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Presidential Documents

Title 3—

The President

Proclamation 5918 of December 5, 1988

National Drunk and Drugged Driving Awareness Week, 1988

By the President of the United States of America

A Proclamation

The holiday season is a most fitting time to reemphasize that driving while under the influence of alcohol or drugs is dangerous and irresponsible behavior that no one should engage in, tolerate, or permit.

Again this year, citizens across our Nation are volunteering their time and talents to take part in a week of observance to focus public attention on eliminating drunk and drugged driving. Public officials at all levels have issued proclamations, sponsored legislation, and appointed task forces; law enforcement agencies have increased enforcement efforts; public and private organizations have held safety campaigns; and citizens have sponsored programs to provide rides home from holiday parties. Actions like these bring us closer to the day when drunk and drugged drivers will no longer threaten our lives and our families.

We can take heart from the results of the comprehensive year-round activities to stop drunk driving. In 1987, the proportion of motor vehicle fatalities in which at least one driver or pedestrian was legally intoxicated was 40 percent. That figure is down from 46.3 percent in 1982. Another significant achievement was among intoxicated teenage drivers, whose involvement in fatal crashes declined to 18.7 percent in 1987, down from 21 percent in 1986 and 28.4 percent in 1982.

These notable gains give us hope and even more reason to redouble our efforts to stop drunk and drugged driving. This is no time for complacency.

We must also realize that combining drugs and alcohol adds to the risk. Studies of drivers involved in accidents reveal that many use drugs—and that certain drugs, either alone or in combination with alcohol, contribute to crashes. We must all be aware of the safety risks of driving after taking drugs, including prescription and over-the-counter drugs that carry a warning label against driving.

We can all help improve safety on our roads and highways by refusing to tolerate drunk and drugged driving; by always wearing safety belts, even for short drives; and by insisting upon prompt and effective action against alcohol- and drug-impaired drivers.

To encourage citizen involvement in prevention efforts and to increase awareness of the threat to our lives and safety, the Congress, by Senate Joint Resolution 332, has designated the week of December 11 through December 17, 1988, as "National Drunk and Drugged Driving Awareness 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 December 11 through December 17, 1988, as National Drunk and Drugged Driving Awareness Week. I ask all Americans to show concern and not to drink or take drugs and drive or to permit others to do so. I also call upon public officials at all levels and interested citizens and groups to observe this week with appropriate ceremonies and activities in reaffirmation of our refusal to tolerate drunk and drugged driving.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of December, 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 thirteenth.

Ronald Reagan

[FR Doc. 88-28303
Filed 12-6-88; 10:35 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5919 of December 5, 1988

Wright Brothers Day, 1988

By the President of the United States of America

A Proclamation

Eighty-five years ago, above the sound of North Carolina's pounding surf, above the chattering of the sea gulls and terns, came the sound of progress; for over the sandy dunes of Kitty Hawk flew the first self-propelled, winged aerovehicle. Hardly an imposing sight, it barely rose above the shore; and, in size, it bore little resemblance to the jumbo jets that would follow. In power, velocity, and payload, it was also but a hint of what was to come. But that aircraft, aloft for only a few moments, held promise far beyond its modest dimensions and capabilities. Eventually that promise became reality, yielding change that helped shrink the globe and bring the peoples of the world closer together. Rarely has mankind beheld an event foreshadowing such remarkable improvement for the benefit of us all. Today, we commemorate an idea that grew in the hearts and minds of the Wright Brothers, Orville and Wilbur, until it culminated in the famous flight that blazed a path into the future for America and the world.

The Congress, by a joint resolution approved December 17, 1963 (77 Stat. 402; 36 U.S.C. 169), has designated the seventeenth day of December of each year as "Wright Brothers Day" and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim December 17, 1988, as Wright Brothers Day, and I call upon the people of the United States to observe this day with appropriate ceremonies and activities, both to recall the achievements of the Wright Brothers and to stimulate aviation in this country and throughout the world.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of December, 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 thirteenth.

Ronald Reagan

[FR Doc. 88-28304
Filed 12-6-88; 10:36 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5920 of December 5, 1988

Year of the Young Reader, 1989

By the President of the United States of America

A Proclamation

Reading is one of the most important activities any child can engage in, and potentially one of the most enjoyable too. For all of us, and especially for youngsters, reading is a key to past, present, and future—a path into virtually limitless treasures of knowledge and inspiration. Reading encourages wonder about the world, broadens awareness of others, and offers clues about the meaning of life. It helps transmit our cultural legacy and fosters inner resources of spirit, intellect, and imagination. Children and young adults need and deserve the gift, joy, and promise of reading, and a year of special national observance in recognition of this truth is most appropriate.

Nurturing a love of reading in children is crucial for their personal growth and well-being and for the continued health and vigor of our communities and country. Now as always, America needs a literate and knowledgeable citizenry fully conversant with and determined to defend our heritage of liberty and learning.

We can all help young readers discover the blessings and the enjoyment that reading offers. Parents can read aloud to their children. Families and schools can make reading materials a familiar part of youngsters' surroundings and can suggest regular visits to libraries. Educators and concerned citizens can redouble their efforts to ensure that students remain in school and that literacy programs for people of all ages are available in their areas. Each of us can give young people the good example of reading ourselves. We can explain the freedom we Americans enjoy to read and write and study as we like. If we do all of these things, we will go a long way toward awakening among every young reader the understanding that reading is a thrilling, lifetime journey into new worlds of adventure, history, heritage, and far frontiers. That will be an inestimable service to our Nation.

The Congress, by Public Law 100–662, has designated 1989 as "Year of the Young Reader" and authorized and requested the President to issue a proclamation in observance of this year.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim 1989 as Year of the Young Reader. I call upon parents and educators, librarians and publishers, interested private organizations and businesses, government officials, and all Americans to observe this year with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of December, 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 thirteenth.

Ronald Reagan

[FR Doc. 88–28305
Filed 12–6–88; 10:37 am]
Billing code 3195–01–M

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-89-011]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Grapefruit Minimum Size Relaxation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule temporarily relaxes the minimum size requirement for shipments of domestic and imported pink seedless grapefruit from size 48 (3$^{9}/_{16}$ inches in diameter) to size 56 (3$^{5}/_{16}$ inches in diameter). The size composition, maturity level, and current and prospective supply and demand conditions for the 1988–89 season Florida grapefruit crop warrants this action.

DATES: Effective for the period December 5, 1988, through August 20, 1989. Comments which are received by January 6, 1989, will be considered prior to issuance of the final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under the Marketing Agreement and Marketing Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. 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 action 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 100 shippers of Florida oranges, grapefruit, tangerines, and tangelos subject to regulation under the Florida citrus marketing order. In addition, there are approximately 13,000 orange, grapefruit, tangerine, and tangelo producers in Florida, and approximately 26 importers who import grapefruit into the United States. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross 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. A minority of these shippers and a majority of the producers and importers may be classified as small entities.

Grade and size requirements for Florida citrus fruit covered under this marketing order are specified in § 905.306 Florida Orange, Grapefruit, Tangerine, and Tangelo Regulation 6 (7 CFR 905.306). This regulation was issued on a continuing basis subject to modification, suspension, or termination by the Secretary. Paragraph (a) of § 905.306 provides that no handler shall ship between the production area and any point outside thereof, in the continental United States, Canada, or Mexico, specified varieties of oranges, grapefruit, tangerines and tangelos unless such varieties meet the minimum grade and size requirements prescribed in Table I.

This rule amends paragraph (a) of § 905.306 to temporarily relax the minimum size requirements for domestic shipments of pink seedless grapefruit from size 48 (3$^{9}/_{16}$ inches in diameter) to size 56 (3$^{5}/_{16}$ inches in diameter), effective December 5, 1988. The relaxation is to remain in effect through August 20, 1989, by which time shipment of the 1988–89 season Florida grapefruit crop will be finished.

The Citrus Administrative Committee (committee), which administers the program locally, recommended relaxation of the size requirements for Florida grapefruit at its November 8, 1988, meeting. The committee recommended the relaxed size requirements for Florida grapefruit based on an analysis of the current and prospective marketing conditions for the 1988–89 season crop, as well as a projection of the size composition and maturity level of the crop which will remain for shipment on and after December 5, 1988. The committee's recommendation to relax the minimum size requirements for grapefruit follows the practice of prior years of lowering such requirements when the fruit reaches an acceptable level of quality, maturity, and flavor. By the date this action takes effect, the size released (56's) should have reached a level of quality, maturity, and flavor satisfactory to consumers necessary to maximize shipments. Growing conditions have not been especially good this season due to a lack of moisture, which has inhibited size development of the fruit. Furthermore, the committee expects the grapefruit market to be the strongest and the weekly flow to market the heaviest of the season when this action becomes effective due to the strong holiday demand, thereby minimizing the price depressing effect of releasing the smaller sized fruit on the market at that time. Shipment of the 1988–89 season

Florida grapefruit crop currently is in progress.

The relaxation of the minimum size requirements for pink seedless grapefruit is only for the remainder of the 1988–89 shipping season. The tighter minimum size requirements as specified § 905.306 will resume for pink seedless grapefruit effective August 21, 1989. The resumption of tighter size requirements for 1989–90 season shipments is based upon the maturity, size, quality, and flavor characteristics of pink seedless grapefruit early in the shipping season.

The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida oranges, grapefruit, tangerines, and tangelos. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Some Florida grapefruit shipments are exempt from the minimum grade and size requirements effective under the marketing order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provision. Also, handlers may ship up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under the current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

Section 8e of the Act [7 U.S.C. 608e–1] provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Since this action relaxes the minimum size requirements for dometically produced pink seedless grapefruit the relaxed requirements would also be applicable to imported pink seedless grapefruit.

Grapefruit import requirements are specified in § 944.106 [7 CFR Part 944), which requires that grapefruit imported into the United States must meet the same minimum grade and size requirements as those specified for the various varieties of Florida grapefruit in Table I of paragraph (a) in § 905.306. Section 944.106 is effective under Section 8e of the Act. An exemption provision in the grapefruit import regulation permits persons to import up to 10 standard packed 4/5-bushel cartons exempt from the import requirements.

The relaxation of the minimum size requirements applicable to domestic and import shipments of pink seedless grapefruit is intended to maximize domestic shipments to meet buyer needs. Therefore, the Department's view is that the impact of this action upon producers, handlers, and importers would be beneficial because it will enable shippers to provide grapefruit consistent with buyer requirements. The application of minimum grade and size requirements to Florida grapefruit and imported grapefruit over the past several years, has resulted in fruit of acceptable size, maturity, and flavor being shipped to fresh markets.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes the minimum size requirements currently in effect for Florida and imported grapefruit; (2) Florida grapefruit handlers are aware of this action which was recommended by the committee at a public meeting and they will need no additional time to comply with the relaxed requirements; (3) shipment of the 1988–89 season Florida grapefruit crop has begun; (4) the relaxation of the size requirements for imported grapefruit is mandatory under Section 8e of the Act; and (5) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, grapefruit, oranges, tangelos, tangerines.

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

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

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

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

2. The provisions of § 905.306 are amended by revising the following entries in Table I of paragraph (a) applicable to domestic shipments, to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6, Amendment 48.

(a) * * *

Table I

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum (Diameter inches) (4)
*	*	*	*
GRAPEFRUIT:			
Seedless, pink	12/05/88–8/20/89.	Improved No. 2 (External) U.S. No. 1 (Internal).	3–5/16
	On and after 8/21/89.	Improved No. 2 (External) U.S. No. 1 (Internal).	3–9/16
*	*	*	*

* * * * *

Dated: December 1, 1988.

Charles R. Brauer,

Director, Fruit and Vegetable Division.

[FR Doc. 88–28103 Filed 12–6–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 989

[FV–88–105FR]

Raisins Produced From Grapes Grown in California; Changes to the Supplementary Rules and Regulations; Deletion of the Weight Adjustment (Moisture) System and Revision of the Schedule of Payments for California Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is adopting as a final rule, the provisions of an interim final rule which changed the supplementary rules and regulations and the schedule of payments of the California raisin marketing order (order). The action deletes the weight adjustment (moisture) system for Natural (sun-dried) Seedless, Monukka, and Other Seedless raisins, makes conforming changes to reflect such deletion and makes a conforming change under the schedule of payments. These changes were recommended by the Raisin Administrative Committee (Committee), the agency responsible for local administration of the marketing order. These changes are designed to improve the operation of the marketing order. In addition, this final rule corrects inadvertent errors in the iterim final rule.

EFFECTIVE DATE: December 7, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 989 (7 CFR Part 989), as amended, regulating the handling of raisins produced from grapes grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601 through 674), hereinafter referred to as the Act.

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 (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such acions 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 23 handlers of raisins subject to regulation under the raisin marketing order, and approximately 5,000 raisin producers 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 raisins may be classified as small entities.

This final rule changes the supplementary rules and regulations and the schedule of payments of the raisin marketing order. These changes were recommended by the Committee. They delete the weight adjustment (moisture) system for Natural (sun-dried) Seedless, monukka, and Other Seedless raisins, make conforming changes to other order provisions to reflect the deletion of this system, and make an additional conforming change in Subpart—Schedule of Payments. The rule also corrects inadvertent errors in the interim final rule published August 22, 1988, (53 FR 31830).

The first change deletes the weight adjustment (moisture) system for natural (sun-dried) Seedless, Monukka, and Other Seedless raisins. This system was established on September 4, 1985, (50 FR 35769). The weight adjustment (moisture) system encouraged Natural (sun-dried) Seedless, Monukka, and Other Seedless raisin producers to deliver lower moisture raisins (i.e., in the 10.0 to 14.0 percent moisture range) to handlers for processing. The industry has found that higher maturity raisins of these varietal types with a moisture level in excess of 14.0 percent tend to sugar if held in storage for extended periods. Sugaring is an undesirable condition in raisins because the raisins feel gritty, rather than soft and pliable, when eaten.

Under this system, producers delivering raisins in the lower percentage range (i.e., 13.9 percent and lower) received a weight credit to their lots of raisins. In turn, producers that delivered raisins in the higher percentage range (i.e., 14.1 to 16.0 percent) received a weight reduction on such lots. There was no dockage or adjustment on raisins containing 14.0 percent moisture. Raisins above the 16.0 percent moisture level were considered off-grade and were returned to the producer or reconditioned by the handler to bring the lot up to acceptable quality standards.

Producers received payments on their deliveries of raisins based on the creditable fruit weight of each lot. Therefore, producers that received a weight credit for delivering drier raisins received a larger payment per lot than those producers who delivered raisins in a higher percent moisture range.

As mentioned above, the industry has found that higher maturity raisins with more than 14.0 percent moisture tend to sugar if held in storage for a lengthy period and the weight adjustment (moisture) system was installed to correct this program. However, since the advent of the program in 1985, the average moisture level of such lots of Natural (sun-dried) Seedless, Monukka, and Other Seedless raisins delivered to handlers has dropped 1.2 percent from 11.71 to 10.52 percent. In addition, an average of only 5.01 percent of the lots of such raisins delivered since the onset of this program have been in the 14.0 to 16.0 percent moisture range. Producers are now delivering drier raisins.

The Committee has therefore recommended that the weight adjustment (moisture) system be discontinued and deleted from the rules and regulations. Since drier raisins are now being delivered, the weight adjustment (moisture) portion of the regulations is not considered as necessary as it was in 1985. The current program has also been found to be cumbersome and difficult to administer. This action also makes necessary conforming changes to other provisions in the regulations to reflect the deletion of the weight adjustment (moisture) system (§§ 989.210, 989.212 and 989.213).

The second change revises § 989.401(a)(1) to reflect the use of "creditable weight" as the basis of payment for receiving, storing, fumigating and handling costs paid to handlers rather than the "natural condition weight" at the time of acquisition as previously stated in the regulations. This is a conforming change which should have been implemented when the weight dockage and adjustment (moisture) systems were originally established on September 4, 1985, (50 FR 35769).

The interim final rule establishing these changes was issued on August 17, 1988, and was published in the **Federal Register** on August 22, 1988, (53 FR 31830). Comments were solicited from interested persons through September 21, 1988. No comments were received. Thus, the changes made by that interim final rule are adopted by this final action, with the exception of correcting errors in §§ 989.212 and 989.213 which were inadvertently made in that interim final rule and which are corrected in this final rule.

Of the errors mentioned above, one appears in the second sentence of paragraph (a) of § 989.212, which is

found in the first column of page 31832 of the August 22, 1988, issue of the **Federal Register**. In that sentence, the phrase "more than 12 percent" was inadvertently used. This action corrects that phrase to read "from 12.1 percent through 17.0 percent."

The second error that is corrected by this final rule also appears in paragraph (a) of § 989.213, which is found in the first column on page 31832 of the August 22, 1988, issue of the **Federal Register**. In the second sentence of paragraph (a), references to paragraph (c) and (d) were inadvertently omitted. This action corrects that reference to read "paragraphs (b), (c), and (d)."

Other errors contained in the August 22 interim final rule were corrected by a final rule published in the **Federal Register** on September 8, 1988, (53 FR 34714). The August 22 interim final rule inadvertently used the phrase "40.0 through 49.9 percent" in the first sentence of paragraph (a) in § 989.213 (53 FR 31832). The September 8 rule corrected that phrase to read "35.0 through 49.9 percent" (53 FR 34715). The August 22 interim final rule also corrected section 989.212 by reinserting the term "dipped seedless" in the first sentence (53 FR 31832).

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

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

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because the crop year for raisins began August 1, 1988, and this rule should continue in effect for this crop year and for subsequent years.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, and Raisins.

For the reasons set forth in the preamble, the following action pertaining to 7 CFR Part 989 is taken:

Note.—These sections will appear in the Code of Federal Regulations.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

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

Subpart—Supplementary Regulations

2. Section 989.210 is revised to read as follows:

§ 989.210 Handling of varietal types of raisins acquired pursuant to a weight dockage system.

(a) *General.* A handler may acquire as standard raisins lots of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, Other Seedless, Sultana, Zante Currant and Muscat (including other raisins with seeds) raisins under the weight dockage provisions described in §§ 989.212 and 989.213. The creditable weight of each lot of raisins acquired in this manner shall be that obtained by multiplying the net weight of the raisins in the lot by the applicable factor(s) from the appropriate dockage table(s) included in those sections.

(b) *Free and reserve tonnage percentages.* Whenever free and reserve percentages are designated for raisins of the varietal types specified in paragraph (a) of this section for a crop year, such percentages shall be applicable to the creditable weight of any lot of such raisins acquired by a handler pursuant to a weight dockage system.

(c) *Reserve tonnage.* A handler may hold as reserve tonnage raisins, any lot, or portion thereof, of raisins of the varietal types specified in paragraph (a) of this section acquired pursuant to a weight dockage system: *Provided,* That only the creditable weight of such lot, or portion thereof, may be applied by the Committee against the handler's reserve tonnage obligation.

(d) *Assessments.* Assessments on any lot of raisins of the varietal types specified in paragraph (a) of this section acquired by a handler pursuant to a weight dockage system shall be applicable to the free tonnage portion of the creditable weight of such lot.

(e) *Payments for services on reserve tonnage.* Payment to a handler for services performed by such handler with respect to reserve tonnage raisins of the varietal types specified in paragraph (a) of this section acquired by a handler pursuant to a weight dockage system shall be made on the basis of the creditable weight of such lot and at the applicable rate specified for such services in § 989.401 of *Subpart—Schedule of Payments.*

(f) *Identification.* Any lot of raisins of the varietal types specified in paragraph (a) of this section acquired pursuant to a weight dockage system shall be so identified by the inspection service affixing to one container on each pallet, or to each bin, in such lot, a prenumbered RAC control card (to be furnished by the Committee) which shall remain affixed to the container or bin until the raisins are processed or disposed of as natural condition raisins. The control card shall only be removed by, or under the supervision of an inspector of, the inspection service, or authorized Committee personnel.

(g) *Application of dockage factors.* A lot of raisins acquired which may be subject to both a substandard and maturity dockage factor shall have only the highest of the two dockage factors applied to determine the creditable weight.

§ 989.211 [Removed]

3. Section 989.211 is removed.

4. Section 989.212(a) is revised to read as follows:

§ 989.212 Substandard dockage.

(a) *General.* Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins containing from 5.1 through 10.0 percent, by weight, of substandard raisins may be acquired by a handler under a weight dockage system. A handler also may, subject to prior agreement, acquire as standard raisins any lot of Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins containing from 12.1 percent through 17.0 percent, by weight, of substandard raisins under a dockage system. The creditable weight of each lot of raisins acquired under the substandard dockage system shall be obtained by multiplying the net weight of the lot of raisins by the applicable dockage factor from the appropriate dockage table prescribed in paragraph (b) or (c) of this section.

* * * * *

5. Section 989.213(a) is revised to read as follows:

§ 989.213 Maturity dockage.

(a) *General.* Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins containing from 35.0 percent through 49.9 percent,

by weight, of well-matured or reasonably well-matured raisins may be acquired by a handler under a weight dockage system. The creditable weight of each lot of raisins acquired under the maturity dockage system shall be obtained by multiplying the net weight of the lot of raisins by the applicable dockage factor from the dockage table prescribed in paragraphs (b), (c), and (d) of this section.

* * * * *

6. Section 989.401(a) is revised to read as follows:

§ 989.401 Payments for services performed with respect to reserve tonnage raisins.

(a) *Payment for crop year of acquisition. (1) Receiving, storing, fumigating, and handling.* Each handler shall, beginning August 1, 1983, be compensated at the rate of $38.75 per ton (creditable weight at the time of acquisition) for receiving, storing, fumigating, and handling the reserve tonnage raisins, as determined by the final reserve tonnage percentage, acquired during a particular crop year and held by the handler for the account of the Raisin Adminsitrative Committee during all or any part of the same crop year, and released after February 13, 1984.

* * * * *

Dated: December 1, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

FR Doc. 88-28068 Filed 12-6-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 059CE, Special Condition No. 23-ACE-43]

Special Conditions; Modified Cessna Model 414A Airplanes With TCM TSIOL-550 Engines Installed

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued to become part of the type certification basis for modified Cessna Model 414A airplanes with TCM TSIOL-550 engines installed. The novel and unusual design features requiring special conditions include the installation of the TCM TSIOL-550 engines, which incorporates coolant systems for which the applicable regulations do not contain adequate or appropriate temperature indicator requirements. The special conditions contain the additional airworthiness standards which the Administrator finds necessary to establish a level of safety equivalent to the original certification basis for these airplanes.

EFFECTIVE DATE: January 6, 1989.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 E. 12th Street, Kansas City, Missouri 64106, telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 1988, RAM Aircraft Corporation, Post Office Box 5219, Waco, Texas 76708, made application to the FAA for supplemental type certificate (STC) approval on the type design changes necessary to install the Teledyne Continental Motors (TCM) TSIOL-550 engines in the Cessna Model 414A airplane. The TCM TSIOL-550 engines are liquid-cooled replacements for the currently installed air-cooled engines.

Early airworthiness standards contained requirements for both liquid-cooled and air-cooled engine installations. These requirements continued through a number of rule changes; however, the requirement for a coolant temperature indicator for the flight crew was deleted from the rules, without explanation, by Civil Air Regulations Amendment 3-5, effective October 1, 1959. Consequently, the type certification basis for these airplanes does not contain a requirement for a liquid-coolant temperature indicator.

Since CAR 3/Part 23 as applicable to these airplanes do not contain adequate instrument requirements for liquid-cooled engines, it is incumbent upon the FAA to identify liquid-cooled engine installations as novel and unusual design features to the extent necessary to adopt special conditions to require the necessary instrumentation.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis in accordance with § 21.101(b)(2), if the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification, as provided by § 21.101(b)(2).

Type Certification Basis

The proposed type certification basis for the RAM modified Cessna Model 414A is as follows: Part 3 of the Civil Air Regulations (CAR), dated May 15, 1956, as amended by 3-1 through 3-5 and 3-8, excluding the following portions: Subpart B and §§ 3.356, 3.357, 3.358, 3.359, 3.411, 3.429, 3.433, 3.434, 3.435, 3.436, 3.437, 3.445, 3.581, 3.582, 3.583, 3.584, 3.585, 3.587, 3.628, 3.666, 3.672, 3.673, 3.674, 3.675, 3.700(c), 3.728, 3.767(a), and 3.767(b). Include the following portions of Part 23 of the FAR, dated February 1, 1965, as amended by 23-1 through 23-14: Subpart B and §§ 23.729, 23.901, 23.909, 23.951, 23.954, 23.955, 23.959, 23.973, 23.1041, 23.1043, 23.1047, 23.1143, 23.1305, 23.1387(e); 23.1435 and 23.1557(c), as amended by 23-1 through 23-21; § 23.1385(c), as amended by 23-1 through 23-23, § 23.1327. Add § 23.1559(b) for Model 414A only. Findings of equivalent level of safety were made for CAR 3.637, 3.757, and 3.778(a). Part 36, as applicable, and these special conditions are applicable when liquid-cooled engines are installed.

Discussion of Comments

The FAA received no comments on the special condition in response to Notice No. 23-ACE-43, published in the **Federal Register** on August 1, 1988. The closing date for comments was August 31, 1988. However, the FAA did receive one comment addressing an error in the preamble to the notice.

The commenter objected to the statement in the "Discussion" section that states: "When CAR 3 was recodified into Part 23, the requirement for a coolant temperature indicator for each liquid-cooled engine was inadvertently omitted." The commenter states he participated in the recodification and it was not "inadvertently" omitted. The commenter submitted the applicable portions of the May 1962 issue of CAR 3 that was used as the basis for Part 23. The applicable page from CAR 3, of May 1956, was also enclosed. Since the older document contains the requirement and the later one does not, the requirement was deleted somewhere between. The commenter suspects the requirement was deleted by Amendment 3-5, 24 FR 7065, dated September 1, 1959.

The FAA checked further into this issue and finds that the commenter is correct in that Civil Air Regulations amendment 3-5, effective October 1, 1959, deleted the requirement without

explanation other than the change is "clarifying or editorial in nature." The FAA apologizes for the error in the notice.

Federalism Implications

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

Conclusion

In view of the design features discussed above, the following special conditions are adopted for the propulsion system of the Cessna Model 414A airplanes, with TCM TSIOL-550 engines installed, under the provisions of § 21.16 to provide a level of safety equivalent to that intended by the regulations incorporated by reference. This action is not a rule of general applicability and affects only the model/series of airplane identified in these special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g). Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.29(b).

Adoption of Special Conditions

Accordingly, the Federal Aviation Administration issues the following special conditions as part of the type certification basis for the RAM modified Cessna Model 414A airplanes with TCM TSIOL-550 engines installed:

1. In addition to the requirements of § 23.1305, a coolant temperature indicator is required for each liquid-cooled engine.

Issued in Kansas City, Missouri on November 15, 1988.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-28099 Filed 12-6-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 536

Claims Against the United States

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army announces a change of the regulatory provisions controlling the processing and settlement of administrative claims filed against the Army. The change is necessary because of the publication of change 1 to AR 27-20 (July 10, 1987) (Claims). This change will inform third parties of the procedures currently controlling the processing and settlement of these administrative claims by the Army.

EFFECTIVE DATE: December 7, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Mounts, Jr., Deputy Director, U.S. Army Claims Service, Office of The Judge Advocate General, Fort Meade, Maryland 20755-5360, (301) 677-7622.

SUPPLEMENTARY INFORMATION: This change updates the applicable law on damages. It changes the appellate rules to the Military Claims Act (MCA). The revision provides rules on nonappropriated claims to be handled by commercial insurance instead of under a claims statute. It designates responsibility for the Article 139 Program. The change provides uniform reduction procedures for claimant's failure, absent good cause, to provide timely notice to household goods carrier for loss or damage.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as non-major. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 536

Claims, Foreign claims, Tort claims.

Jack F. Lane, Jr.,

Colonel, JA, Commanding, United States Army Claims Service, Office of The Judge Advocate General, Department of Defense.

Accordingly, 32 CFR Part 536 is revised to read as follows:

PART 536—CLAIMS AGAINST THE UNITED STATES

General Provisions

Claims Arising From Activities of Military or Civilian Personnel or Incident to Noncombat Activities

Claims Arising From Activities of National Guard Personnel While Engaged in Duty or Training

Sec.

Claims Incident to Use of Government Vehicles and Other Property of the United States Not Cognizable Under Other Law

Authority: 10 U.S.C. 939, 2733, 2734, 2734a, 2736, 2737, 3012, 4801 through 4804, and 4806; 28 U.S.C. 1346(b), 2401(b), 2402, 2671 through 2680; and 32 U.S.C. 715, unless otherwise noted.

General Provisions

§ 536.1 Purpose and scope.

(a) *Purpose.* Part 536 prescribes policies and procedures to be followed in the filing, investigation, processing and administrative settlement of Department of Army (DA) generated noncontractual claims. Sections 536.1 through 536.13 contain general instructions and guidance for the investigation and processing of claims and apply to all claims unless other laws or regulations specify other procedures. They are intended to ensure that incidents that may result in claims are promptly and efficiently investigated under supervision adequate to ensure a sound basis for official action and that all claims resulting from such incidents are expeditiously settled. The Secretary of the Army has delegated authority to The Judge Advocate General (TJAG) to assign areas of responsibility and designate functional responsibility for claims purposes. TJAG has delegated to the Commander, U.S. Army Claims Service (USARCS) to carry out these responsibilities. USARCS is the agency through which the Secretary of the Army and TJAG discharge their responsibilities for claims administration. The proper mailing address of USARCS is Commander, U.S. Army Claims Service, Office of The Judge Advocate General, Fort George G. Meade, Maryland 20755–5360.

(b) *Scope*—(1) *Applicability.* (i) Sections 536.20 through 536.35 apply in the settlement of claims under the Military Claims Act (MCA) (10 U.S.C. 2733) for personal injury, death or property damage that was either caused by members or employees of the DA acting within the scope of their employment or otherwise incident to noncombat activities of the DA.

(ii) Section 536.40 sets forth the procedures to be followed and the standards to be applied in the processing of claims cognizable under Article 139, Uniform Code of Military Justice (UCMJ) (10 U.S.C. 399) for property willfully damaged or wrongfully taken or withheld by members of the DA.

(iii) Section 536.50 governs the administrative settlement of claims under the Federal Tort Claims Act (FTCA) (28 U.S.C. 1346(b), 2671–2680) for personal injury, death or property damage caused by the negligent act or omissions of members or employees of the DA while acting within the scope of their employment.

(iv) Section 536.60 provides the procedures to be followed in the settlement of claims under the Army Maritime Claims Settlement Act (10 U.S.C. 4801–4804, 4806) for damage caused by a vessel of or in the service of the Army.

(v) Sections 536.70 through 536.81 provide instructions for settlement of claims under the National Guard Claims Act (NGCA) (32 U.S.C. 715) for personal injury, death or property damage that was either caused by a member or employee of the Army National Guard (ARNG) while in training or duty under Federal law, and acting within the scope of their employment; or otherwise incident to noncombat activities of the ARNG not in active Federal service.

(vi) Sections 536.90 through 536.97 provide instructions for settlement of claims under 10 U.S.C. 2737 for personal injury, death or property damage (not cognizable under any other law) incident to the use of Government property by members or employees of the DA.

(2) *Nonappropriated fund activities.* Claims arising from acts or omissions of employees of nonappropriated fund activities within the United States, its Territories, and possessions, are processed in the manner prescribed by §§ 536.1 through 536.13. In oversea areas, such claims will be processed in accordance with treaties or agreements between the United States and foreign countries with respect to the settlement of claims arising from acts or omissions of military and civilian personnel of the United States in such countries, or in accordance with applicable regulations as appropriate.

(3) *Nonapplicability.* Sections 536.1 through 536.13 do not apply to:

(i) Contractual claims which are under the provisions of Pub. L. 85–804, 28 August 1958 (72 Stat. 972) and AR 37–103, or other regulations including acquisition regulations.

(ii) Maritime claims (§ 536.60).

§ 536.2 Information and assistance.

(a) Government personnel may not represent any claimant or receive any payment or gratuity for services rendered. They may not accept any share or interest in a claim or assist in its presentation, under penalty of Federal criminal law (18 U.S.C. 203, 205). They are prohibited from disclosing information which may be the basis of a claim, or any evidence or record in any claims matter, except as prescribed in §§ 518.1 through 518.4 of this chapter or other pertinent regulations. A person lacking authority to approve or disapprove a claim may not advise a claimant or his representative as to the disposition recommended.

(b) The prohibitions against furnishing information and assistance do not apply to the performance of official duty. Any person who indicates a desire to file a claim against the United States will be instructed concerning the procedure to follow. He will be furnished claim forms, and, when necessary, will be assisted in completing the forms and assembling evidence. He will not be assisted in determining what amount to claim. In the vicinity of a field exercise, maneuver, or disaster, information may be disseminated concerning the right to present claims, the procedure to be followed, and the names and locations of claims officers, and engineer repair teams. When the government of a foreign country in which the U.S. Armed Forces are stationed has assumed responsibility for the settlement of certain claims against the United States, officials of that country will be furnished pertinent information and evidence so far as security considerations permit.

§ 536.3 Definitions and explanations.

The following terms as used in §§ 536.1 through 536.13 and the matters referred to in § 536.1(b) will have the meaning here indicated:

(a) *Affirmative Claims.* The government's statutory right to recover money, property, or repayment in kind incurred as a result of property loss, damage, or destruction by any individual, partnership, association or other legal entity, foreign or domestic, except an instrumentality of the United States. Also, the Government's statutory right to recover the reasonable medical costs expended for hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) incurred under circumstances creating tort liability upon some third person.

(b) *Civilian Employees.* Civilian employee means a person whose

activities the Government has the right to direct and control, not only as to the result to be accomplished but also as to the means used: this includes, but is not limited to, full-time Federal civilian officers and employees. The term should be distinguished from the term "independent contractor" for whose actions the Government generally is not liable. The determination of who is a civilian employee is a Federal question determined under Federal law and not under local law.

(c) *Claim.* A demand for payment of a specified sum of money (other than the ordinary obligations incurred for services, supplies or equipment) and, unless otherwise specified in this regulation, in writing and signed by the claimant or a property designated representative.

(d) *Claim file.* The claim, report of the claims officer or other report of investigation, supporting documentation, and pertinent correspondence.

(e) *Claim approval authority.* Except for claims under 10 U.S.C. 939, 31 U.S.C. 3721, and treaties or international agreements such as the North Atlantic Treaty Organization (NATO), Status of Forces Agreement (SOFA), and subject to any limitations found in specific provisions of these regulations, the authority to approve and pay a claim in the amount presented or in a lesser amount upon the execution of a settlement agreement by the claimant. A person with approval authority may not disapprove a claim in its entirety nor make a final offer, subject to any limitations found in specific provisions of this regulation.

(f) *Claim settlement authority.* The authority to approve a claim, to deny a claim in its entirety, or to make a final offer subject to any limitations found in specific provisions of this regulation.

(g) *Claims attorney.* DA or DOD civilian attorney assigned to a judge advocate or legal office, who has been designated by the Commander, USARCS.

(h) *Claims judge advocate.* An officer of the Judge Advocate General's Corps designated by a command or staff judge advocate (SJA) to be in immediate charge of claims activities of the command.

(i) *Claims Officer.* A commissioned officer, warrant officer, or qualified civilian employee detailed by the commander of an installation or unit who is trained or experienced in the investigation of claims.

(j) *Claimant.* An individual, partnership, association, corporation, country, state, territory, or other political subdivision of such country; does not include the U.S. Government or any of its instrumentalities, except as prescribed by statute. Indian tribes are not proper party claimants but individual Indians can be claimants.

(k) *Combat activities.* Activities resulting directly or indirectly from action by the enemy, or by U.S. Armed Forces engaged in, or in immediate preparation for, impending armed conflict.

(l) *Diaster.* A sudden and extraordinary calamity occasioned by activities of the Army, other than combat, resulting in extensive civilian property damage or personal injuries and creating a large number of potential claims.

(m) *Federal agency.* A federal agency includes the executive departments and independent establishments of the United States and corporations acting as instrumentalities or agencies of the United States but does not include any contractor with the United States.

(n) *Final offer.* An offer of payment by a settlement authority in full and final settlement of a claim which, if not accepted, constitutes a final action for purposes of filing suit under § 536.50 or filing an appeal under §§ 536.20 through 536.35 and 536.70 through 536.81, provided such offer is made in writing and meets the other requirements of a final action as set forth in this regulation.

(o) *Government vehicle.* A vehicle owned or on loan to any agency of the Government of the United States or privately owned, and operated by members or civilian employees of the DA in the scope of their office or employment with the Government of the United States including vehicles being operated on joint operations of the U.S. Armed Forces.

(p) *Medical claims judge advocate.* A judge advocate (JA) assigned to an Army Medical Center, under an agreement between TJAG and The Surgeon General, to perform the primary duty of investigating and processing medical malpractice claims.

(q) *Medical claims investigator.* A senior legal specialist or qualified civilian assigned to assist a medical claims JA on a full-time basis. A medical claims investigator is authorized to administer oaths under the provision of Article 136(b)(6), UCMJ, 10 U.S.C. 936(b)(6) when performing investigative duties.

(r) *Medical malpractice claim.* A claim arising out of substandard or inadequate care of an Army patient.

(s) *Military personnel.* Military personnel means members of the DA on active duty for training, or inactive duty training as defined in AR 310–25 and 10 U.S.C. 101(22), 101(23), and 101(30). This includes members of the District of Columbia ARNG while performing active duty or training under 32 U.S.C. 316, 502, 503, 504 or 505.

(t) *Noncombat activities.* A noncombat activity arises from authorized activities essentially military in nature, having little parallel in civilian pursuits and which historically have been considered as furnishing a proper basis for payment of claims, such as practice firing of missiles and weapons, training and field exercises, and maneuvers, including, in connection therewith, the operation of aircraft and vehicles, and use and occupancy of real estate, and movement of combat or other vehicles designed especially for military use. Activities incident to combat, whether in time of war or not, and use of military personnel and civilian employees in connection with civil disturbances, are excluded.

(u) *Personal property.* Property consisting solely of corporeal personal property, that is, tangible things. Personal property does not consist of the loss or forfeiture of a security deposit or a contingent financial benefit.

§ 536.4 Treaties and international agreements.

(a) The governments of some foreign countries have by treaty or agreement waived or assumed, or may hereafter waive or assume, certain claims against the United States. In such instances claims will not be settled under laws or regulations of the United States.

(b) The prohibition stated in paragraph (a) of this section is not applicable to claims within the purview of Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty or similar type agreements which normally will be investigated and settled as therein provided.

§ 536.5 Claims.

(a) *Who may present.* (1) A claim may be presented by the owner of the property, or in his name by a duly authorized agent or legal representative. As used in this regulation an owner includes the following:

(i) For real property. The mortgagor, or the mortgagee, if he or she can maintain a cause of action in the local courts involving a tort to that specific property. When notice of divided interests in real property is received, the claim should, if feasible, be treated as a single claim or a release from all interests must be obtained.

(ii) For personal property. A bailee, leasee, mortgagee, and conditional vendor, or others having title for

purposes of security only, are not proper claimants unless specifically authorized by the statute and implementing regulations in question. If more than one party has a real interest in the property, all must join in the claim or a release from all interests must be obtained.

(2) A claim for personal injury may be presented by the injured person or duly authorized agent or legal representative.

(3) A claim based on death may be presented by the executor or administrator of the deceased's estate, or by any person determined to be legally or beneficially entitled. The amount allowed will, to the extent practicable, be apportioned among the beneficiaries in accordance with the law applicable to the incident.

(4) A claim for medical, hospital, or burial expenses may be presented by any person who by reason of family relationship has in fact incurred the expenses for which the claim is made. However, for claims cognizable under the provisions of the FTCA, see § 536.50, and for claims cognizable under the provisions of the Nonscope of Employment Claims Act, see §§ 536.90 through 536.97.

(5) A claim presented by an agent or legal representative will be made in the name of the claimant and signed by the agent or legal representative showing the title or capacity. Written evidence of the authority of such person to act is mandatory except when controlling law does not require such evidence.

(6) A claim normally will include all damages that accrue by reason of the incident. Where the same claimant has a claim for damage to or loss of property and a claim for personal injury or a claim based on death arising out of the same incident, each of the foregoing or any combination of them ordinarily represent only an integral part or parts of a single claim or cause of action. Under §§ 536.20 through 536.35 and the Foreign Claims Act (FCA) (10 U.S.C. 2734), a single claimant is entitled to be compensated only one time for all damages or injuries arising out of an incident.

(b) *Subrogation.* A claim may be presented by a subrogee in his own name if authorized by the law of the place where the incident giving rise to the claim occurred, provided subrogation is not barred by the regulation applicable to the type of claim involved. (1) The claims of the subrogor (insured) and subrogee (insurer) for damages arising out of the same incident constitute separate claims, and it is permissible for the aggregate of such claims to exceed the monetary jurisdiction of the approving or settlement authority.

(2) A subrogor and a subrogee may file a claim jointly or individually. A fully subrogated claim will be paid only to the subrogee. Whether a claim is fully subrogated is a matter to be determined by local law. Some jurisdictions permit the property owner to file for property damage even though the owner has been compensated for the repairs by an insurer. In such instances a release should be obtained from both parties in interest or be released by both of them. The approved payment in a joint claim will be by joint check which will be sent to the subrogee unless both parties specify otherwise. If separate claims are filed, payment will be by check issued to each claimant to the extent of his undisputed interest.

(3) Where a claimant has made an election and accepted workmen's compensation benefits, both statutory and case law of the jurisdiction should be scrutinized to determine to what extent the claim of the injured party against third parties has been extinguished by acceptance of compensation benefits. While it is infrequent that the claim is fully extinguished, it is true in some jurisdictions, and the only proper party claimant is the workmen's compensation carrier. Even where the injured party's claim has not been fully extinguished, most jurisdictions provide that the compensation insurance carrier has a lien on any recovery from the third party, and no settlement should be reached without approval by the carrier where required by local law. Additionally, claims from the workmen's compensation carrier as subrogee or otherwise will not be considered payable where the United States has paid the premiums, directly or indirectly, for the workmen's compensation insurance. Applicable contract provisions holding the United States harmless should be utilized.

(4) Whether medical payments paid by an insurer to its insured can be subrogated depends on local law. Some jurisdictions prohibit these claims to be submitted by the insurer notwithstanding a contractual provision providing for subrogation. Therefore, local law should be researched prior to deciding the issue, and claims forwarded to higher headquarters for adjudication should contain the results of said research. Such claims, where prohibited by state law, will also be barred by the Antiassignment Act.

(5) Care will be exercised to require insurance disclosure consistent with the type of incident generating the claim. Every claimant will, as a part of his claim, make a written disclosure concerning insurance coverage as to:

(i) The name and address of every insurer;

(ii) The kind and amount of insurance;

(iii) Policy number;

(iv) Whether a claim has been or will be presented to an insurer, and, if so, the amount of such claims; and

(v) Whether the insurer has paid the claim in whole or in part, or has indicated payment will be made.

(6) Each subrogee must substantiate his interest or right to file a claim by appropriate documentary evidence and should support the claim as to liability and measure of damages in the same manner as required of any other claimant. Documentary evidence of payment to a subrogor does not constitute evidence either of liability of the Government or of the amount of damages. Approving and settlement authorities will make independent determinations upon the evidence of record and the law.

(7) Subrogated claims are not cognizable under §§ 536.90 through 536.97 and the FCA (10 U.S.C. 2734).

(c) *Transfer and assignments.* (1) Except as they occur by operation of law or after a voucher for the payment has been issued, unless within the exceptions set forth by statute (see 31 U.S.C 3727 and AR 37–107), the following are null and void—

(i) Every purported transfer or assignment of a claim against the United States, or of any part of or interest in a claim, whether absolute or conditional.

(ii) Every power of attorney or other purported authority to receive payment of all or part of any such claim.

(2) The purposes of the Antiassignment Act are to eliminate multiple payment of claims, to cause the United States to deal only with original parties, and to prevent persons of influence from purchasing claims against the United States.

(3) In general, this statute prohibits voluntary assignments of claims with the exception of transfers or assignments made by operation of law. The operation of law exception has been held to apply to claims passing to assignees because of bankruptcy proceedings, assignments for the benefit of creditors, corporate liquidations, consolidations or reorganizations, and where title passes by operation of law to heirs or legatees. Subrogated claims which arise under a statute are not barred by the Antiassignment Act. For example, subrogated worker's compensation claims are cognizable when presented by the insurer.

(4) Subrogated claims which arise pursuant to contractual provisions may be paid to the subrogee if the subrogated

claim is recognized by state statute or decision. For example, an insurer under an automobile insurance policy becomes subrogated to the rights of a claimant upon payment of a property damage claim. Generally, such subrogated claims are authorized by State law and are therefore not barred by the Antiassignment Act.

(5) Before claims are paid, it is necessary to determine whether there may be a valid subrogated claim under Federal or State statute or subrogation contract held valid by State law. If there may be a valid subrogated claim forthcoming, payment should be withheld for this portion of the claim. If it is determined that claimant is the only proper party, full settlement is authorized.

(d) *Action by claimant*—(1) *Form of claim.* The claimant will submit his claim using authorized official forms whenever practicable. A claim is filed only when the elements indicated in § 536.3(c) have been supplied in writing by a person authorized to present a claim, unless the claim is cognizable under a regulation that specifies otherwise. A claim may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a).

(4) *Amendment of claims.* A claim may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). A claim may be amended by changing the amount, the bases of liability, or elements of damages concerning the same incident. Parties may be added only if the additional party could have filed a joint claim initially. If the additional party had a separate cause of action, his claim may not be treated as an amendment but only as a separate claim and is thus barred if the statute of limitations has run. For example, if a claim is timely filed on behalf of a minor for personal injuries, a subsequent claim by a parent for loss of services is considered a separate claim and is barred if it is not filed prior to the running of the statute of limitations. Another example is where a separate claim is filed for loss of services or consortium by a spouse arising out of injuries to the husband or wife of the claimant. On the other hand, if a claim is timely filed by an insured for the deductible portion of the property damage, a subsequent claim by the insurer based on payment of property damage to its insured may be filed as an amendment even though the statute of limitations has run, unless final action has been taken on the insured's claim.

(5) *Date of receipt stops the running of the statute.* In computing this time to determine whether the period of limitations has expired, exclude the first day and include the last day, except when it falls on a nonworkday such as Saturday, Sunday, or a legal holiday, in which case it is to be extended to the next workday.

(f) *Statute of limitations*—(1) *General.* Each statute available to the Department of the Army for the administrative settlement of claims, except the Maritime Claims Settlement Act (10 U.S.C. 4802), specifies the time during which the right to file a claim must be exercised. These statutes of limitations, which are jurisdictional in nature, are not subject to waiver unless the statute expressly provides for waiver. Specific information concerning the period for filing under each statute is contained in the appropriate implementing sections of this regulation.

(2) *When a claim accrues.* A claim accrues on the date on which the alleged wrongful act or omission results in an actionable injury or damage to the claimant or his decedent. Exceptions to this general rule may exist where the claimant does not know the cause of injury or death; that is, the claim accrues when the injured party, or someone acting on his or her behalf, knows both the existence and the cause of his or her injury. However, this exception does not apply when, at a later time, he or she discovers that the acts inflicting the injury may constitute medical malpractice. (See *United States v. Kubrick*, 444 U.S. 111, 100 S. Ct. 352 (1979).) The discovery rule is not limited to medical malpractice claims; it has been applied to diverse situations involving violent death, chemical and atomic testing, and erosion and hazardous work environment. In claims for indemnity or contribution against the United States, the accrual date is the time of the payment for which indemnity is sought or on which contribution is based.

(3) *Effect of infancy, incompetency or the filing of suit.* The statute of limitations for administrative claims is not tolled by infancy or incompetency. Likewise, the statute of limitations is not tolled for purposes of filing an administrative claim by the filing of a suit based upon the same incident in a Federal, State, or local court against the United States or other parties.

(2) *Signatures.* (i) The claim and all other papers will be signed in ink by the claimant or by his duly authorized agent. Such signature will include the first name, middle initial, and surname. A married woman must sign her claim in her given name, for example, "Mary A. Doe," rather than "Mrs. John Doe."

(ii) Where the claimant is represented, the supporting evidence required by subparagraph a(5) of this section will be required only if the claim is signed by the agent or legal representative. However, in all cases in which a claimant is represented, the name and address of the representative will be included in the file together with copies of all correspondence and records of conversations and other contacts maintained and included in the file. Frequently, these records are determinative as to whether the statute of limitations has been tolled.

(3) *Presentation.* The claim should be presented to the commanding officer of the unit involved, or to the legal office of the nearest Army post, camp, or station, or other military establishment convenient to the claimant. In a foreign country where no appropriate commander is stationed, the claim should be submitted to any attache of the U.S. Armed Forces. Claims cognizable under Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty, Article XVIII of the Treaty of Mutual Cooperation and Security between the United States and Japan regarding facilities and areas and the Status of United States Armed Forces in Japan (Japan SOFA) or other similar treaty or agreement are filed with designated claims officials of the receiving State.

(e) *Evidence to be submitted by claimant.* The claimant should submit the evidence necessary to substantiate his claim. It is essential that independent evidence be submitted which will substantiate the correctness of the amount claimed.

(g) *By the command concerned*—(1) *General.* If the claim is of a type and amount within the jurisdiction of the claims office of the command concerned and the claim is meritorious in the amount claimed, it will be approved and paid. If a claim in an amount in excess of the monetary jurisdiction of the claims office, is meritorious in a lesser amount within its jurisdiction, the claim may be approved for payment provided the amount offered is accepted by the claimant in settlement of the claim. If the claim is not of a type within the jurisdiction of the claims office, or if the claimant will not accept an amount within its jurisdiction, the claim with supporting papers and a recommendation for appropriate action will be forwarded to the next higher

claims authority. If the claim is determined to be not meritorious, it will be disapproved provided the claims office has settlement authority for claims of the type and amount involved. Prior to the disapproval of a claim under a particular statute, a careful review should be made to ensure that the claim is not properly payable under a different statute or on another basis.

(2) *Claims within settlement authority of USARCS or the Attorney General.* A copy of each of the following types of claims will be forwarded immediately to the Commander, USARCS: (i) One that appears to be of a type that must be brought to the attention of the Attorney General in accordance with his or her regulations;

(ii) One in which the demand exceeds $15,000; or

(iii) One which is a claim under the FTCA (§ 536.50) where the total of all claims, arising from a single incident, actual or potential, exceeds $25,000. USARCS is responsible for the monitoring and settlement of such claims and will be kept informed on the status of the investigation and processing thereof. Direct liaison and correspondence between the USARCS and the field claims authority or investigator is authorized on all claims matters, and assistance will be furnished as required. The field claims office will provide USARCS duplicates of all documentation as it is added to the field file. This will include all correspondence, memoranda, medical reports, reports, evaluations, and any other material relevant to the investigation and processing of the claim.

(3) *Claims involving privately owned vehicles.* In areas where the FTCA (§ 536.50) is applicable, any claim except those under 31 U.S.C. 3721, arising out of an accident involving a privately owned vehicle driven by a member of the DA, or by ARNG personnel as defined in § 536.71, based on an allegation that the privately owned vehicle travel was within the scope of employment, should be forwarded without adjudication directly to the Commander, USARCS. Additional information is provided in §§ 536.20 through 536.35, 536.90 through 536.97.

(4) *Claims within the exclusive jurisdiction of USARCS.* Authority to settle the following claims has been delegated to the Commander, USARCS, only: (i) Claims under Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty and other treaties or international agreements:

(ii) Claims under § 536.60 (Maritime claims not arising out of civil works activities);

(iii) Industrial security claims, DOD Directive 5220.6, 12 August 1985; and

(iv) Claims of the U.S. Postal Service. Files of these claims will be forwarded directly to the Commander, USARCS, with the report of investigation and supporting papers, including a seven-paragraph memorandum.

(5) *Maritime claims.* (i) A Copy of a claim arising out of damage, loss, injury, or death which originates on navigable waters and is not considered cognizable under the Army Maritime Claims Settlement Act (10 U.S.C. 4802–4804) will be forwarded immediately to the Commander, USARCS. A determination will be made as to whether the claim must be processed under the Suits in Admiralty Act or the Public Vessels Act or may be considered administratively.

(ii) In a maritime claim cannot be settled administratively, the claimant will be advised that he must file a suit.

(iii) If it is determined that both administrative and judicial remedies are available, the claim may be processed administratively and the claimant advised of the need to file a suit within 2 years of the date of occurrence if he chooses his judicial remedy.

(iv) If the claim is for damage to property, or injury to person, consummated on land, a claimant who makes an oral inquiry or demand will be advised that no suit can be filed until a period of six months has expired after a claim in writing is submitted.

(v) If it is determined by the Commander, USARCS, that a claim, apparently maritime in nature, is not within the maritime jurisdiction, the claimant will be so advised, and the claim will be returned for processing under the appropriate section of this regulation.

(h) *By district or division engineer.* The district or division engineer area claims office will take the action of an initial claims authority. Files of unpaid claims should be forwarded directly to USARCS. An information copy will be sent to the next higher engineer authority unless such requirement is waived.

(i) *By higher settlement authority.* A higher claims settlement authority may take action with respect to a claim in the same manner as the initial claims office. However, if it is determined that any further attempt to settle the claim would be unwarranted, the claim will be forwarded to the Commander, USARCS, with recommendations.

§ 536.6 Determination of liability.

(a) In the adjudication of tort claims, the liability of the United States generally is determined in accordance with the law of the State or country where the act or omission occurred, except that any conflict between local law and the applicable United States statute will be resolved in favor of the latter. However, in claims by inhabitants of the United States arising in foreign countries, liability is determined in accordance with general principles of tort law common to the majority of American jurisdictions as evidenced by Federal case law and standard legal publications, except as it applies to absolute liability. Where liability is not clear or other issues exist, settlements should truly reflect the uncertainties in the adjudication of such issues. Compromise settlements are encouraged provided agreement can be reached that reflects the reduced value of the damages as measured against the full value or range of value if such uncertainties or issues did not exist and were it possible for the claimant to successfully litigate the claim.

(b) Quantum exclusion. The costs of filing a claim and similar costs, for example, court costs, bail, interest, inconvenience expenses, or costs of long distance telephone calls or transportation in connection with the preparation of a claim, are not proper quantum elements and will not be allowed.

§ 536.7 Incident to service exclusionary rule.

(a) *General.* A claim for personal injury or death of a member of the Armed Forces of the United States or a civilian employee of the United States that accrued incident to his service is not payable under this regulation. A claim for property damage that accrued incident to the service of a member of the Armed Forces may be payable under 31 U.S.C. 3721 or §§ 536.20 through 536.35 depending on the facts.

(b) *Property damage claims.* A claim for damage to or loss of personal property of a claimant who is within one of the categories of proper party claimants under 31 U.S.C. 3721, which is otherwise cognizable under 31 U.S.C. 3721, must first be considered thereunder. If a claim is not clearly compensable under 31 U.S.C. 3721, and it arises incident to a noncombat activity of the DA or was caused by a negligent or wrongful act or omission of military personnel or civilian employees of the Department of Defense (DOD), it may be cognizable under either §§ 536.20 through 536.35 or § 536.50. The

claim, if meritorious in fact, will probably be payable under one authorization or another regardless of whether the claim accrued incident to the service of the claimant.

(c) *Personal injury and death claims.* (1) Only after the death or personal injury (which is the subject of the claim) has been determined to have not been incurred incident to the member's service should §§ 536.20 through 536.35 and § 536.50 be studied to determine which, if either, provides a proper basis for settlement of the claim. In any event, the rule in *U.S.* v. *Brooks*, 176 F.2d 482 (4th Cir. 1949) requiring setoff of amounts obtained through military or veterans' compensation systems against amounts otherwise recoverable will be followed. Other Government benefits, funded by general treasury revenues and not by the claimant's contributions, may also be used as a setoff against the settlement. (See, *Overton* v. *United States*, 619 F.2d 1299 (8th Cir. 1980)).

(2) As the incident to service issue is determinative as to whether this type of claim may be processed administratively at all, the applicable law and facts should be carefully considered before deciding that injury or death was not incident to service. Such claims also are often difficult to settle on the issue of quantum and thus more likely to end in litigation. Moreover, the United States may well elect to defend the lawsuit on the basis of the incident to service exclusion, and this defense could be prejudiced by a contrary administrative determination that a service member's personal injuries or death were not incident to service. Doubtful cases will be fowarded to the Commander, USARCS without action along with sufficient factual information to permit a determination of the incident to service question.

§ 536.8 Use of appraisers and independent medical examinations.

(a) *Appraisers.* Appraisers should be used in all claims where an appraisal is reasonably necessary and useful in effectuating the administrative settlement of the claims. The decision to use an appraiser is at the discretion of DA.

(b) *Independent medical examinations.* In claims involving serious personal injuries, for example, normally those cases in which there is an allegation of temporary or permanent disability, the claimant should be examined by an independent physician, or other medical specialist, depending upon the nature and extent of the injuries. The decision to conduct an independent medical examination is at the discretion of DA.

§ 536.9 Effect on award of other payments to claimant.

The total award to which the claimant (and subrogee) may be entitled normally will be computed as follows: (a) Determine the total of the loss or damage suffered.

(b) Deduct from the total loss or damage suffered any payment, compensation, or benefit the claimant has received from the following sources:

(1) The U.S. or ARNG employee/member who caused the damage.

(2) The U.S. or ARNG employee's/member's insurer.

(3) Any person or agency in a surety relationship with the U.S. employee; or

(4) Any joint tortfeasor or insurer, to include Government contractors under contracts or in jurisdictions where it is permissible to obtain contribution or indemnity from the contractor in settlement of claims by contractor employees and third parties.

(5) Any advance payment made pursuant to § 536.13.

(6) Any benefit or compensation based directly or indirectly on an employer-employee relationship with the United States or Government contractor and received at the expense of the United States including but not limited to medical or hospital services, burial expenses, death gratuities, disability payment, or pensions.

(7) The State (Commonwealth and so forth) whose employee or ARNG member caused or generated an incident that was a proximate cause of the resulting damages.

(8) Value of Federal medical care.

(9) Benefits paid by the Veterans Administration (VA) that are intended to compensate the same elements of damage. When the claimant is receiving money benefits from the VA under 38 U.S.C. 351 for a non-service connected disability or death based on the injury that is the subject of the claim, acceptance of a settlement or an award under the FTCA (§ 536.50) will discontinue the VA monetary benefits until the amount that would have otherwise been received in VA monetary benefits is equal to the total amount of the agreement or award including attorney fees. While monetary benefits received under 38 U.S.C. 351 must be discontinued as above, medical benefits, that is, VA medical care may continue provided the settlement or award expressly provides for such continuance and the appropriate VA official is informed of such continuance.

(10) When the claimant is receiving money benefits under 38 U.S.C. 410(b) for non-service connected death, arising from the injury that is the subject of the claim, acceptance of a settlement or award under the FTCA (§ 536.50) or under any other tort procedure will discontinue the VA benefits until the amount that would have otherwise been received in VA benefits is equal to the amount of the total settlement or award including attorney fees. The discontinuation of monetary benefits under 38 U.S.C. 410(b) has no effect on the receipt of other VA benefits. The claimant should be informed of the foregoing prior to the conclusion of any settlement and thus afforded an opportunity to make appropriate adjustment in the amount being negotiated.

(11) Value of other Federal benefits to which the claimant did not contribute, or at least to the extent they are funded from general revenue appropriation.

(12) Collateral sources where permitted by State law (for example, State or Federal workers' compensation, social security, private health, accident, and disability benefits paid as a result of injuries caused by a health care provider).

(c) No deduction will be made for any payment the claimant has received by way of voluntary contributions, such as donations of charitable organizations.

(d) Where a payment has been made to the claimant by his insurer or other subrogee, or under workmen's compensation insurance coverage, as to which subrogated interests are allowable, the award based on total damages will be apportioned as their separate interests are indicated (see § 536.5(b)).

(e) After deduction of permissible collateral and non-collateral sources, also deduct that portion of the loss or damage believed to have been caused by the negligence of the claimant, third parties whose negligence can be imputed to the claimant, or joint tortfeasors who are liable for their share of the negligence (for example, where some form of the Uniform Contribution Among Joint Tortfeasors Act has been passed).

(f) Claims with more than one potential source of recovery.

(1) The Government seeks to avoid multiple recovery, that is, claimants seeking recovery from more than one potential source, and to minimize the award it must make. The claims investigation should therefore identify other parties potentially liable to the claimant and/or their insurance carriers; indicate the status of any claims made or include a statement that none has been made so that it can be assured there is only one recovery and the Government does not pay a disproportionate share. Where no claim

has been made by the claimant against others potentially liable, if applicable State law grants the Government the right to indemnity or contribution, and it is felt the Government may be entitled to either under the facts developed by the claims investigation, the claims officer or attorney should formally notify the other parties of their potential liability, the Government's willingness to share information, and its expectation of shared responsibility for any settlement. Furthermore, the claimant may be receiving or entitled to receive benefits from collateral and non-collateral sources, which can be deducted from the total loss or damage. Accordingly, a careful review must be made of applicable State laws regarding joint and several liability, indemnity, contribution, comparative negligence, and the collateral source doctrine.

(2) If a demand by a claimant or an inquiry by a potential claimant is directed solely to the Army, in a situation where it appears that the responsible Army employee may have applicable insurance coverage, inquiry should be made of the employee as to whether he has liability insurance. (i) If so, determine if the insurer has made or will make any payment to claimant. Under applicable State law, the United States may be an additional named insured entitled to coverage under the employee's liability policy. (See 16 ALR3d 1411; *United States* v. *State Farm Mutual Ins. Co.*, 245 F. Supp. 58 (D. Ore. 1965.) Therefore, where there may be applicable insurance coverage, there should be a review of the policy language together with the rules and regulations of the State insurance regulatory body to determine whether the United States comes within the definition of "insured," and whether the exclusion of the United States from policy coverage conforms with state law and policy.

(ii) If the employee refuses to cooperate in providing this information, he or she should be advised to comply with the notice requirements of the insurance policy and to request the insurance carrier contact the claims officer or attorney. In addition, other sources of information, such as vehicle registration records, will be checked to ascertain the employee's insurer. The case should be followed to ascertain whether the employee's insurer has made or will make any payment to the claimant before deciding whether to settle the claim against the Government. Normally, the award, if any, to the claimant will be reduced by the amount of the payment of the employee's insurance carrier.

(3) If the employee is the sole target of the claim and Army claims authorities arrange to have the claim made against the Government, the member or employee should be required to notify his or her insurance carrier according to the policy and inform DA claims authorities as to the details of the insurance coverage, including the name of the insurance carrier. Except when the "Driver's Act" is applicable, the insurance carrier is expected to participate in the negotiation of the claims settlement and to pay its fair share of any award to the claimant.

(4) Where the responsible Army employee is "on loan" to another employer other than the United States, for example, civilian institution for ROTC instructor, or performing duties for a foreign government, inquiry should be made to determine whether there is applicable statutory or insurance coverage concerning the acts of the responsible employee and contribution or indemnification sought as appropriate. In the case of foreign governments, applicable treaties or agreements are considered controlling.

(5) A great many claims cognizable under the FTCA (§ 536.50) are now settled on a compromise basis. A major consideration in many such settlements is the identification of other sources of recovery. This is true in a variety of factual situations where there is a potential joint tortfeasor; for example, multi-vehicle accidents with multiple drivers and guest passengers, State or local government involvement, contractors performing non-routine tasks for the Government, medical treatment rendered to a claimant by non-Government employees, or incidents caused by a member or employee of the military department of a State or Commonwealth with whom the DA does not have a cost-sharing agreement. The law of the jurisdiction regarding joint and several liability, indemnity and contribution may permit shared financial responsibility, but even in jurisdictions which do not permit contribution, a compromise settlement can often be reached with the other tortfeasor's insurance company paying a portion of the total amount of the claim against the Government. For these reasons, every effort should be made to identify the insurance of all potential tortfeasors involved and the status of any claims made, and to demand contribution or indemnity where there is a substantial reason to believe that liability for the loss or damage should be shared.

(6) Whenever a claim is filed against the Government under a statute which does not permit the payment of a subrogated interest, it is important to ensure that full information is obtained from the claimant regarding insurance coverage, if any, since it is the clear legislative intent of such statutes that insurance coverage be fully utilized before using appropriated funds to pay the claims.

§ 536.10 Settlement agreement

(a) *General.* Except under 31 U.S.C. 3721, if a claim is determined to be meritorious in an amount less than claimed, or if a claim involving personal injuries or death is approved in full, a settlement agreement will be obtained prior to payment. Acceptance by a claimant of an award constitutes a full and final settlement and release of any and all claims against the United States and against the military or civilian personnel whose act or omission gave rise to the claim.

(b) *Claims involving workmen's compensation carriers.* The settlement of a claim involving a claimant who has elected to receive workmen's compensation benefits under local law may require the consent of the workmen's compensation carrier and in certain jurisdictions the State agency with authority over workmen's compensation awards. Accordingly, claims approval and settlement authorities should be aware of local requirements.

§ 536.11 Appeals and notification to claimant as to denial of claims.

(a) *General.* The nature and extent of the written notification to the claimant as to the denial of his claim should be based on whether the claimant has a judicial remedy following denial or whether he has an administrative recourse to appeal. Where there is a judicial remedy, the written notification should be general, as the various defenses to be employed by the United States in any subsequent litigation is a matter finally for determination by the Attorney General or the appropriate U.S. Attorney. On the other hand, in cases in which an administrative appeal is provided, the basis for denial should be more explicit and certain; only in this way can the claimant be required to completely particularize his grounds for appeal.

(b) *Final Actions under the Federal Tort Claims Act (28 U.S.C. 2671–2680), § 536.50.* If the settlement authority has information available which could possibly be a persuasive factor in the decision of the claimant as to whether to resort to litigation, such information may be orally transmitted to the

claimant and, in appropriate cases, released under normal procedures in accordance with AR 340–17. However, the written notification of the denial should be general in nature; for example, denial on the weaker ground of contributory negligence should be avoided, and the inclination should be to deny on the basis that the claimant was solely responsible for the incident. The claimant will be informed in writing of his right to bring an action in the appropriate United States District Court not later than 6 months after the date of mailing of the notification.

(c) *Denials under the MCA (10 U.S.C. 2733) §§ 536.20 through 536.35 and the NGCA (32 U.S.C. 715) §§ 536.70 through 536.81.* Claims disapproved under these statutes are subject to appeal and the claimant will be so informed. Also, the notice of disapproval will be sufficiently detailed to provide the claimant with an opportunity to know and attempt to overcome the basis for the disapproval. The claimant should not be afforded a valid basis for claiming surprise when an issue adverse to him is asserted as a basis for denying his appeal.

(d) *Denials on jurisdictional grounds.* Regardless of the nature of the claim presented or the statute under which it may be considered, claims denied on jurisdictional grounds which are valid, certain, and not easily overcome and in which for this reason no detailed investigation as to the merits of the claim is conducted, should contain in the denial letter a general statement to the effect that the denial on such grounds is not to be construed as an expression of opinion on the merits of the claim or an admission of liability. If sufficient factual information is available to make a tentative ruling on the merits of the claim, liability may be expressly denied.

(e) *Where claim may be considered under more than one statute.* In cases in which it is doubtful as to whether the MCA (§§ 536.20 through 536.35) or the NGCA (§§ 536.70 through 536.81) or the FTCA (§ 536.50) is the appropriate statute under which to consider the claim, the claimant will be advised of the alternatives, for example, the right to sue or the right to appeal. Similarly, a claimant may be advised of his alternative remedies when the claimant is a military member and the issue of "incident to service" is not clear.

§ 536.12 Effect of payment.

Acceptance of an award by the claimant, except for an advance payment, constitutes for the United States, and for the military member or civilian employee whose act or omission gave rise to the claim, a release from all liability to the claimant based on the act or omission.

§ 536.13 Advance payments.

(a) *Purpose.* This section implements the Act of September 8, 1961 (75 Stat. 488, 10 U.S.C. 2736), as amended by Pub. L. 90–521 (82 Stat. 874) and Pub. L. 98–564 (98 Stat. 2918). No new liability is created by 10 U.S.C. 2736, which merely permits partial advance payments on meritorious claims as specified in this section.

(b) *Conditions for advance payment.* An advance payment not in excess of $10,000 is authorized in the limited category of claims resulting in immediate hardship arising from incidents that are payable under the provisions of §§ 536.20 through 536.35, 536.70 through 536.81, or the FCA (10 U.S.C. 2734). An advance payment is authorized only under the following circumstances:

(1) The claim must be determined to be cognizable and meritorious under the provisions of either §§ 536.20 through 536.35, and 536.70 through 536.81, or the FCA (10 U.S.C. 2734).

(2) There exists an immediate need of the person who suffered the injury, damage, or loss, or of the family of a person who was killed, for food, clothing, shelter, medical or burial expenses, or other necessities, and other resources for such expenses are not reasonably available.

(3) The payee, so far as can be determined, would be a proper claimant, as is the spouse or next of kin of a claimant who is incapacitated.

(4) The total damage sustained must exceed the amount of the advance payment.

(5) A properly executed advance payment acceptance agreement has been obtained.

Claims Arising From Activities of Military or Civilian Personnel or Incident to Noncombat Activities

§ 536.20 Statutory authority.

The statutory authority for §§ 536.20 through 536.35 is contained in the Act of August 10, 1956 (70A Stat. 153, 10 U.S.C. 2733) commonly referred to as the Military Claims Act (MCA), as amended by Pub. L. 90–522, September 26, 1968 (82 Stat. 875), Pub. L. 90–525, September 26, 1968 (82 Stat. 877), Pub. L. 91–312, July 8, 1970 (84 Stat. 412) and Pub. L. 93–336, July 8, 1974 (88 Stat. 291); and the Act of September 9, 1961 (75 Stat. 488, 10 U.S.C. 2736), as amended by Pub. L. 90–521, September 26, 1968 (82 Stat. 874) and Pub. L. 98–564, October 30, 1984 (98 Stat. 2918).

§ 536.21 Definitions.

The definitions of terms set forth in § 536.3 are applicable to §§ 536.20 through 536.35.

§ 536.22 Scope.

Sections 536.20 through 536.35 are applicable in all places and prescribe the substantive bases and special procedural requirements for the settlement of claims against the United States for death, personal injury, or damage to or loss or destruction of property caused by military personnel or civilian employees of the DA acting within the scope of their employment, or otherwise incident to the noncombat activities of the DA, provided such claim is not for personal injury or death of a member of the Armed Forces or Coast Guard or a civilian officer or employee whose injury or death is incident to service.

§ 536.23 Claims payable.

(a) *General.* Unless otherwise prescribed, a claim for personal injury, death, or damage to or loss of real or personal property is payable under §§ 536.20 through 536.35 when—

(1) Caused by an act or omission determined to be negligent, wrongful, or otherwise involving fault of military personnel or civilian officers or employees of the Army acting within the scope of their employment, or

(2) Incident to the noncombat activities of the Army.

(b) *Property.* The loss or damage to property which may be the subject of claims under §§ 536.20 through 536.35 includes—

(1) Real property used and occupied under a lease, express or implied, or otherwise (for example, in connection with training, field exercises, or maneuvers). An allowance may be made for the use and occupancy of real property arising out of trespass or other tort, even though claimed as rent.

(2) Personal property bailed to the Government under an agreement, express or implied, unless the owner has expressly assumed the risk of damage or loss. Some losses may be payable using Operations and Maintenance, Army funds. Clothing damage or loss claims arising out of the operation of an Army Quartermaster laundry are considered to be incident to service and are payable only if claimant is not a proper claimant under 31 U.S.C. 3721.

(3) Registered or insured mail in the possession of the Army, even though the loss was caused by a criminal act.

(c) *Effect of FTCA.* A claim arising in the United States may be settled under §§ 536.20 through 536.35 only if the

FTCA (28 U.S.C. 2671–2680), § 536.50, has been judicially determined not to be applicable to claims of this nature, or if the claim arose incident to noncombat activities.

(d) *Advance payments.* Advance payments under 10 U.S.C. 2736, as amended, in partial payment of meritorious claims to alleviate immediate hardship are authorized.

§ 536.24 Claims not payable.

A claim is not payable under §§ 536.20 through 536.35 which—

(a) Results wholly from the negligent or wrongful act of the claimant or agent.

(b) Is for reimbursement for medical, hospital, or burial expenses furnished at the expense of the United States.

(c) Is purely contractual in nature.

(d) Arises from private as distinguished from Government transactions.

(e) Is based solely on compassionate grounds.

(f) Is for war trophies or articles intended directly or indirectly for persons other than the claimant or members of his or her immediate family, such as articles acquired to be disposed of as gifts or for sale to another, voluntarily bailed to the Army, or is for precious jewels or other articles of extraordinary value voluntarily bailed to the Army. The preceding sentence is not applicable to claims involving registered or insured mail. No allowance will be made for any item when the evidence indicates that the acquisition, possession, or transportation thereof was in violation of DA directives.

(g) Is for rent, damage, or other payments involving the acquisition, use, possession, or disposition of real property or interests therein by and for the DA, except as authorized by § 536.23(b)(1). Real estate claims founded upon contract are generally processed under AR 405–15.

(h) Is not in the best interests of the United States, is contrary to public policy, or is otherwise contrary to the basic intent of the governing statute (10 U.S.C. 2733); for example, claims by inhabitants of unfriendly foreign countries or by or based on injury or death of individuals considered to be unfriendly to the United States. When a claim is considered to be not payable for the reasons stated in this paragraph, it will be forwarded for appropriate action to the Commander, USARCS, together with the recommendations of the responsible claims office.

(i) If presented by a national, or a corporation controlled by a national, or a country at war or engaged in armed conflict with the United States, or of any country allied with such enemy country unless the settlement authority having jurisdiction over the claim determines that the claimant is and, at the time of the incident, was friendly to the United States. A prisoner of war or an interned enemy alien is not excluded as to a claim for damage, loss, or destruction of personal property in the custody of the Government otherwise payable.

(j) Is for personal injury or death of a member of the Armed Forces or Coast Guard or a civilian employee thereof which is incident to his or her service (10 U.S.C. 2733(b)(3)).

(k) The types of claims not payable under the FTCA (see § 536.50(j)) are also not payable under §§ 536.20 through 536.35 with the following exceptions:

(1) The foreign country exclusion in 28 U.S.C. 2680(k) does not apply to claims under §§ 536.20 through 536.35.

(2) The *Feres* bar in § 536.50(j)(1) does not apply to claims under §§ 536.20 through 536.35, but see the exclusion in paragraph (j) of this section.

§ 536.25 Claims also cognizable under other statutes.

(a) *General.* Claims based upon a single act or incident cognizable under §§ 536.20 through 536.35, which are also cognizable under the FTCA (28 U.S.C. 2671–2680) § 536.50, the Army Maritime Claims Settlement Act (10 U.S.C. 4801–04, 4806) § 536.60, the FCA (10 U.S.C. 2734), or Title 31, U.S.C. section 3721 (Personnel Claims), will be considered first under the latter statutes. If not payable under any of those latter statutes, the claim will be considered under §§ 536.20 through 536.35.

(b) *Claims in litigation.* Disposition under §§ 536.20 through 536.35 of any claim of the type covered by this section that goes into litigation in any State or Federal court under any State or Federal statute or ordinance will be suspended pending disposition of such litigation and the claim file will be forwarded to the Commander, USARCS. The Commander, USARCS, in coordination with the U.S. Department of Justice, may determine that final disposition under §§ 536.20 through 536.35 during pendency of the litigation is in the best interests of the United States. This section will also apply to any litigation brought against any agent of the United States in his or her individual capacity which is based upon the same acts or incidents upon which a claim under §§ 536.20 through 536.35 is based.

§ 536.26 Presentation of claims.

(a) *When claim must be presented.* A claim may be settled under this §§ 536.20 through 536.35 only if presented in writing within 2 years after it accrues, except that if it accrues in time of war or armed conflict, or if war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after war or armed conflict is terminated. As used in this section, a war or armed conflict is one in which any Armed Force of the United States is engaged. The dates of commencement and termination of an armed conflict must be as established by concurrent resolution of Congress or by determination of the President.

(b) *Where claim must be presented.* A claim must be presented to an agency or instrumentality of the DA. However, the statute of limitations is tolled if a claim is filed with another agency of the Government and is forwarded to the DA within 6 months, or if the claimant makes inquiry of the DA concerning his or her claim within 6 months after it was filed with another agency of the Government. If a claim is received by an official of the DA who is not a claims approval or settlement authority under §§ 536.20 through 536.35, the claim will be transmitted without delay to the nearest claims office or JA office for delivery to such an authority.

§ 536.27 Procedures.

So far as not inconsistent with §§ 536.20 through 536.35, the procedures set forth in §§ 536.1 through 536.13 will be followed. Subrogated claims will be processed as prescribed in § 536.5(b).

§ 536.28 Law applicable.

(a) As to claims arising in the United States, its territories, commonwealths, and possessions, the law of the place where the act or omission occurred will be applied in determining liability and the effect of contributory negligence on claimant's right to recover damages.

(b) In claims arising in a foreign country, liability of the United States will be assessed by reference to general principles of tort law common to the majority of United States jurisdictions. Absolute liability and similar theories are not a basis for liability under this section. Damages will be determined under § 536.29. The law of the foreign country governing the legal effect of contributory or comparative negligence by the claimant will be applied in determining the relative merits of the claim. In the unusual situation where foreign law governing contributory or comparative negligence does not exist, the MCA (10 U.S.C. 2733) requires application of traditional rules of contributory negligence. Foreign rules and regulations governing the operation of motor vehicles ("rules of the road") will be applied to the extent these rules

are not specifically superseded or preempted by United States military traffic regulations.

§ 536.29 Compensation for property damage, personal injury, or death.

(a) *Measure of damages for property claims*—(1) *General.* The measure of damages in property claims arising in the United States or its possessions will be determined in accordance with the law of the place where the incident occurred. The measure of damages in property claims arising overseas will be determined in accordance with general principles of United States tort law.

(2) *Proof of damage.* The information specified in 28 CFR 14.4(c) will be submitted by a claimant to substantiate a claim.

(3) *Appraisals.* The assistance of appraisers should be used in all claims where, in the opinion of the claims officer, an appraisal is reasonably necessary and useful in reaching an administrative settlement of claims.

(b) *Measure of damages in injury or death claims arising in the United States or its possessions.* Where an injury or an injury resulting in death arises within the United States or its possessions, the measure of damages will be determined in accordance with the law of the State or posesssion wherein the injury arises. The information specified in 28 CFR 14.4 (a) and (b) will be submitted to substantiate a claim.

(c) *Measure of damages for overseas personal injury claims.*

(1) Damages will be determined in accordance with general principles of United States tort law.

(2) The information specified in 28 CFR 14.4(b) will be submitted to substantiate a claim.

(3) A claimant who suffers serious personal injury, resulting in temporary or permanent disability should be examined by an independent physician or other medical specialist. (See § 536.8(b).)

(d) *Wrongful death claims arising in foreign countries*—(1) *General.* Where claims for wrongful death under §§ 536.20 through 536.35 arise overseas, eligible claimants and their damages will be determined in accordance with established principles of general maritime law. (See generally *Moragne* v. *United States Lines, Inc.*, 398 U.S. 375 (1970).) However, the following elements of damages are not recoverable:

(i) Punitive damages, including damages punitive in nature under 28 U.S.C. § 2674.

(ii) Interest on any claim settlement.

(2) The information specified in 28 CFR 14.4(a) will be submitted by a claimant to substantiate a claim.

§ 536.30 Structured settlements.

(a) The use of the structured settlement device by approval and settlement authorities is encouraged in all appropriate cases. A structured settlement should not be used when contrary to the desires of the claimant.

(b) Notwithstanding the above, the Commander, USARCS may require or recommend to higher authority that an acceptable structured settlement be made a condition of award notwithstanding objection by the claimant or his or her representative where—(1) Necessary to ensure adequate and secure care and compensation to a minor or otherwise incompetent claimant over a period of years;

(2) Where a trust device is necessary to ensure the long-term availability of funds for anticipated further medical care;

(3) Where the injured party's life expectancy cannot be reasonably determined.

§ 536.31 Claims over $100,000.

Claims cognizable under 10 U.S.C. 2733 and §§ 536.20 through 536.35, which are meritorious in amounts in excess of $100,000, will be forwarded to the Commander, USARCS who will negotiate a settlement subject to approval by the Secretary of the Army or designee or require the claimant to state the lowest amount that will be acceptable and provide appropriate justification. Tender of a final offer by the Commander, USARCS constitutes an action subject to appeal. Upon appeal, the Commander, USARCS will prepare a memorandum of law with recommendations and forward the claim to the Secretary of the Army or designee for final action. The Secretary or designee will either disapprove the claim or approve it in whole or in part.

§ 536.32 Settlement procedures.

(a) *Procedures.* Approval and settlement authorities will follow the procedures set forth in §§ 536.1 through 536.13 in paying, denying or making final offers on claims. A copy of the notification will be forwarded to Commander, USARCS. The settlement authority will notify the claimant by certified mail (return receipt registered) of a denial or final action and the reason therefore. The letter of notificaiton will inform the claimant of the following:

(1) He or she may appeal, and that no form is prescribed for the appeal.

(2) The title of the authority who will act on the appeal and that the appeal will be addressed to the settlement authority who last acted on the claim.

(3) The claimant must fully set forth the grounds for appeal, or state that he or she appeals on the basis of the record as it exists at the time of denial or final offer.

(4) The appeal must be postmarked not later than 60 days after receipt of notice of action on the claim. If the 60th day falls on a day on which the post office is closed, the next day on which it is open for business will be considered the final day of the appeal period. The 60 day appeal period starts on the day following claimant's receipt of the letter from the settlement authority informing the claimant of the action taken and of the appellate rights. For good cause shown, the Commander, USARCS or designee, or the chief of a command claims service (if the appellant authority), may extend the time for appeal, but normally such extension will not exceed 90 days.

(5) Where a claim for the same injury has been filed under the FTCA and the denial or final offer applies equally to such claim, the letter of notification must advise the claimant that any suit brought as to any portion of the claim under the FTCA must be brought not later than 6 months from the date of mailing of the notice of denial or final offer. Further, the claimant must be advised that if suit is brought, action on any appeal will be held in abeyance pending final determination of such suit.

(b) *Action on appeal.* (1) The appeal will be examined by the settlement authority who last acted on the claim, or his or her successor, to determine if the appeal complies with the requirements of this section. The settlement authority will also examine the claims investigative file and decide whether additional investigation is required; ensure all allegations or evidence presented by the claimant, agent or attorney are documented in the file; and that all pertinent evidence is included in the file. If the claimant states that he or she appeals but does not submit supporting materials within the 60 day appeal period or an approved extension thereof, the appeal will be treated as being on the record as it existed at the time of denial or final offer. Unless action under paragraph (b)(2) of this section is taken. The claim with complete investigative file including any additional investigation required and a seven-paragraph memorandum of opinion will be forwarded to the appropriate appellate authority for necessary action on the appeal.

(2) If the evidence in the file, including information submitted by the claimant with the appeal and any necessary additional investigation, indicates that the appeal should be granted, in whole or in part, the settlement authority who last acted on the claim or his or her successor will attempt to settle the claim. If settlement cannot be reached, the appeal will be forwarded in accordance with paragraph (b)(1) of this section.

(3) As to an appeal that requires action by TJAG, The Assistant Judge Advocate General (TAJAG), or the Secretary of the Army or designee, the Commander, USARCS may take the action in paragraph (b)(2) of this section or forward the claim together with a recommendation for action. All matters submitted by the claimant will be forwarded and considered.

(4) Since an appeal under this authority is not an adversary proceeding, no form of hearing is authorized. A request by the claimant for access to documentary evidence in the claims file to be used in considering the appeal should be granted unless access is not permitted by law or regulation.

§ 536.33 Attorney fees.

In the settlement of any claim under §§ 536.20 through 536.35, attorney fees shall not exceed 20 percent of any award; provided, that when a claim involves payment of an award is excess of $1,000,000, attorney fees on that part of the award exceeding $1,000,000 may be determined by the Secretary. Where a structured settlement is involved, attorney fees will not exceed 20 percent of the cost of the award to the United States.

§ 536.34 Payment of costs, settlements and judgments related to certain medical and legal malpractice claims.

(a) Costs, settlements, or judgments cognizable under 10 U.S.C. 1089(f) for personal injury or death caused by any physician, dentist, nurse, pharmacist, or paramedical, or other supporting personnel (including medical and dental technicians, nurse assistants, and therapists) of DA should be forwarded to Commander, USARCS, for action and will be paid, provided: (1) The alleged negligent or wrongful actions or omissions arose in performance of medical, dental or related health care functions (including clinical studies and investigations) within the scope of employment; and

(2) Such personnel provide prompt notification and delivery of all process served or received, provide such other documents, information, and assistance as requested, and cooperate in the defense of the action on the merits. (See DoD Directive 6000.6.)

(b) Costs, settlements, and judgments cognizable under 10 U.S.C. 1054(f) for damages for injury of loss of property caused by any attorney, paralegal, or other member of a legal staff within the DA should be forwarded to Commander, USARCS, for action and will be paid, provided:

(1) The alleged negligent or wrongful actions or omissions arose in connection with providing legal services while acting within the scope of the person's duties or employment, and

(2) Such personnel provide prompt notification and delivery of all process served or received, provide such other documents, information and assistance as requested, and cooperate in the defense of the action on the merits. (See DoD Directive 6000.6.)

§ 536.40 Claims under Article 139, uniform code of military justice.

(a) *Statutory authority.* The authority for this section is Article 139, Uniform Code of Military Justice (10 U.S.C. 939) which provides for redress of damage to property willfully damaged or destroyed, or wrongfully taken, by members of the armed forces of the United States.

(b) *Purpose.* This section sets forth the standards to be applied and the procedures to be followed in the processing of claims for damage, loss or destruction of property owned by or in the lawful possession of an individual, whether civilian or military, a business, a charity, or a State or local government, where the property was wrongfully taken or willfully damaged by military members of DA. Claims cognizable under other claims statutes may be processed under this section.

(c) *Effect of disciplinary action.* Administrative action under Article 139 and this section is entirely separate and distinct from disciplinary action taken under other articles of the UCMJ or other administrative actions. Because action under Article 139 and this section requires independent findings on issues other than guilt or innocence, the mere fact that a soldier was convicted or acquitted of charges is not dispositive of a claim under Article 139.

(d) *Claims cognizable.* Claims cognizable under Article 139, UCMJ are limited to—

(1) *Claims for property willfully damaged.* Willful damage is damage which is inflicted intentionally, knowingly, and purposefully without justifiable excuse, as distinguished from damage caused inadvertently or thoughtlessly through simple or gross negligence. Damage, loss, or destruction of property caused by riotous, violent, or disorderly acts, or by acts of depredation, or through conduct showing reckless or wanton disregard of the property rights of others may be considered willful damage.

(2) *Claims for property wrongfully taken.* A wrongful taking is any unauthorized taking or withholding of property, not involving the breach of a fiduciary or contractual relationship, with the intent to temporarily or permanently deprive the owner or person lawfully in possession of the property. Damage, loss, or destruction of property through larceny, forgery, embezzlement, fraud, misappropriation, or similar offense may be considered wrongful taking.

(e) *Claims not cognizable.* Claims not cognizable under this section and Article 139 include—

(1) Claims resulting from negligent acts.

(2) Claims for personal injury or death.

(3) Claims resulting from acts or omissions of military personnel acting within the scope of their employment.

(4) Claims resulting from the conduct of reserve component personnel who are not subject to the UCMJ at the time of the offense.

(5) Subrogated claims, including claims by insurers.

(f) *Limitations on assessments*—(1) *Time Limitations.* To be considered, a claim must be submitted within 90 days of the incident out of which the claim arose, unless the special court-martial convening authority (SPCMCA) acting on the claim determines that good cause has been shown for the delay.

(2) *Limitations on amount.* No soldier's pay may be assessed more than $5,000 on a single claim without the approval of the Commander, USARCS, or designee. If the commander acting on the claim determines that an assessment against a soldier in excess of $5,000 is meritorious, he or she will assess the pay of that soldier in the amount of $5,000 and forward the claim to the Commander, USARCS, with his or her recommendation as to the additional amount which should be assessed.

(3) *Direct damages.* Assessments are limited to direct damages for the loss of or damage to property. Indirect, remote, or consequential damages may not be considered under this section.

(g) *Procedure.* Area claims offices and claims processing offices with approval authority are responsible for publicizing the Article 139 program and maintaining a log for Article 139 claims presented in their areas (see Personnel Claims

Adjudication Appendix G, Claims Manual). Area claims offices and claims processing offices with approval authority are required to monitor action taken on Article 139 claims and ensure that time requirements are met. If assessment action on a particular claim will be unduly delayed, the office may consider the claim under 31 U.S.C. 3721 and chapter 11 of this regulation if it is otherwise cognizable under the authority. The office will counsel the claimant to repay any overpayment if the Article 139 claim is later successful (see para 11–2e of the manual).

(1) *Form of a claim and presentment.* A claim must be presented by the claimant or his or her authorized agent orally or in writing. The claim must be reduced to writing, signed, and for a definite sum in U.S. dollars within 10 days after oral presentment. (See para 2–10d(1)(a) of the manual.)

(2) *Action upon receipt of a claim.* Any officer receiving a claim will forward it within 2 working days to the SPCMCA over the soldier or soldiers against whom the claim is made. If the claim is made against soldiers under the jurisdiction of more than one such convening authority who are under the same general court-martial convening authority, the claim will be forwarded to that general court-martial convening authority, who will designate one SPCMCA to investigate and act on the claim as to all soldiers involved. If the claim is made against soldiers under the jurisdiction of more than one SPCMCA at different locations and not under the same general court-martial convening authority, the claim will be forwarded to the SPCMCA whose headquarters is closest to the situs of the incident, who will investigate and act on the claim as to all soldiers involved. If a claim is made against a member of one of the other military Services, the claim will be forwarded to the commander of the nearest major Army command (MACOM) of that Service.

(3) *Action by the SPCMCA.* Within 4 working days of receipt of a claim, the SPCMCA will appoint an investigating officer to investigate the claim, using the procedures of this section supplemented by the procedures of AR 15–6. The claims officer of a command, if he or she is a commissioned officer, may be appointed as the investigating officer.

(4) *Action by the investigating officer.* The investigating officer will provide notification to the soldier against whom the claim is made.

(i) If the soldier indicates a desire to make voluntary restitution, the investigating officer may, with the convening authority's concurrence, delay proceedings until the end of the next pay period to accomplish this. If the soldier makes payment to the claimant's full satisfaction, the claim will be dismissed.

(ii) In the absence of full restitution, the investigating officer will determine whether the claim is cognizable and meritorious under the provisions of Article 139 and this chapter and the amount to be assessed each offender. This amount will be reduced by any restitution accepted by the claimant from an offender in partial satisfaction. Within 10 working days or such time as the SPCMCA may provide, the investigating officer will make findings and recommendations and submit these to the SPCMCA. The investigating officer will also provide a copy of his or her findings and recommendations to any soldier against whom an assessment is recommended.

(iii) If the soldier is absent without leave so that he or she cannot be provided with notification, the Article 139 claim may be processed in the soldier's absence. If an assessment is approved, a copy of the claim and SPCMCA approval will be forwarded by transmittal letter to the servicing finance and accounting office (FAO) for offset input against the soldier's pay account. In the event the soldier is dropped from the rolls, the servicing FAO will forward the assessment documents to Commander, U.S. Army Finance and Accounting Center, ATTN: Department 40, Indianapolis, Indiana 46249.

(5) *Legal review.* After completion of the investigating officer's report, the SPCMCA will refer the claim to the area claims office or claims processing office servicing his or her command to review for legal sufficiency and advice. That office will furnish within 5 working days or such time as the SPCMCA will provide a written opinion as to—

(i) Whether the claim is cognizable under the provisions of Article 139 and this chapter.

(ii) Whether the findings and recommendations are supported by evidence.

(iii) Whether there has been substantial compliance with the procedural requirements of Article 139, this chapter, and AR 15–6.

(6) *Final action.* After considering the advice of the claims office, the SPCMCA will disapprove the claim or approve the claim in an amount equal to or less than the amount recommended by the investigating officer. The SPCMCA will notify the claimant, and any soldier subject to his or her jurisdiction, of the determination and the right to request reconsideration. The SPCMCA will then suspend action on the claim for 10 working days pending receipt of a request for reconsideration unless he or she determines that this delay will result in substantial injustice. The SPCMCA will direct the servicing finance officer for the soldier or soldiers against whom assessments are approved to withhold such amount from the soldier or soldiers up to $5000. For any soldier not subject to the SPCMCA's jurisdiction, the SPCMCA will forward the claim to that commander who does exercise special court-martial jurisdiction over the soldier for collection action.

(7) *Assessment.* Subject to any limitations provided in appropriate regulations, the servicing finance officer will withhold the amount directed by the SPCMCA and pay it to the claimant. The SPCMCA's assessment is not subject to appeal and is conclusive on any finance officer. If the servicing finance officer finds that the required amount cannot be withheld because he or she does not have custody of the soldier's pay record or because the soldier is in a no pay due status, the servicing finance officer will promptly notify the SPCMCA of this in writing.

(8) *Post settlement action.* After action on the claim is completed, the claims office servicing the command which took final action will forward one copy of the claim together with a cover sheet and all attachments, to include information that money has or has not been withheld and paid to the claimant by the servicing finance officer, through any command claims service, to the Commander, USARCS.

(9) *Remission of indebtedness.* 10 U.S.C. 4837(d), which authorizes the remission and cancellation of indebtedness of an enlisted person to the United States or its instrumentalities, is not applicable and may not be used to remit and cancel indebtedness determined as a result of action under Article 139.

(h) *Reconsideration*—(1) *General.* Although Article 139 does not provide for a right of appeal, either the claimant or a soldier whose pay is assessed may request the SPCMCA or a successor in command to reconsider the action. A request for reconsideration will be submitted in writing and will clearly state the factual or legal basis for the relief requested. The SPCMCA may direct that the matter be reinvestigated.

(2) *Reconsideration by the original SPCMCA.* The original SPCMCA may reconsider the action so long as he occupies that position, regardless of whether a soldier whose pay was assessed has been transferred. If the original SPCMCA determines that the action was incorrect, he or she may modify it subject to paragraph (h)(4) of

this section. If a request for reconsideration is submitted more than 15 days after notification was provided, however, the SPCMCA should only modify the action on the basis of fraud, substantial new evidence, errors in calculation, or mistake of law.

(3) *Reconsideration by a successor in command.* Subject to subparagraph (h)(4) of this section, a successor in command may only modify an action on the basis of fraud, substantial new evidence, errors in calculation or mistake of law apparent on the face of the record.

(4) *Legal review and action.* Prior to modifying the original action, the SPCMCA will have the claims office render a legal opinion and fully explain his or her basis for modification as part of the file. If a return of assessed pay is deemed appropriate, the SPCMCA should request the claimant to return the money, setting forth the basis for the request. There is no authority for repayment from appropriated funds.

(5) *Disposition of files.* After completing action on reconsideration, the SPCMCA will forward a copy of the reconsideration action to the Commander, USARCS, and retain one or more additional copies with the claim file.

§ 536.50 Claims based on negligence of military personnel or civilian employees under the Federal Tort Claims Act.

(a) *Authority.* The statutory authority for this chapter is the FTCA (60 Stat. 842, 28 U.S.C. 2671–2680), as amended by the Act of July 18, 1966 (Pub. L. 89–506; 80 Stat. 306), the Act of March 16, 1974 (Pub. L. 93–253; 88 Stat. 50), and the Act of December 29, 1981 (Pub. L. 97–124), and as implemented by the Attorney General's Regulations (28 CFR 14.1–14.11).

(b) *Scope.* This section prescribes the substantive basis and special procedural requirements for the administrative settlement of claims against the United States under the FTCA and the implementing Attorney General's Regulations based on death, personal injury, or damage to or loss of property which accrue on or after January 18, 1967. If a conflict exists between the provisions of this section and the provisions of the Attorney General's Regulations, the latter govern.

(c) *Claims payable.* Unless otherwise prescribed, claims for death, personal injury, or damage to or loss of property (real or personal) are payable under this section when the injury or damage is caused by negligent or wrongful acts or omissions of military personnel or civilian employees of the DA or the DoD while acting within the scope of their employment under circumstances in which the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The FTCA is a limited consent to liability without which the United States is immune. Similarly, there is no Federal cause of action created by the Constitution which would permit a damage recovery because of the Fifth Amendment or any other constitutional provision. Immunity must be expressly waived, as by the FTCA.

(d) "Employee of the Government" (28 U.S.C. 2671) includes the following categories of tortfeasors for which the DA is responsible: (1) Military personnel (members of the Army), including but not limited to:

(i) Members on full-time active duty in a pay status, including—

(A) Members assigned to units performing active service.

(B) Members serving as ROTC instructors. (Does not include Junior ROTC instructors unless on active duty.)

(C) Members serving as National Guard instructors or advisors.

(D) Members on duty or in training with other Federal agencies, for example, Nuclear Regulatory Commission, National Aeronautics and Space Administration, Departments of Defense, State, Navy, or Air Force.

(E) Members assigned as students or ordered into training at a non-Federal civilian educational institution, hospital, factory, or other industry. This does not include members on excess leave.

(F) Members on full-time duty at nonappropriated fund activities.

(G) Members of the ARNG of the United States on active duty.

(ii) Members of reserve units during periods of inactive duty training and active duty training, including ROTC cadets who are reservists while they are at summer camp.

(iii) Members of the ARNG while engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, or 505 for claims arising on or after December 29, 1981.

(2) Civilian officials and employees of both the DOD and the DA (there is no practical significance to the distinction between the terms "official" and "employee") including but not limited to—

(i) Civil Service and other full-time employees of both DOD and DA paid from appropriate funds.

(ii) Contract surgeons (10 U.S.C. 1091, 4022; paragraph 4–2, AR 40–1) and consultants (10 U.S.C. 1091; paragraph 4–3, AR 40–1; CPR A–9; FPM Chapter 304) where "control" is exercised over physician's day to day practice.

(iii) Employees of nonappropriated funds if the particular fund is an instrumentality of the United States and thus a Federal agency. In determining whether or not a particular fund is a "Federal agency," consider whether the fund is an integral part of the DA charged with an essential DA operational function and the degree of control and supervision exercised by DA personnel. Members or users, as distinguished from employees of nonappropriated funds, are not considered Government employees. The same is true of family child care providers. However, claims arising out of the use of certain nonappropriated fund property or the acts or omissions of family child care providers, may be payable from such funds under chapter 12, AR 27–20, as a matter of policy, even when the user is not within the scope of employment and the claim is not otherwise cognizable under any other claims authorization.

(iv) Prisoners of war and interned enemy aliens.

(v) Civilian employees of the District of Columbia National Guard, including those paid under "service contracts" from District of Columbia funds.

(vi) Civilians serving as ROTC instructors paid from Federal funds.

(vii) National Guard technicians employed under 32 U.S.C. 709(a) for claims accruing on or after January 1, 1969 (Pub. L. 90–486, August 13, 1968; 82 Stat. 755).

(3) Persons acting in an official capacity for the DOD or the DA whether temporarily or permanently in the service of the United States with or without compensation including but not limited to—

(i) "Dollar a year" personnel.

(ii) Members of advisory committees, commissions, boards or the like.

(iii) Volunteer workers in an official capacity acting in furtherance of the business of the United States. The general rule with respect to volunteers is set forth in 31 U.S.C. 665(b), which provides that, "No officer or employee of the United States shall accept voluntary service for the United States or employ personal service in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property." (5 U.S.C. 3111(c) specifically provides that student volunteers employed thereunder shall be considered Federal employees for purposes of claims under the FTCA. The same classification is applied by 10 U.S.C. 1588 to museum and family support program volunteers.) The DA is permitted to accept and use certain

volunteer services in Army family support programs as authorized by Pub. L. 98–94, September 24, 1983.

(iv) Loaned servants. Employees who are permitted to serve another employer may be considered "loaned servants," provided the borrowing employer has the power to discharge the employee, to control and direct the employee, and to decide how he will perform his tasks. Whoever has retained those powers is liable for the employee's torts under the principle of respondeat superior. Where those elements of direction and control have been found, the United States has been liable, for example, for the torts of Government employees loaned for medical training and emergency assistance, and county and state employees discharging Federal programs.

(e) "Scope of employment" means acting in "line of [military] duty" (28 U.S.C. 2671) and is determined in accordance with principles of respondent superior under the law of the jurisdiction in which the act or omission occurred. Determination as to whether a person is within a category listed in paragraph (d)(3) of this section will usually be made together with the scope determination. Local law should always be researched, but the novel aspects of the military relationship should be kept in mind in making a scope determination.

(f) "Line of duty" determinations under AR 600–8–1 are not determinative of scope of employment. "Joint venture" situations are likely to be frequent where the Federal employee is performing federally assigned duties but is under actual direction and control of a non-Federal entity, for example, a Federal employee in training at a non-Federal entity or ROTC instructors at civilian institutions. This could also occur where the employee is working for another Federal agency. Furthermore, dual purpose situations are commonplace where benefits to the Government and the member or employee may or may not be concurrent, for example, use of privately owned vehicles at or away from assigned duty station, or permanent change of station with delay en route. (See §§ 536.90 through 536.97 for the handling of certain claims arising out of nonscope activities of members of the Army.)

(g) *Law applicable.* The whole law of the place where the act or omission occurred, including choice of law rules, will be applied in the determination of liability and quantum. Where there is a conflict between the local law and an express provision of the FTCA, the latter governs.

(h) *Subrogation.* Claims involving subrogation will be processed as prescribed in § 536.5(b), except where inconsistent with the provisions of this section or the Attorney General's regulations.

(i) *Indemnity or contribution*—(1) *Sought by the United States.* If the claim arises under circumstances in which the Government is entitled to contribution or indemnity under a contract of insurance or the applicable law governing joint tortfeasors, the third party will be notified of the claim, and will be requested to honor its obligation to the United States or to accept its share of joint liability. If the issue of indemnity or contribution is not satisfactorily adjusted, the claim will be compromised or settled only after consultation with the Department of Justice as provided in 28 CFR 14.6.

(2) *Claims for indemnity or contribution.* Claims for indemnity or contribution from the United States will be compromised or settled under this section, if liability exists under the applicable law, provided the incident giving rise to such claim is otherwise cognizable under this section. As to such claims where the exclusivity of the FECA may be applicable, see 5 U.S.C. 8101–8150.

(3) *ARNG vehicular claims.* When a vehicle used by the ARNG, or a privately owned vehicle operated by a member or employee of the ARNG, is involved in an incident under circumstances which make this section applicable to the disposition of administrative claims against the United States and results in personal injury, death, or property damage, and a remedy against the State or its insurer is indicated, the responsible area claims authority will monitor the action against the State or its insurer and encourage direct settlement between the claimant and the State or its insurer. Where the State is insured, direct contact with State or ARNG officials rather than the insurer is desirable. Regular procedures will be established and followed wherever possible. Such procedures should be agreed on by both local authorities and the appropriate claims authorities subject to concurrence by Commander, USARCS. Such procedures will be designed to ensure that local authorities and United States authorities do not issue conflicting instructions for processing claims and that whenever possible and in accordance with governing local and Federal law, a mutual arrangement for disposition of such claims as in subparagraph (i)(4) of this section is worked out. Amounts recovered or recoverable by claimant from any insurer (other than claimant's insurer who has obtained no subrogated interest against the United States) will be deducted from the amount otherwise payable.

(4) *Claims arising out of training activities of ARNG personnel.* Contribution may be sought from the state involved where it has waived sovereign immunity or has private insurance which would cover the incident giving rise to the particular claim. Where the state involved rejects the request for contribution, the file will be forwarded to the Commander, USARCS. The Commander, USARCS, is authorized to enter into an agreement with a State, territory, or commonwealth to share settlement costs of claims generated by the ARNG personnel or activities of that political entity.

(j) *Claims not payable.* The exclusions contained in 28 U.S.C. 2680 are applicable to claims herein. Other types of claims are excluded by statute or court decisions, including, but not liimited to, the following: (1) Claims for the personal injury or death of a member of the Armed Forces of the United States incurred incident to service, or for damage to a member's property incurred incident to service. *Feres v. United States,* 340 U.S. 135 (1950). Currently the most significant justification for the incident to service doctrine is the availability of alternative compensation systems, and the fear of disrupting the military command relationship. Other supportive factors often cited by the courts are the service member's duty status, location, and receipt of military benefits at the time of the incident.

(i) The exception applies to members of the Army, Navy, Air Force, Marine Corps, and Coast Guard, including the Reserve Components of the Armed Forces. (See 10 U.S.C. 261.) The exception also applies to service members on the Temporary Disability Retired List, and on convalescent leave, to service academy cadets, to members of visiting forces in the United States under the SOFA between the parties to the North Atlantic Treaty Organization or similar international agreements, and to service members on the extended enlistment program.

(ii) The incident to service doctrine has been extended to derivative claims where the directly injured party is a service member. Third party indemnity claims are barred.

(2) Claims for the personal injury or death of a Government employee for whom benefits are provided by the Federal Employees Compensation Act (5 U.S.C. 8101–8150). This Act provides

that benefits paid under the Act are exclusive and instead of all other liability of the United States, including that under a Federal tort liability statute (5 U.S.C. 8116(c)). It extends to derivative claims, to subsequent malpractice for treatment of a covered injury, to injuries for which there is no scheduled compensation, and to employee harassment claims for which other remedies are available (42 U.S.C. 2000e). The exception does not bar third party indemnity claims. When there is doubt as to whether or not this exception applies, the claim should be forwarded through claims channels to the Commander, USARCS, for an opinion.

(3) Claims for the personal injury or death of an employee, including nonappropriated fund employees, for whom benefits are provided by the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901–950). An employee of a nonappropriated fund instrumentality is covered by that Act (5 U.S.C. 8171). This is the exclusive remedy for covered employees, similar to the exclusivity of the FECA.

(4) Claims for the personal injury or death of any employee for whom benefits are provided under any workmen's compensation law, if the premiums of the workmen's compensation insurance are retrospectively rated and charged as an allowable, allocable expense to a cost-type contract. If, in the opinion of an approval or settlement authority, the claim should be considered payable, for example, the injuries did not result from a normal risk of employment or adequate compensation is not payable under workmen's compensation laws, the file will be forwarded with recommendations through claims channels to the Commander, USARCS, who may authorize payment of an appropriate award.

(5) Claims for damage from or by flood or flood waters at any place. 33 U.S.C. 702c. This exception is broadly construed and includes multi-purpose projects and all phases of construction and operation.

(6) Claims based solely upon a theory of absolute liability or liability without fault. Either a "negligent" or "wrongful" act is required by the FTCA, and some type of malfeasance or nonfeasance is required. *Dalehite v. United States*, 346 U.S. 15 (1953); *Laird v. Nelms*, 406 U.S. 797 (1972). Thus, liability does not arise by virtue either of United States ownership of an inherently dangerous commodity or of engaging in extra-hazardous activity.

(k) *Procedures*—(1) *General.* Unless inconsistent with the provisions of this section, the procedures for the investigation and processing of claims set forth in §§ 536.1 through 536.13 will be followed.

(2) *Claims arising out of tortious conduct by ARNG personnel as defined in subparagraph (d)(1)(iii) of this section—(i) Notification.* The procedures prescribed in § 536.75, will be followed in ARNG claims arising under the FTCA.

(ii) Claims against the U.S. Government received by agencies of the State. These claims will be expeditiously forwarded through the State adjutant general to the appropriate U.S. Army area claims office in whose geographic area the incident occurred.

(3) *Statute of Limitations.* (i) To be settled under this section, a claim against the United States must be presented in writing to the appropriate Federal agency within 2 years of its accrual.

(ii) For statute of limitations purposes, a claim will be deemed to have been presented when the appropriate Federal agency as defined in § 536.3(m) receives from a claimant, his or her duly authorized agent, or legal representative an executed SF 95 or written notification of an incident, together with a claim for money damages, in a sum certain, for damage to or loss of property or personal injury or death. For Federal tort claims arising out of activities of the ARNG, receipt of a written claim by any fulltime officer or employee of the ARNG will be considered proper receipt.

(iii) A claim received by an official of the DOD will be transmitted without delay to the nearest Army claims processing office or area claims office. Inquiries concerning applicability of the statute of limitations to claims filed with the wrong Federal agency will be referred to USARCS for resolution.

(4) *Claims within settlement authority of USARCS or the Attorney General.* A copy of each claim which appears to be of a type that must be brought to the attention of the Attorney General in accordance with his or her regulations (28 CFR 14.6), or one in which the demand exceeds $15,000 or the total amount of all claims, actual or potential, from a single incident exceeds $25,000, will be forwarded immediately to the Commander, USARCS. Subsequent documents should be forwarded or added in accordance with § 536.5(h)(2). USARCS is responsible for the monitoring and settlement of such claims and will be kept informed of the status of the investigation and processing thereof. Direct liaison and correspondence between USARCS and the field claims authority or investigator is authorized on all claims matters, and assistance will be furnished as required.

(5) *Non-Army claims.* Claims based on acts or omissions of employees of the United States, other than military and civilian personnel of the DA, civilian personnel of the DOD, and employees, of nonappropriated fund activities of the DA, will be transmitted forthwith to the nearest official of the employing agency, and claimant will be advised of the referral.

(6) *Acknowledgment of claim.* (i) The claimant and his or her attorney will be kept informed by personal contact, telephonic contact, or mail of the receipt of his or her claim and the status of the claim. Formal acknowledgment of the claim in writing is required only where the claim is likely to result in litigation or is presented in an amount exceeding $15,000. In this event, the letter of acknowledgment will state the date of receipt of the claim by the first agency of the Army receiving the claim.

(ii) If it is reasonably clear to the office acknowledging receipt that a claim filed under the FTCA is not cognizable thereunder; for example, it is a maritime claim under § 536.60, or it falls under §§ 536.20 through 536.35 or 536.70 through 536.81, the acknowledgment will contain a statement advising the claimant of the statute under which his or her claim will be processed. If it is not clear which statute applies, a statement to that effect will be made, and the claimant will be promptly advised on his or her remedy when a decision is made. However, all potential maritime claims will be handled in accordance with § 536.5(h)(5).

(iii) When a claim has been amended as set forth in § 536.5(f)(4), the amendment will be acknowledged in all cases. Additionally, the claimant will be informed that the amendment constitutes a new claim insofar as concerns the 6 months in which the DA is granted the authority to make a final disposition under 28 U.S.C. 2675(a) and the claimant's option thereunder will not accrue until 6 months after the filing of the amendment.

(iv) When a claim is improperly presented, is incomplete or otherwise does not meet the requirements set forth in § 536.5(d), the claimant or his or her representative will be promptly informed in writing of the deficiencies and advised that a proper claim must be filed within the 2 year statute of limitations.

(7) *Investigation.* Claims cognizable under this section will be investigated and processed on a priority basis in order that settlement if indicated may be

accomplished within the 6 months prescribed by statute.

(8) *Advice to claimant.* (i) A full explanation of claims procedures and of the rights of the claimant will be made to the extent necessitated by the amount and nature of the claim.

(ii) In a case where litigation is likely, or where this course of action is preferred by the claimant, and it appears to be a proper case for administrative settlement, the claimant will be advised as to the advantages of administrative settlement. If the claim is within the jurisdiction of a higher settlement authority, the claim will be discussed with such authority prior to the furnishing of such advice. The claimant should be familiarized with all aspects of administrative settlement procedures including the administrative channels through which his claim must be processed for approval. He or she may be advised that administrative processing can result in more expeditious processing, whereas litigation may take considerable time, particularly in jurisdictions with crowded dockets.

(iii) If appropriate, he or she may be informed that a tentative settlement can be reached for any amount above $25,000, subject to approval by the Attorney General. He or she should be advised that administrative filing of the claim protects him under the statute of limitations for purpose of litigation; suit can be filed within 6 months after the date of mailing of notice of final denial by the DA, thus potentially allowing negotiations to continue indefinitely. An attorney representing a claimant should be advised of the limitations on fees for purposes of administrative settlement (20 percent) and litigation (25 percent). The attorney may also be advised that there is no jury trial under the FTCA.

(9) *Notification to claimant of action on claim.* (i) The filing of an administrative claim and its denial are prerequisite to filing suit. Any suit must be filed not later than 6 months after notification by certified or registered mail of the denial of the administrative claim. Failure of a settlement authority to take final action on a properly filed claim within 6 months may be treated by the claimant as a final denial for the purposes of filing suit. If the claimant has provided insufficient documentation to permit evaluation of the claim, written notice should be given to this effect. Since administrative settlements are a voluntary process, the preferred method of negotiating is to attempt to exchange information on an open basis.

(ii) Upon final denial of a claim, or upon rejection by the claimant of a partial allowance, and further efforts to reach a settlement are not considered feasible (§ 536.5(h)(1)), the settlement authority will inform the claimant of the action on his claim by certified or registered mail. Notification will be made as set forth in § 536.11(b).

(iii) If a claim has been presented to the DA and, also, to other Federal agencies, without any notification to the DA of this fact, final action taken by the DA prior to that of any other agency is conclusive on a claim presented to other agencies, unless another agency decides to take further action to settle the claim. Such agency may treat the matter as a reconsideration under 28 CFR 14.9(b), unless suit has been filed. The foregoing applies likewise to DA claims in which another Federal Agency has already taken final action.

(iv) If, after final denial by another agency, a claim is filed with the DA, the new submission will not toll the 6 months limitation for filing suit, unless the DA treats the second submission as a request for reconsideration under paragraph (l) of this section.

(l) *Reconsideration.* (1) While there is no appeal from the action of an approving or settlement authority under the FTCA and this section, an approving of settlement authority may reconsider a claim upon request of the claimant or someone acting in his behalf. Even in the absence of such a request, an approving or settlement authority may on his own initiative reconsider a claim. He may reconsider a claim which he previously disapproved in whole or in part (even where a settlement agreement has been executed) when it appears that his original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. If he determines that his original action was incorrect, he will modify the action and, if appropriate, make a supplemental payment. The basis for a change in action will be stated in a memorandum included in the file.

(2) A successor approving or settlement authority may also reconsider the original action on a claim but only on the basis of fraud, substantial new evidence, errors in calculation or mistake (misinterpretation) of law.

(3) A request for reconsideration must be submitted prior to the commencement of suit and prior to the expiration of the 6-month period provided in 28 U.S.C. 2401(b). Upon timely filing, the appropriate authority shall have 6 months from the date of filing in which to make a final disposition of the request, and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of the request.

(4) A request for reconsideration should indicate fully the legal or factual basis asserted as grounds for relief. Following completion of any investigation or other action deemed necessary for an informed disposition of the request, the approving or settlement authority will reconsider the claim and attempt to settle it by granting such relief as may appear warranted. When further settlement efforts appear unwarranted, the entire file with a memorandum of opinion will be referred through claims channels to the Commander, USARCS, and the claimant informed of such referral.

§ 536.60 Maritime claims.

(a) *Statutory authority.* Administrative settlement or compromise of admiralty and maritime claims in favor of and against the United States by the Secretary of the Army or his designee is authorized by the Army Maritime Claims Settlement Act (10 U.S.C. 4801–04, 4806, as amended).

(b) *Related statutes.* The Army Maritime Claims Settlement Act is supplemented by the following statutes under which suits in admiralty may be brought: The Suits in Admiralty Act of 1920 (41 Stat. 46 U.S.C. 525, 741–752); the Public Vessels Act of 1925 (43 Stat. 1112, 46 U.S.C. 781–790); the Act of 1948 Extending the Admiralty and Maritime Jurisdiction (62 Stat. 496, 46 U.S.C. 740). Similar maritime claims settlement authority is exercised by the Department of the Navy under 10 U.S.C. 7365, 7621–23 and by the Department of the Air Force under 10 U.S.C. 9801–9804, and 9806.

(c) *Scope.* 10 U.S.C. 4802 provides for the settlement or compromise of claims for—(1) Damage caused by a vessel of, or in the service of, the DA or by other property under the jurisdiction of the DA;

(2) Compensation for towage and salvage service, including contract salvage, rendered to a vessel of, or in the service of, the DA or to other property under the jurisdiction of the DA; or

(3) Damage caused by a maritime tort committed by any agent or employee of the DA or by property under the jurisdiction of the DA.

(d) *Claims exceeding $500,000.* Claims against the United States settled or compromised in a net amount exceeding $500,000 are not payable hereunder, but will be investigated and processed under this section, and, if approved by the Secretary of the Army, will be certified by him to Congress.

(e) *Claims not payable.* A claim is not allowable under this section which:

(1) Is for damage to, or loss or destruction of, property, or for personal injury or death, resulting directly or indirectly from action by the enemy, or by U.S. Armed Forces engaged in armed combat, or in immediate preparation for impending armed combat.

(2) Is for personal injury or death of a member of the Armed Forces of the United States or a civilian employee incurred incident to his service.

(3) Is for personal injury or death of a Government employee for whom benefits are provided by the FECA (5 U.S.C. 8101–8150).

(4) Is for personal injury or death of an employee, including non-appropriated fund employees, for whom benefits are provided by the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. 901).

(5) Has been made the subject of a suit by or against the United States, except as provided in subparagraph (h)(2) of this section.

(6) Arises in a foreign country and was considered by the authorities of a foreign country and final action taken thereon under Article VIII of the NATO Status of Forces Agreement, Article XVIII of the Treaty of Mutual Cooperation and Security between the United States and Japan regarding facilities and areas and the Status of United States Armed Forces in Japan, or other similar treaty or agreement, if reasonable disposition was made of the claim.

(f) *Claims under other laws and regulations.* (1) Claims of military personnel and civilian employees of the DOD and the Army, including military and civilian officers and crews of Army vessels, for damage to or loss of personal property occurring incident to their service will be processed under the provisions of the Military Personnel and Civilian Employees' Claims Act (31 U.S.C. 3721).

(2) Claims which are within the scope of this section and also within the scope of the FCA (10 U.S.C. 2734) may be processed under that statute when specific authority to do so has been obtained from the Commander, USARCS. The request for such authority should be accompanied by a copy of the report of the incident by the Marine Casualty Investigation Officer, or other claims investigator.

(g) *Subrogation.* (1) An assurer will be recognized as a claimant under this section to the extent that it has become subrogated by payment to, or on behalf of, its assured, pursuant to a contract of insurance in force at the time of the incident from which the claim arose. An assurer and its assured may file a claim either jointly or separately. Joint claims must be asserted in the names of, and must be signed by, or on behalf of, all parties; payment then will be made jointly. If separate claims are filed, payment to each party will be limited to the extent of such party's undisputed interest.

(2) For the purpose of determining authority to settle or compromise a claim, the payable interests of an assurer (or assurers) and the assured represent merely separable interests, which interests in the aggregate must not exceed the amount authorized for administrative settlement or compromise.

(3) The policies set forth in paragraphs (g) (1) and (2) of this section with respect to subrogation arising from insurance contracts are applicable to all other types of subrogation.

(h) *Limitation of settlement.* (1) The period for effecting an administrative settlement under the Army Maritime Claims Settlement Act is subject to the same limitation as that for beginning an action under the Suits in Admiralty Act; that is, a 2-year period from the date of the origin of the cause of action. The claimant must have agreed to accept the settlement, and it must be approved for payment by the Secretary of the Army or his designee prior to the end of such period; otherwise, thereafter the cause of action ceases to exist, except under the circumstances set forth in subparagraph (h)(2) of this section. The presentation of a claim, or its consideration by the DA, neither waives nor extends the 2-year limitation period.

(2) In the event that an action has been filed in a U.S. district court before the end of the 2-year statutory period, an administrative settlement may be negotiated by the Commander, USARCS, with the claimant, even though the 2-year period has elapsed since the cause of action accrued, provided the claimant obtains the written consent of the appropriate office of the Department of Justice charged with the defense of the complaint. Payment may be made upon dismissal of the complaint.

(3) When a claim under this section, notice of damage, invitation to a damage survey, or other written notice of an intention to hold the United States liable is received, the receiving installation, office, or person immediately will forward such document to the Commander, USARCS. USARCS will promptly advice the claimant or potential claimant in writing of the comprehensive application of the time limit.

(4) When a claim under this section for less than $10,000 is presented to a Corps of Engineers office and thus may be appropriate for action by the Corps of Engineers pursuant to the delegation of authority set forth in subparagraph (i)(2) of this section, the receiving Corps of Engineers office will promptly advise the claimant in writing of the comprehensive application of the time limit (unless such has already been done by USARCS).

(i) *Delegation of authority.* (1) Where the amount to be paid is not more than $10,000, claims under this section may be settled or compromised by the Commander, USARCS, or this designee.

(2) When a claim under this section arises from a civil works activity of the Corps of Engineers, engineer area claims offices are delegated authority to approve and pay in full, or in part, subject to the execution of an appropriate settlement agreement, claims presented for $10,000 or less, and compromise and pay claims regardless of the amount claimed, provided an award of $10,000 or less is accepted by the claimant in full satisfaction and final settlement of the claim, subject to such limitations as may be imposed by the Chief of Engineers. Meritorious claims arising from civil works activities of the Corps of Engineers will be paid from Corps of Engineers funds.

Claims Arising From Activities of National Guard Personnel While Engaged in Duty or Training

§ 536.70 Statutory authority.

The statutory authority for this chapter is contained in the Act of September 13, 1960 (74 Stat. 878, 32 U.S.C. 715), commonly referred to as the National Guard Claims Act (NGCA), as amended by Pub. L. 90–486, August 13, 1968 (82 Stat. 756), Pub. L. 90–525, September 26, 1968 (82 Stat. 877), Pub. L. 91–312, July 8, 1970 (84 Stat. 412), and Pub. L. 93–336, July 8, 1974 (88 Stat. 291); and the Act of September 8, 1961 (75 Stat. 488, 10 U.S.C. 2736) as amended by Pub. L. 90–521, September 26, 1968 (82 Stat. 874), Pub. L. 97–124 December 29, 1981 (95 Stat. 1666), and Pub. L. 98–564, October 30, 1984 (98 Stat. 2918).

§ 536.71 Definitions.

For purposes of §§ 536.70 to 536.81 the following terminology applies:

(a) *ARNG personnel.* A member of the ARNG engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or 709.

(b) *Claimant.* An individual, partnership, association, corporation, country, State, Commonwealth, territory or a political subdivision thereof, or the District of Columbia, presenting a claim

and meeting the conditions set forth in § 536.5. The term does not include the U.S. Government, any of its instrumentalities, except as prescribed by statute, or a State, commonwealth, territory or the District of Columbia which maintains the unit to which the ARNG personnel causing the injury or damage are assigned. This exclusion does not ordinarily apply to a unit of local government which does not control the ARNG organization involved. As a general rule, a claim by a unit of local government other than a State, commonwealth or territory will be entertained unless the item claimed to be damaged or lost was procured or maintained by State, commonwealth or territorial funds.

§ 536.72 Scope.

(a) Sections 536.70 through 536.81 apply in all places and set forth the procedures to be followed in the settlement and payment of claims for death, personal injury, or damage to or loss or destruction of property caused by members or employees of the ARNG, or arising out of the noncombat activities of the ARNG when engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or 709, provided such claim is not for personal injury or death of a member of the Armed Forces or Coast Guard, or a civilian officer or employee whose injury or death is incident to service.

(b) A claimant dissatisfied with an administrative settlement under §§ 536.70 through 536.81 as the result of activities of the ARNG of a State, Commonwealth, or territory is not entitled to judicial relief in an action against the United States. Whether he or she has a legal cause of action or may file an administrative claim against such a political entity depends upon controlling local law.

(c) Claims arising out of activities of the ARNG when performing duties at the call of the governor of a State maintaining the unit are not cognizable under §§ 536.70 through 536.81 or any other law, regulation or appropriation available to the Army for the payment of claims. Such claims should be returned or referred to the authorities of the State for whatever action they choose to take, and claimants should be informed of the return or referral. Care should be taken to determine the status of the unit and members at the time the claims incident occurred, particularly in civil emergencies as units called by the governor are sometimes "federalized" during the call-up. If the unit was "federalized" at the time the claim incident occurred, the claim will be cognizable under §§ 536.20 through 536.35, 536.50, or 536.90 through 536.97 or other sections pertaining to the Active Army.

§ 536.73 Claims payable.

(a) *Tort claims.* All claims for personal injuries, death, or damage to or loss of real or personal property, arising out of incidents occurring on or after December 29, 1981, based on negligent or wrongful acts or omissions of ARNG personnel acting within the scope of employment, within the United States while engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or 709 will be processed under the FTCA, § 536.50. Such claims arising before December 29, 1981 will, except as modified herein, be processed and settled in accordance with the provisions of §§ 536.20 through 536.35.

(b) *Noncombat activities.* A claim incident to the noncombat activities of the ARNG while engaged in duty or training under 32 U.S.C. 316, 502, 503, 504, 505, or 709 may be settled under §§ 536.70 through 536.81. "Noncombat activities" are defined in § 536.3.

(c) *Subrogated claims.* Subrogated claims will be processed as prescribed in § 536.5(b).

(d) *Advance payments.* Advance payments in partial settlement of meritorious claims to alleviate immediate hardship are authorized as provided in § 536.13.

§ 536.74 Claims not payable.

The type of claims listed in § 536.24 as not payable are also not payable under §§ 536.70 through 536.81.

§ 536.75 Notification of incident.

Except where claims are regularly paid from State sources, for example, insurance, court of claims, legislative committee, etc., the appropriate adjutant general will ensure that each incident which may give rise to a claim cognizable under §§ 536.70 through 536.81 is reported immediately by the most expeditious means to the area claims office in whose geographic area the incident occurs or to a claims processing office designated by the area claims office. The report will contain the following information:

(a) Date of incident.

(b) Place of incident.

(c) Nature of incident.

(d) Names and organizations of ARNG personnel involved.

(e) Names of potential claimant(s).

(f) A brief description of any damage, loss, or destruction of private property, and any injuries or death of potential claimants.

§ 536.76 Claims in which there is a state source of recovery.

Where there is a remedy against the State, as a result of either waiver of sovereign immunity or where there is liability insurance coverage, the following procedures apply:

(a) Where the State is insured, direct contact with State or ARNG officials rather than the insurer is desirable. Regular procedures will be established and followed wherever possible. Such procedures should be agreed on by both local authorities and the appropriate claims authorities subject to concurrence by the Commander, USARCS. Such procedures will be designed to ensure that local authorities and U.S. authorities do not issue conflicting instructions for processing claims, and whenever possible and in accordance with governing local and Federal law, a mutual arrangement for disposition of such claims as in paragraph (c) of this section is worked out. Amounts recovered or recoverable by claimant from any insurer (other than claimant's insurer who has obtained no subrogated interest against the United States) will be deducted from the amount otherwise payable.

(b) If there is a remedy against the State or its insurer, the claimant may be advised of that remedy. If the payment by the State or its insurer does not fully compensate claimant, an additional payment may be made under §§ 536.70 through 536.81. If liability is clear and claimant settles with the State or its insurer for less than the maximum amount recoverable, the difference between the maximum amount recoverable from the State or its insurer and the settlement normally will be also deducted from the payment by the United States.

(c) If the State or its insurer desires to pay less than their maximum jurisdiction or policy limit on a basis of 50 percent or more of the actual value of the entire claim, any payment made by the United States must be made directly to the claimant. This can be accomplished by either having the United States pay the entire claim and have the State or its insurer reimburse its portion to the United States, or by having each party pay its agreed share directly to the claimant. If the State or its insurer desires to pay less than 50 percent of the actual value of the claim, the procedure set forth in paragraph (d) of this section will be followed.

(d) If there is a remedy against the State and the State refuses to make payment, or there is insurance coverage and the claimant has filed an administrative claim against the United

States, forward file with seven-paragraph memorandum to the Commander, USARCS, including information as to the status of any judicial or administrative action the claimant has taken against the State or its insurer. The Commander, USARCS, will determine whether the claimant will be required to exhaust his remedy against the State or its insurer, or whether the claim against the United States can be settled without such requirement. If the Commander, USDARCS determines to follow the latter course of action, he will also determine whether an assignment of the claim against the State or its insurer will be obtained and whether recovery action will be taken. The State or its insurer will be given appropriate notification in accordance with State law necessary to obtain contribution of indemnification.

§ 536.77 Claims against the ARNG tortfeasor individually.

The procedures set forth in § 536.9(f) are applicable. With respect to claims arising before December 29, 1981, an ARNG driver acting pursuant to the authorities cited in § 536.73(a) is not protected by the provisions of the Drivers Act (28 U.S.C. 2670(b)) and the driver may be sued individually in State court. When this situation occurs, it should be monitored closely by ARNG authorities. If possible an early determination will be made as to whether any private insurance of the ARNG tortfeasor is applicable. Where such insurance is applicable and the claim against the United States is of doubtful validity, final actions will be withheld pending resolution of the demand against the ARNG tortfeasor. If, in the opinion of the claims approving or settlement authority, such insurance is applicable and the claim against the United States is payable in full or in a reduced amount, settlement efforts will be made either together with the insurer or singly by the United States. Any settlement will not include amounts recovered or recoverable as in § 536.9. If the insurance is not applicable, settlement or disapproval action will proceed without further delay.

§ 536.78 When claim must be present.

A claim may be settled under §§ 536.70 through 536.81 only if presented in writing within 2 years after it accrues, except that if it accrues in time of war or armed conflict, or if war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after war or armed conflict is terminated. As used in this section, a war or armed conflict is one in which any Armed Force of the United States is engaged. The dates of commencement and termination of an armed conflict must be established by concurrent resolution of Congress or by determination of the President.

§ 536.79 Where claim must be present.

A claim must be presented to the appropriate Federal agency. Receipt of a written claim by any full time officer or employee of the National Guard will be considered receipt. However, the statute of limitations is tolled if a claim is filed with a State agency, the claim purports to be under the NGCA and it is forwarded to the Army within 6 months, or the claimant makes inquiry of the Army concerning to claim within 6 months. If a claim is received by a DA official who is not a claims approval or settlement authority, the claim will be transmitted without delay to the nearest approval or settlement authority.

§ 536.80 Procedures.

(a) The form of a claim under §§ 536.70 through 536.81 will be as described in § 536.5 (d) and (e).

(b) So far as they are not inconsistent with §§ 536.70 through 536.81, the guidance set forth in §§ 536.10 through 536.12 will be followed in processing a claim under §§536.70 through 536.81.

(c) The following provisions are applicable to claims under §§ 536.70 through 536.81 and are hereby incorporated by reference:

(1) Section 536.28 (applicable law);

(2) Section 536.29 (determination of quantum);

(3) Section 536.31 (claims over $100,000);

(4) Section 536.32 (settlement procedures);

(5) Section 536.33 (attorney fees).

§ 536.81 Settlement agreement.

Procedures concerning settlement agreements will be in accordance with § 536.10 except that the agreement will be modified to include a State and its National Guard in most cases. A copy of the agreement will be furnished to State authorities and the individual tortfeasor.

Claims Incident to Use of Government Vehicles and Other Property of The United States Not Cognizable Under Other Law

§ 536.90 Statutory authority.

The statutory authority for §§536.90 through 536.97 is contained in the act of October 9, 1962 (76 Stat. 767, 10 U.S.C. 2737). This statute is commonly called the "Nonscope Claims Act." For the purposes of §§ 536.90 through 536.97, a Government installation is a facility having fixed boundaries owned or controlled by the Government, and a vehicle includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land (1 U.S.C. 4).

§ 536.91 Scope.

(a) Sections 536.90 through 536.97 prescribe the substantive bases and special procedural requirements for the administrative settlement and payment, in an amount not more than $1,000, of any claim against the United States not cognizable under any other provision of law for damage to or loss of property, or for personal injury or death, caused by military personnel or civilian employees of the DA or by civilian employees of the DoD incident to the use of a United States vehicle at any place or incident to the use of other United States property on a Government installation.

(b) Any claim in which there appears to be a disputed issue relating to whether the employee was acting within the scope of employment will be considered under §§ 536.20 through 536.35, 536.50, or 536.70 through 536.81 as applicable. Only when all parties, to include an insurer, agree that there is no "in scope" issue will §§ 536.90 through 536.97 be used.

§ 536.92 Claims payable.

(a) *General.* A claim for personal injury, death, or damage to or loss of property, real or personal, is payable under §§ 536.90 through 536.97 when—

(1) Caused by the act or omission, negligent, wrongful, or otherwise involving fault, of military personnel of the DA or the ARNG, or civilian employees of the DA or the ARNG—

(i) Incident to the use of a vehicle of the United States at any place,

(ii) Incident to the use of any other property of the United States on a Government installation.

(2) The claim may not be settled under any other claims statute and claims regulation available to the DA for the administrative settlement of claims.

(3) The claim has been determined to be meritorious, and the approval or settlement authority has obtained a settlement agreement in an amount not in excess of $1,000 in full satisfaction of the claim prior to approval of the claim for payment.

(b) *Personal injury or death.* A claim for personal injury or death is allowable only for the cost of reasonable medical, hospital, or burial expenses actually incurred and not otherwise furnished or paid by the United States.

(c) *Property loss or damage.* A claim for damage to or loss of property is allowable only for the cost of reasonable repairs or value at time of loss, whichever is less.

§ 526.93 Claims not payable.

A claim is not allowable under §§ 536.90 through 536.97 that—

(a) Results wholly or partly from the negligent or wrongful act of the claimant, his or her agent or employee. The doctrine of comparative negligence is not applicable.

(b) Is for medical, hospital, and burial expenses furnished or paid by the United States.

(c) Is for any element of damage pertaining to personal injuries or death other than provided in § 536.92(b). All other items of damage, for example, compensation for loss of earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement, and pain and suffering, are not payable.

(d) Is for loss of use of property or for the cost of a substitute property, for example, a rental.

(e) Is legally recoverable by the claimant under an indemnifying law or indemnity contract. If the claim is legally recoverable in part, that part recoverable by the claimant is not payable.

(f) Is a subrogated claim.

§ 536.94. When claim must be presented.

A claim may be settled under §§ 536.90 through 536.97 only if it is presented in writing within 2 years after it accrues.

§ 536.95 Procedures.

So far as not inconsistent with §§ 536.90 through 536.97, the procedures for the investigation and processing of claims contained in §§ 536.1 through 536.13 will be followed.

§ 536.96 Settlement agreement.

A claim may not be paid under §§ 536.90 through 536.97 unless the amount tendered is accepted by the claimant in full satisfaction. A settlement agreement (§ 536.10) is required before payment.

§ 536.97 Reconsideration.

(a) An approval or settlement authority may reconsider the quantum of a claim upon request of the claimant or someone acting in his behalf. In the absence of such a request, an approval or settlement authority may on his own initiative reconsider the quantum of a claim. Reconsideration may occur even in a claim which was previously disapproved in whole or in part (even though a settlement agreement has been executed) when it appears that his or her original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. If he or she determines that the original action was incorrect, he or she will modify the action and, if appropriate, make a supplemental payment. If the original action is determined correct, the claimant will be so notified. The basis for either action will be stated in a memorandum included in the file.

(b) An approval or settlement authority may reconsider the applicability of §§ 536.90 through 536.97 to a claim upon request of the claimant or someone acting in his behalf, or on his own initiative. Such reconsideration may occur even though all parties had previously agreed per § 536.91(b) when it appears that this agreement was incorrect in law or fact based on the evidence of record at the time of the agreement or subsequently received. If he or she determines the agreement to be incorrect, the claim will be reprocessed under the applicable sections of this regulation. If he or she determines the agreement to have been correct, that is, that §§ 536.90 through 536.97 are applicable, he or she will so advise the claimant. This advice will include reference to any appeal or judicial remedies available under the section which the claimant alleges the claim should be processed under.

(c) A successor or higher approval or settlement authority may also reconsider the original action on a claim as in paragraph (a) or (b) of this section, but only on the basis of fraud substantial new evidence, errors in calculation or mistake (misinterpretation) of law.

(d) A request for reconsideration should indicate fully the legal or factual basis asserted as grounds for relief.

[FR Doc. 88-27867 Filed 12-6-88; 8:45 am]
BILLING CODE 3710-08-M

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS PASADENA

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that USS PASADENA (SSN-752) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 23, 1988.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS PASADENA (SSN-752) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Under Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS PASADENA (SSN-752) is a member of the SSN 688 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS PASADENA (SSN-752).

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and

701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light, distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(k), Annex I	Anchor lights, relationship of aft light to forward light in meters; § 2(k), Annex I
USS PASADENA	SSN-752	255°	112.5°	206°	4.2	6.1	3.5	1.7 below.

3. Table Three of § 706.2 is amended by adding the following vessel:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
USS PASADENA	SSN-752	3.5

Date: November 23, 1988.

Approved:

H. Lawrence Garrett III,

Under Secretary of the Navy.

[FR Doc. 88-28093 Filed 12-6-88; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS WASP

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that USS WASP (LHD-1) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval amphibious assault ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 23, 1988.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS WASP (LHD-1) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(a), pertaining to the location of the masthead lights over the fore and aft centerline of the ship; Annex 1, section 2(g), pertaining to the distance of the sidelights above the hull; Annex I, section 3(a), pertaining to the location of the forward masthead light, in the forward quarter of the ship, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights; and Annex 1, section 3(b), pertaining to the positioning of the sidelights in relationship to the forward masthead light, without interfering with its special function as a Navy ship. The Under Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Two of § 706.2 is amended by adding the following ship:

Vessel	Number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; sec. 2(k), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; sec. 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; sec. 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; sec. 3(b), Annex I
USS WASP	LHD-1	9.0					3.1	65.2	

3. Table Five of § 706.2 is amended by adding the following ship:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i).	Aft masthead light, less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	AFT masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
USS WASP	LHD-1						X	X	65

Date: November 23, 1988.

Approved:

H. Lawrence Garrett III,

Under Secretary of the Navy.

[FR Doc. 88-28094 Filed 12-6-88; 8:45 am]

BILLING CODE 3810-AE-M

Department of the Air Force

32 CFR Part 809d

Procedures for Reporting on Defense Related Employment

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending Title 32, Chapter VII of the CFR by removing Part 809d, Procedures for Reporting on Defense Related Employment. The source document has been revised and incorporated into Air Force Regulation 30-30, Standards of Conduct. This rule is removed because it has limited applicability to the general public. This action is the result of departmental review. The intended effect is to insure that only regulations which substantially affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: January 6, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Patsy J. Conner, Air Force Federal Register Liaison Officer, SAF/AADAQD, Pentagon, Washington, DC 20330-1000, telephone (202-694-3431).

SUPPLEMENTARY INFORMATION: Accordingly, 32 CFR, Chapter VII, is amended by removing Part 809d.

PART 809d—[REMOVED]

Authority: 10 U.S.C. 8013.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-28080 Filed 12-6-88; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 59

Statutory Prohibition on Use of Appropriated Funds in Programs Where Abortion is a Method of Family Planning

AGENCY: Public Health Service, HHS.

ACTION: Notice of court action.

SUMMARY: This document provides notification of court action relating to rules promulgated by the Department of Health and Human Services on February 2, 1988 (53 FR 2922) under Title X of the Public Health Service Act and guidance as to how further clarification of the effect of such court action as it relates to particular grantees and applicants for grants may be obtained.

FOR FURTHER INFORMATION CONTACT: Dennis G. Smith, Director, Office of Family Planning, (202) 245-0153.

SUPPLEMENTARY INFORMATION: On February 2, 1988, the Department of Health and Human Services promulgated rules revising the requirements for compliance by grantees and applicants for grants under section 1001 of the Public Health Service Act, 42 U.S.C. 300a, with the prohibition on the use of Title X funds in programs where abortion is a method of family planning which is set forth at section 1008 of the Act, 42 U.S.C. 300a-6. 53 FR 2922. The rules promulgated on February 2, 1988 are codified at 42 CFR 59.7-59.10, and various technical and conforming changes were made to other sections of the pre-existing regulations.

Four suits were filed in three jurisdictions by various organizations and individuals seeking to have the February 2nd rules declared invalid and their operation enjoined. In two of the suits, permanent injunctions were entered enjoining the Department from enforcing the rules against the parties to those suits. See *Commonwealth of Massachusetts, et al.* v. *Bowen*, No. 88-0253-S (D. Mass., March 3, 1988) and *Planned Parenthood Federation of America, et al.* v. *Bowen*, No. 88-Z-158 (D. Colo., June 15, 1988). In the remaining two suits, the government prevailed and the complaints were dismissed. See *The State of New York, et al.* v. *Bowen*, No. 88 Civ. 0701 (S.D.N.Y., June 30, 1988) and *Dr. Irving Rust, et al.* v. *Bowen*, No. 88 Civ. 0702 (S.D.N.Y., June 30, 1988). All of the district court orders are currently on appeal.

As a result of this court action, the rules promulgated on February 2, 1988 are currently effective with respect to certain organizations and not with respect to others. Because the appellate process has not concluded and because the applicants for grants and grantees under the program can change, the extent of the rules' coverage is likely to change over time. Organizations with questions as to whether the February 2nd rules are in effect with regard to them are encouraged to consult their attorneys and the Director of the Office of Family Planning at the number provided above.

Dated: October 28, 1988.

Nabers Cabaniss,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 88-28135 Filed 12-6-88; 8:45 am]

BILLING CODE 4160-17-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[CC Docket No. 86-111; FCC 88-355]

Common Carrier Services; Allocation of Costs Between Regulated and Nonregulated Activities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has affirmed its *Order on Reconsideration* in CC Docket 86-111 insofar as that Order requires carriers to use a three-year forecasting period for the allocation of network plant between regulated and nonregulated activities. The Commission also denied a request that revenues from nonregulated activities be recorded in various operating revenue accounts

within 47 CFR Part 32, and affirmed that these revenues must be placed in a single revenue account. However, the Commission determined that the account established for this purpose in the *Order on Reconsideration* did not properly identify these revenues. Accordingly, the Commission changed the account number and title.

EFFECTIVE DATE: May 22, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert W. Spangler, Common Carrier Bureau, (202) 632-7500.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's *Order on Further Reconsideration* in CC Docket No. 86-111, FCC 88-355, adopted November 1, 1988 and released November 18, 1988. The full text of the FCC's decision is available for inspection and copying in the FCC Dockets Branch, Room 230, 1919 M Street NW., Washington, DC. The complete text of this document may be purchased from the Commission's copy contractor, International Transcription Service's Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order on Further Reconsideration

In the *Joint Cost Order*, the Commission adopted rules and policies applicable to the telephone companies' allocation of costs between their regulated and nonregulated activities. The Commission largely affirmed the *Joint Cost Order* in the *Order on Reconsideration*. However, the Commission on reconsideration modified the time period that carriers are to use for forecasting joint use of network plant, and established procedures by which carriers account for tariffed services used for nonregulated activities.

The Bell Atlantic Telephone Companies petitioned for reconsideration of the changes in the procedure by which carriers account for tariffed services used for nonregulated activities. The *Joint Cost Order* stated that tariffed services provided to a nonregulated activity must be charged to the nonregulated activity at the carrier's tariffed rates. The *Order on Reconsideration* specified the precise accounting procedure for this requirement, which included debiting the tariffed rate to Account 7991, Other nonregulated revenue. This account is classified as a nonoperating account. Bell Atlantic asked that nonregulated revenues instead be accounted for within unique subaccounts in various operating revenue accounts. In the *Order on Further Reconsideration* the Commission rejected that accounting treatment. Such revenues often do not fit readily within the regulated revenue accounts. Moreover, the Commission has no regulatory need for service-specific revenue data for nonregulated activities, and Bell Atlantic's proposal would complicate efforts to assess the level of nonregulated revenues in reports filed by the carriers. The Commission agreed with Bell Atlantic and certain commenters, however, that the nonregulated revenues should not be recorded as nonoperating revenues. Rather, those revenues should be recorded in a separate account classified as operating revenue along with the group of accounts used for regulated telecommunications revenues. Accordingly, the Commission replaced Account 7991 with Account 5280, Nonregulated operating revenue. Carriers must record in that account all nonregulated revenues derived from activities which share assets or resources with regulated activities.

The New York Department of Public Service also sought reconsideration of the *Order on Reconsideration*. In the *Joint Cost Order*, the Commission required carriers to allocate certain types of investment on the basis of relative regulated and nonregulated usage of the investment at the highest forecast relative nonregulated usage over the life of the investment. The *Order on Reconsideration* affirmed use of a forward-looking investment allocator for this investment. However, the Commission amended the rules on reconsideration to require use of a three-year forecast period, because forecasting for the life of the investment would create variations in forecast periods such that monitoring of cost allocations would be complicated. NYDPS sought reinstatement of the three-year forecast period. The Commission rejected a return to use of the three-year forecast period because NYDPS presented no evidence that such forecasts would be meaningful or useful. In response to NYDPS' request, the Commission clarified the restrictions on a carrier's ability to reallocate investment from nonregulated to regulated use.

Ordering Clauses

It is hereby ordered, that pursuant to sections 4(i), 4(j), 201-205, 215, 218, 219, 220, and 405 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201-205, 215, 218, 219, 220, and 405, the Petition of New York State Department of Public Service for Clarification and Reconsideration, filed in this proceeding on November 13, 1987, and the Bell Atlantic Petition for Reconsideration, filed in this proceeding on November 23, 1987, are denied in part and granted in part as specified herein.

It is further ordered, that pursuant to sections 4(i), 4(j), 201-205, 215, 218, 219, and 220 of the Communications Act of 1934, 47 U.S.C. sections 154(i), 154(j), 201-205, 215, 218, 219, and 220, the amendments to Part 32 of the Commission's Rules and Regulations set forth at the end of this document are adopted, effective May 22, 1989.

List of Subjects in 47 CFR Part 32

Communications Common Carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Part 32 Uniform System of Accounts for Telecommunications Companies is amended as follows:

1. The authority citation for Part 32 continues to read as follows:

Authority: 47 U.S.C. 154, 47 U.S.C. 219, 220.

2. The table of contents to Part 32 is amended to remove § 32.7991 and to add § 32.5280 to read as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

* * * * *

Subpart D—Instructions for Revenue Accounts

Sec.

* * * * *

32.5270 Carrier billing and collection revenue.
32.5280 Nonregulated operating revenue.
32.5300 Uncollectible revenue.

* * * * *

Subpart F—Instructions for Other Income Accounts

* * * * *

32.7990 Nonregulated net income.

Subpart G—Glossary

* * * * *

3. Section 32.14 is amended by revising paragraph (c) to read as follows:

§ 32.14 Regulated accounts.

* * * * *

(c) In the application of detailed accounting requirements contained in this part, when a regulated activity involves the common or joint use of assets and resources in the provision of regulated and nonregulated products and services, companies shall account for these activities within the accounts

prescribed in this system for telephone company operations. Assets and expenses shall be subdivided in subsidiary records among amounts solely assignable to nonregulated activities, amounts solely assignable to regulated activities, and amounts related to assets used and expenses incurred jointly or in common, which will be allocated between regulated and nonregulated activities. Companies shall submit reports identifying regulated and nonregulated amounts in the manner and at the times prescribed by this Commission. Nonregulated revenue items not qualifying for incidental treatment, as provided in § 32.4999(1), shall be recorded in Account 5280, Nonregulated operating revenue.

4. Section 32.23 is amended by revising paragraph (c) to read as follows:

§ 32.23 Nonregulated activities.

* * * * *

(c) When a nonregulated activity does involve the common or joint use of assets and resources in the provision of regulated and nonregulated products and services, carriers shall account for these activities within accounts prescribed in this system for telephone company operations. Assets and expenses shall be subdivided in subsidiary records among amounts solely assignable to nonregulated activities, amounts solely assignable to regulated activities, and amounts related to assets and expenses incurred jointly or in common, which will be allocated between regulated and nonregulated activities. Carriers shall submit reports identifying regulated and nonregulated amounts in the manner and at the times prescribed by this Commission. Nonregulated revenue items not qualifying for incidental treatment, as provided in § 32.4999(1), shall be recorded in separate subsidiary record categories of Account 5280, Nonregulated operating revenue. Amounts assigned or allocated to regulated products or services shall be subject to Part 36 of this Chapter.

5. Section 32.1220 is amended by revising paragraph (i) to read as follows:

§ 32.1220 Inventories.

* * * * *

(i) *1220.2 Property held for sale or lease.* This subaccount shall include the cost of all items purchased for resale or lease. The cost shall include applicable transportation charges, sales and use taxes, and cash and other purchase discounts. Inventory shortage and overage shall be charged and credited, respectively, to Account 5280, Nonregulated operating revenue.

6. Section 32.4999 is amended by redesignating (l) and (m) as (m) and (n), adding a new paragraph (l) and by revising paragraph (m) and amending (n) to add Account 5280 to the list of revenue accounts to be maintained as follows:

§ 32.4999 General.

* * * * *

(l) Nonregulated revenues. The nonregulated revenue account shall be used for nonregulated operating revenues when a nonregulated activity involves the common or joint use of assets or resources in the provision of regulated and nonregulated products or services and when such activity is accounted for, as required in §32.23(c) of this subpart, within the accounts prescribed in this system for telephone company operations. Revenues from nontariffed activities offered incidental to tariffed services may be accounted for as regulated revenues, provided the activities are outgrowths of regulated operations and the revenues do not exceed, in the aggregate, one percent of total revenues for three consecutive years. Such activities must be listed in the Commission-approved Cost Allocation Manual for any company required to file a Cost Allocation Manual.

(m) Uncollectible revenues. Uncollectible revenues shall include amounts originally credited to the revenue accounts which have proved impracticable of collection.

(n) Revenue accounts to be maintained.

Account title	Class A account	Class B account
* * *	*	*
Miscellaneous Revenues: *	*	*
Carrier billing and collection revenue	5270	.....
Nonregulated Revenues:		
Nonregulated operating revenue	5280	5280
Uncollectible Revenues: *	*	*

7. Section 32.5280 is added to read as follows:

§ 32.5280 Nonregulated operating revenue.

(a) This account shall include revenues derived from a nonregulated activity involving the common or joint use of assets or resources in the provision of regulated and nonregulated products or services, which are not provided for elsewhere in this system of accounts.

(b) This account shall be debited and regulated revenue accounts shall be credited at tariffed rates when tariffed services are provided to nonregulated activities that are accounted for as prescribed in § 32.23(c) of this subpart.

(c) Separate subsidiary record categories shall be maintained for each nonregulated revenue item recorded in this account.

§ 32.699 [Amended]

8. Section 32.6999 is amended by amending paragraph (b) to delete the listing of Account 7991.

§ 32.7991 [Removed]

9. Section 32.7991 is removed in its entirety.

[FR. Doc. 27406 Filed 12-6-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-149; RM-6128]

Radio Broadcasting Services; Wabasha, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 273A to Wabasha, Minnesota, in response to a petition filed by Interstate Communications, Inc. The allotment could provide Wabasha with its first FM broadcast service. The coordinates for Channel 273A are 44-23-06 and 92-05-12. With this action, this proceeding is terminated.

DATES: Effective January 9, 1989; The window period for filing applications will open on January 10, 1989, and close on February 9, 1989.

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. 88-149, adopted October 28, 1988, and released November 25, 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 Section 73.202(b), the Table of FM Allotments is amended under Minnesota by adding Wabasha, Channel 273A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-28125 Filed 12-6-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-522; RM-5971 & RM-6243]

Radio Broadcasting Services; Red Lodge, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 258C1 for Channel 257A at Red Lodge, Montana, and modifies the construction permit for Channel 257A to specify Channel 258C1. This action is taken in response to a counterproposal filed by C. R. Crisler. Petitioner had originally requested the substitution of Channel 258C2 for Channel 257A at Red Lodge, as was proposed in the Notice. The coordinates for Channel 258C1 at Red Lodge are 45-11-15 and 109-14-46. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 9, 1989.

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. 87-522, adopted October 28, 1988, and released November 25, 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 under Montana is amended by removing Channel 257A and adding Channel 258C1 at Red Lodge.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-28126 Filed 12-6-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-456; RM-4632]

Television Broadcasting Services; Minneapolis-St. Paul, MN and Crandon, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document modifies the license of Station WCCO-TV, Minneapolis-St. Paul, Minnesota to specify a channel offset of "plus" in lieu of "zero", and allots Channel 4 to Crandon, Wisconsin. In response to an *Order to Show Cause* directed against the licensee of Station WCCO-TV, the licensee argued that the failure of the proponent of the Crandon allotment to demonstrate its financial ability to reimburse Station WCCO-TV for the expenses incurred in changing the channel offset raises a substantial and material question of fact requiring a hearing. The Commission disagreed with this contention and ordered the Station WCCO-TV license modified in order to accommodate the Channel 4 allotment in Crandon. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 5, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 84-456, adopted October 13, 1988, and released November 22, 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

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments, is amended under Minnesota by removing Channel 4 and adding Channel 4+ at Minneapolis-St. Paul.

3. Section 73.606, the Television Table of Allotments, is amended under Wisconsin by adding Crandon, Channel 4.

Federal Communications Commission.

Donna R. Searcy,

Acting Secretary.

[FR Doc. 88-28129 Filed 12-6-88; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1011

[Ex Parte No. 55 (Sub-No. 71)]

Policy and Final Rule Governing Submission and Evaluation of Safety Fitness Evidence in Motor Carrier Licensing Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Notice of policy statement and final rule.

SUMMARY: The Commission is publishing this policy statement to inform the public about its policies governing motor carrier licensing proceedings in which the applicants hold less-than-satisfactory Department of Transportation (DOT) safety fitness ratings. As part of this policy, the Commission will require all applicants for motor carrier operating authority to provide, as a supplement to the existing OP-1 application form, the applicant's DOT safety rating, and other evidence as appropriate. In addition, the Commission is adopting final rules at 49 CFR 1011, governing delegations of authority, that withdraw the Motor Carrier Board's delegated authority to process applications of conditionally rated motor carriers for authority to transport property (other than hazardous materials, *e.g.*, bulk flammables). Such applications will be

reviewed and disposed of in the first instance by the entire Commission. Effective immediately, the Commission's Motor Carrier Board will reject all applications for operating authority filed by carriers holding "unsatisfactory" safety ratings and all applications for motor passenger or hazardous materials authority filed by carriers holding "conditional" ratings. Such rejections will be issued without prejudice to the involved carriers refiling for authority upon receipt of an improved safety fitness rating from DOT if they otherwise qualify under our policy (*e.g.*, a passenger carrier with an "unsatisfactory" rating could not obtain authority unless its rating improved to "satisfactory").

Applicants for motor property authority (that does not involve transportation of hazardous materials) holding "conditional" safety fitness ratings will also be required to submit with their applications evidence specifically addressing: (1) The measures taken to achieve full compliance with DOT safety requirements and to correct any deficiencies cited in the audit upon which their performance rating was based; and (2) proof that the applicant has requested a reaudit by DOT. This evidence will be evaluated by the Commission as part of an applicant's case-in-chief to determine its fitness to perform the proposed service.

DATE: The rule revisions announced here will be effective December 7, 1988.

FOR FURTHER INFORMATION CONTACT: Suzanne M. O'Malley, (202) 275–7292 or Richard B. Felden, (202) 275–7691. (TDD for hearing-impaired: (202) 275–1721.)

SUPPLEMENTARY INFORMATION: The Commission conscientiously strives to fulfill its mandate to license only those carriers that affirmatively demonstrate their overall fitness to provide transportation. We repeatedly have emphasized that the primary component of the fitness licensing prerequisite is an applicant's operational safety profile—specifically, observance of safety regulations and compliance with applicable bodily injury and property damage insurance limits. Assessment of fitness in this light is fully consistent with—indeed, required by—our national transportation policy mandate to maintain a safe and sound motor carrier system. 49 U.S.C. 10101(a)(7). *See Acceptable Forms of Requests for Operating Authority*, 133 M.C.C. 328, at 330–331 (1984). Our implementation of this policy has evolved over time, and has been accomplished, in part, through case-by-case handling of the licensing docket. One purpose of this notice is to offer, in one place, an explanation of our policy governing safety fitness determinations in licensing cases so that more comprehensive information will be readily available to applicants and their representatives in advance of filing new applications for authority.

Accordingly, to promote better understanding and implementation of our policy, we set forth below our general standards with regard to new licensing of motor carriers with less than "satisfactory" ratings from DOT:

1. All applications for new authority filed by carriers holding "unsatisfactory" safety ratings from DOT will be rejected.[1]

2. All applications seeking authority to transport passengers or hazardous materials filed by conditionally rated carriers will be rejected.

3. All other applications filed by carriers with "conditional" ratings will be reviewed by the Commission on a case-by-case basis; whether an application is granted or denied will depend upon the evidence of record in each case including the carrier's presentation regarding correction of the violations that led DOT to assign the "conditional" rating.

In the past, we have addressed safety issues that arise in new licensing cases only after the application has been noticed in the "ICC Register" and preliminarily granted. This procedure has become inefficient and wasteful of our resources. Moreover, publication in the "ICC Register" may create the false impression that the authority will be granted regardless of the carrier's rating. Thus, confusion often results when the Commission itself reopens the case and either conditions the authority or denies it. To eliminate this confusion and streamline our internal process, we are here adopting final rules which move our examination of safety fitness to the very beginning of the application process, remove certain matters from the authority now delegated to the Motor Carrier Board, and provide direction to the Board in those areas where policy is clear so that the Board may implement it.

This past procedure for addressing safety fitness has often also required that carriers later submit safety-related evidence in addition to evidence now required in the OP–1. Moreover, the OP–1 does not require a carrier to provide its DOT safety rating. We, therefore, independently obtain safety ratings and background material from DOT. These matters have delayed final action in many cases.

The Commission is in the process of revising and streamlining its general licensing application, Form OP–1, and developing corresponding revisions to its regulations governing motor property and passenger applicants and intends to issue a notice instituting Ex Parte No. 55 (Sub-No. 69) in which it will seek public comments on those proposed changes. However, we believe submission of safety-related evidence is so important and its timing so ministerial in nature that we should require, effective immediately, that this type of evidence be introduced with the OP–1, as a supplement. Accordingly, and effective immediately:

1. All carriers shall submit a verified statement of their current DOT safety rating and when it was obtained. Applications without this information will be rejected.

2. The Commission's Motor Carrier Board will reject applications of all applicants holding "unsatisfactory" ratings and applications for motor passenger and motor property hazardous materials authority filed by carriers holding "conditional" ratings. Rejection will be without prejudice to the application being refiled upon receipt of an upgraded safety fitness rating—to "satisfactory" for motor passenger applicants and motor property transporters of hazardous materials; to at least "conditional" for all other motor property applicants.

3. Motor property applicants holding "conditional" ratings (other than those seeking hazardous materials authority) will also be required to submit with their Form OP–1 licensing application (in addition to certifying their current DOT rating and the date it was obtained) proof that the applicant has requested a reaudit by DOT, and verified evidence specifically addressing the measures taken to achieve full compliance with DOT safety requirements and to correct any safety deficiencies cited in the most recent DOT audit. Applications filed by these conditionally rated carriers will be ruled on by the entire Commission, which will base its decision on a thorough case-by-case review of the safety compliance evidence introduced.

Generally, in those instances where an applicant in this category has requested a reaudit by DOT and affirmatively establishes that it has

[1] There is one minor procedural difference between our prior policy and that described here. In the past we either denied applications from carriers with "unsatisfactory" ratings or granted their application but withheld the actual issuance of any authority to them until DOT upgraded their safety ratings. Now we will reject their applications. This change in policy to rejecting applications works no harm on applicants. The substantive result is the same—authority is not issued—but rejection will allow return of the filing fee.

eliminated any safety deficiencies cited in DOT's most recent audit report and brought its operations into full compliance with DOT regulations, the Commission will tentatively grant the authority, subject to a 1-year term limitation. The preliminary grant of authority will be published in the "ICC Register" with this term limitation. If no legitimate protest to the application is filed, the certificate or permit will be issued with a self-executing condition, indicating that the authority will expire at the conclusion of 1 year unless applicant petitions to remove the term limitation based on its receipt of a satisfactory fitness rating.

Applicants in this category are also advised that the Commission will not extend limited term authorities unless the carriers have received satisfactory safety ratings prior to expiration of their authorities. However, such carriers may petition for post-expiration reopening of their licensing proceedings to receive unrestricted authority if a subsequent DOT safety audit results in a "satisfactory" rating.

We will further discuss our role in evaluating safety fitness as an essential component of the licensing process in the forthcoming Ex Parte No. 55 (Sub-No. 69) proceeding. In the notice instituting that proceeding we will invite comment on certain matters discussed here.

We note that our policy statement and the authority delegation change announced here do not require public notice and opportunity for comment prior to implementation. Under 5 U.S.C. 553(b)(A), interpretive rules, general policy statements, and rules of agency organization, procedure, or practice are specifically exempted from the notice and comment requirements of the Administrative Procedure Act. The policy announced here merely provides a uniform and consistent expression of the manner in which we carry out our mandate to license only operationally safe carriers and thereby ensure a safe and efficient motor transportation system. Similarly, the rule revision that withdraws from the Motor Carrier Board previously delegated authority, consistent with our safety fitness policy, represents a matter of internal agency organization. And, as discussed earlier, the new supplement to the OP-1 simply changes the time when safety-related evidence must be filed. Thus, these matters fall squarely within 5 U.S.C. 553(b)(A) and may be implemented without public notice and comment procedures. Nevertheless, as noted above, we will invite comment on certain aspects of this policy in the upcoming rulemaking.

Environmental and Energy Considerations

We conclude that the policy announced here and the corresponding rule revision will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603, the Commission is required to examine the impact of an action on small business and small organizations. We conclude that the policy and corresponding rule revision adopted here will not have a significant impact on a substantial number of these entities. To the extent that small transportation providers and new applicants are influenced at all by our action, it will be a result of increased certainty and predictability in the disposition of licensing matters involving safety fitness issues.

Although this policy statement requires certain conditionally rated applicants to introduce evidence of corrective safety measures and current compliance with DOT regulations, such supplemental testimony does not impose additional burdens on applicants for operating authority or unduly protract or complicate the licensing process. Rather, by requiring that, where appropriate, applicants affirmatively introduce such safety compliance evidence as part of their case-in-chief, we have ensured against the need to hold open or otherwise needlessly delay licensing proceedings in order to obtain supplemental information to clarify the safety fitness profile of particular applicants.

We, therefore, conclude that the policy statement and rule revision announced here will not have a significant impact on a substantial number of small carrier applicants or other entities. The policy and rule will not impose additional reporting, recordkeeping, or compliance requirements upon small entities, nor will the amended rule duplicate, overlap, or conflict with any existing Federal rule.

List of Subjects in 49 CFR Part 1011

Administrative practice and procedure.

Decided: November 18, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commissioner Simmons commented with a separate expression. Commissioner Lamboley dissented in part.

Noreta R. McGee,

Secretary.

Title 49, Chapter X, Part 1011, of the Code of Federal Regulations is amended as follows:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for Part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

2. Section 1011.6(i)(1) is revised to read as follows:

§ 1011.6 Employee boards.

* * * * *

(i) * * *.

(1) Pre-publication matters in operating rights applications of motor carriers (except those requesting authority to transport non-hazardous property filed by applicants with "conditional" DOT safety fitness ratings), water carriers, household goods freight forwarders, and property brokers.

* * * * *

[FR Doc. 88-28109 Filed 12-6-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 81126-8226]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) closes the commercial fishery in the exclusive economic zone (EEZ) for king mackerel from the western zone of the Gulf migratory group. The Secretary has determined that the commercial quota for Gulf group king mackerel from the western zone was reached on December 2, 1988. This closure is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: Closure is effective at 12:01 a.m., local time, December 3, 1988, until 12:00 p.m. (midnight), local time, June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic, as amended, was developed by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations at 50 CFR Part 642. Regulations effective July 1, 1988, implemented catch limits recommended by the Councils for the Gulf of Mexico migratory group of king mackerel for the current fishing year (July 1, 1988, through June 30, 1989). Those regulations set the commercial allocation at 1.09 million pounds divided into quotas of 0.75 million pounds for the eastern zone and 0.34 million pounds for the western zone (53 FR 25611, July 8, 1988). The boundary between the eastern and western zones is a line directly south from the Florida/Alabama boundary (87°31'06" W. longitude) to the outer limit of the EEZ.

Under § 642.22(a), the Secretary is required to close any segment of the king mackerel commercial fishery when its allocation or quota has been reached, or is projected to be reached, by publishing a notice in the **Federal Register**. The Secretary has determined that the commercial quota of 0.34 million pounds for the western zone of the Gulf migratory group of king mackerel was reached on December 2, 1988. Hence, the commercial fishery for Gulf group king mackerel from the western zone is closed effective 12:01 a.m., on December 3, 1988, through June 30, 1989, the end of the fishing year.

Except for a person on a charter vessel, during the closure, no person aboard a vessel permitted to fish under a commercial allocation may fish for, retain, or have in possession in the EEZ king mackerel from the western zone. A person aboard a charter vessel may continue to fish for king mackerel in the western zone under the bay limit set forth in § 642.28(a)(1), provided the vessel is under charter, i.e., there are more than three persons aboard, including captain and crew. During the closure, king mackerel from the western zone taken in the EEZ, including those harvested under the bag limit, may not be purchased, bartered, traded, or sold. This prohibition does not apply to trade in king mackerel from the western zone that were harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

Other Matters

This action is required by 50 CFR 642.22(a) and complies with E.O. 12291.

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

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: December 2, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–28169 Filed 12–2–88; 4:46 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 235
Wednesday, December 7, 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 COMMERCE

Bureau of Export Administration

15 CFR Part 776

[Docket No. 81136-8236]

Exports From Abroad of Foreign Products Incorporating U.S.-Origin Parts and Components

AGENCY: Bureau of Export Administration, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise § 776.12 of the Export Administration Regulations (EAR) to reduce U.S. export controls on U.S.-origin parts and components incorporated in foreign products. The reduction in controls is required by section 5(a)(5)(A) of the Export Administration Act of 1979, as amended by the Omnibus Trade and Competitiveness Act of 1988. This change would expand the existing 25% exemption to additional destinations and would create a new exemption based on the Advisory Notes that indicate a likelihood of approval for exports to Country Groups Q, W, and Y.

Comments on this proposed rule will be considered in the development of the final rule.

EFFECTIVE DATE: Comments must be received by January 23, 1989.

ADDRESSES: Written comments (six copies) should be sent to: Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, Room 1622, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377-3856.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Trade and Competitiveness Act has amended section 5(a)(5)(A) of the Export Administration Act of 1979 (the Act), as amended, to require a reduction of U.S. controls on U.S.-origin parts and components incorporated in foreign products. Currently, when U.S.-origin parts and components are valued at $10,000 or less and comprise 10% or less of the value of a foreign-made product, the Export Administration Regulations permit the foreign-made products to be exported from abroad to any destination without written U.S. authorization. With certain exceptions, written U.S authorization is also not required for exports, from foreign countries, of foreign-made products with a U.S. content value of 25% or less to countries listed in Supplement No. 2 or 3 to part 773.

This proposed rule would make two significant revisions to § 776.12 that exempt additional foreign-made products incorporating U.S.-origin parts and components from written authorization requirements. First, the 25% exemption is expanded to apply to *any* destination if the export of the foreign product to the new destination would be subject to U.S. national security controls *only*. The existing 25% exemption for countries listed in Supplement No. 2 or 3 to Part 773 (excluding Ethiopia, Lebanon, and Nicaragua) is continued regardless of the basis of control.

The second major revision would exempt foreign-made products containing U.S.-origin content from written authorization requirements when none of the U.S. content, regardless of its value, exceeds the technical performance characteristics of any Advisory Note on the Commodity Control list that indicates licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, W, and Y *and* where the export of the foreign product to the new destination would be subject to U.S. national security controls *only*. When the new destination is a country listed in Supplement No. 2 or 3 to Part 773 (excluding Ethiopia, Lebanon, and Nicaragua), this exemption will apply regardless of the basis of control.

This rule also proposes to revise what U.S. content is to be counted when calculating "U.S. content value" as defined in § 776.12(d). Parts, components, or materials that could be exported from the United States to the new country of destination under General Licenses G-DEST, G-COCOM, G-COM, or GFW may be excluded from the calculation of "U.S. content value." Currently, only G-DEST items are excluded from this calculation.

However, this rule would not change the policy that prior written approval from the Office of Export Licensing is always required for the export from a foreign country of a foreign-made supercomputer containing U.S. parts, components, or materials, *without exception*. In addition, a foreign-made product that is the direct product of U.S.-origin technical data may require U.S. authorization regardless of the U.S. content. This rule deals only with U.S. origin parts and components incorporated in foreign products. Section 5(m) of the Act, "Goods Containing Controlled Parts and Components," will be implemented in a separate rule.

Rulemaking Requirements and Invitation to Comment

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694-0010.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of

proposed rulemaking, an opportunity for public comment, and a delay in effective data. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Because this rule is being issued in proposed form, this rule complies with section 13(b) of the Export Administration Act. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in proposed form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close January 23, 1989. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4886, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377-2593.

5. This proposed rule does not contain policies with Federalism implications sufficient to warrent preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 776

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 776 of the Export Administration Regulations is proposed to be amended as follows:

1. The authority citation for 15 CFR Part 776 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985, and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 776—[AMENDED]

3. Section 776.12 is amended by revising the introductory text, by revising paragraphs (a), (b), (c), and (d), and by removing paragraph (h), as follows:

§ 776.12 Parts, components, and materials incorporated abroad into foreign-made products.

U.S. origin parts, components, materials, or other commodities incorporated abroad into a foreign-made product are subject to United States export controls under § 776.12. United States parts, components, materials, or other commodities that are not incorporated abroad into products are subject to the reexport provisions of Part 774. U.S. origin peripheral or accessory devices that are merely rack mounted with or cable connected into foreign equipment are not deemed to be incorporated components even though intended for use with products made abroad. Rather, such items are treated as U.S. items that retain their identity and remain subject to the reexport provisions of Part 774. The Department of Commerce asserts control over parts, components, and materials incorporated in foreign-made products to prevent the use of such U.S. origin parts, components, or materials in a manner detrimental to the national security or foreign policy of the United States. These controls do not apply if either the U.S. content or the foreign-made product is subject to control only for a short supply reasons.

(a) *Calculation of values.* Use the following guidelines in determining values for establishing exemptions or for submission of a request for authorization:

(1) *U.S. content value.* (i) U.S. content value is the delivered cost to the foreign manufacturer of the U.S. origin parts, components, or materials. (When affiliated firms have special arrangements that result in lower than normal pricing, the cost should reflect "fair market" prices that would normally be charged to similar, unaffiliated customers.)

(ii) In calculating the U.S. content value, do not include parts, components, or materials that could be exported from the United States to the new country of destination under General License G-DEST, G-COCOM, G-COM, or GFW.

(2) The foreign-made product value is the normal export selling price f.o.b. factory (excluding value added taxes or excise taxes).

(b) *Determining approval requirements.* The prior written approval of the Office of Export Licensing is required for the export from a foreign country of a foreign-made supercomputer containing U.S. origin parts, components, or materials that are not G-DEST to the new destination, *without exception.* Such prior written approval also is required for any other foreign-made product incorporating U.S. origin parts, components, or materials, *except:*

(1) If at the time of export of the foreign-made product to the new country of destination, the export of the foreign-made product meets any of the conditions of § 774.2 (permissive reexports); or

(2) If the U.S. content value is both 10% or less *and* $10,000 or less; or

(3) If the U.S. content value is greater than 10%, or greater than $10,000, but not more than 25%, *and:*

(i) The ultimate destination of the foreign product is a country listed in Supplement Nos. 2 or 3 to Part 773 (excluding Ethiopia, Lebanon, and Nicaragua) or

(ii) The ultimate destination of the foreign product is Ethiopia, Lebanon, Nicaragua or a country *not* listed in Supplement Nos. 2 or 3 to Part 773 *and* the foreign-made product is subject only to national security controls;

Note.—To determine the reason for control, see the *"Reason for Control"* paragraph in each CCL entry. If the reason is given only as "national security", you must also review §§ 776.14, 776.16, 776.18, 785.1, 785.2, 785.4, 785.7, and Part 778 to establish whether a

foreign policy or nuclear nonproliferation control might apply to the commodity and destination.

or

(4) If none of the technical performance characteristics of the U.S. content exceed those of any Advisory Note in the CCL that indicates licenses are likely to be approved for country Groups Q, W, and Y, *and* either:

(i) The ultimate destination of the foreign product is a country listed in Supplement Nos. 2 or 3 to Part 773 (excluding Ethiopia, Lebanon, and Nicaragua); or

(ii) The ultimate destination of the foreign product is Ethiopia, Lebanon, Nicaragua or a country *not* listed in Supplement Nos. 2 or 3 to Part 773 *and* the foreign-made product is subject only to national security controls. (see Note to § 776.12(b)(3)(ii) above.)

Note.—See § 776.12(g) for other controls that may apply even if the export would be excepted by this paragraph (a).

(c) *Applicability of exceptions to approval requirements.* The exceptions to the approval requirements in paragraph (b) of this section apply only if the U.S. content is normal and usual for the product being exported and is not physically incorporated in the foreign product as a device to evade the requirement for reexport authorization.

(d) *Spare parts.* Shipments of foreign-made items that incorporate U.S. origin components may be accompanied by U.S. origin controlled spare parts, provided they do not exceed the value of the controlled U.S. content.

* * * * *

Dated: December 2, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88-28181 Filed 12-6-88; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 851 0162]

Cleveland Automobile Dealers' Association; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Cleveland Automobile Dealers' Association (CADA) from limiting its members' hours, from maintaining any policy concerning hours of operation, and from encouraging members to influence each other as to their hours. Respondent would be required to advertise in the newspaper that dealers' hours are no longer restricted and also change its Articles of Incorporation or other policy statements to reflect the consent agreement.

DATE: Comments must be received on or before February 6, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mark Kindt, Cleveland Regional Office, Federal Trade Commission, Suite 500—Mall Building, 118 St. Clair Ave., Cleveland, OH. 44114. (216) 522-4210.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

List of Subjects in 16 CFR Part 13

Automobile dealers, Trade practices.

Agreement Containing Consent Order To Cease and Desist

Before Federal Trade Commission in the matter of Cleveland Automobile Dealers' Association, a corporation. File No. 851 0162.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Cleveland Automobile Dealers' Association ("Proposed Respondent"), a corporation, and it now appearing that Proposed Respondent is willing to enter into an agreement containing an Order to Cease and Desist from the use of the acts or practices being investigated,

It Is Hereby Agreed by and between Proposed Respondent, by its duly authorized officer and its attorney, and counsel for the Federal trade Commission that:

1. Proposed Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at Suite 300, The Lincoln Building, 1367 East 6th Street, Cleveland, Ohio 44114.

2. Proposed Respondent admits all the jurisdictional facts set forth in the draft Complaint here attached.

3. Proposed Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's Decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the draft Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and Decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft Complaint here attached.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions § 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondent, (1) issue its Complaint corresponding in form and substance with the draft Complaint and its Decision containing the following Order to Cease and Desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order to Cease and Desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal

Service of the Complaint and Decision containing the agreed-to Order to Proposed Respondent's address as stated in this Agreement shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The Complaint attached hereto may be used in construing the terms of the Order. No agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed Respondent has read the proposed Complaint and Order contemplated hereby. It understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It Is Ordered that for purposes of this Order, the following definitions shall apply:

(A) "Respondent" means the Cleveland Automobile Dealers' Association, its directors, trustees, councils, committees, officers, representatives, delegates, agents, employees, successors, and assigns, or any other person acting for or on behalf of the Cleveland Automobile Dealers' Association in any capacity;

(B) "Dealer" means any person who receives on consignment or purchases new motor vehicles for sale to the public, and any director, officer, employee, representative, or agent thereof;

(C) "Member" means any dealer who is a member of the Cleveland Automobile Dealers' Association;

(D) "Person" includes any natural person, corporate entity, partnership, association, joint venture, trust, or any other organization or entity, but does not include any government entity; and

(E) "Hours of operation" means any period of time (whether that period be stated as specific hours, specific days, or otherwise) that any dealer holds itself out to the public as open to sell new cars. For purposes of this Order, "hours of operation" shall not include any period of time that a dealer conducts the operation of parts or service departments or aspects of its operation other than new car sales.

II

It Is Further Ordered that Respondent, directly, indirectly, or through any corporate or other device, shall forthwith cease and desist from:

(A) Entering into, continuing or carrying out any agreement, contract, combination, or conspiracy with any dealer or any other person regarding hours of operation;

(B) Adopting, implementing, or maintaining any article, bylaw, regulation, code of conduct, or other policy, whether formal or informal, regarding hours of operation;

(C) Exchanging information or communicating with any dealer or any other person concerning hours of operation, directly or by implication, except to the extent necessary to comply with any order of the Federal Trade Commission;

(D) Requesting, coercing, influencing, encouraging, persuading, or attempting to request, coerce, influence, encourage, or persuade any dealer to adopt, agree to, or adhere to any hours of operation, or taking any other action intended to or likely to influence any dealer to adopt, agree to, or adhere to any hours of operation; and

(E) Encouraging any person to, or suggesting that any person, engage in any of the acts or practices set forth in Part II (A), (B), (C), or (D), above.

III

It Is Further Ordered that:

(A) With respect to Respondent's Articles of Incorporation, Code of Regulations, Code of Bylaws, Statement of Policies, or any other policy statements, within sixty (60) days after this Order becomes final, Respondent shall explicitly and formally remove any provision, rule, standard, interpretation, policy statement, or guideline that is inconsistent with Part II of this Order, by amendment, revision, or in such other manner as to eliminate the inconsistency, including, but not limited to, formal rescission of any existing Resolution of the Board of Trustees addressing hours of operation, including the Resolution adopted in August 1954 and the Resolution adopted in September 1964 and amended in September 1976;

(B) Within sixty (60) days after this Order becomes final, and until February 28, 1999, Respondent shall incorporate in its Code of Regulations:

(1) A provision that requires members to report to Respondent in writing any agreement, contract, combination or conspiracy between members regarding hours of operation. For a period of five (5) years after receipt, Respondent shall maintain, and upon request make available to the Federal Trade Commission, all report filed pursuant to this part.

(2) A provision that prohibits its trustees, members, officers, employees, and agents from discussing, directly or by implication, hours of operation at any of Respondent's membership, Board of Trustees, or committee meetings, formal or informal, except to the extent necessary to comply with any order of the Federal Trade Commission;

(3) A provision that requires members to destroy any decals or signs provisions provided to them by Respondent that referred in any way to hours of operation; and

(4) A respondent that requires expulsion from membership in Respondent of any member, discharge from employment, or the termination of its relationship with any member, employee or agent who fails to comply with the provision required by Part III (B)(1), (B)(2), or (B)(3), above.

(C) Within ten (10) days after the amendment, revision, or any other change of its Articles of Incorporation, Code of Regulations, Code of Bylaws, Statement of Policies, or any other policy statement of Respondent pursuant to this Order, Respondent shall send by first-class mail a copy of such amended Articles of Incorporation, Code of Regulations, Code of Bylaws, Statement of Policies, or any other policy statement to all members, accompanied by a cover letter clearly and conspicuously drawing the member's attention to the amendment, revision, or other change and briefly summarizing its nature and purpose;

(D) Promptly, and in no case in excess of ninety (90) days after acquiring reason to believe that a member violated Part III (B)(1), (B)(2), or (B)(3) of this Order, Respondent shall, in accordance with its Code of Regulations relating to expulsion of members, make a determination whether a violation has occurred and shall expel any member it so determines to have violated Part III (B)(1), (B)(2), or (B)(3) of this Order;

(E) Within thirty (30) days after this Order becomes final, Respondent shall provide each member, officer, agent, and employee with a copy of this Order and attached Complaint and the Notice set out in Appendix A;

(F) For a period of two (2) years after this Order becomes final, Respondent shall provide each new member who joins Respondent, and each new officer, new agent, or new employee employed by Respondent, with a copy of this Order and attached Complaint and the Notice set out in Appendix A; and

(G) Within sixty (60) days after this Order becomes final, Respondent shall provide each member with replacement decals and signs for any decals or signs previously provided by Respondent that referred in any way to hours of operation, along with a cover letter explaining that members must destroy the original decals and signs and urging them to substitute the replacement decals and signs for the original ones. Replacement decals and signs either shall have no reference to hours of operation or shall be designed so the individual member may insert any hours of operation it wishes.

It Is Further Ordered that:

(A) Beginning thirty (30) days after this Order becomes final, and for a period of not less than eight (8) weeks thereafter, Respondent shall place and cause to be disseminated each week at least two (2) advertisements, including one in the Thursday edition and one in the Saturday edition of *The Plain Dealer*. The advertisements must contain a principal message devoted to explaining that dealers who are members of Respondent are free to offer expanded shopping hours as required in Part IV(B) of this Order. The advertisements shall be a minimum of one-eighth (⅛) of a page and shall be placed in the same location in *The Plain Dealer* at which advertisements for the sale of new automobiles ordinarily appear; and

(B) Prior to placement of the first such advertisement, Respondent shall conduct, or cause to be conducted, copy testing of such advertisement. The copy testing shall be based on monadic interviews (such as the "mall intercept" procedure) of not fewer than thirty (30) subjects screened and selected to have purchased a new automobile within the last three (3) years, and shall be conducted by a reputable advertising or research organization using techniques commonly accepted in the advertising profession. Such organization shall provide a written report to Respondent explaining the result of such copy testing, and Respondent may use such advertisement to satisfy its obligations under Part IV(A), above, only if the report establishes that the advertisement effectively communicates (1) that until [date of Order], most Cleveland-area automobile dealers have not been open for business on Sundays and most weekday evenings; and (2) that Cleveland-area automobile dealers are free to choose their own hours of operation so that dealers may now have shopping hours on Sundays, weeknights, or any other times they choose. In the event any subsequent advertisement prepared pursuant to this paragraph differs significantly from the first advertisement disseminated in accordance with this paragraph, Respondent shall conduct or cause to be conducted copy testing of such advertisement in the same manner and for the same purpose as described above.

V

It Is Further Ordered that Respondent shall file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied and is complying with this Order, within ninety (90) days after this Order becomes final, and on the first anniversary of the date this Order becomes final.

VI

It Is Further Ordered that for a period of ten (10) years after this Order becomes final, Respondent shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in Respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change that may affect compliance obligations arising out of this Order.

Appendix A

Please Read This.

It Is Very Important.

Enclosed with this notice is a copy of a Consent Order agreed to between the Federal Trade Commission and the Cleveland Automobile Dealers' Association ("CADA"). In the Order, CADA has agreed that we will not have any part in suggesting or setting the hours during which any automobile dealer can be open.

YOU ARE FREE TO BE OPEN TO SELL NEW CARS AT ANY HOURS YOU WISH. CADA HAS NO POLICY OR GUIDELINES ABOUT HOURS REGARDING NEW SALES. THE HOURS YOU ARE OPEN ARE YOUR BUSINESS.

If you have any questions about this, please feel free to contact CADA.

* * * * *

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed Consent Order from the Cleveland Automobile Dealers Association (CADA) located in Cleveland, Ohio. The agreement would settle charges by the Commission that the proposed respondent violated section 5 of the Federal Trade Commission Act by combining or conspiring to interfere with competition among automobile dealers in greater Cleveland by limiting its members' showroom hours.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

The Complaint

A Complaint has been prepared for issuance by the Commisson along with the proposed Order. It alleges that CADA has limited the times during which its members sell new automobiles. The Complaint alleges, for example, that CADA adopted bylaws discouraging its member dealers from maintaining showroom hours on Sundays, on Saturday nights, and on weeknights except Mondays and Thursdays. In addition, the Complaint alleges that CADA's bylaws had the effect of limiting showroom hours of its member dealers to the suggested times. The Complaint further alleges that the combination or conspiracy constitutes an unfair method of competition.

The Proposed Consent Order

Part I of the proposed Consent Order contains definitions of terms used in the Order.

Part II of the Order prohibits CADA from maintaining any policies relating to, or from discussing, its members' operating hours.

Part III requires CADA to (1) amend its bylaws to remove any provision which might limit or restrict its members' showroom hours; (2) adopt bylaws prohibiting discussions regarding hours at membership meetings and requiring expulsion of any member violating the prohibition; (3) require its members, until 1999, to file a notice with CADA of hours agreements arrived at outside CADA meetings, and require expulsion of any member in violation; (4) provide its members with placement window decals which do not state opening and closing times; and (5) notify each of its members of the Order.

Part IV requires CADA to place sixteen (16) advertisements in the Cleveland *Plain Dealer* informing the public of the proposed Consent Order and of the possibility of non-traditional showroom hours.

Part V requires that CADA provide the Commission with compliance reports ninety (90) days after, and on the first anniversary of the effective date of the Order.

Part VI requires, for a period of ten (10) years, that CADA notify the Commission of any change in CADA's legal status.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 88-28151 Filed 12-6-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1385, 1386, 1387, and 1388

Developmental Disabilities Program

AGENCY: Administration on Developmental Disabilities, ADD Office of Human Development Services, (OHDS), Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to amend current regulations to implement changes made by the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987 (Pub. L. 100-146). The regulations propose standards for determining whether a State has used Federal funds to supplement and not supplant State and local funds. They also propose to establish a peer review process for applications under the University Affiliated Programs and make other clarifying, technical, and conforming changes.

DATE: To ensure consideration comments must be submitted on or before February 6, 1989.

ADDRESS: Please address comments to: Commissioner, Administration on Developmental Disabilities, Room 348-F (Regulations), Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Attention: Ms. Elsbeth Porter Wyatt.

It would be helpful if agencies and organizations submitted comments in duplicate. Two weeks after the close of the comment period, comments and letters will be available for public inspection in Room 347D, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, Monday through Friday, 9:00 a.m. to 4:00 p.m., telephone (202) 245-2890.

FOR FURTHER INFORMATION CONTACT: Ms. Elsbeth Porter Wyatt, (202) 245-2904.

SUPPLEMENTARY INFORMATION:

A. Program History

In 1963, the Mental Retardation Facilities and Construction Act (Pub. L. 88-164) was enacted to provide for planning activities and construction of facilities to provide services to the mentally retarded. This legislation was subsequently amended by the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (Pub. L. 91-517) which constituted the first Congressional effort to address the needs of a group of persons with handicaps designated as developmental disabilities. The 1970 Amendments defined developmental disability to include individuals with mental retardation, cerebral palsy, epilepsy, and other neurological conditions closely related to mental retardation which originated prior to age 18 and constituted a substantial handicap. It also created State Planning Councils to advocate for, plan, monitor and evaluate services for persons with developmental disabilities; it also authorized grants for constructing, administering and operating University Affiliated Facilities.

The legislation authorizing the Developmental Disabilities program has been revised periodically. The major changes of note included the following: (1) The 1975 Amendents (Pub. L. 94-103) deleted the construction authority, authorized studies to determine the feasibility of having University Affiliated Facilities establish Satellite Centers, established the Protection and Advocacy System, and added a section on "Rights of the Developmentally Disabled;" (2) the 1978 amendment (Pub. L. 95-602) included a functional definition of developmental disabilities; and (3) the Developmental Disabilities Amendments of 1984 (Pub. L. 98-527) added a new emphasis regarding the purpose of the program, i.e., to assist States to assure that persons with developmental disabilities receive the care, treatment and other services necessary to enable them to achieve their maximum potential through increased independence, productivity, and integration into the community.

The 1987 amendments extend authorization of appropriations for programs under the Developmental Disabilities Assistance and Bill of Rights Act (the Act) through FY 1990, and made other revisions to the Act. The amendments revise definitions of priority activities under State plans; require additional activities under State protection and advocacy systems; and require a variety of new reviews, studies, and reports. They also require the Secretary to consider applications for four new university affiliated programs or satellite centers each year through FY 1990.

Developmental Disabilities Program

Basic State Grants

Formula grants are made to States for planning, coordinating, and administering services for citizens with developmental disabilities. This program assists States in developing and implementing a comprehensive plan to ensure that persons with developmental disabilities have the range of services available to them which best promote self-sufficiency.

Protection and Advocacy

Formula grants are made to States for the establishment of a system to protect and advocate for the rights of persons with developmental disabilities. This system must have the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of developmentally disabled individuals who are receiving, or who are eligible to receive, treatment or habilitation services.

University Affiliated Programs

Awards are made to universities, or public or nonprofit entities associated with universities, to establish University Affiliated Programs or Satellite Centers. Such programs carry out interdisciplinary training, conduct demonstrations of exemplary services, provide technical assistance, and disseminate information which will assist in improving the service delivery system.

Projects of National Significance

This program provides funding through grants and contracts for projects to educate policymakers, develop an ongoing data collection system, determine the feasibility and desirability of developing a nationwide information and referral system, and pursue Federal interagency initiatives and other projects of national significance which hold promise of expanding or otherwise improving opportunities for persons with developmental disabilities.

B. Summary of Proposed Regulations

A section-by-section discussion of the changes we are proposing follows:

Part 1385 Requirements Applicable to the Developmental Disabilities Program

Editorial and technical changes are proposed in Part 1385 to comport with statutory changes. See §§ 1385.1, 1385.3, 1385.4, 1385.5 and 1385.9. In § 1385.3 we propose to amend the definition of "Act" to cite the U.S. Code and thus eliminate the need for revision each time the law is amended. In addition, we propose to define "ADD" and "OHDS."

Part 1376 Formula Grant Programs

Pursuant to section 125(b) and 142(c) of the Act, we are proposing to clarify in paragraph (a) of § 1386.2, Obligation of funds, that Federal funds will be available for obligation by States for a two year period beginning with the first day of the fiscal year in which the grant is awarded.

Current regulations at § 1386.23(c) require the State Protection and Advocacy agency to submit financial status reports quarterly. These reports are due 30 days after the close of each quarter of the Federal fiscal year except for the final report which is due 90 days following the close of the fiscal year.

We are proposing new language in paragraph (c) to continue the requirement that State agencies must submit financial status reports, but we have deleted the regulatory language specifying a time period for submittal. However, we will implement this requirement administratively through an OHDS Program Instruction rather than through language in regulations. This will avoid the need to amend the rules in the future.

In § 1386.30, State plan requirements, we propose to revise paragraph (e)(4) purusant to section 124(c)(1) of the Act. The proposed change clarifies that each State Planning Council shall receive from the State administering agency the amount of funds the State deems necessary to hire staff and obtain the services of other technical, professional, and clerical staff.

In § 1386.32 Periodic reports: Basic State grants, we are proposing to make the same change regarding financial status reports as we proposed in § 1386.23(c). OHDS will continue to require quarterly reports and will implement this requirement administratively through an OHDS Program Instruction rather than through language in the regulations. The new language proposed in paragraph (a) continues the requirement that the State agency must submit financial status reports but deletes the regulatory language specifying a time period for submittal.

Technical changes have been made in § 1386.33(a), Protection of employee's interests, to reflect the new statutory citations.

In § 1386.35, Allowable and non-allowable costs for Basic State grants, we are proposing to add a new paragraph (c) to specify objective standards for use in determining whether a State is in compliance with the provision in section 122(b)(4)(D) of the Act that basic State grant funds must be used to supplement and not supplant Federal funds. These provisions are proposed in response to Congressional concern expressed in the Joint Senate-House Explanatory statement on S. 12417. *See* S. Rep. No. 100–113, 100th Cong., 1st Sess. (1987).

Part 1387 Projects of National Significance

§ 1387.1(a), the statutory reference has been corrected to comport with the 1987 Amendments. Also, we are proposing to add in a new paragraph (b), that proposed priorities for projects under this part will be published in the **Federal Register** and a 60 day public comment period will be allowed. Finally, the current paragraph (b) has been redesignated as paragraph (c) and amended to delete an unnecessary word "services" and incorporate the requirement that final priority areas will be announced in the **Federal Register** pursuant to Section 162(c) of the Act.

Part 1388 University Affiliated Programs

The title of Part 1388—The University Affiliated Facilities Program—would be revised to read the University Affiliated Programs, based on Part D of the Act.

In § 1388.5, Program criteria—training, we are proposing to specify new priority areas for training in paragraph (f)(3) pursuant to sections 152(b) (2), (3) and (4) of the Act. Paragraph (f)(3) proposes that training priorities must consider national manpower needs with particular attention in the areas of early intervention, the elderly developmentally disabled, and community-based programs.

Throughout all of Part 1388, the term University Affiliated Facilities has been changed to University Affiliated Programs (UAPs).

A new § 1388.9, Peer review, has been proposed regarding peer review of UAPs applications pursuant to section 153 (e)(1) and (e)(2) of the Act. In paragraph (a) we are proposing a statement of the reason a peer review process is being established to review UAP applications. In paragraph (b) we are proposing that all applications for funding opportunities under Part D of the Act must be evaluated through the peer review process. In paragraph (c) we are proposing the requirements regarding the composition of the panel which is to include individuals with expertise and experience in the fields appropriate to the activities conducted by UAPs and Satellite Centers. (*See* S. Rep. No. 100–113, 100th Cong., 1st Sess. (1987)). Examples of disciplines related to the mentally retarded and developmentally disabled populations, are not limited to, but may include the following: (1) Administration; (2) audiology; (3) child psychiatry; (4) dentistry; (5) genetics; (6) gerontology; (7) medicine; (8) language/speech; (9) law; (10) neurology; (11) nursing; (12) occupational/physical therapy; (13) opthamology/optometry; (14) pediatrics; (15) program evaluation; (16) psychology; (17) social work; (18) special education; and (19) vocational rehabilitation. In addition, the following areas of expertise and experience may also be considered: (1) Experience in the UAPs, Mental Retardation and/or Developmental Disabilities networks; (2) demonstrated knowledge of UAP/Satellite Center mandates and program goals and objectives; and (3) professional association with national mental retardation/developmental disabilities organizations.

Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. These regulations primarily affect State agencies and University Affiliated Programs. The basic requirements of the program are established by the statute, not these regulations. Therefore, the Department concludes that these regulations are not major rules within the meaning of the Executive Order, because they do not have an effect on the economy of $100 million or more or meet the other threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act (5 U.S.C. Ch. 6), we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities", we prepare an analysis describing the rule's impact on small entities. The

primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Act. For these reasons, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirement contained in a proposed or final rule. This proposed rule does not contain information collection requirements or increase Federal paperwork burden on the public or private sector.

List of Subjects

45 CFR Part 1385

Grant programs/education, Grant programs/social programs, Handicapped, Reporting and recordkeeping requirements.

45 CFR Part 1386

Administrative practice and procedure, Grant programs/education, Handicapped, Reporting and recordkeeping requirements.

45 CFR 1387

Grant programs/education, Grant programs/social programs, Handicapped.

45 CFR Part 1388

Colleges and universities, Grant programs/education, Grant programs/social programs, university affiliated program, satellite center.

(Catalog of Federal Domestic Assistance Program, Nos. 13.630 Developmental Disabilities Basic Support and 13.631 Developmental Disabilities—Projects of National Significance, and 13.632 Developmental Disabilities-University Affiliated Program)

Dated: July 27, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

Approved: August 31, 1988.

Otis R. Bowen,

Secretary.

For the reasons set forth in the preamble. Chapter XIII of title 45 of the Code of Federal Regulations is proposed to be amended as follows:

Subchapter 1—The Administration on Developmental Disabilities, Developmental Disabilities Program

PART 1385—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

1. The authority citation for Part 1385 is revised to read as follows:

Authority: 42 U.S.C. 6000 et. seq.

2. Section 1385.1 is amended by revising paragraphs (b), (c) and (d) to read as follows:

§ 1385.1 General.

* * * * *

(b) State Basic Program for Planning Priority Area Activities for Persons with Developmental Disabilities.

(c) Projects of National Significance; and

(d) University Affiliated Programs (UAPs)

3. Section 1385.3 is amended by revising the definition of "Act" and by adding the definition of "ADD" and "OHDS" to read as follows. The introductory text is republished for the convenience of the reader.

§1385.3 Definitions.

In addition to the definitions in section 102 of the Act (42 U.S.C. 6001), the following definitions apply:

Act means the Developmental Disabilities Assistance and Bill of Rights Act, as amended (42 U.S.C. 6000 et. seq).

* * * * *

ADD means the Administration on Developmental Disabilities, within the Office of Human Development Services.

OHDS means the Office of Human Developmental Services within the Department of Health and Human Services.

4. Section 1385.4 is amended by revising paragraphs (b) and (c) to read as follows:

§1385.4 Rights of persons with developmental disabilities.

* * * * *

(b) In order to comply with section 122(b)(6)(C) of the Act (42 U.S.C. 6022 (b)(6)(C), regarding the rights of developmentally disabled persons, the State must meet the requirements of § 1386.30(e)(3) of these regulations.

(c) Applications from university affiliated programs or for projects of national significance grants must also contain an assurance that the human rights of persons assisted by these programs will be protected consistent with section 110 (see section 153(b)(3) and section 162(b)).

5. Section 1385.5 is amended by revising paragraph (b) to read as follows:

§ 1385.5 Recovery of Federal funds used for construction of facilities.

* * * * *

(b) The State Council or the appropriate UAP official must submit detailed documentation to the Commissioner of all transactions as specified in paragraph (a) of this section which occurred prior to this publication.

* * * * *

6. Section 1385.9 is amended by revising paragraph (a) introductory text to read as follows:

§ 1385.9 Grants administration requirements.

(a) The following parts of Title 45 CFR apply to grants funded under Parts 1386 and 1388 of this chapter and to projects of national significance under section 162 of the Act (42 U.S.C. 6082).

* * * * *

PART 1386—FORMULA GRANT PROGRAMS

7. The authority citation for Part 1386 is revised to read as follows:

Authority: 42 U.S.C. 6000 et.seq.

Subpart A—Basic Requirements

8. Section 1386.2 is amended by revising paragraph (a) to read as follows:

§ 1386.2 Obligation of funds.

(a) Funds which the Federal Government allots under this Part during a Federal fiscal year are available for obligation by States for a two year period beginning with the first day of the Federal fiscal year in which the grant is awarded.

* * * * *

Subpart B—State System for Protection and Advocacy of Individual Rights

9. Section 1386.23 is amended by revising paragraph (c) and the OMB statement to read as follows:

§ 1386.23 Periodic reports: Protection and Advocacy System.

* * * * *

(c) Financial Status reports must be submitted by the Protection and Advocacy Agency according to a frequency interval which will be specified by OHDS. In no case will such reports be required more frequently than quarterly.

[Information collection requirements contained in paragraph (b) under control

number 0980–0160 and paragraph (c) under control number 0348–0039 are approved by the Office of Management and Budget.]

Subpart C—State Plan for Provision of Services for Persons With Developmental Disabilities

10. Section 1386.30 is amended by revising paragraph (e)(4) to read as follows:

§ 1386.30 State plan requirements.

* * * * *

(e) * * *

(4) Each Planning Council shall receive from the State administering agency funds to hire staff and obtain the services of other technical, professional, and clerical staff, consistent with State law to allow States to comply with this requirement however they see fit.

* * * * *

11. Section 1386.32 is amended by revising paragraph (a) and the OMB statement to read as follows:

§ 1386.32 Periodic reports: Basic State grants.

(a) The Governor or the appropriate State financial official must submit quarterly financial status reports on the programs funded under this part. These reports are due thirty (30) days after the close of each quarter. The final financial report is due two (2) years and ninety (90) days after the last day of the Federal fiscal year in which the grant was awarded. The quarterly reports must be submitted until the final report is submitted for each fiscal year.

* * * * *

[Information collection requirements contained in paragraph (a) under control number 0348–0039 and paragraph (b) under control number 0980–0172 are approved by the Office of Management and Budget.]

12. Section 1386.33 is amended by revising paragraph (a) to read as follows:

§ 1386.33 Protection of employee's interests.

(a) Based on section 122(b)(7)(B) of the Act (42 U.S.C. 6022(b)(7)(B)), the State plan must provide for fair and equitable arrangements to protect the interest of all institutional employees affected by actions under the plan to provide alternative community living arrangements. Specific arrangements for the protection of affected employees must be developed through negotiations between the appropriate State authorities and employees or their representatives. Fair and equitable arrangements must include procedures that provide for the impartial resolution of disputes between the State and an employee concerning the interpretation, application, and enforcement of protection arrangements. The State must inform employees of the State's decision to provide alternative community living arrangements.

* * * * *

13. In § 1386.35 a new paragraph (c) is added to read as follows:

§ 1386.35 Allowable and non-allowable costs for basic State grants.

* * * * *

(c) Expenditure of funds which supplant State and local funds will be disallowed. Supplanting occurs when State or local funds previously used to fund activities in the developmental disabilities State Plan are replaced by Federal funds which are then used for the same purpose. However, supplanting does not occur if State or local funds are replaced with Federal funds for a particular activity or purpose in the approved State Plan if the State or local funds are then used for other activities or purposes in the approved State Plan.

14. Part 1387 is revised to read as follows:

PART 1387 PROJECTS OF NATIONAL SIGNIFICANCE

§1387.1 General requirements.

Authority: 42 U.S.C. 6000 et. seq.

§ 1387.1 General requirements.

(a) All projects funded under this part must be of national significance and serve or relate to the developmentally disabled to comply with section 162 of the Act.

(b) Based on section 162(c), proposed priorities for grants and contracts will be published in the **Federal Register** and a 60 day period for public comments will be allowed.

(c) The requirements concerning format and content of the application, submittal procedures, eligible applicants and final priority areas will be published in program announcements in the **Federal Register**.

(d) Projects of national significance must be exemplary models and hold potential for replication.

15. The heading of Part 1388 is revised to read as follows:

PART 1388—THE UNIVERSITY AFFILIATED PROGRAMS

16. The authority citation for Part 1388 continues to read as follows:

Authority 42 U.S.C. 6000 et. seq.

PART 1388—NOMENCLATURE CHANGE

17. In part 1388 wherever the term UAF is used, it is changed to UAP, and wherever the term University Affiliated Facilities is used, it is changed to University Affiliated Programs.

18. Section 1388.5 is amended by revising paragraph (f)(3) to read as follows:

§ 1388.5 Program criteria—training

* * * * *

(f) * * *

(3) Training priorities must consider national manpower needs with particular attention to the following areas:

(i) Early intervention programs;

(ii) Programs for elderly persons with developmental disabilities; and

(iii) Community based programs.

19. A new § 1388.9 has been added to read as follows:

§1388.9 Peer review

(a) The purpose of the peer review process is to provide the Commissioner, ADD, with technical and qualitative evaluation of UAP and Satellite Center applications.

(b) Peer review panels will evaluate all applications under Part D, Section 152, including applications for:

(1) Core UAP and Satellite Center funding;

(2) Feasibility studies: and

(3) Training projects in areas of emerging national significance.

(c) Panels will be composed of individuals with expertise and experience in the fields appropriate to the activities conducted by UAP and Satellite Centers.

[FR Doc. 88–28044 Filed 12–6–88; 8:45 am]
BILLING CODE 4130–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–531, RM–6383]

Radio Broadcasting Services; Paris, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Benton-Weatherford Broadcasting of Tennessee, Inc., licensee of AM Station WMUF, Paris, Tennessee, seeking the allotment of Channel 231A to Paris, Tennessee, as that community's first local FM station. The allotment can be made in compliance with the Commission's minimum distance separation requirements utilizing the city's reference coordinates at 36–18–12 and 88–19–24.

DATES: Comments must be filed on or before January 17, 1989 and reply comments on or before February 1, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Leonard C. Watson, 250 N. Hale, Palatine, Illinois 60067 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–531, adopted October 28, 1988, and released November 25, 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 1.120(b) 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. 88–28131 Filed 12–6–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Parts 73 and 76

[Gen. Docket No. 87–24]

Program Exclusivity in the Cable and Broadcast Industries

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This action corrects an error in the Commission's *Further Notice of Proposed Rule Making* in MM Docket No. 87–24 (published October 28, 1988, 53 FR 43736) regarding the applicability of the non-network territorial exclusivity rule, § 73.658(m), to noncommercial television stations. It also is intended to make parties aware of § 74.780 of the low power station rules which cross-references § 73.658.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Parts 73 and 76

Broadcast television, Cable television.

Erratum

Released: November 15, 1988.

By the Chief, Mass Media Bureau.

1. On October 13, 1988, the Commission adopted a *Second Further Notice of Proposed Rule Making*, FCC 88–322, in the above-captioned proceeding. This Notice addresses possible changes in a number of rules relating to the ability of television broadcasters to obtain exclusive rights in the programming they purchase *vis-a-vis* cable television systems carrying distant broadcast signals and against other television broadcast stations.

2. Paragraph 43 of this *Further Notice* incorrectly indicated that the non-network territorial exclusivity rule set forth in § 73.658(m) applied to both commercial and noncommercial stations. Note 3 at the end of § 73.658 specifies that the non-network exclusivity rule is presently limited in its applications to commercial station. Commenting parties should also be aware, in connection with the discussion in paragraph 44 relating to low power television stations, of § 74.780 of the low power station rules which cross-references § 73.658.

Federal Communications Commission

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 88–28128 Filed 12–6–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Ch. II

[FRA Docket No. RSCG–3; Notice No. 1]

RIN 2130–AA27

Grade Crossing Signal System Safety

AGENCY: Federal Railroad Adminstration (FRA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking; change of hearing date.

SUMMARY: FRA is changing the date of a public hearing on grade crossing signal system safety. The hearing, originally scheduled for December 14, 1988, is being changed to December 19 and 20, 1988.

On November 23, 1988, FRA published in the **Federal Register** an Advanced Notice of Proposed Rulemaking (ANPRM) (53 FR 47554) on grade crossing signal system safety and scheduled a public hearing to be held on December 14, 1988. Based on preliminary expressions of interest, FRA has determined that all parties desiring to appear at the hearing could not be accommodated in one day. As a consequence, FRA is rescheduling the public hearing to December 19 and 20, 1988. The hearing location remains the same as Room 4234 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

DATES: Public Hearing: FRA will hold a public hearing in this proceeding on December 19 and 20, 1988. The hearing will commence at 10:00 a.m. on both days. Any person desiring to make an oral statement at the hearing should submit their prepared statements to the FRA Docket Clerk at least five days before the hearing date.

ADDRESSES: The hearing will be held at Room 4234 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mark Tessler, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590 (telephone: (202) 366–0628).

Issued in Washington, DC on December 5, 1988.

John H. Riley,

Administrator.

[FR Doc. 88–28258 Filed 12–6–88; 8:45 am]

BILLING CODE 4910–06–M

Notices

Federal Register
Vol. 53, No. 235
Wednesday, December 7, 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.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 2, 1988.

The Department of Augriculture has submitted to OMB for review the following proposals for the collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, UDSA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revision

• Agricultural Marketing Service
Pork Promotion, Research, and Consumer Information Program
LS–35 and LS–36
On occasion; Monthly; Quarterly
Individuals or households; Farms; 76,300 responses; 76,150 hours; not applicable under 3504(h)
Robert Leverette (202) 447–2650

• Farmers Home Administration
7 CFR 1951–0, Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Community and Business Programs
On occasion
State or local governments; Non-profit institutions; 14 responses; 12 hours; not applicable under 3504(h)
Jack Holston (202) 382–9736

• Foreign Agricultural Service
FAS/Cooperator Market Development Program
Monthly; Annually
State or local governments; Non-profit institutions; 2,795 responses; 80,958 hours; not applicable under 3504(h)
Richard E. Passig (202) 447–4327

Extension

• Farmers Home Administration
7 CFR 1940–G, Environmental Program
FmHA 1940–20
On Occasion
Individual or huseholds; State or local governments; Farms; Businesses or other for-profit, Non-profit institiutions; Small Businesses or organization; 9,745 responses; 75,235 hours; not applicable under 3504(h)
Jack Holston (202) 382–9736

• Farmers Home Administration
7 CFR 1951–K, Predetermined Amortization Schedule System (PASS) Policies
On occasion
Individuals of households; Non-profit institutions; Small businesses or orgaizations; 300 responses; 75 hours; not applicable under 3504(h)
Jack Holson (202) 382–9736

• Agricultural Marketing Service
Dairy Promotion and Research Order
DA–15, –16, –17, –18, –19, –20, and –26
Recordkeeping; Monthly; Annually
Farms; Businesses or other for-profit; Small Businesses or organizations; 15,733 responses; 8,248 hours; not applicable under 3504(h)
Vernon Burkholder (202) 447–6932

• Animal and Plant Health Inspection Service
Proceeds from Animals Sold for Slaughter
VS Form 1–24
On occassion
Businesses or other for profit; 2,500 responses; 500 hours; not applicable under 3504(h)
Ralph L. Hosker (301) 436–8715

Reinstatement

• Food and Nutrition Service
Food Coupon Deposit Document
FNS–521
On occasion; Recordkeeping
Businesses or other for-profit; Federal agencies or employees; 600,000 responses; 5,810 hours; not applicable under 3504(h)
David Saarela (612) 370–3320.

Larry K. Roberson,
Acting Departmental Clearance Officer.

[FR Doc. 88–28160 Filed 12–6–88; 8:45 am]
BILLING CODE 3410–01–M

Office of the Secretary

Agriculture Biotechnology Research Advisory Committee Meeting

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. No. 92–463, 86 Stat. 770–776), the U.S. Department of Agriculture (USDA), Science and Education, announces the following advisory committee meeting:

Name: Agriculture Biotechnology Research Advisory Committee

Date: January 5–6, 1989.

Time: 9:00 a.m. to approximately 5:00 p.m. on January 5, 9:00 a.m. to approximately 3:00 p.m. on January 6.

Place: Room 104–A, the "Williamsburg Room", USDA Administration Building, 14th and Independence Avenue SW., Washington, DC.

Type of Meeting: This meeting is open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person specified below.

Purpose: To review matters pertaining to agricultural biotechnology research and to develop advice for the Secretary through the Assistant Secretary for Science and Education with respect to

policies, programs, operations and activities associated with the conduct of agricultural biotechnology research. The major items to be considered at this meeting are the development of guidelines for biotechnology research in agriculture, a field handbook for agricultural researchers using materials and methods of biotechnology, and biological containment and confinement of organisms used in research.

Contact Person: Dr. Alvin L. Young, Executive Secretary, Agricultural Biotechnology Research Advisory Committee, U.S. Department of Agriculture, Office of Agricultural Biotechnology, Room 321–A, Administration Building, 14th and Independence Avenue SW., Washington, DC, 20250. Telephone (202) 447–9165.

Done at Washington, DC, this 22d day of November, 1988.

Orville G. Bentley,

Assistant Secretary, Science and Education.

[FR Doc. 88–28161 Filed 12–6–88; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

Tongass National Forest, Ketchikan Area; Intent To Prepare a Supplement to the Draft Environmental Impact Statement for the Cleveland Peninsula Area Analysis

The Department of Agriculture, Forest Service will prepare a Supplement to the draft Environmental Impact Statement previously issued for central Cleveland Peninsula on the Ketchikan Area of the Tongass National Forest.

The draft Environmental Impact Statement was released in July of 1987, but a decision on this Area Analysis has been delayed since that time. During this interim period the condition of the timber markets of Southeast Alaska has improved, and the demand for National Forest timber has increased accordingly. Additional resource information relevant to the decision has become available during the interim. The purpose of the Supplement is to identify a new Agency preference that is more responsive to the current situation, and to convey any additional information now available for public review and comment.

Preparation of this Supplement is expected to take three to four months, and it should be available for public comment by March of 1989. The final Environmental Impact Statement is scheduled to be completed by September of 1989.

Questions about the Supplement should be directed to Mark Voight, team leader, Ketchikan Area Supervisor's Office, phone 907–225–3101.

Date: November 25, 1988.

J. Michael Lunn,

Forest Supervisor.

[FR Doc. 88–28177 Filed 12–6–88; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Town Creek Watershed, MS

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: L. Pete Heard, rsponsible Federal official for projects administered under the provisions of Pub. L. 83–566, 16 U.S.C. 1001–1008, in the state of Mississippi, is hereby providing notification that a record of decision to proceed with the installation of the Town Creek Watershed project is available. Single copies of the record of decision may be obtained from L. Pete Heard at the address shown below.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, 100 West Capitol Street, Suite 1321, Jackson, Mississippi, 39269, telephone 601–965–5205.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Date: November 22, 1988.

L. Pete Heard,

State Conservationist.

[FR Doc. 88–28170 Filed 12–6–88; 8:45 am]

BILLING CODE 3410–16–M

ARMS CONTROL AND DISARMAMENT AGENCY

Performance Review Board; Membership

AGENCY: Arms Control and Disarmament Agency.

ACTION: Notice of membership of Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the U.S. Arms Control and Disarmament Agency announces the appointment of Performance Review Board members.

EFFECTIVE DATE: December 4, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Aderholdt, Director of Personnel, U.S. Arms Control and Disarmament Agency, Washington, DC 20451 (202), 647–2034.

The following are the names and present titles of the individuals appointed to the register from which Performance Review Boards will be established by the U.S. Arms Control and Disarmament Agency. Each individual will serve one year renewable terms beginning on the effective date of this notice. Specific Performance Review Boards will be established as needed from this register.

These appointments supersede those in the announcement published at 52 FR 36291 on September 28, 1987.

Name	Title
George F. Murphy, Jr.	Deputy Director.
William Jeffrey Ankley	Executive Assistant.
Manfred Eimer	Assistant Director, Verification and Intelligence Bureau.
Lynn Hansen	Assistant Director, Multilateral Affairs Bureau.
William Fite	Assistant Director, Strategic Programs Bureau.
Kathleen Bailey	Assistant Director, Nuclear and Weapons Control Bureau.
Norman Wulf	Deputy Assistant Director, Nuclear and Weapons Control Bureau.
Michael Guhin	Counselor.
William Montgomery	Administrative Director.
Thomas Graham, Jr.	General Counsel.
Mary Elizabeth Hoinkes	Deputy General Counsel.
Richard Toye	Senior Policy Advisor.
William Staples	Deputy for Policy Analysis.
David Clinard	Deputy for Long Range Planning.
R. Lucas Fischer	Deputy Assistant Director, Strategic Programs Bureau.
Stanley Riveles	Chief, Strategic Affairs Division, Strategic Programs Bureau.
Alfred Lieberman	Chief, Operations Analysis Division, Verification and Intelligence Bureau.
Robert Summers	Chief, Verification Division, Verification and Intelligence Bureau.
O. James Sheaks	Chief, Science and Technological Division, Multilateral Affairs Bureau.
Joerg Menzel	Chief, Nuclear Safeguards and Technology Division, Nuclear and Weapons Control Bureau.
Michael Rosenthal	Chief, International Nuclear Affairs Division, Nuclear and Weapons Control Bureau.

William J. Montgomery,
Administrative Director.
[FR Doc. 88-28081 Filed 12-6-88; 8:45 am]
BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requestes comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Officer of Export Trading Company Affairs, International Trade Administation, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary to Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88-00017." A summary of the application follows.

Applicant: Construction Industry Manufacturers Association (CIMA), 111 East Wisconsin Avenue, Suite 940, Milwaukee, Wisconsin 53202. Contact: J. Wm. Peterson, Director of Government Affairs. Telephone: (202) 479-2666.

Application #: 88-00017.

Date Deemed Submitted: November 23, 1988.

Members (in addition to applicant): Barber-Greene Overseas, Inc. (Controlling Entity: Astec Industries, Inc.); Blaw-Knox Construction Equipment Corporation (Controlling Entity: AB Electrolux); J.I. Case Company (Controlling Entity: Tenneco Inc.); Caterpillar Inc.; Cedarapids Inc. (Controlling Entity: Raytheon Company); Century II Inc.; CMI Corporation; Etnyre International Ltd.; Gomaco Corporation (Controlling Entity: Godbersen-Smith Construction Co., Inc.); Ingersoll-Rand Company; Nordberg Inc.; Payhauler Corp.; Power Curbers, Inc.; Rexworks Inc.; Ross Company; ScanRoad, Inc. (Controlling Entity: Nobel Industries Sweden AB); Taylor Machine Works, Inc.; and Terex Corporation.

Summary of the Application

Export Trade

1. Products

Construction machinery and equipment, including parts and components (SIC code 3531); gas turbines and turbine generator set units, including parts and components (SIC code 3511); internal combustion engines, including parts and components (SIC code 3519); farm machinery and equipment, including parts and components (SIC code 3523); lawn and garden tractors and equipment, including parts and components (SIC code 3524); mining machinery and equipment, including parts and components (SIC code 3532); oil and gas field machinery and equipment, including parts and components (SIC code 3533); conveyors and conveying equipment, including parts and components (SIC code 3535); overhead traveling cranes, hoists, and monorail systems, including parts and components (SIC code 3536); industrial trucks, tractors, trailers, and stackers, including parts and components (SIC code 3537); motors and generators, including parts and components (SIC code 3621); motor vehicles and bodies, including parts and components (SIC code 3711); truck bodies, including parts and components (SIC code 3713); truck trailers, including parts and components (SIC code 3715); ship building and repairing, including parts and components (SIC code 3731); and, other construction equipment, parts, attachments, accessories, components and assemblies not elsewhere classified.

2. Services

Engineering, technical, financial, and management services related to Products and to turn-key project contracts that substantially incorporate Products; servicing of Products; and training with respect to the use of Products.

3. Technology Rights

Patents, trademarks, service marks, copyrights, trade secrets, and know-how.

4. Export Trade Facilitation Services (as they relate to the export of Prodcuts, Services and Technology Rights)

Consulting; international market research; marketing; financing; trade promotion; insurance; legal assistance; transportation; trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. CIMA and/or one or more of its Members may:

a. Engage in joint bidding, financing, leasing, or other joint selling arrangements for Products and Services in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and Services by Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to the interface specifications and engineering requirements demanded by specific potential customers of Products for Export Markets;

d. Refuse to quote prices for, or to market or sell in, Export Markets with respect to Products and Services;

e. Solicit non-member Suppliers to sell their Products and/or Services or offer their Export Trade Facilitation Services through the certified activities of CIMA and/or its Members;

f. Coordinate with respect to the delivery, installation, assembly and servicing of Products in Export Markets, including the establishment of joint warranty, service, parts warehousing and training centers in such markets;

g. License associate Technology Rights in conjunction with the sale of Products, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and the export customer without coordination with CIMA or any Member;

h. Engage in joint promotional activities, such as advertising, trade shows, trade missions, demonstrations and field trips aimed at developing existing or new Export Markets; and,

i. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product and Service requirements of specific export customers or particular Export Markets.

2. CIMA and/or one or more of its Members may enter into agreements wherein they agree to act in certain countries or markets as the Members' exclusive or non-exclusive Export Intermediary for Products and/or Services in that country or market. In such agreements, (i) CIMA or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through CIMA or the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary. When acting as an Export Intermediary, CIMA shall make its services available to any Member on non-discriminatory terms.

3. CIMA and/or one or more of its Members may exchange and discuss the following types of information solely about Export Markets:

a. Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies or methods) that is already generally available to the trade or public;

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets, customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, and delivery dates of Products available from Members for export, provided however that exchanges of information and discussions as to Product quantity, source, and delivery dates must be on a transaction-by-transaction basis only;

d. Information about terms and conditions and contracts for sales in Export Markets to be considered and/or bid on by CIMA and/or its Members;

e. Infomation about joint bidding, distribution, financing, selling, or servicing arrangements for Export Markets and allocations of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Exports Markets, including, without limitation, transportation, warehousing, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and,

h. Information about CIMA's or its Members' export operations, including without limitation sales and distribution networks established by CIMA or its Members in Export Markets, and prior export sales by Members (including export price information).

4. CIMA may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Services to facilitate the export of Products to Export Markets. This may be accomplished by CIMA itself, or by agreement with Members or other parties.

5. CIMA and/or one or more or its Members may meet to engage in the activities described in paragraphs one through four above.

6. CIMA and/or one or more of its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Members" means the member companies of CIMA, who choose to participate in this certificate, subject to the provisions of this paragraph. New CIMA members may be incorporated in this certificate pursuant to the abbreviated amendment procedure described below. An abbreviated amendment shall consist of a written notification to the Department of Commerce and the Department of Justice stating changes in CIMA membership, identifying all new CIMA members that desire to become a Member under this certification pursuant to the abbreviated amendment procedure, and certifying for each new CIMA member so identified its sales of Products in its prior fiscal year. Notice of new members so identified shall be published in the **Federal Register**. However, CIMA may withdraw one or more individual members from the application for the abbreviated amendment. If 30 days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the certificate of the new members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the certificate of review to incorporate such new members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the **Federal Register** so amend the certificate of review, such amendment must be sought through the nonabbreviated amendment procedure.

3. "Supplier" means a person who produces, provides, or sells a Product, Service, and/or Export Trade Facilitation Services, whether a Member or nonmember.

Date: December 1, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-28157 Filed 12-6-88; 8:45 am]

BILLING CODE 3510-DR-M

Short-Suply Review on Certain Railroad Axles; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-Brazil Arrangement concerning Trade in Certain Steel Products with respect to certain railroad axles.

DATE: Comments must be submitted no later than December 19, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the USDA for a particular product, (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors) an additional tonnage shall be allowed for such product or products * * *"

We have received a short-supply request for the following sizes of railroad freight car axles as specified in the Association of American Railroads Manual of Standards and Practices, Section G, Specification M–101: (1) 6½×12, Classification F, Grade F; and (2) 6×11, Classification E, Grade U.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than December 19, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce, at the above address.

Jan W. Mares,

Assistant Secretary for Import Administration.

December 1, 1988.

[FR Doc. 88–28158 Filed 12–6–88; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: Baltimore, MD

December 1, 1988.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for a 3-year period, subject to availability of funds. The cost of performance for the first 12 months is estimated at $271,059 for the project performance of May 1, 1989 to April 30, 1990. The MBDC will operate in the Baltimore, Maryland, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $230,400 in Federal funds and a minimum of $40,659 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of business. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is January 23, 1989. Applications must be postmarked on or before January 23, 1989.

ADDRESS: Washington Regional Officer, Minority Business Development Agency, U.S. Department of Commerce, Room 6723, Washigton, DC 20230, 202–377–8275.

FOR FURTHER INFORMATION CONTACT: Willie J. Williams, Regional Director, Washington Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Willie J. Williams,

Regional Director, Washington Regional Office.

Date: December 1, 1988.

[FR Doc. 88–28175 Filed 12–6–88; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit: Riviera Hotel (P434)

Notice is hereby given that an 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:* Riviera Hotel, 2901 S. Las Vegas Blvd., Las Vegas, Nevada 89109.

2. *Type of Permit:* Importation and Public Display.

3. *Name and Number of Marine Mammals:* California sea lions, *(Zalophus californianus)*

4. *Type of Take:* The animals will be imported and maintained.

5. *Location of Activity:* Las Vegas, NV.

6. *Period of Activity:* Two 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 application 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 Services, 1335 East-West Highway, Rm. 7330, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California, 90731–7415.

Date: November 10, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Program.

[FR Doc. 88–28077 Filed 12–6–88; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Intent to Grant Exclusive Patent License; CETUS Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to CETUS Corporation, having a place of business in Emeryville, CA 94608, an exclusive license in the United States and certain foreign countries to practice an invention embodied in U.S. Patent Application Serial Number 7–209,108, entitled "Activated Killer Monocytes: Tumoricidal Activity and Method of Monitoring Same." Among the objectives of the invention are to produce a substantially pure, clinical grade, activated killer monocyte that will more effectively attack human cancer cells, to assay AKM effectiveness *in vitro*, and to facilitate the body's immune response. Prior to any license granted by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not serve the public interest.

Inquiries, comments, and other materials relating to the intended license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487–4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–28083 Filed 12–6–88; 8:45 am]

BILLING CODE 2510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Hungarian People's Republic

December 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

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: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: In addition to setting forth limits for the 1989 agreement year, the limits for Categories 434 and 435 are being reduced for carryforward used in 1988.

A copy of the current bilateral textile agreement between the Governments of the United States and the Hungarian People's Republic is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

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

December 2, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854) and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Wool Textile Agreement of February 15 and 25, 1983, as amended, between the Governments of the United States and the Hungarian People's Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories,

produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 1989 and extending through December 31, 1989, in excess of the following restraint limits:

Category	12-month restraint limit
300/301	1,202,020 kilograms.
313	11,743,409 square meters.
410	844,489 square meters.
433	8,105 dozen.
434	7,125 dozen.
435	13,256 dozen.
442	18,180 dozen.
443	85,434 numbers.
444	25,197 numbers.
445/446	41,624 dozen of which not more than 31,218 dozen shall be in Category 445 and not more than 31,218 dozen shall be in Category 446.
448	20,163 dozen.
604	721,212 kilograms.
645/646	95,506 dozen.
669-P [1]	589,670 kilograms.

[1] In Category 669-P, only tariff numbers 6305.31.00.10, 6305.31.00.20 and 6305.39.00.00.

Imports charged to these category limits for the periods beginning on November 1, 1987, March 1, 1988 and January 1, 1988 and extending through December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for these periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the Hungarian People's Republic.

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 Commowealth of Puerto Rico.

The Committee for the Implementation of Texitle 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. 88-28104 Filed 12-06-88; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Costa Rica

December 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: December 9, 1988.

Authroity: 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: Inasmuch as consultations held November 2-4, 1988 between the Governments of the United States and Costa Rica have not resulted in a mutually satisfactory limit for Categories 347/348, the United States Government has decided to control imports in thse categories for the period July 28, 1988 through July 27, 1989.

The United States remains committed to finding a solution concerning Categories 347/348. Should such a solution be reached in further consultations with the Government of Costa Rica, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRECTION: Textile and Apparel Categories with Tariff Schedule of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). A description of the textile and apparel categories in terms of HTS numbers is available in the Correction: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 30857, published on August 16, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 2, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854) and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 9, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348, produced or manufactured in Costa Rica and exported during the twelve-month period which began on July 28, 1988 and extends through July 27, 1989, in excess of 912,767 dozen.

Textile products in Categories 347/348 which have been exported to the United States prior to July 28, 1988 shall not be subject to this directive.

Textile products in Categories 347/348 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

You are directed to charge 45,381 dozen for Category 347 and 17,963 dozen for Category 348 to the limit established in this directive for Categories 347/348. these charges are for goods imported during the period July 28, 1988 through August 31, 1988.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception 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. 88-28113 Filed 12-6-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

December 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authroity: 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: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Cutsoms port or call (202) 535-6735. For information on

embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral agreement between the Governments of the United States and the Philippines is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

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

December 2, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Texiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in the Philippines and exported during the period beginning on January 1, 1989 and extending through December 31, 1989, in excess of the following restraint limits:

Category	12-month restraint limit
Group I:	
237	1,123,600 dozen.
239	6,029,331 kilograms.
331	842,700 dozen pairs.
333/334	156,538 dozen of which not more than 22,472 dozen shall be in Category 333.
335	101,890 dozen.
336	370,788 dozen.
338/339	1,235,960 dozen.
340/640	677,069 dozen of which not more than 372,388 dozen shall be in shirts made with two or more colors in the warp and/or filling in Categories 340–Y/640–Y.[1]
341/641	599,219 dozen.
342/642	309,051 dozen.
345	95,506 dozen.
347/348	1,123,600 dozen.
351/651	337,080 dozen.
352/652	1,348,320 dozen.
369–S [2]	484,174 kilograms.
431	154,545 dozen pairs.
433	4,096 dozen.
443	24,167 numbers.
445/446	25,133 dozen.
447	8,041 dozen.
604	1,132,277 kilograms.
631	2,752,820 dozen pairs.
633	20,665 dozen.
634	247,073 dozen.
635	274,572 dozen.
636	966,296 dozen.
638/639	1,269,668 dozen.
643	493,600 numbers.
645/646	551,250 dozen.
647/648	677,971 dozen.
649	4,698,155 dozen.
650	58,315 dozen.
659–H [3]	611,587 kilograms.
Group II:	
200, 201, 218–229, 300–326, 330, 332, 349, 350, 353, 354, 359, 360–363, 369–O [4], 400, 410, 414, 432, 434–442, 444, 448, 459, 464–469, 600–603, 606–629, 630, 632, 644, 653, 654, 659–O [5], 665–670 and 831–859, as a group.	77,212,077 square meters equivalent.

[1] In Categories 340–Y/640–Y, only tariff numbers 6205.20.20.15, 6205.20.20.20, 6205.20.20.46, 6205.20.20.50, 6205.20.20.60, in Category 340–Y; and 6205.30.20.10, 6205.30.20.20, 6205.30.20.50 and 6205.30.20.60 in Category 640–Y.

[2] In Category 369–S, only tariff number 6307.10.20.10.

[3] In Category 659–H, only tariff numbers 6502.00.90.30, 6504.00.90.15, 6504.00.90.60, 6505.90.50.60, 6505.90.60.60, 6505.90.70.60, 6505.90.80.75.

[4] In Category 369–O, all tariff numbers except 6307.10.20.10.

[5] In Category 659–O, all tariff numbers except 6502.00.90.30, 6504.00.90.15, 6504.00.90.60, 6505.90.50.60, 6505.90.60.60, 6505.90.70.60, 6505.90.80.75.

Imports charged to these category limits, except Categories 439 and 839, for the period January 1, 1988 through December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and the Philippines.

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. 88–28105 Filed 12–6–88; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Import Limits for Certain Cotton, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Socialist Republic of Romania

December 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

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: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6497. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: A copy of the current Bilateral Cotton Textile Agreement of January 28 and March 31, 1983, as amended, between the Governments of the United States and the Socialist Republic of Romania is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

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

December 2, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton Textile Agreement of January 28 and March 31, 1983, as amended and extended, between the Governments of the United States and Romania; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1989 and extending through December 31, 1989, in excess of the following restraint limits:

Category	12-month restraint limit
200, 201, 218–220, 222–227, 229, 237, 239, 300, 301, 313–315, 317, 326, 330–342, 345, 347–354, 359–363, 369, 800, 810, 831–836, 838–840, 842–847, 850–852, 858, 859, 863, 870, 871 and 899, as a group.	38,110,686 square meters equivalent.
Sublevels within the group:	
313	1,672,255 square meters.
314	1,254,191 square meters.
315	1,254,191 square meters.
333/833	79,500 dozen.
334	257,153 dozen of which not more than 36,320 dozen shall be in Category 334pt. all H.S. tariff numbers in Category 334 except 6112.11.00.10.
335/835	100,700 dozen.
338/339	434,600 dozen.
340	189,699 dozen.
341/840	79,500 dozen.
347/348	339,200 dozen.
352	181,818 dozen.
359	295,821 kilograms.
361	515,000 numbers.
369	295,821 kilograms.
810	4,180,637 square meters.
847	75,000 dozen.

Imports charged to these category limits, except Category 839, for the period January 1, 1988 through December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the Bilateral Cotton Textile Agreement of January 28 and March 31, 1983, as amended and extended, between the Governments of the United States and Romania.

The conversion factor for Categories 341/840 is 12.1.

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. 88-28114 Filed 12-6-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

December 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

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: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-8791. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral textile agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

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

December 2, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement of November 18, 1982, as amended and extended, concerning cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products from Taiwan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 1989 and extends through December 31, 1989, in excess of the following restraint limits:

Category	12-month restraint limit
Group I:	
200–227, 229, 300–317, 326, 360–369, 400, 410, 414, 464–469, 600–629 and 665–670, as a group.	553,073,622 square meters equivalent.
Sublevels within Group I:	
200	546,760 kilograms.
218	16,117,877 square meters.
219	17,366,810 square meters.
220	11,111,989 square meters.
225/317/326	27,035,294 square meters.
226	8,653,001 square meters.

Category	12-month restraint limit
229-F [1]	523,607 kilograms.
301	208,788 kilograms.
313	60,747,205 square meters.
314	34,049,300 square meters.
315	22,017,770 square meters.
360	871,556 numbers.
361	1,098,321 numbers.
363	13,048,761 numbers.
369-L [2]	1,077,087 kilograms.
604	230,198 kilograms.
611	1,085,437 square meters.
613/614/615/617	15,126,589 square meters.
619/620	8,726,864 square meters.
625/626/627/628/629	12,764,278 square meters.
669-P [3]	263,015 kilograms.
669-T [4]	854,851 kilograms.
670-F [5]	1,857,144 kilograms.
670-H [6]	18,871,882 kilograms.
670-L [7]	33,187,977 kilograms.
Group II:	
237, 239, 330-354, 359, 431-448, 459, 630-654 and 659, as a group.	827,394,399 square meters equivalent.
Sublevels within Group II:	
237	534,190 dozen.
239	2,339,971 kilograms.
331	487,376 dozen pairs.
333/334	82,253 dozen.
335	97,480 dozen.
336	91,012 dozen.
338/339	685,000 dozen.
340	664,126 dozen.
341	384,709 dozen.
342	203,029 dozen.
345	95,096 dozen.
347/348	1,033,788 dozen of which not more than 509,767 dozen shall be in Category 347 and not more than 817,617 dozen shall be in Category 348.
350	104,503 dozen.
351	337,772 dozen.
352	943,785 dozen.
353/354/653/654	239,909 dozen.
359-H [8]	2,002,725 kilograms.
433	13,797 dozen.
434	9,578 dozen.
435	31,268 dozen.
436	4,528 dozen.
438	36,642 dozen.
440	10,406 dozen.
442	49,258 dozen.
443	38,628 numbers.
444	55,013 numbers.
445/446	130,124 dozen.
447/448	19,042 dozen.
631	4,154,629 dozen pairs.
632	4,525,633 dozen pairs.
633/634/635	1,694,961 dozen of which not more than 1,051,316 dozen shall be in Categories 633/634 and not more than 877,917 dozen shall be in Category 635.
636	342,110 dozen.
638	1,768,849 dozen.
639	4,823,270 dozen.
640	3,354,438 dozen of which not more than 1,677,219 dozen shall be in Category 640-Y. [9]
641	723,809 dozen of which not more than 253,333 dozen shall be in Category 641-Y. [10]
642	776,357 dozen.
643	487,129 numbers.
644	594,004 numbers.
645/646	4,087,255 dozen.
647	2,625,687 dozen.
648	3,082,187 dozen.
649	709,752 dozen.
650	48,664 dozen.
651	423,590 dozen.
652	1,470,832 dozen.
659-B [11]	743,236 kilograms.
659-C [12]	547,758 kilograms.
659-H [13]	2,420,660 kilograms.
659-S [14]	2,098,704 kilograms.
Group III:	
831-844 and 846-859, as a group.	7,808,681 square meters equivalent.
Individual limits not in a group:	
845	846,811 dozen.
870	2,494,710 kilograms.

[1] In Category 229-F, only tariff numbers 5608.11.00.00, 5608.19.10.10 and 5608.19.10.20.
[2] In Category 369-L, only tariff numbers 4202.12.40.00, 4202.12.80.20, 4202.12.80.60, 4202.92.15.00 and 4202.92.60.00.
[3] In Category 669-P, only tariff numbers 6305.31.00.10, 6305.31.00.20 and 6305.39.00.00.
[4] In Category 669-T, only tariff numbers 6306.12.00.00, 6306.19.00.10 and 6306.22.90.00.
[5] In Category 670-F, only tariff number 4202.32.95.50.
[6] In Category 670-H, only tariff numbers 4202.22.40.30 and 4202.22.80.50.
[7] In Category 670-L, only tariff numbers 4202.12.80.30, 4202.12.80.70, 4202.92.30.20, 4202.92.30.30 and 4202.92.90.20.
[8] In Category 359-H, only tariff numbers 6505.90.15.30 and 6505.90.20.60.
[9] In Category 640-Y, only tariff numbers 6205.30.20.10, 6205.30.20.20, 6205.30.20.50 and 6205.30.20.60.
[10] In Category 641-Y, only tariff numbers 6204.23.00.50, 6204.29.20.30, 6206.40.30.10 and 6206.40.30.25.
[11] In Category 659-B, only tariff numbers 6114.30.20.10 and 6114.30.20.20.
[12] In Category 659-C, only tariff numbers 6103.23.00.55, 6103.43.20.20, 6103.49.20.00, 6103.49.30.38, 6104.63.10.20, 6104.69.10.00, 6104.69.30.14, 6114.30.30.40, 6114.30.30.50, 6203.43.20.10, 6203.49.10.10, 6204.63.15.10, 6204.69.10.10, 6211.33.00.10 and 6211.43.00.10.
[13] In Category 659-H, only tariff numbers 6502.00.90.30, 6504.00.90.15, 6504.00.90.60, 6505.90.50.60, 6505.90.60.60, 6505.90.70.60 and 6505.90.80.75.
[14] In Category 659-S, only tariff numbers 6112.31.00.10, 6112.31.00.20, 6112.41.00.10, 6112.41.00.20, 6112.41.00.30, 6112.41.00.40, 6211.11.10.10, 6211.11.10.20, 6211.12.10.10 and 6211.12.10.20.

Imports charged to these category limits, except Categories 439 and 839, for the period January 1, 1988 through December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits are subject to adjustment in the future pursuant to the provisions of the agreement of November 18, 1982, as amended and extended.

The conversion factors are as follows:

Category	Conversion factor
237	19.2
333/334	33.0
633/634/635	34.1

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. 88-28115 Filed 12-6-88; 8:45 am]

BILLING CODE 3510-DR-M

Amending Requirements for Certain Textiles and Textile Articles Exported From the United Mexican States Under the Special Regime

December 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending the requirements for using the ITA-370P Form.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1952, as amended. (7 U.S.C. 1854)

SUPPLEMENTARY INFORMATION: A notice published in the **Federal Register** on May 3, 1988 (53 FR 15724) stated that a shipment which includes several different products covering different categories and exported from Mexico on and after January 1, 1989 under the Special Regime may be accompanied by a single ITA-370P form, properly certified.

However, the directive published below amends that requirement to permit only one category or merged category to be used for each form. For example, a single shipment of parts to produce tops and bottoms, must be accompanied by two ITA-370P forms. If

two or more categories of merchandise are being shipped but all are included in a single merged category (e.g., men's and women's cotton and man-made fiber knit shirts and blouses—338/339/638/639), a single ITA–370P form should be used. This amendment will be effective for shipments of cut pieces accompanied by an ITA–370P form which are exported from the United States to Mexico on or after January 1, 1989.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 32421, published on August 25, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 2, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of August 22, 1988, as amended, issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes export visa and exempt certification requirements for certain textiles and textile articles, produced, manufactured or assembled in Mexico.

Effective on January 1, 1989, the directive of August 22, 1988 is amended further to require that shipments of cut pieces for re-entry under the Special Regime which include several different products covering different textile categories and exported from the United States to Mexico on and after January 1, 1989 must be accompanied by a separate properly certified Shippers Export Declaration (ITA–370P form) for each single category or merged category. Shipments exported from the United States to Mexico on and after January 1, 1989 which are accompanied by an ITA–370P form which includes more than one category or merged category will be denied re-entry into the United States.

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. 88–28106 Filed 12–6–88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

November 28, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Hypersonic Test Facilities will meet on 5 January 1989, from 8:00 a.m. to 5:00 p.m., at ANSER, Washington, DC.

The purpose of this meeting is to review the status of the study's final report. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–28176 Filed 12–6–88; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

November 28, 1988.

The USAF Scientific Advisory Board Logistics Cross-Matrix Panel will meet on 11–12 January 1989, from 8:00 a.m. to 5:00 p.m., at HQ AFLC, Wright-Patterson, AFB, OH.

The purpose of this meeting will be to facilitate the exchange of information on technical development and logistics operations issues. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–28088 Filed 12–6–88; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Chief of Naval Operations; Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet January 11–12, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review maritime issues as they impact national security policy and requirements. The entire agenda for the meeting will consist of discussions of key issues related to national security policy, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: December 1, 1988.

Sandra M. Kay,

Alternate Federal Register Liaison Officer.

[FR Doc. 88–28096 Filed 12–6–88; 8:45 am]

BILLING CODE 3810-AE-M

Patent Licenses, Exclusive; American Cyanamid Co.

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant partially exclusive patent license; American Cyanamid Company.

SUMMARY: The Department of the Navy hereby gives notice of intent to grant to American Cyanamid Company a revocable, nonassignable, partially exclusive license to practice the Government-owned invention described in U.S. Patent No. 4,626,383 entitled, "Chemiluminescent System Catalysts," issued December 2, 1986; inventors; Herbert P. Richter and Joseph H. Johnson, in the field of commercial fishing and the field of industrial and civic safety. The license will be revocable, nonassignable and nonexclusive in all other fields.

This license will be granted unless within 60 days from the date of this notice written objections to this grant along with supporting evidence, if any, are received by the Office of the Chief of Naval Research (Code OOCCIP), Arlington, VA 22217–5000.

DATE: December 7, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 N. Quincy Street, Arlington, VA 22217–5000, telephone (202) 696–4001.

Date: December 2, 1988.

Sandra M. Kay,

Alternate Federal Register Liaison Officer.

[FR Doc. 88–28095 Filed 12–6–88; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management

Fees for Federal Interim Storage, Calendar Year 1989

AGENCY: Department of Energy.

ACTION: Notice of fees for Federal interim storage of spent nuclear fuel from civilian nuclear power plants in the United States for calendar year 1989.

SUMMARY: This notice updates the fees to be levied against users of Federal Interim Storage (FIS) services for spent nuclear fuel as required by section 136(a)(2) of the Nuclear Waste Policy Act of 1982, Pub. L. 97–425, 42 U.S.C. section 10101 et seq. (Act). The fees previously established for Calendar Year 1988 are hereby rescinded on the effective date of this notice. The fees, shown in Table 1, have been updated to ensure full recovery of all costs incurred by the Department of Energy (Department) in providing these services. These fees are for calendar year 1989 and replace those in effect for calendar year 1988.

EFFECTIVE DATE: The updated fees will be effective on January 1, 1989, and will remain effective for a period of twelve months from the effective date.

FOR FURTHER INFORMATION CONTACT: Charles R. Head, Office of Systems Integration and Regulations (RW–32), Office of Civilian Radioactive Waste Management, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5292.

SUPPLEMENTARY INFORMATION: The updated fees shown below in Table 1 were developed by the Department to comply with the requirement of section 136 of the Act which requires each user to pay its pro rata share of costs in order to ensure complete recovery of costs incurred by the Department in supplying FIS services.

TABLE 1.—FEES FOR FIS SERVICES FURNISHED BY THE DEPARTMENT OF ENERGY, DOLLARS PER KGU [1] [2]

Spent fuel committed to FIS (MTU)	Initial fee	Final fee	Total fee
100	385	350	735
300	190	140	330
800	135	80	215
1,500	120	65	185
1,900	115	60	175

[1] The cost of transportation of spent fuel is not included in the above fees. Each user's actual transportation costs will be billed directly after delivery of the fuel is completed.

[2] KgU—the weight of uranium contained in fresh fuel assemblies at the time of insertion into the reactor. One MTU is 1000 KgU.

The Department reexamined alternative methods for structuring fees for FIS services, as reported in 1988 Federal Interim Storage Fee Study: A Technical and Economic Analysis, (PNL–6727) October 1988. Based on this reexamination, the Department again concluded that the combined interests of the Department and the users would be best served, and costs would be most appropriately recovered, by a two-part fee payment consisting of an Initial Payment upon execution of a contract for FIS services followed by a Final Payment upon delivery of the spent fuel to the Department. In addition, each user will be invoiced by the Department for the actual costs of transportation of its spent fuel from the reactor site to the FIS facility.

The Initial Payment shall be made within 30 days after execution of the contract for FIS service; it is an advance payment covering the pro rata share of the preoperational costs including:

(1) The capital construction costs of the transfer facilities and storage area required to accommodate the initial storage service commitments, including design and construction costs;

(2) Costs of procuring storage modules;

(3) Development costs;

(4) Government administrative costs, including storage fund management;

(5) Impact aid payments made in accordance with section 136(e) of the Act; and

(6) Interest paid on any funds borrowed from the Treasury Department to conduct preliminary work.

The effective Initial Fee will be determined by the quantity of spent fuel committed to FIS by the first contract executed, or group of contracts executed simultaneously, by the Department in accordance with section 135(b) of the Act. Table 1 exhibits the appropriate fees for discrete quantities of contracted fuel, from 100 MTU to 1900 MTU. If the quantity of fuel covered by the first contracts is less than 100 MTU, the Initial Fee will be the Initial Fee shown in Table 1 for 100 MTU storage capacity. If the quantity of fuel covered by the first contracts exceeds 100 MTU and is not one of the discrete quantities shown, the Initial Fee will be recalculated by the Department for the exact quantity of spent fuel committed to storage under these first contracts. The Initial Fee so determined by the first contracts will then be charged to all subsequent contractors of FIS services until the Fee Schedule is next revised.

To ensure that the payments are equitable among the users of FIS services, the Department will annually update both the Initial and Final Fees to reflect changes in the estimated costs for providing FIS services as the amount of fuel under contract increases or as additional FIS facilities are activated. After all preoperational activities have been completed, the Department will determine the total costs incurred in connection with the preoperational activities (i.e., design, safety reviews, construction, storage module procurement, and associated activities) and will determine the difference between the Initial Payments made by each user and the subsequently revised Initial Payments that take into account the increased quantities of spent fuel being committed to FIS. The Department will then credit or debit the Final Payment of each user with the difference between the amounts paid as Initial Payments and its then pro rata share of the revised total preoperational costs (net of its pro rata share of interest earned on advance payments made).

The Final Payment shall be billed to the user within 60 days after delivery of the spent fuel to the Department and shall be payable within 60 days thereafter. It will be calculated to cover the sum of the following:

(1) Any under- or over-estimation in the costs used to calculate the Initial Payment of the fee, as described above;

(2) The total estimated cost of operation and decommissioning of the FIS facilities (including Government administrative costs, storage fund management and impact aid).

In addition, the Department will bill each individual user for the actual costs the Department incurs in the transportation of that user's spent fuel to the FIS facilities including but not limited to cask lease, freight charges, and security. Billing and payment for transportation will be on the same schedule as the Final Payment.

In addition to the Initial Payment and the Final Payment described above, the

Department will make a final adjustment for each user after the decommissioning of the FIS facilities, or March 31, 2007, whichever is earlier. This adjustment will be based on a determination of the total costs incurred in design, construction, operation and decommissioning of the FIS system through December 31, 2006. The Department will make final adjustments to the extent that there is a difference between the total amounts paid by each user in Initial and Final Payments and the user's pro rata share of these total costs (net of its pro rata share of interest earned on advanced payments made). This adjustment may be either a payment to the Department or a refund to the user.

Any payments not made on a timely basis will be subject to interest charged at the Treasury Current Value of Funds Rate plus 6% from the due data to the date of actual payment.

In order to include the time value of money in the fee update calculation, the revenue/expenditure projections are based on the following assumptions concerning the schedule of constructing and operating FIS facilities. These assumptions reflect the changes in spent fuel storage requirements which occurred during 1988:

Assumption 1: Design and construction of FIS facilities would commence in 1989 and be completed so that storage operations could commence in mid-1992;

Assumption 2: The FIS facility would receive spent fuel during the three-year period between mid-1992 and mid-1995. It would ship spent fuel to a Monitored Retrievable Storage faciilty or geologic repository during the three-year period commencing at the beginning of 2003 and terminating at the end of 2005. One-third of the storage capacity of the FIS facility would be received each year during the receiving period and one-third would be shipped each year during the shipping period;

Assumption 3: Decontamination and decommissioning of FIS facilities would be conducted in the year 2006.

In accordance with the constraints imposed by the Act, the Department plans to expend no funds in connection with the FIS program other than the minimal expenses for planning until clear evidence of a need exists. At that time, the Department will commence the design of the FIS facilities on the basis of the contractual commitments that then exist for FIS services. These facilities will have the capacity for only that amount of spent fuel which is committed to storage under the then-existing contracts.

The Department has again assumed that canistered consolidated spent fuel rods would be acceptable for strorage at the FIS facilities. However, consolidation would not be a criterion for acceptance, nor would the disassembly and consolidation of spent fuel be included in the capabilities of the FIS facilities. Until the cost effects of storing consolidated fuel have been accurately determined, the Department will collect the same fee for storage of canistered consolidated spent fuel rods as for intact fuel assemblies. At that time, any difference in operational costs which may result from receipt and handling of consolidated fuel rods will be included in the annual recalculation of the fee, and a separate fee for consolidated fuel will be published. If the revised intital fees are lower than any previously collected for consolidated fuel, a credit will be assigned to the Final Payment for that consolidated fuel. Any savings in transportation costs that result from shipping consolidated rods would be realized immediately.

Further information as to the Department's FIS services and charges is available in the cited report, PNL-6727.

Issued in Washington, DC, on November 30, 1988.

Samuel Rousso,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 88-28165 Filed 12-6-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy is forecasting the representative average unit costs of five residential energy sources for the year 1989. The five sources are electricity, natural gas, No. 2 heating oil, propane and kerosene. The representative unit costs of these energy sources are used in the Energy Conservation Program for Consumer Products established by the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, by the National Appliance Energy Conservation Act of 1987, and by the National Appliance Energy Conservation Amendments of 1988.

EFFECTIVE DATE: The representative average unit costs of energy contained in this notice will become effective January 6, 1989, and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE-132, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127).

Eugene Margolis, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, Mail Station CC-12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507).

SUPPLEMENTARY INFORMATION: Section 323 of the Energy Policy and Conservation Act (Pub. L. 94-163), as amended by the National Energy Conservation Policy Act (Pub. L. 95-619), by the National Appliance Energy Conservation Act of 1987 (Pub. L. 100-12), and the National Appliance Energy Conservation Amendments of 1988 (Pub. L. 100-357) (Act) [1] requires that the Department of Energy (DOE) prescribe test procedures for the determination of the estimated annual operating cost and other measures of energy consumption for certain consumer product specified in the Act. DOE has prescribed test procedures for the major household products listed in section 322(a) of the Act. These test procedures are found in 10 CFR Part 430, Subpart B.

Section 323(b) of the Act requires that the estimated annual operating costs of a covered product be computed from measures of energy use in a representative average-use cycle and from representative average unit costs of the energy needed to operate such product during such cycle. The section further requires DOE to provide information regarding the representative average unit costs of energy for use wherever such costs are needed to perform calculations in accordance with the test procedures. Most notably, these costs are used under the Federal Trade Commission appliance labeling program established by section 324 of the Act and in connection with advertisements of appliance energy use and energy costs which are covered by section 323(c) of the Act.

[1] References to the "Act" refer to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, by the National Appliance Energy Conservation Act of 1987 and by the National Appliance Energy Conservation Amendments of 1988.

DOE last published representative average unit costs of residential energy for use in the Energy Conservation Program for Consumer Products on December 23, 1987. (52 FR 48563). Effective January 6, 1989, the cost figures published on December 23, 1987, will be superseded by the cost figures set forth in this notice.

DOE's Energy Information Administration (EIA) has developed the 1989 representative average unit costs of electricity, natural gas and No. 2 heating oil found in this notice. These costs were taken from EIA's October 1988 *Short-Term Energy Outlook (Outlook)*, DOE/EIA–0202 (88/4Q), which forecasts the retail cost of selected energy products based on changes in world oil prices, wellhead natural gas prices, seasonal patterns in retail prices and established trends in margins and operating expenses. The development of these costs is discussed in detail in the October 1988 issue of this report, which is EIA's quarterly publication of historical and forecasted energy consumption and prices. The costs appear in Table 5 of EIA's *Outlook*. Copies of this report are available at the National Energy Information Center, Forrestal Building, Room 1F–048, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8800.

In the cases of kerosene and propane, the 1989 representative average unit costs found in this notice were developed by other means since EIA's *Outlook* does not provide a forecast of the retail costs of these fuels. However, historical refiner prices for kerosene and propane are available from another EIA publication, *Petroleum Marketing Monthly* (PMM), DOE/EIA–0380. Referring to Table 2 of the July 1988 issue of the *PMM*, DOE obtained refiner average sales prices to end users for kerosene and propane for 1987. To forecast a 1989 representative average unit cost for kerosene, DOE made the assumption that the percentage change in 1989 from the 1987 annual average (last complete year of available data) for No. 2 heating oil prices to residential customers (which can be calculated from Table 5 of the *Outlook*) would be applied to kerosene. Propane prices were assumed to change at the same rate as the residential price of natural gas (which also can be calculated from Table 5 of the *Outlook*). Refiner prices to end users for kerosene and propane were used since, of the comparable recent data available, these are believed to be most representative of prices to residential consumers.

The 1989 representative average unit costs stated in Table 1 are provided pursuant to section 323(b)(4) of the Act and will become effective January 6, 1989. They will remain in effect until further notice.

Issued in Washington, DC, November 30, 1988.

John R. Berg,

Assistant Secretary, Conservation and Renewable Energy.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (1989)

Type of energy	In common terms	As required by test procedure	Dollars per million Btu [1]
Electricity	7.70¢/kWh [2] [3]	0.0770/kWh	$22.57
Natural Gas	55.20¢/therm [4] or $5.68/MCF [5] [6]	0.00000552/Btu	5.52
No. 2 Heating Oil	$0.78/gallon [7]	0.00000562/Btu	5.62
Propane	$0.72/gallon [8]	0.00000788/Btu	7.88
Kerosene	$0.75/gallon [9]	0.00000555/Btu	5.55

[1] Btu stands for British thermal unit.
[2] kWh stand for kilowatt hour.
[3] 1 kWh = 3,412 Btu.
[4] 1 therm = 100,000 Btu.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,029 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. 88–28166 Filed 12–6–88; 8:45 am]
BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Adminstration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

DATE: Comments must be filed within 30 days of publication of this notice.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION CONTACT: Carole Patton, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA–213, 412, 759, 826, 860, and 861.
3. 1905–0129.
4. Electric Power Surveys.
5. Revision—The purpose of this request is to revise the following form, EIA–861, "Annual Electric Utility Report." The revision is necessary in order to establish and maintain a nonutility power producer frame and to identify utility expansion plans in this area. Question 1a asks the name, address, and telephone number of each nonutility electric power producer that is electrically connected and has the ability to supply electricity to the reporting electric utility. Question 1b asks the name, address, and telephone number of each nonutility electric power producer that will be electrically connected and has the ability to supply electricity to the reporting electric utility. Question 2 asks the reporting electric utility the total capacity it had available under contract from nonutility electric power producers at the end of the reporting period. Question 3 asks the reporting electric utility the total capacity it expects to have available under contract from nonutility electric power producers five years from the end of the current reporting period. (No changes are being proposed to the other forms in this program nor is any request being proposed at this time to extend any of these forms beyond the currently approved date of December 31, 1989.)
6. Monthly and Annually.
7. Mandatory.
8. Businesses or other for profit.
9. 6,938 respondents annually.
10. 19,313 respondents annually.
11. The estimated average hours per response for each of the Electric Power Surveys are: EIA–213, 5.753 hours; EIA–412, 31.796 hours; EIA–759, 1.404 hours; EIA–826, 3.36 hours, EIA–860, 16.142 hours; and EIA–861, 7.288 hours.
12. This revsion will add 232 hours of annual burden to the currently approved total of 83,767 hours for this program. See item 5 above.
13. The Electric Power Surveys collect information on capacity, generation, fuel consumption, receipts and stocks, prices, electric rates, typical electric bills, construction costs, operating income and revenue of electric utility companies. Data are published in various EIA reports. Respondents are primarily electric utilities.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, December 1, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88–28167 Filed 12–6–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER89–78–000 et al.]

Boston Edison Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

December 1, 1988.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ER89–78–000]

Take notice that on November 23, 1988, Boston Edison Company (Edison) tendered for filing supplemental Exhibits A to a Service Agreement for Braintree Electric Light Department (Braintree), under its FERC Electric Tariff, Original Volume No. III, Non-Firm Transmission Service (the Tariff). The Exhibits A specifies the amount and duration of transmission service required by Braintree under the Tariff.

Edison requests waiver of the Commission's notice requirements to permit the Exhibits A to become effective as of the commencement date of the transactions of which they relate, November 1, 1988.

Edison states that it has served the filing on Braintree and the Massachusetts Department of Public Utilities.

Comment date: December 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Company

[Docket No. ER89–79–000]

Take notice that on November 23, 1988, Boston Edison Company (Edison) tendered for filing supplemental Exhibits A to a Service Agreement for Hingham Municipal Lighting Plant (Hingham), under its FERC Electric Tariff, Original Volume No. III, Non-firm Transmission Service (the Tariff). The Exhibits A specifies the amount and duration of transmission service required by Hingham under the Tariff.

Edison requests waiver of the Commission's notice requirements to permit the Exhibits A to become effective as of the Commencement date of the transactions of which they relate, November 1, 1988.

Edison states that it has served the filing on Hingham and the Massachusetts Department of Public Utilities.

Comment date: December 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Boston Edison Company

[Docket No. ER84–705–010]

Take notice that on November 21, 1988, Boston Edison Company (Edison) tendered for filing its Compliance Refund Report pursuant to the Commisson's order issued March 25, 1988 and a letter from the Commission dated October 7, 1988.

Comment date: December 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, The Toledo Edison Company (CAPCO Group).

[Docket No. ER89–75–000]

Take notice that on November 22, 1988, the CAPCO Group filed Appendix 8 as a supplement to Schedule E of the CAPCO Basic Operating Agreement, as amended September 1, 1980, which is on file for each listed company:

Company	FERC rate schedule no.
The Cleveland Electric Illuminating	15
Duquesne Light Co.	15
Ohio Edison Co.	144
Pennsylvania Power Co.	35
The Toledo Edison Co.	27

Appendix 8 to Schedule E of the CAPCO Basic Operating Agreement provides that the basis for the determination of charges applicable to Unit Capacity and Energy transactions by the CAPCO member companies from Beaver Valley Unit No. 2. The services and compensation for Unit Capacity and Energy transactions from base load charges from particular CAPCO Units being set forth in Appendices to Schedule E. It is requested that Appendix 8 become effective as of November 1, 1988.

Comment date: December 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Minnesota Power & Light Company

[Docket No. ER87-476-002]

Take notice that on November 21, 1988, Minnesota Power & Light Company (MP&L) tendered for filing a compliance report in accordance with the Commission's order issued November 4, 1988.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: December 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Orange and Rockland Utilities, Inc.

[Docket No. ER89-74-000]

Take notice that on November 21, 1988, Orange and Rockland Utilities, Inc. (O&R) tendered for filing proposed changes in its Power Supply Agreement with Pike County Light & Power Company, Rate Schedule FERC No. 55. This filing proposes to change the return on equity to 13.7 percent in two phases. Phase I rates, as proposed, would change the return on equity to 12.39 percent effective on November 17, 1988 (if requested waivers are granted), but not later than January 20, 1989 (if requested waivers are denied). Phase II rates, as proposed, would change the return on equity to 13.7 percent effective January 22, 1989. The return on equity is one component of the return on investment applied to utility plant serving a joint use function as between the two companies. The change in the return on equity is necessary to reflect current economic conditions as they affect the cost of capital.

Copies of filing were served upon the New York State Public Service Commission, the Pennsylvania Public Utility Commission and the Office of the Consumer Advocate in Pennsylvania.

Comment date: December 15, 1988, in accordance with Standard Paragraph E at the end of this document.

7. Orange and Rockland Utilities, Inc.

[Docket No. ER89-73-000]

Take notice that on November 21, 1988, Orange and Rockland Utilities, Inc. (O&R) tendered for filing proposed changes in its Power Supply Agreement with Rockland Electric Company, Rate Schedule FERC No. 56. This filing proposes to change the return on equity to 13.7 percent in two phases. Phase I rates, as proposed would change the return on equity to 12.39 percent effective on November 17, 1988 (if requested waivers are granted), but no later than January 20, 1989 (if requested waivers are denied). Phase II rates, as proposed, would change the return on equity to 13.7 percent effective January 22, 1989. The return on equity is one component of the return on investment applied to utility plant serving a joint use function as between two companies. The change in the return on equity is necessary to reflect current economic conditions as they affect the cost of capital.

Copies of the filing were served upon the New York State Public Service Commission, the New Jersey Board of Public Utilities and the Department of the Public Advocate (Division of Rate Counsel) in New Jersey.

Comment date: December 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

Comment date: Deceomer

8. Southern California Edison Company

[Docket No. ER89-77-000]

Take notice that on November 23, 1988, Southern California Edison Company (Edison) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 195, 1987-1988 Edison Vernon CDWR Firm Transmission Service Agreement between Edison and the City of Vernon, California.

Edison states that the services under this Agreement was to remain in force and effect until December 31, 1988.

Comment date: December 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Central Louisiana Electric Company, Inc.

[Docket No. ES89-8-000]

Take notice that on November 25, 1988, Central Louisiana Electric Company, Inc. (Applicant), filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking authorization to issue not more than $90,000,000 of short-term debt on or before December 31, 1990, with a final maturity date no later than December 31, 1991.

Comment date: December 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. E.F. Oxnard, Inc.

[Docket No. QF86-968-002]

On November 14, 1988, E.F. Oxnard, Inc. (Applicant) of 401 B Street, Suite 1000, San Diego, California 92101 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility was originally certified on October 22, 1987. *E.F. Oxnard, Inc.*, Docket No. QF86-968-001, 41 FERC ¶ 62,073 (1987). Under the instant application, recertification is sought because of the following changes in the facility: (1) where the facility originally consisted of a General Electric MS-6000 combustion turbine generator set with a dual pressure heat recovery steam generator and an extraction/condensing steam turbine generator, it will now consist of a General Electric LM5000 STIG combustion turbine generator set with a three pressure level heat recovery steam generator; (2) the net electric power production capacity of the facility will decrease from 48.1 MW to 47.5 MW; and (3) where the original certification specified that steam would be sold to Oxnard Frozen Foods Cooperative for use in absorption chillers, the instant application states that steam will also be sold to Western Precooling Systems for use in a steam jet ejector vacuum system for the precooling of vegetables, to Terminal Freezers for use in absorption refrigeration storage of fruits, vegetables, fish and other food products, and to Pacific Linen for use in laundry services. The primary energy source is natural gas. Construction of the facility is expected to begin in early 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

11. Chalk Cliff Limited

[Docket No. QF87-132-001]

On November 21, 1988, Chalk Cliff Limited (Applicant), a Texas limited partnership of 9432 Old Katy Road, Suite 200, Houston, Texas 77055 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California. The facility will consist of a combustion turbine generator and a heat recovery steam generator. Thermal energy recovered from the facility will be used for enhanced oil recovery operation.

The original application was filed on December 10, 1986 by Chalk Cliff CoGen, Inc. (CCCI) and was granted on March 23, 1987; 38 FERC ¶62,290. The recertification is requested due to change in ownership and increase in

electric power production capacity of the facility. The ownership interest will change from CCCI to Clalk Cliff Limited, a Texas limited parthership consisting of CCCI, Dominion Cogen, CA, Inc., an indirect wholly-owned subsidiary of Dominion Resources, Inc. (an exempt public utility holding company), Dominion Energy, Inc., a wholly-owned subsidiary of Dominion Resources, Inc. and SJC Cogen, Inc. The net electric power production capacity will increase from 44.453 MW to 45.058 MW. Installation of the facility is expected to begin by October 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR. Doc. 88–28137 Filed 12–6–88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9676–001]

David Davison; Surrender of Preliminary Permit

December 1, 1988.

Take Notice that David Davison, Permittee for the Galloway Ridge Hydropower Project No. 9676, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9676 was issued May 10, 1986, and would have expired April 30, 1989. The project would have been located on an unnamed tributary to the North Yuba River in Sierra County, California.

The Permittee filed the request on May 9, 1988, and the preliminary permit for Project No. 9676 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR. Doc. 88–28138 Filed 12–6–88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2466 Virginia]

Appalachian Power Co.; Intent To File an Application for a New License

December 1, 1988.

Take notice that on November 8, 1988, Appalachian Power Company, the existing licensee for the Niagara Hydroelectric Project No. 2466, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2466 was issued effective March 1, 1968, and expires December 31, 1993.

The project is located on the Roanoke River in Roanoke County, Virginia. The principal works of the Niagara Project include a 52-foot-high, 452-foot-long concrete dam with a crest elevation at 885 feet m.s.l.; a reservoir of about 85 acres; a powerhouse with an installed capacity of 2,400 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at G. O. Hydro Department, 40 Franklin Road, Roanoke, Virginia 24022.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28139 Filed 12–6–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88–217–006]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 1, 1988.

Take notice that CNG Transmission Corporation ("CNG"), on November 28, 1988, pursuant to section 4 of the Natural Gas Act, the Commission's September 30, 1988, and August 12, 1988, orders in this docket, and Section 12.9 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Original Sheet Nos. 49 and 160H.

First Revised Sheet Nos. 46, 47, 48, and 160G.

Second Revised Sheet Nos. 40, 41, 42 and 160A.

Substitute Original Sheet No. 160G.

Substitute First Revised Sheet No. 160C.

The proposed effective date for the original and revised tariff sheets is December 1, 1988. The proposed effective date for the substitute sheets is August 1, 1988.

CNG states that the purpose of the filing is to change its take-or-pay passthrough provisions to reflect modifications and additions to Order No. 500 buyout and buydown costs that have been made recently by CNG's pipeline suppliers. The filing also corrects references to the refund provisions of the Commission's PGA regulations as was required by the Commission's September 30, 1988, order in this docket.

Copies of the filing were served upon GNG's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protect or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211). All motions or protests should be filed on or before December 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28140 Filed 12-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-32-000]

Florida Gas Transmission Co.; Filing

December 1, 1988.

Take notice that on November 23, 1988, Florida Gas Transmission Company (FGT) filed a motion for a limited waiver of section 4 (Minimum Bill) of its Rate Schedule G on behalf of the Utilities Board of the City of Florala, Alabama, for the contract year from October 1, 1986 through September 30, 1987.

FGT states that it has an effective service agreement with Florala which is dated before June 25, 1984, the effective date of Original Sheet Nos. 51 and 52 in Volume No., 1 of FGT's FERC Gas Tariff which contains section 16—Schedule of Effective Minimum Annual Contract Quantity. Thus, the Minimum Annual Quantities (MAQ) set forth in Section 16 are currently effective, FGT states that it determined that Florala had taken less than its applicable MAQ during the period October 1, 1986, to September 30, 1987, and sent an invoice to Florala for the deficiency. Florala requested that FGT grant relief from the minimum bill provisions of Rate Schedule G.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protect with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protects should be filed on or before December 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28141 Filed 12-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-1-13-001]

Gas Gathering Corp.; Tariff Filing

December 1, 1988.

Take notice that on November 25, 1988, Gas Gathering Corporation ("GGC") tendered for filing Third Revised Sheet No. 4 to First Revised Volume No. 1 of its FERC Gas Tariff.

The proposed effective date is October 20, 1988.

GGC states that it filed changes to its FERC Gas Tariff on September 20, 1988, which among other things provided for a unit surcharge thereby permitting GGC to collect from its customers the annual charges assessed by the Commission under § 382.202 of its Regulations.

GGC further states that due to arithmetical and clerical errors, the rate reflected in the filing was expressed as .0018 cents per MMBtu. The rate should have reflected an amount of .18 cents per MMBtu. Thus, states GGC, the instant filing is made to correct the error present on its Second Revised Sheet No. 4 to reflect the correct rate of .18 cents per MMBtu.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulation Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28142 Filed 12-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1494-002]

Grand River Dam Authority, Issuance of Annual License

December 1, 1988.

On December 23, 1985, the Grand River Dam Authority (GRDA), licensee for the Pensacola Hydropower Project No. 1494 filed an application for a new license pursuant to the provisions of the Federal Power Act and the Commission's regulations thereunder. Project No. 1494 is located on the Grand River in Mayes, Craig, Delaware and Ottawa Counties, Oklahoma.

The license for Project No. 1494 was issued for a period ending December 31, 1988. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, an annual license must be issued to the Grand River Dam Authority pursuant to section 15(a) of the Federal Power Act, 16 U.S.C. 808(a).

Take notice that an annual license is issued to the GRDA for a period effective January 1, 1989, to December 31, 1989, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 1494, subject to terms and conditions of the original license.

Take further notice that if issuance of a new license does not take place on or before December 31, 1989, an annual license will be issued each year thereafter, effective January 1, of each year, until such time as a new license is issued, without further notice being given by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28143 Filed 12-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2551 Michigan]

Indiana Michigan Power Co.; Intent To File an Application for a New License

December 1, 1988.

Take notice that on November 8, 1988, Indiana Michigan Power Company, the existing licensee for the Buchanan Hydroelectric Project No. 2551, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2551 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the St. Joseph River in Berrien County, Michigan. The principal works of the Buchanan Project include a 13-foot-high, 387-foot-long dam with a spillway crest elevation at 634.07 feet m.s.l.; a reservoir of about 300 acres; a powerhouse with an installed capacity of 4,105 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No.

496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Hydro Generation, 13840 East Jefferson Road, Mishawaka, Indiana 46545, telephone (219) 255–8946.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28144 Filed 12–6–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–104–004]

Midwestern Gas Transmission Co.; Tariff Filing

December 2, 1988.

Take notice that on November 28, 1988, Midwestern Gas Pipeline Company (Midwestern) tendered for filing the following tariff sheets to Original Volume I of this FERC Gas Tariff to be effective June 1, 1988:

Original Volume No. 1

Fourth Revised Sheet No. 161.
Fourth Revised Sheet No. 162.
Sixth Revised Sheet No. 163.
Fifth Revised Sheet No. 164.
Second Revised Sheet No. 164A
Fourth Revised Sheet No. 165.
Third Revised Sheet No. 165A.
Fourth Revised Sheet No. 166.
Fifth Revised Sheet No. 167.
Fifth Revised Sheet No. 169.
Fourth Revised Sheet No. 169A.
Third Revised Sheet No. 169B.
Second Revised Sheet No. 169C.
Second Revised Sheet No. 169D.

Midwestern states it is filing revisions to the PGA clauses for its Northern and Southern Systems to comply with the Order of the Director (OPPR) in the referenced docket on October 28, 1988.

Midwestern states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20425, in accordance with Rules 211 and 214 of the Commisson's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Secretary.

[FR Doc. 88–28145 Filed 12–6–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA88–3–25–003 Docket No. RP89–12–001]

Mississippi River Transmission Corp.; Tariff Filing

December 2, 1988.

Take notice that on November 28, 1988 Mississippi River Transmission Corporation ("MRT") tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Tariff sheet	Proposed effective date
First Revised Sheet No. 4A.1	Dec. 1, 1988.
First Revised Sheet No. 4A.2	Nov. 28, 1988.
Alternate First Revised Sheet No. 4A.2.	Nov. 28, 1988.
Sixth Revised Sheet No. 62	Nov. 28, 1988.
Alternate Sixth Revised Sheet No. 62.	Nov. 28, 1988.

MRT states that the purpose of its filing is to reflect the flow-through of additional fixed take-or-pay charges allocated to MRT by Natural Gas Pipeline Company of America ("Natural") in Docket No. RP88–94–010 and Trunkline Gas Company ("Trunkline") in Docket No. RP89–11–000.

MRT states that it is allocating the additional fixed take-or-pay charges it will be billed by Natural to its jurisdictional sales customers by utilizing the same cumulative purchase deficiency methodology used by it for allocation of Natural's initial take-or-pay costs in Docket No. TA88–3–25–000, *et al.*, which methodology was required and accepted by Commission order dated June 1, 1988. MRT claims that the impact of such additional take-or-pay charges on its jurisdictional customers is an annual increase of approximately $1.9 million.

MRT further states that its filing includes a primary tariff sheet which utilizes a Demand Component D–1 allocation methodology for the flow-through of Trunkline's take-or-pay charges. MRT asserts that the impact of the primary tariff sheet on its jurisdictional sales customers is approximately $265,000 annually. MRT states that its filing also contains an alternate tariff sheet which reflects utilization of the cumulative purchase deficiency allocation methodology for the flow-through of Trunkline's take-or-pay charges. MRT states that the impact of its alternate tariff sheet on its jurisdictional sales customers is approximately $219,000 annually.

MRT states that copies of its filing have been served on all jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28146 Filed 12–6–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2536 Wisconsin & Michigan]

Niagara of Wisconsin Paper Corp.; Intent To File an Application for a New License

December 1, 1988.

Take notice that on June 14, 1988, Niagara of Wisconsin Paper Corporation, the existing licensee for the Little Quinnesec Falls Hydroelectric Project No. 2536, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project

No. 2536 was issued effective July 1, 1943, and will expire June 30, 1993.

The project is located on the Menominee River in Marinette County, Wisconsin, and Dickinson County, Michigan. The principal works of the Little Quinnesec Project include a concrete dam; a reservoir of 320 acres; a 350-foot-long, 16-foot-diameter steel penstock; a powerhouse with an installed capacity of 8,388 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE.; Washington, DC 20426. The above information as described in the rule is now available from the licensee at 1101 Mill Street, Niagara, WI 54151, Attn: Mr. William R. Roberts, telephone (715) 251-3151.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 29, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28147 Filed 12-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2337-001]

Pacific Power and Light Co.; Issuance of Annual License

December 1, 1988.

On December 24, 1985, the Pacific Power and Light Company (PP&LC), licensee for the Prospect No. 3 Hydroelectric Project No. 2337 filed an application for a new license pursuant to the provisions of the Federal Power Act and the Commission's regulations thereunder. Project No. 2337 is located on the South and Middle Forks of Rogue River and Imnaha and Daniels Creeks, in Jackson County, Oregon.

The license for Project No. 2337 was issued for a period ending December 31, 1988. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, an annual license must be issued to the Pacific Power and Light Company pursuant to section 15(a) of the Federal Power Act, 16 U.S.C. 808(a).

Take notice that an annual license is issued to PP&LC or its transferee [1] for a period effective January 1, 1989, to December 31, 1989, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 2337, subject to terms and conditions of the original license.

Take further notice that if issuance of a new license does not take place on or before December 31, 1989, an annual license will be issued each year thereafter, effective January 1, of each year, until such time as a new license is issued, without further notice being given by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28148 Filed 12-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-227-004]

Paiute Pipeline Co.; Proposed Revised Tariff Sheets

December 2, 1988.

Take notice that Paiute Pipeline Company (Paiute) on November 25, 1988, tendered for filing First Revised Sheet Nos. 10, 69 and 70 applicable to its FERC Gas Tariff, Original Volume No. 1-A. Paiute states that the purpose of said filing is to comply with the Commission's order issued October 28, 1988 in Docket Nos. RP88-227-000, RP88-227-002, RP88-227-003, CP87-309-004 and CP87-309-005 which, in part, directed Paiute to revise its transportation tariff concerning the general liability of Paiute for deliverability in order to be consistent with its sales tariff dealing with the same issues. Paiute further states that it has incorporated a revision to the (1) annual charge adjustment (ACA) surcharge amount in order to recover the Commission's annual charges for the 1988 fiscal year; and (2) effective date of ACA filings from November 1 to October 1 in order to coincide with the Commission's fiscal year.

Paiute has requested waiver of the notice requirements and any other applicable Commission regulations as may be necessary so as to permit First Revised Sheet Nos. 10 and 70, which reflect the ACA revisions, to become effective October 1, 1988; and First Revised Sheet No. 69 submitted in compliance with the aforementioned Commission order to become effective November 1, 1988.

Paiute states that copies of this filing have been mailed to the Nevada Public Service Commission, the California Public Utilities Commission, Southwest Gas Corporation, Sierra Pacific Power Company and CP National Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 9, 1988.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28149 Filed 12-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2689 Wisconsin]

Scott Paper Co.; Intent To File an Application for a New License

December 1, 1988.

Take notice that on November 3, 1988, Scott Paper Company, the existing licensee for the Oconto Falls Hydroelectric Project No. 2689, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The orginal license for Project No. 2689 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Oconto River in Oconto County, Wisconsin. The principal works of the Oconto Falls Project include a 425-foot-long rubble

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[1] *See* PacifiCorp, d.b.a. Pacific Power & Light Company, 45 FERC ¶ 62,146 (1988). The license transfer for Project No. 2337 is an element of the merger of Pacific Power & Light Company and Utah Power & Light Company. Approval of the transfer is conditioned upon acceptance of and compliance with all terms and conditions imposed by the Commission in Opinion No. 318, issued October 26, 1988, in Docket No. EC88-2-000.

masonry dam with concrete abutments; a reservoir of about 15 acres at normal water surface elevation of 701.6 feet m.s.l.; two powerhouse with a combined installed capacity of 1810 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b) (2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 106 E. Central Avenue, Oconto Falls, Wisconsin 54154.

Pursuant to section 15 (c) (1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28150 Filed 12–6–88; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Colorado River Storage Project Proposed Adjustment of Firm Transmission Rate

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed adjustment of firm transmission rate.

SUMMARY: The Western Area Power Administration (Western) is proposing to adjust the Colorado River Storage Project (CRSP) firm transmission rate. The proposed adjustment would increase the firm transmission rate from the present $15.94 to $22.35 per kilowatt-year.

The proposed adjustment is estimated to increase FY 1989 CRSP revenues by $826,890, as compared to the total FY 1989 anticipated revenues for the entire system of $100,300,432. The rate adjustment results in a change of less than 1 percent in annual revenues for the CRSP, and therefore is a minor rate adjustment as defined by the current procedures for public participation in rate adjustments (10 CFR 903.2(f)). A brochure will be distributed in early December to all CRSP power and transmission system customers and other interested parties, and a combined public information and comment forum will be held in accordance with the current procedures for public participation in rate adjustments.

Need for Rate Adjustment

In the 1985 transmission system rate study, total CRSP transmission investment was projected to reach $357,540,618 by 1988 (the last year in the 1985 study). In the current 1988 transmission system rate study, additional transmission facilities planned to improve system reliability, to better manage inadvertent powerflows from other systems, and to conserve fuel by better coordination of thermal and hydro resources bring the projected 1991 transmission system investment to $410,976,726 (the last year in the current study). The current study shows that the system additions, along with associated increases in operations, maintenance, and replacement expenses, require a rate adjustment from the current $15.94 to the proposed $22.35 per kilowatt-year. The current rate expires on June 30, 1989.

Additional information in support of the need for and derivation of the proposed rate adjustment is explained in detail in the brochure.

DATES: The proposed adjustment of the CRSP firm transmission rate is expected to be effective for a 3-year period beginning on July 1, 1989. Western will outline the reasons for the rate increase, and the public will be given an opportunity to ask questions and comment orally or in writing at a combined public information and comment forum which will be held: January 19, 1989, 1:30 p.m., Red Lion Inn, 255 South West Temple, Salt Lake City, Utah. Interested persons will be given an opportunity to consult with and make comments to Western during the consultation and comment period that begins on the date of publication of this notice and ends 60 days thereafter or 15 days after the close of the combined public information and comment forum, whichever is later. Written comments may be submitted to the address below and should be received at that address by February 3, 1989.

ADDRESS: Written comments, as well as requests for further information, may be submitted to the following address throughout the consultation period: Mr. Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, Utah 84147, telephone (801) 524–6372.

SUPPLEMENTARY INFORMATION: Transmission rates for CRSP are established pursuant to the Department of Energy Organization Act of August 4, 1977 (42 U.S.C. 7101, *et seq.*); Colorado River Storage Project Act (43 U.S.C. 620, *et seq.*); the Reclamation Act of 1902 (43 U.S.C. 372, *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C 485h(c)); and the acts specifically applicable to the project or system involved.

By Delegation Order No. 0204–108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), the Secretary of Energy delegated to the Administrator of Western the authority to develop long-term power and transmission rates; to the Under Secretary of the Department of Energy the authority to confirm, approve, and place such rates in effect on an interim basis; and to the Federal Energy Regulatory Commission the authority to confirm, approve, and place in effect on a final basis, to remand or to disapprove such rates. The Secretary of Energy, in a notice dated October 27, 1988, transferred the authority to place Western's rates into effect on an interim basis from the Under Secretary to the Deputy Secretary.

Procedures for public participation in rate adjustments by Western (10 CFR Part 903) were published in the **Federal Register** (50 FR 37835) on September 18, 1985.

Availability of Information

Information regarding this rate adjustment including studies, comments, and other supporting material is available for public review in the Salt Lake City Area Office, Western Area Power Administration, 438 East 200 South, Suite 2, Salt Lake City, Utah 84111; in the Office of the Director of Marketing and Rates, Western Area Power Administration, 1627 Cole Boulevard, Golden, Colorado 80401; and in the Office of the Assistant Administrator for Washington Liaison, Room 8G061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Environmental Compliance

Western will conduct an analysis of the proposed rate pursuant to the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations, and section D of the Department of Energy guidelines published in the **Federal Register** (52 FR 47662) on December 15, 1987.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) each agency, when required by 5 U.S.C. 553 to

publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the rate adjustment relates to nonregulatory services provided by Western.

Under 5 U.S.C. 601(2), rates or services of particular applicability are not considered "rules" within the meaning of the Act. Because the proposed rate is of limited applicability and is being set in accordance with specific legislation under particular circumstances, no flexibility analysis is required.

Determination Under Executive Order 12291

The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981). In addition, Western is exempt from sections 3, 4, and 7 of Executive Order 12291.

Conclusion

Following the consultation and comment period and after consideration of comments received, the Deputy Secretary will issue a rate order confirming and approving a transmission rate to be placed in effect on an interim basis and will promptly submit such rate to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Issued at Golden, Colorado, November 23, 1988.

William H. Clagett,

Administrator.

[FR Doc. 88-28168 Filed 12-6-88; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

November 30, 1988.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501 *et seq.*).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0259.

Title: Section 90.263, Substitution of frequencies below 25 MHz.

Action: Extension.

Respondents: Businesses and state and local governments.

Frequency of Response: On occassion.

Estimated Annual Burden: 60 responses; 30 hours; 30 minutes each.

Needs and Uses: This rule requires an applicant to make a special showing to demonstrate safety-of-life reasons why frequencies above 25 MHz will not meet the applicant's operational requirements. The Commission uses this information to evaluate the applicant's need for such frequencies and the interference potential to other stations operating on the proposed frequencies.

OMB Number: 3060-0221.

Title: Section 90.155(b), Time in which station must be placed in operation (exceptions).

Action: Extension.

Respondents: State or local governments.

Frequency of Response: On occasion.

Estimated Annual Burden: 55 responses; 55 hours; 1 hour each.

Needs and Uses: State and local governments may, upon a showing of need, take more than eight months to place their stations in operation. The Commission uses this information to determine if the exception to the eight month requirement is warranted.

OMB Number: 3060-0218.

Title: Section 90.41(b), Disaster relief organizations "Special eligibility showing."

Action: Extension.

Respondents: Non-profit institutions and small businesses.

Frequency of Response: On occasion.

Estimated Annual Burden: 75 responses; 13 hours; 10 minutes each.

Needs and Uses: This rule is used to establish the eligibility of disaster relief organizations for Special Emergency Radio Service frequencies that are primarily used for emergency medical services. The Commission uses this information to ensure efficient communications operations.

OMB Number: 3060-0224.

Title: Section 90.151, Requests for waiver.

Action: Extension.

Respondents: Individuals or households, state or local governments, businesses (including small businesses), and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 60 responses; 120 hours; 2 hours each.

Needs and Uses: Applicants that request waiver of various rules must submit justification for the proposed waiver. This is necessary to enable the Commission to make an informed decision on requests.

OMB Number: 3060-0261.

Title: Section 90.215, Transmitter measurements.

Action: Extension.

Respondents: Individuls or households, state or local governments, businesses (including small businesses), and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 129,900 recordkeepers; 4,287 hours; 2 minutes each.

Needs and Uses: Rule requires technical measurements on each transmitter upon initial installation. Requirement helps ensure proper operation of transmitters, thereby reducing instances of interference.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-28132 Filed 12-6-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1760]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

December 1, 1988.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed Insert date of 16 days after FR. Pub. date. See § 1.4(b)(1) of the Commission's rules (47 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (New Ulm, Bryan, Huntsville, Cameron, Creedmoor and La Grange, Texas. (MM Docket No. 87-209, RM's 5700, 5768, 5926, 6079 & 6080); Number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast

Stations. (Albert Lea, Red Wing and Stewartville, Minnesota) (MM Docket No. 87–306, RM's 5837, 6120 & 6121); Number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (West Palm Beach, Florida) (MM Docket No. 87–438, RM–5894); Number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Oakdale, Tioga and West Monroe, Louisiana) (MM Docket No. 88–47, RM's 5977, 6148, 6364 & 6365); Number of petitions received: 2.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Vero Beach, Florida) (MM Docket No. 88–111, RM–5359)

Filed By: John C. Quale & Jerry V. Haines, Attorneys for Gilmore Boardcasting Corporation, (WLVE–FM) on 11–22–88).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88–28133 Filed 12–6–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Miami Valley Worldwide, Inc., 2382 South Dixie Drive, Dayton, OH 45409. Officers: John Francis Sweeney, President, Michael J. Serrney, Vice President

IPS Freight Services Limited, 1060 Randolph Road, Rahway, NJ 07065. Officers: Peter Maybury, President/Treasurer, Terri Brennan, Director/Stockholder, Andrew Finn, Director/Stockholder

Future Freight Systems, Inc., 48 Third Street, South Kearny, NJ 07032. Officers: Joseph Sade, President/Director/Stockholder, Owen Stewart, Vice President

MBC Freight Consultants (USA), Inc., 515 Saratoga Street, E. Boston, MA 02128. Officers: Christopher Staub, President, Leo Staub, Director, Timothy Staub, Director

Phoenix Global Services, Inc., Unit A–129 The Commons at Chadds Ford, Chadds Ford, PA 19139. Officers; Jamal Abu-Hakemeh, President, Steven G. Sewell, Exec. Vice President, Khalil Hamid, Exec. Vice President

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: December 2, 1988.

[FR Doc. 88–28159 Filed 12–6–88; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Vaccine Injury Compensation Program; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 39409–24, August 31, 1982, as amended most recently at 53 FR 34588, September 7, 1988) is amended to reflect the establishment of the National Vaccine Injury Compensation Program under Part A (42 U.S.C. 300aa–10 et seq.) and Part D (42 U.S.C. 300aa–31 et seq.), Subtitle 2, Title XXI of the Public Health Service Act, as amended, within the Bureau of Health Professions, Health Resources and Services Administration.

Under HB–10, Organization and Functions, amend the functional statements for the *Bureau of Health Professions (HBP)* by deleting the "and" after item number (11), changing the period after item number (12) to a semicolon, and adding the following after item number (12): "and (13) administers the National Vaccine Injury Compensation Program."

Date: November 28, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–28097 Filed 12–6–88; 8:45 am]

BILLING CODE 4160–15–M

National Vaccine Injury Compensation Program; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, all the authorities vested in the Secretary of Health and Human Services under Part A (42 U.S.c. 300aa–10 et seq.) and Part D (42 U.S.C. 300aa–31 et seq.), Subtitle 2 of Title XXI of the Public Health Service Act, as amended, pertaining to the National Vaccine Injury Compensation Program, excluding the authority under section 2114(e) (42 U.S.C. 300aa–14) to recommend to Congress revisions to the Vaccine Injury Table to change the vaccines covered by the table in section 2114 (42 U.S.C. 300aa–14) of the Public Health Service Act, as amended. Also excluded were the authority to promulgate regulations, to appoint members of the Advisory Commission under section 2119 (42 U.S.C. 300aa–19), and the authority to submit reports to the Congress.

This delegation became effective upon the date of signature. In addition, notification is hereby given that, effective on the date of this delegation, I have affirmed and ratified any actions taken by the Assistant Secretary for Health and his subordinates which involved the exercise of the delegated authorities prior to the effective date of delegation.

Date: November 28, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–28098 Filed 12–6–88; 8:45 am]

BILLING CODE 4160–15–M

Food and Drug Administration

[Docket No. 88F–0376]

M&T Chemicals, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that M&T Chemicals, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of hydrated monobutyltin oxide, monobutyltin trioctoate, and dibutyltin oxide in the production of polyester resins to be used in resinous and polymeric coatings and cross-linked polyester resins. The polyesters are intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4113) has been filed by M&T Chemicals, Inc., c/o 1150 17th St. NW., Washington, DC 20036, proposing

that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) and § 177.2420 *Polyester resins, cross-linked* (21 CFR 177.2420) be amended to provide for the safe use of hydrated monobutyltin oxide, monobutyltin trioctoate, and dibutyltin oxide in the production of polyester resins to be used in resinous and polymeric coatings and cross-linked polyester resins. The polyesters are intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 18, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-28090 Filed 12-6-88; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: *Nashville District Office*, chaired by Hayward Mayfield, District Director. The topic to be discussed is the tampon absorbency labeling.

DATE: Monday, December 12, 1988, 1:30 p.m. to 3 p.m.

ADDRESS: FDA District Office, 297 Plus Park Blvd., Nashville, TN 37217.

FOR FURTHER INFORMATION CONTACT: Sandra Baxter, Consumer Affairs Officer, Food and Drug Administration, 297 Plus Park Blvd., Nashville, TN 37217, 615-736-2088.

SUPPLEMENTARY INFORMATION: The purpose of this meeting 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: December 1, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-28091 Filed 12-6-88; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Vaccine Injury Compensation Program; Content of Medical Records

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice to advise the public of the content of medical records to be attached to petitions for compensation of vaccine related injuries under the National Vaccine Injury Compensation Program (the "Program"). The information set forth below does not constitute a requirement for filing, as the publication of such requirements is the prerogative of the United States Claims Court, but rather provides a statement of what information PHS views as necessary for it to carry out its responsibilities under the Program.

FOR FURTHER INFORMATION CONTACT: National Vaccine Injury Compensation Program, Parklawn Building, 5600 Fishers Lane, Room 4-101, Rockville, Maryland 20857, (301) 443-6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking compensation are to file a petition with the United States Claims Court, which is responsible for adjudicating the petition. A copy of the petition is also to be served upon the Secretary of Health and Human Services, who is named as the respondent in each proceeding.

Section 2111(c)(2) of the PHS Act provides that each petition is to be accompained by:

> All available relevant medical records (including autopsy reports, if any) relating to the person who suffered such injury or who died from the administration of the vaccine and an identification of any unavailable records known to the petitioner and the reasons for their unavailability * * *.

While the United States Claims Court is responsible for issuing rules on the content of petitions and their accompanying medical and related records, PHS, as the respondent, will have the responsibility of reviewing these documents and advising the Court of its view as to whether compensation should be awarded. Accordingly, we are advising the public of the information that we would view as necessary for us to carry out this responsibility. For petitions that are not accompanied by sufficient information, we intend to request the missing materials, and if they are not provided (or an adequate explanation of their unavailability is not submitted), we may be forced to advise the Court that the records submitted are insufficient to support a determination that the petitioner is entitled to compensation.

Under the statue, the determination regarding eligibility for compensation requires examination of records related to the following: (a) The health status of the injured individual before the administration of the vaccine, (b) information related to the actual administration of the vaccine, (c) the effects of the vaccine, (d) the period in which those effects first occurred, and (e) the period for which the effects continued. Accordingly, while we recognize that not all of these materials will be relevant in each case, the materials that we would view as constituting complete medical and related records are as follows:

1. Maternal prenatal and delivery records;
2. Newborn hospital records, including all physicians' and nurses' notes and test results;
3. Vaccination records associated with the vaccine allegedly causing the injury;
4. Pre- and post-injury physician or clinic records, including all relevant growth charts and test results;
5. All post-injury outpatient records, including all provider notes, test results, and medication records;
6. If applicable, death certificate; and
7. If applicable, autopsy results (if an autopsy was conducted).

We are also requesting that petitioners make every effort to provide medical and related records that are legible. Clearly, our task of evaluating petitons will be significantly impeded if the records provided are not legible.

Section 2111(c)(3) of the PHS Act provides that petitions for compensation must also be accompanied by:

> Appropriate assessments, evaluations, and prognoses and such other records and documents as are reasonably necessary for the determination of the amount of compensation to be paid to, or on behalf of, the person who suffered such injury or who died from the administration of the vaccine.

This notice does not cover the medical and other records necessary to determine the amount of compensation once eligibility for compensation has been established. Accordingly, the Secretary (or the Department of Justice, which represents the Secretary in proceedings before the United States Claims Court) may require additional records in order to determine the amount of compensation.

Chapter 35 of Title 44, United States Code, related to paperwork reduction,

does not apply to information required for purposes of carrying out the Program.

Dated: December 2, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88-28134 Filed 12-6-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Resolution of the Hoopa Valley Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Hoopa Valley Tribe of the Hoopa Valley Indian Reservation, Hoopa, California, is required under the Hoopa-Yurok Settlement Act of October 31, 1988 (102 Stat. 2924) to adopt and transmit to the Secretary of the Interior a tribal resolution waiving any claim such tribe may have against the United States arising out of the provisions of the Act, and affirming tribal consent to the contribution of Hoopa Escrow monies to the Settlement Fund, and for their use as payments to the Yurok Tribe, and to individual Yuroks, as provided in the Act. In accordance with the Settlement Act, the resolution is to be published in the **Federal Register**. Effective with such publication the joint reservation shall be partitioned as provided in the Act.

DATE: The Settlement Act requires that the tribal resolution be published in the **Federal Register** within 60 days after the date of enactment of the Settlement Act.

FOR FURTHER INFORMATION CONTACT: Northern California Agency, Bureau of Indian Affairs, P.O. Box 494879, Redding, California, 96049-4879, telephone number: (916) 246-5141.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

Pursuant to the Hoopa-Yurok Settlement Act of October 31, 1988 (102 Stat. 2924), Section 2(a)2(B), this is official notification that the Hoopa Valley Tribe has adopted a valid resolution which meets the requirements of section 2(a)(2)(A) of the Act, and said resolution reads as follows:

"RESOLUTION OF THE HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION
HOOPA VALLEY, CALIFORNIA

RESOLUTION NO: 88-115
DATE APPROVED: November 28, 1988
SUBJECT: WAIVER OF CERTAIN CLAIMS AND CONSENT TO USES OF TRIBAL FUNDS PURSUANT TO THE HOOPA-YUROK SETTLEMENT ACT

WHEREAS: The Hoopa Valley Business Council is the governing body of the Hoopa Valley Tribe under a Constitution and Bylaws approved by the Commissioner of Indian Affairs on August 18, 1972; and

WHEREAS: The *Jessie Short* case stated that the Hoopa Valley Reservation as extended is a single reservation in which tribes lack vested rights, and accordingly the court imposed liability on the United States for past per capita distributions of revenue from the Hoopa Square which went to Hoopa Valley tribal members only; and

WHEREAS: The *Puzz* case has interpreted *Short* and applicable law in a manner which prohibits the Hoopa Valley Tribe from exercising territorial management powers over the Hoopa Square and has crippled the power of the Hoopa Valley Business Council to exercise the authorities granted under the Tribe's Constitution to administer tribal property, to expend tribal funds, to protect tribal resources, to govern non-members and generally to safeguard and promote the peace, safety and general welfare of the Hoopa Valley Tribe; and

WHEREAS: The Hoopa people have petitioned the United States Congress to enact a law confirming the Hoopa Square as the property of the Hoopa Valley Tribe and reinforcing the governmental power of the Hoopa Valley Business Council pursuant to its Constitution; and

WHEREAS: On April 26, 1988, Representative Doug Bosco introduced H.R. 4469 which, after hearings, negotiations and introduction of substitute bills, was enacted as the Hoopa-Yurok Settlement Act on October 31, 1988; and

WHEREAS: Section 2(a)(2)(A) of the Act provides:

(A) The partition of the joint reservation as provided in this subparagraph, and the ratification and confirmation as provided by section 8, shall not become effective unless, within 60 days after the date of the enactment of this Act, the Hoopa Valley Tribe shall adopt, and transmit to the Secretary a tribal resolution:

(i) Waiving any claim such tribe may have against the United States arising out of the provisions of this Act, and

(ii) Affirming tribal consent to the contribution of Hoopa Escrow monies to the Settlement Fund, and for their use as payments to the Yurok Tribe, and to individual Yuroks, as provided in this Act.

WHEREAS: The Senate Report accompanying the Act states that the waiver required by the Act does not prevent the Hoopa Valley Tribe "from enforcing rights or obligations created by this Act", S. Rep. 100-564 at 17; and

WHEREAS: The Hoopa Valley Business Council has fully considered the claims to be waived and the consent to be granted and has balanced them against the benefits offered to the Hoopa Valley Tribe under the Act including, under Section 2, the "partition of the joint reservation" so that "the unallotted trust lands and assets of the [new] Hoopa Valley Reservation shall thereafter be held in trust by the United States for the benefit of the Hoopa Valley Tribe" and, under Section 8, a declaration that "the existing governing documents of the Hoopa Valley Tribe and the governing body established and elected thereunder, as heretofore recognized by the Secretary, are hereby ratified and confirmed," and has concluded that the Tribe would best be served by complying with Section 2(a) of the Act; and

WHEREAS: The Hoopa Valley Business Council has consulted with the members of the Hoopa Valley Tribe in a duly-noticed General Meeting held on November 12, 1988, and in previous General Meetings, and has been reassured and directed by the membership to comply with the Act; and

WHEREAS: The Hoopa Valley Business Council has carefully considered the Tribe's Constitution and other tribal law and custom concerning the method by which the resolution called for by the Act should be enacted;

NOW THEREFORE BE IT RESOLVED: That the Hoopa Valley Business Council has the power under the Constitution and Bylaws of the Hoopa Valley Tribe to approve and enact the resolution required by Section 2(a) of the Hoopa-Yurok Settlement Act; and

BE IT FURTHER RESOLVED: That this resolution is not intended, and shall not be construed, so as to prevent the Hoopa Valley Tribe from enforcing rights and obligations created by the Hoopa-Yurok Settlement Act, *see* S. Rep. 100-564 at 17; and

BE IT FURTHER RESOLVED: That the Hoopa Valley Tribe hereby waives any claim the Hoopa Valley Tribe may have against the United States arising out of

the provisions of the Hoopa-Yurok Settlement Act; and

BE IT FURTHER RESOLVED: That the Hoopa Valley Tribe affirms tribal consent to the contribution of Hoopa Escrow moneys to the settlement fund and for their use as payments to the Yurok Tribe, and to individual Yuroks, as provided in the Hoopa-Yurok Settlement Act; and

BE IT FURTHER RESOLVED: That the Chairman and Secretary of the Hoopa Valley Business Council are hereby authorized, directed and empowered to sign the resolution for and on behalf of the Hoopa Valley Tribe as its act and deed.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Business Council, do hereby certify that the Hoopa Valley Business Council is composed of eight members, of which 6 were present, constituting a quorum, at a special meeting thereof, duly and specially called, noticed, convened, and held this 28th day of November, 1988, and that this resolution was adopted by a vote of 5 FOR with 0 AGAINST; and that said resolution has not been rescinded or amended in any way.

DATED THIS 28TH DAY OF NOVEMBER, 1988.

/S/ JASPER A. HOSTLER, FOR WILFRED K. COLEGROVE, CHAIRMAN HOOPA VALLEY BUSINESS COUNCIL ATTEST: DEIRDRE R. YOUNG, TRIBAL SECRETARY, HOOPA VALLEY BUSINESS COUNCIL.

35–TLT1.8/WAIVER.RS4
klb/112888"

Donald F. Asbra,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88–28294 Filed 12–6–88; 9:24 am]

BILLING CODE 4310–02–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Managemnet and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340, with copies to Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 1203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Facilities on the Outer Continental Shelf (OCS) Adjacent to California (30 CFR 250.47).

OMB Approval Number: None.

Abstract: Respondents are required to provide the Minerals Management Service (MMS) with information on emissions data and related data from existing and new facilities or modifications to existing and new facilities located on the Federal OCS adjacent to California. The MMS will use this information to identify any potential or existing pollutant emissions and evaluate the potential impact of those operations on the adjacent coastal areas of the State of California.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Federal OCS oil and gas lessees.

Estimated Completion Time: 29.6 hours.

Annual Responses: 123.

Annual Burden Hours: 3,640.

Bureau Clearance Officer: Dorothy Christopher, (703) 435–6213.

Date: November 22, 1988.

Wm. D. Bettenberg,

Associate Director for Offshore Minerals Management.

[FR Doc. 88–28092 Filed 12–6–88; 8:45am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Gulfstar Operating Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5415, Block 117, Vermilion Area, offshore Louisiana. Proposed Plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on November 29, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m. Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Emile H. Simoneaux, Jr., Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2872.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Date: November 30, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–28084 Filed 12–6–88; 8:45 am]

BILLING CODE 4310–MX–M

Bureau of Reclamation

San Xavier Development Project, Pima County, Arizona

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public hearings and notice of extension of public review on draft environmental impact statement (DEIS); INT–DES–88–50.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation has prepared a draft Environmental Impact Statement (DEIS) for the San Xavier Development Project, Arizona. The DEIS (INT–DES–88–50, dated October 26, 1988) was filed with the Environmental Protection Agency and is available to the public as specified in the Notice of Availability. The public review period for the DEIS has been extended to 90 days ending January 27, 1989. Public hearings to receive comments on the DEIS will be held as specified below.

DATES: The close of the public review period for the DEIS has been extended until January 27, 1989.

Three public hearings on the DEIS are scheduled as follows:

1. January 13, 1989, 1:00 p.m., Sells, Arizona.
2. January 13, 1989, 7:00 p.m., Tucson, Arizona.
3. January 14, 1989, 9:00 a.m., San Xavier District, Arizona.

ADDRESSES: The hearings will be held at tne following locations:

1. Sells—Tohono O'odham Nation Tribal Headquarters, Sells, Arizona.
2. Tucson—Day's Inn, 88 East Broadway, Tucson, Arizona.
3. San Xavier District Community Center—located just west of the San Xavier Mission on Mission Road, southwest of Tucson, Arizona.

Addresses for Comments and Requests to Testify:

Director, Public Affairs Office, Department of the Interior, Bureau of Reclamation, Room 7644, Washington, DC 20240; Telephone: (202) 3433–4662.

Assistant Commissioner—Resources Management, Department of the Interior, Bureau of Reclamation, Program Service Division—Environmental Services, Federal Center, Building 67, Room 638, Denver, CO 80225; Telephone: (303) 236–9336.

Regional Director, Bureau of Reclamation, Lower Colorado Regional Office, P.O. Box 427, Boulder City, NV 89005; Telephone: (702) 293–8710.

Environmental Division, Bureau of Reclamation, Arizona Projects Office, P.O. Box 9980, Phoenix, AZ 85068; Telephone: (602) 870–6760.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Rinne (Regional Environmental Officer, Lower Colorado Region), (702) 293–8560; or Dr. Wayne O. Deason (Manager, Environmental Services, Denver Federal Center), (303) 236–9336.

SUPPLEMENTARY INFORMATION: At the public hearing, oral statements will be limited to 5 minutes or less. Speakers will not be allowed to trade their time to obtain a longer presentation period; however, the presiding officer may allow any speaker additional time after all persons wishing to make comments have been heard.

Organizations and individuals wishing to make presentations should contact the Environmental Division, Arizona Projects Office at the address given below, or telephone (602) 870–6760, and announce their intention to participate. Requests for scheduled presentations at the hearings will be accepted until 4:00 p.m., January 10, 1989. Whenever possible, speakers will be scheduled according to the time preference indicated in their letter or telephone request.

Any scheduled speakers not present when called will lose their place in the scheduled order, and will be recalled after the scheduled speakers. Unscheduled speakers will be handled on a first-come, first-served basis following the scheduled presentations.

Written comments from those wishing to supplement their oral presentations, will be accepted for the record until January 20, 1989. Written comments should be addressed to the Regional Director at the address given above and should specify that the comments are to be included in the hearing record.

The DEIS analyzes the environmental consequences of the construction and operation of the San Xavier Development Project. The project is an authorized feature of the Southern Arizona Water Rights Settlement Act of 1982 (SAWRSA) (Pub. L. 97–293). The San Xavier Development Project was developed in response to the requirement in the SAWRSA to design and construct a new efficient irrigation system for agricultural purposes within the San Xavier District. The proposed project includes land leveling and construction of a main canal, pipelines, field ditches, turnouts, floodways, and operational headquarters.

The DEIS describes four alternatives: Full Development Alternative, Partial Development Alternative, Alternative 9B, and No Federal Action. The document describes the existing environment and presents the impacts of the alternative courses of action.

Construction of the project is scheduled to begin in mid-1990 with delivery of water by October 1992.

Date: November 25, 1988.

B.E. Martin,

Acting Deputy Commissioner.

[FR Doc. 88–28118 Filed 12–6–88; 8:45 am]

BILLING CODE 4310–09–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–425]

Georgia Power Co., et al.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirement of Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50 to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (the licensee) for Vogtle Electric Generating Plant, Unit 2, located at the licensee's site in Burke County, Georgia.

Environmental assessment

Identification of Proposed Action

Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50 states "Air locks opened during periods when containment integrity is not required by the plant's Technical Specifications shall be tested at the end of such period at not less than P_a." The exemption to this paragraph would relax the requirement for air lock leakage testing in that such a test would not be necessary before entering mode 4 each time that an air lock has been opened in mode 5 or mode 6. This exemption would apply to situations when the periodic 6-month test requirement of Paragraph III.D.2(b)(i) and the 3-day test requirement of Paragraph III.D.2(b)(iii) are current, no maintenance has been performed on the air lock, and the air lock is properly sealed.

Whenever maintenance has been performed on an air lock, the requirements of Paragraph III.D.2(b)(ii) must still be met. The staff's technical evaluation of this request was published in Section 6.2.6 of the Vogtle Safety Evaluation Report (NUREG–1137, June 1985 and NUREG–1137 Supplement No. 5, January 1987). This exemption is responsive to the licensee's request for exemption which is set out in the Vogtle Final Safety Analysis Report.

The Need for the Proposed Action

The proposed exemption to Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50 is needed because this requirement is not necessary in the circumstances pertaining here to achieve the underlying purpose of the rule and slows the process of returning to operation following a shutdown.

Environmental Impacts of the Proposed Action

With regard to potential radiological impacts to the general public, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. The proposed exemption would apply to situations when the periodic 6-month test requirement of Paragraph III.D.2(b)(i) and the 3-day test requirement of Paragraph III.D.2(b)(iii) of Appendix J to 10 CFR Part 50 are current, no maintenance has been performed on the air lock, and the air lock is properly sealed. Appendix J to 10 CFR Part 50 ensures that containment leak-tight integrity can be verified periodically throughout service lifetime so as to maintain containment leakage within the limits specified in the facility Technical Specifications. Meeting the above specified criteria is sufficient to achieve this purpose because it provides adequate assurance of continued leak-tight integrity of the air lock. Therefore, the proposed exemption does not affect the potential for or consequences of radiological accidents and does not affect radiological plant effluents. The exemption has no effect on non-radiological impacts of facility operation. Therefore, the Commission concludes that there are no significant environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Because we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statements (construction permit and operating license) for the Vogtle Electric Generating Plant, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of no significant impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the Vogtle Final Safety Analysis Report which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Burke County Public Library, 412 4th Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 30th day of November 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-28121 Filed 12-6-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-285]

Omaha Public Power District; Fort Calhoun Station Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-40 issued to the Omaha Public Power District (OPPD or the licensee), for the operation of Fort Calhoun Station, Unit 1, located in Washington County, Nebraska.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) to support Cycle 12 operation.

The proposed action is in accordance with the licensee's application dated September 2, 1988, as supplemented November 22, 1988.

The Need for the Proposed Action

The proposed changes are needed to allow the licensee to support Cycle 12 operation with extended fuel irradiation levels.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications and the increase in the burnup limits for the fuel. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The increased burnup may slightly change the mix of fission products that might be released in the event of a serious accident but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential non-radiological impacts of reactor operation with extended irradiation, the proposed changes involve systems located within the restricted area, as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the higher burnup of the fuel are discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Extended Fuel Enrichment and Irradiation", which was published in the **Federal Register** on August 11, 1988 (53 FR 30355) in connection with the Shearon Harris Nuclear Power Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of the transportation due to the increases in the fuel enrichment up to 5% and irradiation limits up to 60,000 MWD/MT are either unchanged or may, in fact, be reduced from those summarized in Table S-4 as set forth in 10 CFR 51.52(c). These findings are applicable to this amendment for the Fort Calhoun Station, Unit 1.

Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of the Fort Calhoun Unit 1", dated August 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the forgoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated September 2, 1988, as supplemented November 22, 1988, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland, this 30th day of November, 1988.

For The Nuclear Regulatory Commission.

Paul W. O'Connor,

Acting Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-28120 Filed 12-6-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 15-17, 1988, in Room P-114, 7920 Norfolk Avenue, Bethesda, Md. Notice of this meeting was published in the Federal Register on October 20, 1988.

Thursday, December 15, 1988

8:30 a.m.–8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest.

8:45 a.m.–10:15 a.m.: Operator Requalification Program (Open)—Briefing regarding lessons learned from implementation of revised operator qualification methodology (Draft Examiner Standard 601).

10:30 a.m.—12:30 p.m.: Sodium Advanced Fast Reactor (Open)—Review of proposed standardized type of nuclear plant. Representatives of the Department of Energy and the NRC Staff will participate.

1:30 p.m.–3:30 p.m.: Equipment Qualification-Risk Scoping Study (Open)—Review and comment on NRC-sponsored Equipment Qualification-Risk Scoping Study including consideration of peer review comments.

3:45–6:30 p.m.: Quantitative Safety Goals (Open)—Review and comment on proposed NRC Staff plan for implementation of NRC Quantitative Safety Goals.

Friday, December 16, 1988

8:30 a.m.–9:00 a.m.: Future ACRS Activities (Open)—Discuss anticipated ACRS subcommittee activity and topics proposed for consideration by the full Committee.

9:00 a.m.–10:00 a.m.: Nuclear Safety Research (Open)—Briefing by and discussion with the Director, Office of Nuclear Regulatory Research, NRC, regarding aspects of the safety research program of interest to the ACRS and RES.

10:15 a.m.–12:15 p.m.: Emergency Core Cooling (Open)—Review and comment on proposed code Scaling Applicability and Uncertainty proposed for use with best-estimate ECCS evaluation models.

1:45 p.m.–2:45 p.m.: US–USSR Exchange of Information (Open/Closed)—Briefing regarding agreement to exchange safety-related information related to the design, operation, etc. of nuclear reactors.

Portions of this session will be closed as necessary to discuss information provided in confidence by a foreign source.

2:45 p.m.–4:45 p.m.: Containment Systems (Open)—Review and comment on recommendations for containment performance requirements and specific aspects of the BWR Mk I containment.

4:45 p.m.–6:15 p.m.: Reactor Operating Experience (Open/Closed)—Briefing and discussion of lessons learned from power oscillation transient at the LaSalle Nuclear Power Station.

Portions of this session will be closed as necessary to discuss Proprietary Information related to this matter.

Saturday, December 17, 1988

8:30 a.m.–9:00 a.m.: Selection of ACRS Officers (Closed)—Discuss qualifications of nominees proposed for election as Committee officers for Calendar Year 1989.

This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

9:15 a.m.–12:00 Noon: Preparation of ACRS Reports (Open)—Discuss proposed reports to NRC regarding issues considered during this meeting.

1:00 p.m.–2:15 p.m.: ACRS Subcommittee Activities (Open)—Briefing and discussion regarding the status of activities assigned to cognizant subcommittees including thermal-hydraulic phenomena, E. Fermi plant visit and international conference on quality and quality assurance.

2:15 p.m.–3:00 p.m.: Regulatory Process (Open)—Discuss proposed review and discussion of NRC regulatory philosophy.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 27, 1988 (53 FR 43487). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92-463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)], to discuss Information provided in confidence by a foreign source [5 U.S.C. 552b(c)(4)], and to

discuss Proprietary Information applicable to matters being considered [5 U.S.C. 552(b)(4)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8:15 a.m. and 5:00 p.m.

Date: December 2, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–28122 Filed 12–6–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–333]

James A. Fitzpatrick Nuclear Power Plant; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–59, issued to the Power Authority of the State of New York (the licensee), for operation of James A. FitzPatrick Nuclear Power Plant, located in Oswego County, New York.

By application dated November, 9, 1988, the licensee requested that the primary containment leak rate test requirements described in Technical Specification (TS) Section 4.7.A.2.a(10) and Section 4.7.A.2.f be amended for the 1988 refueling outage on an emergency basis under the provisions of 10 CFR 50.91(a)(5). The application stated that these TS changes were necessary to allow plant startup from the 1988 refueling outage without performing a Type A primary containment integrated lead rate test (ILRT) or a Type A, B, or C leak rate test (LRT) following replacement of the high pressure coolant injection (HPCI) system turbine exhaust line manual block valve, as explained below.

Section 4.7.A.2.a(10) of the TS and Section III.A.6(b) of Appendix J to 10 CFR Part 50 require that if two consecutive periodic Type A tests (ILRTs) fail to meet the acceptance criteria, a Type A test must be performed at each plant shutdown for refueling or approximately every 18 months, whichever occurs first, until two consecutive Type A tests meet the acceptance criteria. When it was determined that the cause of the failure of tests, conducted in 1982, 1985 and 1987, to meet the acceptance criteria for the "As Found" condition was due to excessive combined leakage from several containment isolation valves, the licensee concluded that the most effective approach to eliminate the excessive leakage was to implement a Corrective Action Plan (CAP) using guidance given in Information Notice 85–71 dated August 22, 1985. In this CAP the licensee determined that 33 containment isolation valves, which previously were identified as having excessive leakage, should be replaced (21 during the 1988 refueling outage and 12 during the 1990 refueling outage). The 12 valves scheduled to be replaced during the 1990 refueling outage have acceptable leakage rates based on the test performed during the 1988 refueling outage.

As part of the CAP, the licensee replaced the HPCI turbine exhaust line manual block valve to the suppression chamber (23–HPI–11). TS 4.7.A.2.f and Section IV.A of 10 CFR Part 50, Appendix J require that following replacement of a component which is part of the primary containment boundary, either a Type A, Type B, or Type C LRT, as applicable for the area affected, must be conducted and the appropriate acceptance criteria met. Since an isolation volume for the resulting welds on the primary containment side of the valve could not be attained, the licensee conducted 100% radiography and dye penetrant tests on the welds to verify the structural integrity of the welds, in lieu of a Type A, B, or C test.

Based on an evaluation of the licensee's CAP, the alternate tests performed to ensure system integrity, and the implementation of an improved valve maintenenace program, an exemption to the requirements of Section III.,A.6(b) and Section IV.A of Appendix J to 10 CFR Part 50 was issued to the licensee by letter dated November 16, 1988. The exemption was noticed on November 25, 1988 (53 FR 47784).

When it was recognized that the licensee had inadvertently failed to identify that a TS amendment would be required in addition to the exemption, the licensee submitted the necessary amendment request dated November 9, 1988. Based on an evaluation of the amendment application (which is virtually identical to the exemption), a temporary waiver or compliance from the provisions of TS Section 4.7.A.2.a(10) and Section 4.7.A.2.f was issued by the NRC staff to the licensee by letter dated November 18, 1988. This allowed plant startup from the refueling outage without compliance with these TS requirements pending the NRC staff's review of the licensee's amendment request. In order to complete its review in an expeditious manner, yet allow for public comment, the NRC is processing the licensee's amendment proposal on an exigent basis under the provisions of 10 CFR 50.91(a)(6).

Before 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.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

These proposed changes do not increase the probability or consequences of an accident previously evaluated. The containment leakage rates assumed in the Final Safety Analysis Report (FSAR) require that the valves which perform containment isolation functions, as well as the primary containment itself, exhibit superior leak rate characteristics. When the licensee found that the limit was frequently being exceeded, a CAP was initiated. The CAP involved a detailed analysis of the causes for exceeding the allowable limit, determination that the primary cause was valve seat leakage, identification of the valves which were causing the problems, determination of the best method to correct the problem valves, and implementation of the resulting plan to ensure that the leak limits are not exceeded in the future. It was determined that over time some of these valves exhibited gradual degradation to the point where their combined seat leakage rate, when added to the leakage rate resulting from the previous Type A test, caused the limit to be exceeded. This resulted in the determination that many valves needed to be replaced, some during the 1988 refueling outage and other during the 1990 refueling outage. All of these valves were tested prior to the end of the outage with satisfactory results. Using this program, the intergrity of the primary containment has been restored so that it is reasonable to assume that the design leakage rate limits of the

FSAR are satisfied without the need to perform a Type A test at the increased frequency. Therefore, the probability or consequence of an accident previously considered is not increased.

With respect to the replacement of the HPCI exhaust inboard manual block valve (23–HPI–11), the valve body and piping are part of the containment pressure boundary. The TS change allows installation of the valve without performing a leakage test on the welds connecting the valve to the containment penetration. Instead, 100% radiography of the welds ensures the structural integrity of the welds and a dye penetrant examination of the surface of the weld ensures that any surface flaws which could lead to leakage paths are detected. Since the valve is normally open, remains open under accident conditions, and the structural integrity of the containment pressure boundary associated with the valve is assured, no change is made to the probability of occurrence or consequences of any accident previously evaluated.

These proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. No plant operability, maintenance, or system design or functional requirements will be altered by these proposals.

The function of the primary containment is not affected by deletion of the additional 18-month Type A test. The containment shall still isolate, if required to mitigate the consequences of design basis accidents, to maintain site boundary doses below the required limits. Consequently, this change, as proposed, would not create the possibility of any new or different type of accident.

Valve 23–HPI–11 has no active safety function, since it remains open during normal and accident conditions, since alternate testing has been performed which ensures the integrity of the welds, and since it was replaced in kind with another valve, there is no change in the FSAR considerations for the replacement and no new or different kind of accident is created.

The proposed amendment will not involve a significant reduction in a margin of safety. A properly designed and implemented CAP in accordance with Information Notice 87–71, dated August 22, 1985, is superior to performing Type A tests at an increased frequency. The licensee has implemented the CAP to improve the long-term leakage characteristic of the FitzPatrick containment. This CAP was implemented in lieu of performing a Type A test during the 1988 outage and results in no reduction of any margin of safety.

Valve 23–HPI–11 has no operational or accident mitigation functions. Performance of 100% radiograph in lieu of a pneumatic leak rate test on the welds is conservative. The construction code (ANSI B–31.1–1967) allows for 100% radiography as an alternative to leakage testing when such testing is not practicable.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the changes do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice.

Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, Gleman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 6, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for 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, desginated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made 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 that 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 become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30 days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing

held would take place after issuance of the amendment.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commisison, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L 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 promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-600 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Capra: 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, DC 20555, and to Charles M. Pratt, 10 Columbus Circle, New York, NY 10019.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balance of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 9, 1988, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room, Reference and Documents Department, Penefield Library, State University of New York, Oswego, NY 13126.

Dated at Rockville, Maryland, this 29th day of November, 1988.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Project Manager, Project Directorate I-1, Division of Reactor Projects, I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-28119 Filed 12-6-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Mechanical Components; Cancelled Meeting

The **Federal Register** published Monday, November 28, 1988 (53 FR 47886) contained notice of a meeting of the ACRS Subcommittee on Mechanical Components scheduled for December 12, 1988. This meeting has been *cancelled.*

Date: December 1, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review

[FR Doc. 88-28123 Filed 12-6-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, December 21, 1988
Wednesday, December 28, 1988
Wednesday, January 4, 1989
Wednesday, January 11, 1989
Wednesday, January 18, 1989

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street NW., Washington, DC 20415, (202) 632-9710.

December 1, 1988.

Thomas E. Anfinson,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 88-28112 Filed 12-6-88; 8:45 am]

BILLING CODE 6325-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan; Public Hearings

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council, Council).

ACTION: Notice of hearings and deadline for comment.

SUMMARY: Pursuant to the Pacific Northwest Electric Planning and Conservation Act of 1980 (16 U.S.C. 839 *et seq.*), the Council, in April 1983, adopted a Northwest Conservation and Electric Power Plan (Plan) including model conservation standards (MCS). The most recent complete amendment of the Plan was adopted in 1986. Although the Act requires the Council to review the Plan at least every five years, the Council has taken up various discrete parts of the Plan more frequently, to respond to ongoing changes in the regional energy picture and to incorporate the most recent technology and analysis. The Council has now proposed to amend the Plan by updating the technical data base on which portions of the Plan depend. This notice explains how to participate in the amendment process.

DATES AND ADDRESSES: The public comment period regarding the proposed amendments will close at 5 p.m. Pacific time on Friday, January 13, 1989. Public hearings on the proposed amendments will be held in each of the four Northwest states as follows:

January 3, 1989, 1:00 p.m. to 5:00 p.m., the Host International Meeting Room on the Mezzanine, Seattle/Tacoma Airport.

January 4, 1989, 1:30 p.m. the Holiday Inn, 200 S. Pattee, Missoula, Montana.

January 5, 1989, 2:30 p.m. at the Council's Central Office, 851 SW. 6th Avenue, Suite 1100, Portland, Oregon.

January 11, 1989, during the Council's January Council meeting at the Owyhee Plaza, Eleventh and Main, Boise, Idaho. Time will be published with the Council's agenda.

The Council expects to take final action on the proposed Supplement amendments at its February 1989 meeting in Olympia, Washington.

Guidelines for Presenting Oral Comments at Hearings.

1. To reserve a time period for presenting oral comments at a hearing, contact Ruth Curtis, Information Coordinator, at the Council's central office no later than the day before the hearing. The Council's address is: 851 SW. 6th Avenue, Suite 1100, Portland, Oregon 97204. The Council's telephone numbers are: (503) 222–5161 and (toll free) (800) 222–3355 in Idaho, Montana, and Washington or (800) 452–2324 in Oregon.

2. Those who did not reserve time periods will be permitted to present oral comments as time permits.

3. Each speaker will be allowed 15 minutes during the hearing.

Guidelines for Submitting Written Comments

1. All written comments must be received in the Council's central office, at 851 SW. 6th Avenue, Suite 1100, Portland, Oregon 97204, by 5 p.m. Pacific time on January 13, 1989.

2. Please provide three (3) copies of all written submissions.

3. Please clearly mark your comments "SUPPLEMENT".

FOR FURTHER INFORMATION CONTACT: If you would like a copy of the Draft Supplement to the 1986 Power Plan and/or a copy of the Draft Supplement Appendices, please contact Judi Hertz, in the Council's office of Public Information and Involvement, at the address and telephone numbers listed above.

Edward Sheets,

Executive Director.

[FR Doc. 88–28079 Filed 12–6–88; 8:45 am]

BILLING CODE 0000–00–M

RAILROAD RETIREMENT BOARD

1989 Monthly Compensation Base and Other Determinations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: Pursuant to section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 362(r)(3)), the Board gives notice of the following:

1. The montly compensation base under section 1(i) of the Act is $710 for months in calendar year 1989;

2. The amount described in section 1(k) of the Act as "2.5 times the monthly compensation base" is $1,775 for base year (calendar year) 1989;

3. The amount described in section 2(c) of the Act as "an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 1(i) of this Act bears to $600" is $917 for months in calendar year 1989;

4. The amount described in section 3 of the Act as "2.5 times the monthly compensation base" is $1,775 for base year (calendar year) 1989;

5. The amount described in section 4(a–2)(i)(A) of the Act as "2.5 times the monthly compensation base" is $1,775 with respect to disqualifications ending in calendar year 1989;

6. The maximum daily benefit rate under section 2(a)(3) of the Act is $31 with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 1989.

DATES: The determinations made in notices (1) through (5) are effective January 1, 1989. The determination made in notice (6) is effective for registration periods beginning after June 30, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Mary R. Bartik, Bureau of Research and Analysis, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, telephone (312) 751–4786, (FTS) 386–4786.

SUPPLEMENTARY INFORMATION: The Board is required by section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 362(r)(3)) as amended by Pub. L. 100–647, to publish by December 11, 1988, the computation of the calendar year 1989 monthly compensation base (section 1(i) of the Act) and amounts described in sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act which are related to changes in the monthly compensation base. Also, the Board is required to publish by June 11, 1989, the maximum daily benefit rate under section 2(a)(3) of the Act for days of unemployment and days of sickness in registration periods beginning after June 30, 1989.

Monthly Compensation Base

For years after 1988, section 1(i) of the Act contains a formula for determining the monthly compensation base. Under the prescribed formula, the monthly compensation base increases by approximately two-thirds of the growth in average national wages. The monthly compensation base for months in calendar year 1989 shall be equal to the greater of (a) $600 and (b) $600 [1 + {(A − 37,800)/56,700}], where A equals the amount of the applicable base with respect to tier 1 taxes for 1989 under section 3231(e)(2) of the Internal Revenue Code of 1986. Section 1(i) further provides that if the amount so determined is not a multiple of $5, it shall be rounded to the nearest multiple of $5.

The calendar year 1989 tier 1 tax base is $48,000. Subtracting $37,800 from $48,000 produces $10,200. Dividing $10,200 by $56,700 yields a ratio of

0.17989418. Adding one gives 1.17989418. Multiplying $600 by the amount 1.17989418 produces the amount of $707.94, which must then be rounded to $710. Accordingly, the monthly compensation base is determined to be $710 for months in calendar year 1989.

Amounts Related to Changes in Monthly Compensation Base

For years after 1988, sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act contain formulas for determining amounts related to the monthly compensation base.

Under section 1(k), remuneration earned from employment covered under the Act cannot be considered subsidiary remuneration if the employee's base year compensation is less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 1989 monthly compensation base of $710 produces $1,775. Accordingly, the amount determined under section 1(k) is $1,775 for calendar year 1989.

Under section 2(c), the maximum amount of normal benefits paid for days of unemployment within a benefit year and the maximum amount of normal benefits paid for days of sickness within a benefit year shall not exceed an employee's compensation in the base year. In determining an employee's base year compensation, any money remuneration in a month not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year bears to $600 shall be taken into account.

The calendar year 1989 monthly compensation base is $710. The ratio is $710 to $600 is 1.18333333. Multiplying 1.18333333 by $775 produces $917. Accordingly, the amount determined under section 2(c) is $917 for months in calendar year 1989.

Under section 3, an employee shall be a "qualified employee" if his base year compensation is not less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 1989 monthly compensation base of $710 produces $1,775. Accordingly, the amount determined under section 3 is $1,775 for calendar year 1989.

Under section 4(a–2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving unemployment benefits until he has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends. Multiplying 2.5 by the calendar year 1989 monthly compensation base of $710 produces $1,775. Accordingly, the amount determined under section 4(a–2)(i)(A) is $1,775 for calendar year 1989.

Maximum Daily Benefit Rate

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Under the prescribed formula, the maximum daily benefit rate increases by approximately two-thirds of the growth in average national wages. The maximum daily benefit rate for registration periods beginning after June 30, 1989, shall be equal to the greater of (a) $30 and (b) $25 [1+{(A−600)/900}], where A equals the applicable base with respect to tier 1 taxes under section 3231(e)(2) of the Internal Revenue Code of 1986 divided by 60, with the quotient rounded down to the nearest multiple of $100. Section 2(a)(3) further provides that if the amount so computed is not a multiple of $1, it shall be rounded to the nearest multiple of $1.

The calendar year 1989 tier 1 tax base is $48,000. Dividing $48,000 by 60 yields $800. This amount is already a multiple of $100, so no further rounding is required. Subtracting $600 from $800 produces $200. The ratio of $200 to $900 is 0.22222222. Adding 1 produces 1.22222222. Multiplying $25 by 1.22222222 produces $30.56, which must then be rounded to $31. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness begining in registration periods after June 30, 1989, is determined to be $31.

By Authority of the Board.

Dated: December 1, 1988.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88–28178 Filed 12–6–88; 8:45 am]

BILLING CODE 7905–01–M

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Act (26 U.S.C. section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 1989, shall be at the rate of 26 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning January 1, 1989, 32.6 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 67.4 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

By Authority of the Board.

Dated: December 1, 1988.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88–28179 Filed 12–6–88; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

December 1, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Beckman Instruments, Inc.
Common Stock, $.10 Par Value (File No. 7–4051)

Bond International Gold
Warrants expiring 7/31/91 No Par Value (File No. 7–4052)

Huntway Partners, L.P.
Preference Units (File No. 7–4053)

International Telecharge
Common Stock $.01 Par Value (File No. 7–4054)

Pegasus Gold
Common Stock, No Par Value (File No. 7–4055)

Fredericks of Hollywood
Common Stock, $1.00 Par Value (File No. 7–4056)

Heritage Media Corporation
Class A Common Stock, $.01 Par Value (File No. 7–4057)

First Australia Fund Inc.
Common Stock, $.01 Par Value (File No. 7–4058)

First Iberian Fund
Common Stock, $.01 Par Value (File No. 7–4059)

Arctic Alaska Fisheries
Common Stock, $.01 Par Value (File No. 7–4060)

Koger Equity
Common Stock, $.01 Par Value (File No. 7–4061)
Organogenesis Inc.
Common Stock, $.01 Par Value (File No. 7–4062)
RAC Mortgage Investment Corp.
Common Stock, $.01 Par Value (File No. 7–4063)
Thermo Instrument Systems
Common Stock, $.10 Par Value (File No. 7–4064)
World Income Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–4065)
The Blackstone Target Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–4066)
DWG Corporation
Common Stock, $.10 Par Value (File No. 7–4067)
Hudson Foods, Inc.
Common Stock, $.01 Par Value (File No. 7–4068)
Hovnanian Enterprise, Inc.
Common Stock, $.01 Par Value (File No. 7–4069)
Jones Intercable Investors, LP
Class A Units (File No. 7–4070)
Medio Incorporated
Common Stock $1.00, Par Value (File No. 7–4071)
Municipal High Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–4072)
Seamen's Corporation
Class A Common Stock, $.01 Par Value (File No. 7–4073)
Premier Industrial Corporation
Common Stock, Without Par Value (File No. 7–4074)

These securites are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 22, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88–28155 Filed 12–6–88; 8:45 am]
BILLING CODE 8010-01-M

[File No. 22–18767]

Application and Opportunity for Hearing; TRINOVA Corp.

November 28, 1988.

Notice is hereby given that TRINOVA Corporation (the "Company"), an Ohio corporation, has filed an application pursuant to clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of National Bank of Detroit (the "Bank") under an indenture which provides for the issuance of unsecured debt securities between the Company and the Bank, which was heretofore qualified under the Act and dated as of January 28, 1988 (the "1988 Indenture") and under an indenture which provides for the issuance of unsecured debt securities between Libby-Owens-Ford Company, the former name of the Company, and the Bank, which was heretofore qualified under the Act and dated as of November 20, 1975 (the "1975 Indenture") is not so likely to involve a material conflict of interest under the Act as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under either indenture.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) Under the 1975 Indenture, the Company issued approximately $2,964,724 of 9% Installment Notes (the "Notes") due in annual installments through November 19, 1990 of which approximately $588,600 remains outstanding. The Notes were registered under the Securities Act of 1933 (the "1933 Act") and the 1975 Indenture was qualified under the Act.

(2) Under the 1988 Indenture, the Company issued $50,000,000 of 9.5% Senior Sinking Fund Debentures (the "Debentures") due February 1, 2018. The Debentures were registered under the 1933 Act and the 1988 Indenture was qualified under the Act.

(3) The Company is not in default in any respect under the 1975 Indenture or the 1988 Indenture.

(4) The Notes and Debentures are wholly unsecured and rank *pari passu.*

(5) Trusteeship under the 1975 Indenture and the 1988 Indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under the 1988 Indenture.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to the application, which is on file in the Offices of the Commission's Public Reference Section, File No. 22–18767, 450 Fifth Street NW., Washington, DC 20549.

Notice is Further Given that any interested person may, not later than December 23, 1988 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request and the issues of law or fact raised the application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88–28156 Filed 12–6–88; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 1, 1988.

The Department of Treasury has made revisions and resubmitted 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 regarding this information collection should be addressed 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.

Internal Revenue Service

OMB Number: 1545–0051.
Form Number: 990–C.
Type of Review: Resubmission.
Title: Farmers' Cooperative Association Income Tax Return.
Description: Form 990–C is used by farmers' cooperatives to report the tax imposed by section 1381. IRS uses the information to determine whether the tax is being properly reported.
Respondents: Farms, Businesses or other for-profit.
Estimated Number of Respondents: 6,000.

Estimated Burden Hours Per Response/ Recordkeeping

Recordkeeping
69 hours 7 minutes
Learning about the law or the form
17 hours 49 minutes
Preparing the form
34 hours 37 minutes
Copying, assembling, and sending the form to IRS
4 hours 17 minutes

Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 754,980 hours.
OMB Number: 1545–0717.
Form Number: W–4S.
Type of Review: Resubmission.
Title: Request for Federal Income Tax Withholding From Sick Pay.
Description: Section 3402(o) of the Internal Revenue Code extends income tax withholding to sick pay payments made by third parties upon request of the payee. The information is used to determine the amount to be withheld from the third-party sick pay payments.
Respondents: Individuals or households.
Estimated Number of Respondents: 500,000.

Estimated Burden Hours Per Response/ Recordkeeping

Recordkeeping
40 minutes
Learning about the law or the form
7 minutes
Preparing the form
38 minutes
Copying, assembling, and sending the form
23 minutes

Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 685,210 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Irving W. Wilson, Jr.,
Departmental Reports Management Officer.

[FR Doc. 88–28085 Filed 12–6–88; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 1, 1988.

The Department of Treasury has made revisions and resubmitted 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 regarding this information collection should be addressed 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.

Internal Revenue Service

OMB Number: 1545–0092.
Form Number: 1041 and related Schedules D, J, and K–1
Type of Review: Resubmission.
Title: U.S. Fiduciary Income Tax Return; Capital Gains and and Losses; Trust Allocation of an Accumulation Distribution; Beneficiary's Share of Income, Deductions, Credits, etc.
Description: Internal Revenue Code section 6012 requires that an annual income tax return be filed for estates and trusts. Data is used to determine that the estates, trusts, and beneficiaries filed the proper returns and paid the correct tax.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 2,250,000.
Estimated Burden Hours Per Response/Recordkeeping:

Form 1041	Sched. D	Sched. J	Sched. K-1
Record-keeping: 2 hrs. 37 min.	59 min	13 min	1 hr. 12 min.
Learning about the law or the form: 1 hr. 40 min.	16 min	17 min	15 min.
Preparing the form: 2 hrs. 38 min.	1 hr. 16 mins.	58 min	32 min.
Copying, assembling, and sending the form to IRS: 35 min	28 min	35 min	20 min.

Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 23,343,524 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Irving W. Wilson, Jr,
Departmental Reports Management Officer.

[FR Doc. 88–28086 Filed 12–6–88; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 1, 1988.

The Department of Treasury has made revisions and resubmitted 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 regarding this information collection should be addressed 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.

Internal Revenue Service

OMB Number: 1545–0984.

Form Number: 8586.

Type of Review: Resubmission.

Title: Low-Income Housing Credit.

Description: The Tax Reform Act of 1986 (Code section 42) permits owners of residential rental projects providing low-income housing to claim a credit against income tax for part of the cost of constructing or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by IRS to verify that the correct credit has been claimed.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 50,000.

Estimated Burden Hours Per Response:

Recordkeeping, 5 hours 1 minute;
Learning about the law or the form, 3 hours 40 minutes;
Preparing the form, 10 hours 26 minutes; and
Copying, assembling, and sending the form to IRS, 1 hour 53 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1,050,000 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Irving W. Wilson, Jr.,

Departmental Reports Management Officer.

[FR Doc. 88–28087 Filed 12–6–88; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 235
Wednesday, December 7, 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).

COMMISSION ON CIVIL RIGHTS

Amended Notice of Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 48613 (December 1, 1988).

MEETING TIME AND DATE: 3:30 p.m., Friday, December 9, 1988.

CORRECTED ADDRESS: The location of the meeting published in the previous announcement noted above was incorrect. The correct address is: Rooms 108 and 109 of the Nashville Convention Center, 601 Commerce Street, Nashville, Tennessee 37203-3724.

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, (202) 376-8312.

William H. Gillers,

Solicitor.

[FR Doc. 88-28194 Filed 12-5-88; 2:39 pm]

BILLING CODE 6335-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Monday, December 5, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

FY 1990 Budget

The Commission will consider issues related to the Commission's budget for Fiscal Year 1990.[1]

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

November 5, 1988.

[FR Doc. 88-28188 Filed 12-5-88; 2:39 pm]

BILLING CODE 6355-01-M

[1] The Commission decided that agency business required scheduling the FY 90 Budget matter without the usual advance notice.

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 10:03 a.m. on Friday, December 2, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the applications of Summit Bank of Indianapolis, Indianapolis, Indiana, a proposed new bank in organization, for Federal deposit insurance, for consent to purchase the assets of and assume the liability to pay deposits made in Indianapolis Morris Plan Corporation, Indianapolis, Indiana, an operating noninsured industrial loan and development company, and for consent to establish nine offices of Indianapolis Morris Plan Corporation as branches of the resultant bank.

The Board also considered matters relating to the Corporation's assistance agreement with an insured bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, 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 by authority of subsections (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 2, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-28198 Filed 12-5-88; 2:39 pm]

BILLING CODE 6714-01-M

UNITED STATES INSTITUTE OF PEACE

DATES: Thursday, and Friday, December 8, and 9, 1988.

TIME: 9:15 a.m. to 5:00 p.m.

PLACE: The United States Institute of Peace, 1550 M Street, NW., ground floor (conference room).

STATUS: Open session—9:15 a.m. to 12:30 p.m. (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. (98-525).

AGENDA (Tentative):

Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the minutes of the Twenty-seventh meeting. Consideration of grant application matters.

CONTACT: Ms. Olympia Diniak. Telephone (202) 457-1700.

Dated: December 5, 1988.

Bernice J. Carney,

Administrative Officer, The United States Institute of Peace.

[FR Doc. 88-28197 Filed 12-5-88; 2:39 pm]

BILLING CODE 3155-01-M

UNITED STATES INSTITUTE OF PEACE

TIME AND DATE: 4:00-7:00 p.m., Monday, December 12, 1988.

PLACE: Marvel Hall, The American Chemical Society Building, 1155-16th Street, NW., Washington, DC

STATUS: Open.

PURPOSE AND AGENDA: The fourth of a series of Public Workshops scheduled by the growing United States Institute of Peace, "The Meaning of Munich Fifty Years Later," will focus on basic questions regarding the significance of Munich regarding thinking on contemporary peace and international security issues. The panel members will be drawn from the scholarly and policymaking worlds.

CONTACT: Ms. Aileen C. Hefferren, Telephone 202-457-1700.

Dated: November 28, 1988.

Samuel W. Lewis,

President.

[FR Doc. 88-28180 Filed 12-5-88; 8:54 am]

BILLING CODE 3155-01-M

Corrections

Federal Register
Vol. 53, No. 235
Wednesday, December 7, 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.

COMMODITY FUTURES TRADING COMMISSION

Deposit of Customer Funds in Foreign Depositories

Correction

In notice document 88-26860 beginning on page 46911 in the issue of Monday, November 21, 1988, make the following corrections:

1. On page 46913, in the second column, in the first complete paragraph, in the fourth line, "option" was misspelled. Also, in the seventh line, "county" should read "country" and "those" should read "whose".

2. On page 46914, in the second column, under **Subordination Agreement**, in the first paragraph, remove the following sentence:
Such accounts also may be subject to the risk that events could occur which would hinder or prevent the availability of these funds for distribution to customers.

3. On page 46915, in the third column, in the heading for *Example 4*, in the third line, "*Available*" should read "*Unavailable*".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-69-NG]

Seagull Marketing Services, Inc.; Application To Import Natural Gas From and Export Natural Gas To Canada

Correction

In notice document 88-27140 beginning on page 47569 in the issue of Wednesday, November 23, 1988, make the following corrections:

1. On page 47569, in the second column, under the **DATE**, in the fifth line, "November 23, 1988" should read "December 23, 1988".

2. On page 47570, in the first column, at the end of the document, "FR Doc. 88-27104" should read "FR Doc. 27140".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP89-137-000 et al.]

Mid-Louisiana Gas Co. et al.; Natural Gas Certificate Filings

Correction

In notice document 88-27657 beginning on page 48578 in the issue of Thursday, December 1, 1988, make the following correction:

On page 48578, in the second column, under **2. Northwest Pipeline Corporation**, the bracketed information should read as follows:
[Docket No. CP89-263-000]

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3468-5]

Federal Agency Hazardous Waste Compliance Docket

Correction

In notice document 88-24828 beginning on page 46364 in the issue of Wednesday, November 16, 1988, make the following corrections:

1. On page 46365, in the third column, in the first complete paragraph, in the fourth fifth lines, "* *" should read "**".

2. On the same page, in the same column, in the third complete paragraph, in the sixth line, after "As" insert "of".

3. On page 46366, in the third column, in the first line, "was" should read "were".

In the table, "REVISIONS TO 2/12/88 DOCKET.—REMOVALS, beginning on page 46366, make the following corrections:

4. On page 46366, in the 1st column, in the 2nd "Interior" entry, in the 2nd column, remove "No. 5."; in the 3rd column, remove "St. NW."; and in the 10th column, insert "X".

5. On page 46367, in the first column, in the second entry for "Navy", in the third column, "Center" was misspelled.

6. On the same page, in the first column, in the sixth entry for "Agriculture", in the third column, "?" should read ".".

7. On page 46368, in the first column, in the first entry for "Army", in the third column, "Lymanb" should read "Lyman".

8. On the same page, in the first column, in the first entry for "Interior", in the second column, "CO" should read "Co" and "Marshing" should read "Marsing".

9. On the same page, in the first column, in the second entry for "Interior", the second column should read "BLM—Bunker Hill.".

10. On the same page, in the first column, in the second entry for "Army", in the fourth column, "Jolet" should read "Joliet".

11. On the same page, in the first column, in the entry for "Corps of Engineers, Civil", in the second column, "Cir." should read "Ctr.".

12. On the same page in the first column, in the entry for "Defense", in the third column, "Herwood" should read "Hernwood".

13. On page 46369, in the first column, in the entry for "Navy", in the second column, "Facility" was misspelled.

14. On the same page, in the first column, in the first entry for "Agriculture", in the second column, "Chipewa" should read "Chippewa".

15. On the same page, in the first column, in the fifth entry for "Army", in the second column, "Mt." should read "MT.".

16. On the same page, in the first column, in the sixth entry for "Army", in the second column, "MD" should read "ND".

17. On the same page, in the 1st column, in the 10th entry for "Army", in the 2nd column, remove "Ship" and insert "Shop No. 5"; and in the third column after "15th" insert "St., NW."

18. On the same page, in the 1st column, in the 12th entry for "Army", in the second column, "MD" should read "ND".

19. On page 46371, in the first column, in the entry for "Interior", in the second column, "USODI" should read "USDOI".

20. On the same page, in the 1st column, in the 14th entry for "Army" in

the 6th column, "85601" should read "84601".

In the table, "REVISIONS TO 2/12/88 DOCKET.—ADDITIONS, beginning on page 46372, make the following corrections:

21. On page 46372, in the first column, in the third entry for "Air Force", in the third column, "Iliamma" should read "Iliamna".

22. On page 46373, in the first column, in the entry for "Defense", in the second column, "Center-Estero" should read "Center—Estero"; and in the third column, "Panorama" was misspelled.

23. On page 46374, in the first column, in the second entry for "Air Force", in the third column, "mi" should read "Mi"; and in the fourth column, "Spring" should read "Springs".

24. On the same page, in the first column, in the first entry for "Army, in the second column, "Fitzsmons" should read "Fitzsimons".

25. On the same page, in the first column, in the third entry for "Transportation", in the second column, "Materials" was misspelled.

26. On the same page, in the first column, in the third entry for "Air Force", in the third column, "HG" should read "HQ".

27. On page 46376, in the first column, in the first entry for "Energy", in the third column, "RD" should read "Rd".

28. On the same page, in the first column, in the entry for "Defense", in the seventh column, remove "X".

29. On page 46377, in the first column, in the entry for "Interior", in the fourth column, "Cristi" should read "Christi".

30. On the same page, in the first column, in the first entry for "Energy", in the second column, remove "3"; and in the third column, "2400" should read "3 2400".

31. On the same page, in the first column, in the sixth entry for "Energy", in the fourth column, "Opympia", should read "Olympia".

In the table, "CORRECTIONS TO DOCKET LISTING, beginning on page 46378, make the following corrections:

32. On page 46378, in the first column, in the third entry for "Air Force", in the eighth column, remove "X".

33. On the same page, in the first column, in the sixth entry for "Air Force", in the eighth column, insert "X".

34. On the same page in the first column, in the eighth entry for "Air Force", in the ninth column, insert "X".

35. On the same page, in the 1st column, in the 14th entry for "Air Force", the 1st column should read "C—Air Force".

36. On the same page, in the first column, in the third entry for "Army", in the eighth column, insert "X".

37. On page 46379, in the first column, in the first entry for "Transportation", in the fourth column, "Kokiak" should read "Kodiak".

38. On the same page, in the first column, in the second entry for "Tennessee Valley Authority", in the second column, "pit." should read "Plt.".

39. On the same page, in the first column, in the seventh entry and in the eighth entry for "Tennessee Valley Authority" in the first column, "Authority" was misspelled.

40. On the same page, in the first column, in the fifth entry for "Air Force", in the ninth column, remove "X".

41. On page 46380, in the first column, in the fifth entry for "Interior", in the second column, "Kennecott" should read "Kenecott".

42. On the same page, in the first column, in the ninth entry for "Interior", the third column should read "T1NR14ESEC35,36".

43. On the same page, in the 1st column, in the 10th entry for "Interior", the 1st column should read "O—Interior"; the fourth column should read "AZ"; the fifth column should read "85343" and in the sixth column remove "85343".

44. On the same page, in the 1st column, in the 11th entry for "Interior", the third column should read "T7SR17WSEC34".

45. On the same page, in the 1st column, in the 14th entry for "Interior", in the eighth column, insert "X".

46. On the same page, in the first column, in the first entry for "Air Force", the third column should read "20th Street & E Aves. D & M."

47. On the same page, in the first column, in the sixth entry for "Air Force", the third column should read "63ABG/DE".

48. On the same page, in the first column, in the eighth entry for "Air Force", in the eighth column, insert "X"; and in the ninth column, remove "X".

49. On the same page, in the first column, in the second entry for "Army", in the seventh column, remove "X".

50. On the same page, in the first column, in the third entry for "Army", in the fourth column, "Riverbrook" should read "Riverbank".

51. On the same page, in the 1st column, in the 1st entry for "Defense", in the 6th column, "94533" should read "94553"; and in the 10th column, remove "X".

52. On page 46381, in the first column, in the ninth entry for "Navy", in the second column, after "Crows" insert "Land".

53. On page 46382, in the first column, in the first entry for "Army", in the fifth column, "DO" should read "CO".

54. On the same page, in the first column, in the second entry for "Energy", in the second column, after "Research" insert "Inst.".

55. On the same page, in the first column, in the first entry for "EPA", in the first column, "EAP" should read "EPA".

56. On the same page, in the first column, in the sixth entry for "Interior", in the sixth column, insert "81435".

57. On the same page, in the first column, in the first entry for "Treasury", in the fifth column, "CD" should read "DC".

58. On the same page, in the first column, in the second entry for "Treasury", in the fifth column, "CD" should read "DC".

59. On page 46383, in the first column in the second entry for "Air Force", in the seventh column, insert "X".

60. On the same page, in the first column, in the fifth entry for "Air Force", in the seventh column, remove "X".

61. On the same page, in the first column, in the seventh entry for "Air Force", in the seventh column, remove "X".

62. On the same page, in the first column, in the ninth entry for "Air Force", in the seventh column, remove "X".

63. On the same page, in the 1st column, in the 14th entry for "Air Force", in the 3rd column, "CSB/DE" should read "CSG/DE".

64. On the same page, in the first column, in the second entry for "Energy", in the second column, "Penellas" should read "Pinellas".

65. On the same page, in the first column, in the second entry for "EPA", seventh column, remove "X"; and in the eighth column, insert "X".

66. On the same page, in the 1st column, in the 7th entry for "Navy", in the 10th column, insert "X".

67. On page 46384, in the first column, in the third entry for "Army", in the fourth column, remove "Forest Park".

68. On page 46385, in the first column, in the first entry for "Interior", in the third column, the address "T3N R24W SEC15" should read "T3N R24E SEC 15".

69. On the same page, in the first column, in the fourth entry for "Interior", "O—Interior" should read "C—Interior".

70. On the same page, in the first column, in the fifth entry for "Army", "D—Army" should read "O—Army".

71. On page 46386, in the first column, in the first entry for "Air Force", in the seventh column, delete the "X".

72. On the same page, in the first column, in the second entry for "Air

Force", in the seventh column, add an "X".

73. On the same page, in the first column, in the first and second entries for "Army", in the second column, "IUS Army" should read "US Army".

74. On the same page, in the first column, in the seventh and eighth entries for "Air Force", in the second column, "Hascom" should read "Hanscom".

75. On the same page, in the first column, in the fourth entry for "Army", in the fifth column, "01433" should read "01432".

76. On the same page, in the first column, in the fifth entry for "Army", in the second column, the facility name should read "US Army Natick Research Devel and Engineering Ctr.".

77. On the same page, in the first column, in the sixth entry for "Army", in the second column, the facility name should read "US Army Research Devel and Engineering Ctr.".

78. On the same page, in the first column, in the seventh entry for "Army", in the second column, the facility name should read "USW Army Natick R&D Labs, Sudbury Anx.".

79. On the same page, in the first column, in the eighth entry for "Army", in the second column, the facility name should read "US Army Fort Devens Sudbury, Annex".

80. On the same page, in the first column, in the ninth entry for "Army", in the second column, the facility name should read "US Army Matls and Mech Res Ctr.".

81. On the same page, in the 1st column, in the 10th entry for "Army", in the second column, the facility name should read "US Army Matls Tech Lab.".

82. On the same page, in the first column, in the second entry for "Defense", "O—Defense" should read "C—Defense".

83. On page 46387, in the first column, in the third entry for "Navy", in the fourth column, add the city "Clinton".

84. On the same page, in the first column, in the fifth entry for "Navy", the agency name should read "C—Defense".

85. On the same page, in the first column, in the eighth entry for "Navy", in the sixth column, "209003" should read "20903".

86. On the same page, in the first column, in the fourth entry for "Air Force", in the ninth column, add an "X".

87. On page 46388, in the first column, in the third and fourth entries for "Air Force", in the fourth column, "Seymour Johnson Air Force Base" should read "Seymour Johnson AFB".

88. On the same page, in the first column, in the first entry for "Navy", in the seventh column, delete the "X".

89. On the same page, in the first column, in the third and fourth entries for "Navy", in the third column, the facility address should read "Fire Fighting Training Pit."

90. On the same page, in the 1st column, in the 1st entry for "Agriculture", in the 10th column, delete the "X".

91. On the same page, in the first column, in the fifth entry for "Air Force", in the second column, " Offut" should read "Offutt".

92. On the same page, in the 1st column, in the 6th entry for "Air Force", "O—Air Force" should read "C—Air Force"; in the 2nd column, "Offut" should read "Offutt"; and in the 10th column, add an "X".

93. On page 46389, in the first column, in the third entry for "Air Force", in the fourth column, "Holloman" should read "Hollman".

94. On the same page, in the first column, in the third entry for "Interior", in the second column, "Materials" should read "Manerals".

95. On page 46390, in the 3rd and 5th entries for "Interior", in the 10th column, add an "X".

96. On the same page, in the first column, in the seventh entry for "Interior", in the third column, "T28NR44SEC4" should read "T28NR44ESEC4".

97. On the same page, in the first column, in the 12th entry for "Interior", delete the "X" in the seventh column and add an "X" to the 8th column; and delete the "X" in the 9th column and add an "X" to the 10th column.

98. On the same page, in the first column, in the fourth entry for "Air Force", in the seventh and eighth columns, delete the "X's".

99. On page 46391, in the first column, in the second entry for "Corps of Engineers, Civil.", in the seventh column, add an "X".

100. On the same page, in the first column, in the first entry for "Air Force", in the eighth column, delete the "X".

101. On the same page, in the first column, in the ninth entry for "Army", in the second column, "Hayes" should read "Hays".

102. On page 46392, in the first column, in the second entry for "EPA", in the fourth column, "Narragansett" was misspelled.

103. On the same page, in the first column, in the second entry for "Interior", in the third column, "Sachvest" should read "Sachuest".

104. On the same page, in the first column, in the second entry for "Navy", in the fourth column, "North Kingston" should read "North Kingstown".

105. On the same page, in the first column, in the fourth entry for "Navy", in the sixth column, "02905" should read "03445".

106. On the same page, in the first column, in the sixth entry for "Navy", in the sixth column, "02840" should read "02841".

107. On the same page, in the 1st column, in the 2nd entry for "Defense", in the 10th column, delete the "X".

108. On the same page, in the first column, in the first and second entries for "Energy", in the second column, the facility name should read "US DOE Savannah River Plt.".

109. On the same page, in the 1st column, in the 11th, 12th and 14th entries for "Navy", in the 10th column, delete the "X".

110. On the same page, in the 1st column, in the 13th entry for "Navy", in the 8th column, add an "X"; and in the 10th column, delete the "X".

111. On page 46393, in the first column, in the fourth entry for "Army", in the fourth column, "San Antonio" was misspelled.

112. On page 46394, in the first column, in the second entry for "NASA", in the ninth column, add an "X".

113. On the same page, in the first column, in the second entry for "Army", in the second column, "Dougway" should read "Dugway".

114. On the same page, in the first column, in the third entry for "Interior", in the second column, "Buying" should read "Buyin".

115. On the same page, in the first column, in the third and fourth entries for "Interior", in the third column, in the second lines "Moab PARLABC" should read "PARLABC".

116. On the same page, in the 1st column, in the 5th entry for "Army", in the 10th column, delete the "X".

117. On page 46395, in the 1st column, in the 1st entry for "Navy", in the 10th column, add an "X".

118. On the same page, in the first column, in the first and second entries for "Agriculture", in the third column, "T31NR17E WM SEC7." should read "T31N R17E WM SEC7.".

119. On the same page, in the first column, in the second entry for "Air Force", in the ninth column, add an "X".

120. On the same page, in the 1st column, in the 3rd entry for "Army", in the 10th column, add an "X".

In the table, "UPDATE TO 2/12/88 DOCKET—NEW FACILITIES", beginning on

page 46396, make the following corrections:

121. On page 46396, in the first column, in the second entry for "Army", in the sixth column, "99793—5500" should read "99703-5500".

122. On the same page, in the first column, in the third entry for "Army", in the second column, "DA/Wheeler National Wildlife Refuge." should read "DOA/Wheeler National Wildlife Refuge.".

123. On page 46397, in the first column, in the first entry for "Army", in the third column, "Street" was misspelled.

124. On the same page, in the first column, in the second entry for "Army", in the sixth column, "97692" should read "96792"

125. On page 46398, in the first column, in the first entry for "NASA", in the third column, "Gentilly Rd" was misspelled.

126. On the same page, in the first column, in the second entry for "Agriculture", in the second column, "Laboratory" was misspelled.

127. On page 46400, in the first column, in the first entry for "Defense", in the third column, "Perry" was misspelled.

128. On the same page, in the first column, in the first entry for "Interior", in the sixth column, "76106" should read "79106".

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 135 and 145

[Docket No. 25454; Amdt. Nos. 135-29 and 145-21]
RIN 2120-AC50

Foreign Repair Station Rules

Correction

In rule document 88-26934 beginning on page 47362 in the issue of Tuesday, November 22, 1988, make the following corrections:

1. On page 47366, in the third column, in the first complete paragraph, in the seventh line from the bottom, "of" should read "on".

2. On page 47368, in the second column, in the second complete paragraph, in the second line from the bottom, "for" should read "of".

3. On page 47369, in the second column, in the first complete paragraph, in the ninth line from the bottom, "deregulation" should read "derogation".

4. On page 47372, in the second column, in the second line from the bottom, "FAA" should read "FAR".

5. On page 47374, in the first column, in the first complete paragraph, in the fifth line, "collaborating" should read "collaboration".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Proposed Amendment to the Bank Secrecy Act Regulations Regarding the International Transportation and Receipt of Monetary Instruments

Correction

In the issue of Friday, November 18, 1988, on page 46634 in the first column, a correction to FR Doc. 88-26718 appeared. Amendatory instruction 3 was inaccurately printed and should be corrected as follows: In the third and fourth lines, "(1)(1)(iii) through (1)(1)(v)" should read "(l)(1)(iii) through (l)(1)(v)".

BILLING CODE 1505-01-D

federal register

Wednesday
December 7, 1988

Part II

Department of Transportation

Federal Highway Administration

49 CFR Parts 393 and 396

Parts and Accessories Necessary for Safe Operation; Inspection, Repair and Maintenance; Final Rules

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC-127]

RIN 2125-AB45

Parts and Accessories Necessary for Safe Operation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending Part 393, Parts and Accessories Necessary for Safe Operation, of the Federal Motor Carrier Safety Regulations (FMCSRs). These amendments affect the requirements for axles and attached parts, brake systems, frame and frame assemblies, lights, steering systems, suspension systems, fuel systems, and other vehicle parts and accessories. This action is being taken to implement Sections 206 and 210 of the Motor Carrier Safety Act of 1984 (the Act) and to ensure that commercial motor vehicles have the parts and accessories necessary for safe operation in interstate commerce. These amendments also make technical amendments to various sections of Part 393 to provide nomenclature changes, to make editorial changes, to make the regulations more readable, and to add new authority provided by the Act.

The today's **Federal Register**, in the same part, is published another final rule amending Part 396, Inspection, Repair and Maintenance.

EFFECTIVE DATE: March 7, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Thomas P. Holian, Office of the Chief Counsel (202) 366-1350, 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.

SUPPLEMENTARY INFORMATION: On October 11, 1984, Congress passed the Motor Carrier Safety Act of 1984 (Pub. L. 98-554, 98 Stat. 2832). The Act was signed into law by the President on October 30, 1984.

On January 10, 1985, the FHWA published an advance notice of proposed rulemaking (ANPRM) (50 FR 1245) seeking public comment concerning possible modifications to Parts 393 and 396 of the FMCSRs. Due to the complexity of these two areas of rulemaking, the FHWA separated the rulemaking action for Part 393 (OMCS Docket No. MC-127; Notice No. 52 FR 5893) and published a notice of proposed rulemaking (NPRM) on February 26, 1987 (52 FR 5892). The comment period was extended to June 29, 1987. While the dockets for Parts 393 and 396 were separated, the FHWA has reviewed both parts together because of the close relationship of the subjects.

A total of 90 comments were received on this NPRM. Most of these comments addressed more than one part of the regulation. Approximately 2,000 pages of comments were received. The responses included:

35 from truck and bus industry trade associations,
6 from individual motor carriers,
11 from government agencies,
7 from individuals,
28 from manufacturers, and
3 from research institutions.

Background

The FHWA is charged with the important role of promulgating regulations for commercial motor vehicles operating on our Nation's highways. These regulations have a vital role in ensuring, to the maximum extent practical, the safe operation of such vehicles. At the same time, the FHWA is properly concerned that its regulations do not impose unnecessary burdens on the motor carrier industry, and yet protect the safety of the general public.

Section 210 of the Act directs the Secretary of Transportation to afford interested parties an opportunity to comment on Part 393 of the FMCSRs. Section 206 of the Act directs the Secretary to issue regulations to ensure that commercial motor vehicles are safely equipped. A commercial motor vehicle is defined by Section 204 of the Act as any self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property which: (1) Has a gross vehicle or combination weight rating of 10,001 pounds or more; (2) is designed to transport more than 15 passengers, including the driver; or (3) is used to transport hazardous materials in a quantity which requires the vehicle to be placarded.

The FHWA was assisted in reviewing Part 393. The FHWA funded the University of Michigan's Transportation Research Institute (UMTRI) to review European Safety Standards, the Society of Automotive Engineers, Inc.'s (SAE) Recommended Practices, and the various Canadian Safety Standards. The UMTRI was also charged with consulting with experts involved in the motor carrier industry (manufacturers, carriers, drivers, State and Federal enforcement personnel). An attempt was made to have this group of experts reach a consensus on various items contained in Part 393 (lighting devices, brakes, fuel systems, coupling devices, tires, protection against shifting or falling cargo, and miscellaneous parts and accessories). This study, including its recommendations, has been included in Docket No. MC-127 and used in this rulemaking.

Part 393 is the basis for the vehicle inspection currently performed on vehicles operated by motor carriers subject to the jurisdiction of the FMCSRs. It is important to note that Section 210 of the Act requires that each commercial motor vehicle pass an inspection, upon request, of all safety equipment required under Part 393 of the FMCSRs.

The final rule published today is substantially the same as proposed in the NPRM except that § 393.68, Natural Gas Fuel Systems, is deleted. Additional technical changes have been made to provide nomenclature changes consistent with the terminology of the Motor Carrier Safety Act of 1984. Technical changes have also been made to provide consistency with current FMVSS (Federal Motor Vehicle Safety Standards, 49 CFR Part 571). In response to comments, changes in format and wording have been made to the regulations for purposes of clarity. Minor editorial changes have also been made to make the regulations more readable. Those changes that are deemed significant are discussed in the Section-By-Section Analysis.

Review of Comments

The level of public interest was extensive. Due to the large number of comments to the NPRM, there will be no attempt to answer each individual comment; rather, the comments will be discussed by subject matter. Some comments request that additional research be done. Other commenters suggested changes that were not proposed initially in the NPRM and are therefore excluded from the final rule. However, since a number of these comments have merit, they will be addressed in future rulemaking in order to afford public comment on these proposals. As an example, the Environmental Protection Agency (EPA) requested that the minimum fill rate for gasoline fuel systems be changed to a rate of 10 gallons per minute.

One commenter supported all proposed revisions to Part 393. The other commenters supported various changes to Part 393. Several commenters requested closer coordination with the FMVSS. Every effort is being made to ensure the FMVSS and FMCSRs are

closely coordinated and consistent. This situation is made more complex because of a very detailed interrelationship between manufacturing, operations, maintenance, and inspection of a commercial vehicle. The FHWA fully intends to continue to work closely with the National Highway Traffic Safety Administration (NHTSA), the agency which promulgates the FMVSS, to ensure that future revisions to the FMCSRs and revisions to the FMVSS are consistent where appropriate.

Because of the close relationship of this Part with Part 396, Inspection, Repair and Maintenance, as discussed earlier, the FHWA also intends to continue to examine both parts in a future rulemaking. The intent of this action will be to streamline and consolidate the two parts. This examination will look at the possible elimination of standards that are contained in or will be included in the FMVSS or be eliminated because of minimal effects on safety.

One commenter requested raising the gross vehicle weight rating (GVWR) in the scope of this part from 10,000 to 15,000 pounds. The Act defines a commercial motor vehicle as any self-propelled or towed vehicle used on highways in interstate commerce to transport passengers or property, if such vehicle has a GVWR of 10,001 or more pounds. Therefore, the Act mandates that commercial motor vehicles with a GVWR of 10,001 pounds or more be subject to these regulations.

One commenter questioned why § 393.1 was revised. The NPRM proposed to revise the terminology used in that section to conform to the language of section 204 of the Act. The amendment is intended to provide conformity with the Act and does not change the scope of Part 393. The proposed amendment has been adopted in the final rule.

One commenter questioned compliance dates. This regulation "grandfathers" all existing equipment and grants appropriate lead time for new vehicles when necessary as indicated in that specific paragraph of this part. The requirement for parking brakes on all vehicles has an effective date 1 year after the effective date of this regulation. FHWA believes that minor changes in light lenses, fuel tank certification, and certification of tow-bars can be accomplished within the effective date of the rulemaking.

Five commenters wanted to revise the definition of "rear extremity" as found in § 393.5. This definition was placed in the rule to improve the understanding of the requirements for location and placement of lighting devices. There were no attempts made to regulate the more complex issues of size and weight. Therefore, the definition used in this part will apply only to the placement of safety devices such as lights, reflectors, or reflective materials. Overall length and width should be properly addressed in the FHWA Docket No. 87-5 (52 FR 7834, March 13, 1987) (23 CFR Part 658).

Fifty-two comments were received on Subpart B—Lighting Devices, Reflectors, and Electrical Equipment. The FHWA agrees with many of the commenters that more research is needed for any major change of this regulation. Despite the ease with which lighting standards can be criticized, the present system has remained basically intact since the early 1950's and has served its purpose reasonably well. Some users have experimented with and recommend rear-facing turn signal repeater lamps mounted about midway back along the trailer on the right and left sides. Such recommendations need more data and information regarding cost-effectiveness before rulemaking can be considered.

Rather than specifying a distance from which the lamp is visible under specified conditions, the FHWA deemed it appropriate to require the wiring to be of such size so as to deliver the required design voltage to the lamp for which it is serving as a conduit. Section 393.77 has been revised accordingly.

The only other section to receive a large amount of comments was Subpart E—Fuel Systems, which received 36 comments. Five commenters mentioned that fuel gauges are not necessary and are very difficult to maintain. One commenter supported this requirement as being necessary for the safe operation of motor vehicles. The majority of those opposed to requiring fuel gauges believed gauges are not needed and should remain optional at the discretion of operators. The FHWA has decided not to require fuel gauges due to lack of supporting data concerning safety. Therefore, proposed § 393.65(h) has been deleted from this final rule.

Several commenters raised questions about the size of crossover lines and their protection. The FHWA believes that additional research is required to answer the questions regarding size and strength of protection for crossover lines.

Sixteen comments dealt with compressed natural gas (CNG) fuel systems. The FHWA has decided to postpone rulemaking on the subject of compressed natural gas as a fuel in commercial motor vehicles until the Gas Research Institute's (GRI's) 24-month, $400,000 research program under contract to Southwest Research Institute (SWRI) is completed. The contract is scheduled for completion in early 1989. That research program addresses the issues of stress corrosion cracking in vehicle-mounted CNG storage cylinders, nondestructive test procedures for cylinders, and derivation of national inspection intervals to ensure safe cylinder operation. It is clear that, at present, insufficient data is available on CNG cylinder fatigue mechanisms with which to establish a national maximum retest interval. The FHWA agrees with the Gas Research Institute that a major goal of the ongoing GRI-SWRI research program is to develop a test procedure which can be performed with the cylinder in place, and which provides at the minimum, the same amount of information about cylinder integrity as the established hydrostatic retest procedures in 49 CFR 173.34(c).

Several commenters indicated that Supart I, Protection Against Shifting or Falling Cargo, is not adequate for today's demands. Research in this area is being conducted and changes will be issued in a future NPRM if appropriate.

Section-by-Section Analysis

Section 393.1 Scope of the rules in this part

Wording in § 393.1 has been changed to comply with the terminology of the Motor Carrier Act of 1984.

Section 393.3 Additional equipment and accessories

Redesignated § 393.3 is former § 393.2.

Section 393.5 Definitions

Section 393.5 has been added to define certain terms used in this regulation. After review of the comments from the NPRM, the following definitions were changed to provide greater clarity and accuracy: Brake tubing/hose, converter dolly, emergency brake system, fittings, lash, lower half fifth wheel, play, stop lamp, and upper half fifth wheel.

The following definitions have been added to the final rule: Agricultural commodity trailer, heater, heavy hauler trailer, pulpwood trailer, reflective material, and saddle-mount.

The following definitions have been deleted: Composite container, container, container appurtenance, container valve, cylinder, dew point, flammable range, fuel supply container, pressure relief device, pressure relief channels, and manual shut-off valve. These definitions have been deleted because the FHWA has decided to delay rulemaking on compressed natural gas as explained in the discussion of the comments below.

Section 393.11 Lighting devices and reflectors

Section 393.11 incorporates into a tabular format §§ 393.12, 393.13, 393.14, 393.15, 393.16, and 393.18. The lighting requirements are amended to be in conformity with FMVSS 571.108. This change will require a lamp to illuminate the rear license plate on all vehicles, a backup lamp on buses, trucks, and truck tractors, and parking lamps on the front of buses and trucks of less than 80 inches in overall width.

After review of the comments from the NPRM, the proposed requirement for converter dollies to have 2 stop lamps and 2 tail lamps has been changed to require one each. Also based on comments received, several technical changes to the tabular format were incorporated into the final rule. For height above the road surface, the center of the lamp at curb weight of the vehicle will be used.

Section 393.19 Requirements for turn signaling systems

This section has been changed to correctly indicate that a bus, truck, or truck tractor shall have a switch or combination of switches that will cause the turn signals on a vehicle to flash simultaneously as a vehicular traffic hazard warning. The former rule used the term, "motor vehicle" which included a semitrailer and full trailer. The requirement was not intended to apply to such vehicles.

Section 393.20 Clearance lamps to indicate extreme width and height

After review of the comments, it was deemed appropriate to let this rule stand as is, due to the variance in trailer configurations, and variations in the manner in which cargo is covered.

Section 393.22 Combination of lighting devices and reflectors

The proposed change to § 393.22 in the NPRM has been deleted after review of the comments to avoid the possibility of confusing the approaching motorist with a combination turn signal/stop lamp of the same intensity, in the same housing, and using the same lens.

Section 393.24 Requirements for head lamps and auxiliary road lighting lamps

The footnote number 1 to § 393.24 is changed to update SAE references to 1985 and to show that should a conflict between SAE references and FMVSS 571.108 arise, FMVSS 571.108 will prevail.

Section 393.25 Requirements for lamps other than head lamps

Reference to a SAE 1959 standard is updated to 1985 in paragraph (c) and (d). As proposed in the NPRM, paragraph (e) is removed and paragraphs (f) and (g) redesignated (e) and (f), respectively. Color requirements are found in FMVSS 571.108.

Section 393.26 Requirements for reflectors

As proposed in the NPRM, paragraph (d) is removed. Paragraph (b) is changed to require compliance with the specifications in FMVSS 571.108 in effect at the time of manufacture.

Section 393.27 Wiring specifications

As proposed in the NPRM, specific reference is made to SAE recommended practices for ignition cable, battery cable, and primary cable. Subjective wording has been changed to require the power source and wiring to be of such size as to meet the requirements as found in FMVSS 571.108 for minimum candle power. The proposed requirements for 2 circuits on the trailer and color coding of these circuits have been deleted because they were determined to be too design restrictive.

Section 393.28 Wiring to be protected

The proposed change to this section in the NPRM has been modified so as not to require access to wiring from the outside of a fully loaded and locked trailer. This change was made as such a requirement would be counterproductive for the overall reliability of the total system. The proposed prohibition of wiring adjacent to the fuel tank has been changed to prohibit terminals or splices in the wiring above the fuel tank except for fuel gauge sender wiring and terminals.

Section 393.31 Overload protective devices

The wording in this section has been changed from "motor vehicle" to "bus, truck, or truck tractor" since overload protective devices are normally found on such vehicles. The exception for buses having a seating capacity of eight has been raised to 15, including the driver, to comply with the Motor Carrier Safety Act of 1984.

Section 393.41 Parking brake systems

The proposed change for parking brakes in the NPRM has been modified to conform to the requirements for parking brakes as found in FMVSS 571.121. Agricultural commodity trailers, heavy hauler trailers, and pulpwood trailers are exempt from FMVSS 571.121; however, this final rule requires such vehicles to carry sufficient chocking blocks to prevent movement when such vehicles are parked.

Section 393.42 Brakes required on all wheels

Section 393.42 is amended to include the illustration for light weight trailers inadvertently deleted from this section in OMCS Docket No. MC–124 (52 FR 2801, January 27, 1987).

Section 393.44 Front brake protection

The proposed change to § 393.44 in the NPRM is modified to read that a driver of a bus will have a means to apply the brakes on the rear wheels should breakage occur to any brake lines on any front wheel. This device may be located forward of the driver's seat. This change incorporates past interpretations of this rule.

Section 393.45 Brake tubing and hose, adequacy

In this section, general requirements remain the same as found in the present regulation. Paragraph (b) is changed to update the special requirements for brake tubing and hose to more current SAE recommended practices and test procedures. In paragraph (c) the reference to SAE Standard J844 has been moved to paragraph (b), and in paragraph (d) the intended use for metallic and nonmetallic brake tubing and hose is explained. Paragraph (d) also allows the use of tubing through a point of articulation under certain specific conditions.

Section 393.46 Brake tubing and hose connections

To § 393.46, a new paragraph (f) has been added to set standards for splices in brake tubing. This additional paragraph is necessary to make enforcement reasonable and uniform.

Section 393.50 Reservoir required

In § 393.50, paragraph (c), concerning applicability of this section, is eliminated to be in conformity with the Motor Carrier Safety Act of 1984, and paragraph (a) is revised to delete reference to paragraph (c).

Section 393.51 Warning devices and gauges

Section 393.51 has been revised to eliminate paragraph (g), which provided exceptions for certain types of vehicles. This amendment is consistent with the Motor Carrier Safety Act of 1984.

Section 393.65 All fuel systems

The NPRM proposed that fuel gauges become mandatory. After review of the

comments received on the proposal, FHWA has decided not to make this requirement mandatory; therefore, there is no change to § 393.65.

Section 393.67 Liquid fuel tanks

Section 393.67 is amended by revising paragraph (f). This change requires the name of the manufacturer to be included in the certification on the fuel tank. This requirement was inadvertently removed in a previous rule change.

Section 393.68 Natural gas fuel system

This section was proposed in the NPRM, but FHWA has decided that such a section would be premature in light of the research presently being conducted. (See Review of Comments section for a more complete discussion of this decision.)

Section 393.69 Liquefied petroleum gas system

This section is revised to indicate the correct address of the National Fire Protection Association whose standard is referenced in this section.

Section 393.71 Coupling and towing methods, driveaway-towaway operation

This section has been changed to better define the method used to measure off-tracking and to require allowable maximum gross weight to be marked on the tow-bar. The definition for saddle-mount in paragraph (i) has been removed and placed in § 393.5. Paragraph (i) has been placed in reserve for future use. These changes have been made in order that this section may be more enforceable and easier to follow.

Section 393.75 Tires

This section has been changed to be more specific regarding damaged tires not to be used, and to require tire load ratings to meet the requirements of FMVS 571.119. More specific requirements for the use of damaged tires have been added to provide safer operating conditions. Table 1, "Tire Load Rating Limits at Various Cold Inflation Pressures," has been deleted.

Section 393.76 Sleeper berth

This section has been changed to allow a fluid-filled mattress, such as one filled with air or a liquid, to be used in lieu of an innerspring, cellular rubber, or foam mattress. This change makes the required equipment for a sleeper berth less restrictive.

Section 393.77 Heaters

This section has been changed by removing the definition of a heater and placing the definition in § 393.5. The exception for a bus having a seating capacity of eight has been changed to 15, including the driver, to comply with the Motor Carrier Safety Act of 1984.

Section 393.83 Exhaust system location

Exhaust system location requirements have been amended to require an exhaust system, and to prohibit the use of patches or leaking at any point below or forward of the driver/sleeper compartment, or in the case of a bus, forward of any window or door designed to be opened. These changes will increase safety by ensuring that exhaust fumes will not affect the alertness of the driver while driving or affect the driver's health or the health of passengers when being transported.

Section 393.84 Floors

The wording in this section has been changed so that flooring will not be permeated with oil or other substances likely to cause injury to a person using the floor as a traction surface. This has been added to give better protection to personnel and was the original intent of the regulation.

Section 393.87 Flags on projecting loads

This section has been changed to allow projecting loads to extend up to 4 inches beyond the side of the vehicle before flags are required at each point where a lamp is required. This is a relaxation of the present requirement, but is more precise in meaning and therefore more readily enforceable in a uniform manner.

Section 393.91 Buses, aisle seats prohibited

In this section the eight seat capacity exception for buses is increased to 15 passengers, including the driver, to comply with the Motor Carrier Safety Act of 1984. The exception for any bus engaged exclusively in the transportation of agricultural workers has been more clearly worded to state that these buses cannot have more than eight temporary folding seats located in the center aisle.

Subpart J—Frames, Cab and Body Components, Wheels, Steering, and Suspension Systems

As proposed in the NPRM, this subpart has been added to Part 393 because these items are commonly found to be a cause of commercial vehicle accidents and personal injury.

Section 393.201 Frames

This section has been added since most problems encountered in truck/trailer frame failures are the result of improperly installed frame-mounted accessories. Therefore, these regulations are added to prohibit cracked, loose, sagging or broken frames or frame members. This section will also require that all accessories to a frame be bolted or riveted securely and prohibit welds and the drilling of holes to certain areas of the frame. Field repairs to frames are authorized. Trailers having frames will not be allowed to have cracked or broken frames.

Section 393.203 Cab and body components

This section has been added to ensure that cab, doors, hood, and seat are securely fastened and not missing. Components are required to be attached in a secure manner. This addition has been made primarily to protect the driver.

Section 393.205 Wheels

Wheel and tire failures are historically one of the major mechanical defects related to commercial vehicle accidents reported to the FHWA. This final rule prohibits cracks in wheels and rims, elongated (out-of-round) stud or bolt holes and missing or loose nuts or bolts.

Section 393.207 Suspension systems

Accident statistics generated by motor carriers of property filing accident reports with the FHWA show that suspension systems are the fourth ranked mechanical defect causing accidents. The condition of springs, axles, adjustable axles assemblies, torsion bars, and related devices are now included in Part 393.

Section 393.209 Steering Wheel Systems

In 1983, 5.9 percent of the reported mechanical defect related accidents involved steering systems. According to accident reports filed with the FHWA, steering wheel system problems and failures account for the third most serious mechanical defect resulting in accidents of motor carriers. As proposed in the NPRM, regulations concerning free play in steering wheels, defects in the steering column system, universal joints, and power steering systems are included in the final rule.

Effect on State Laws; Preemption

In issuing this final rule, the FHWA has considered the effect of the rule on State laws and regulations pertaining to commercial motor vehicle safety. The FHWA has determined that the requirements contained in this rule are the minimum requirements necessary for

the safe operation of commercial motor vehicles. Many of the changes to Part 393 contained in this final rule were made to provide consistency with existing Federal requirements contained in the FMVSS for the manufacture of commercial motor vehicles. Other changes were made to provide the requirements for parts and accessories that are necessary to conduct the periodic inspection required by section 210 of the Act. Therefore, the FHWA has determined that this final rule does not unnecessarily preempt State laws and regulations pertaining to commercial motor vehicle safety.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. It is considered to be a significant regulation under the regulatory policies and procedures of the Department of Transportation because of the sizable number of individuals and companies that may be impacted economically by certain rule changes promulgated herein. However, despite the number of individuals and companies that may be affected, it is anticipated that the economic impact of this rule to all individuals will be minimal. It is also anticipated that the benefits and opportunities for benefits to be derived from the rule will offset any costs. A regulatory evaluation/regulatory flexibility analysis has been prepared and is available for review in the public docket.

Under the criteria of the Regulatory Flexibility Act, it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Federalism Impact

In promulgating this rule, the FHWA has considered the President's Executive Order on "Federalism" issued on October 26, 1987. (E.O. 12612, 52 FR 41685) The purpose of the Executive Order is to assure the appropriate division of governmental responsibilities between the national government and the States. This rule implements a specific legislative directive to establish minimum Federal safety standards for commercial motor vehicles in interstate commerce contained in section 206 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 2505). Therefore, it has been determined that the Federalism implications to be considered under the Executive Order do not apply to this rule.

In consideration of the foregoing, the FHWA hereby amends Title 49, Code of Federal Regulations, Chapter III, by revising Part 393 as set forth below.

List of Subjects in 49 CFR Part 393

Highways and roads, Highway safety, Motor carriers, Motor vehicle safety, Parts and accessories.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on November 21, 1988.

Robert E. Farris,

Federal Highway Administrator.

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

1. The authority citation for Part 393 is revised to read as follows:

Authority: Sec. 210 of Pub. L. No. 98–554, 98 Stat. 2839 (1984) (49 U.S.C. App. 2505); 49 U.S.C. 3102; 49 CFR 1.48.

2. Subpart A is revised to read as follows:

Subpart A—General

Sec.

Subpart A—General

§ 393.1 Scope of the rules in this part.

Every employer and employee shall comply and be conversant with the requirements and specifications of this part. No employee shall operate a commercial motor vehicle, or cause or permit it to be operated, unless it is equipped in accordance with the requirements and specifications of this part.

§ 393.3 Additional equipment and accessories.

Nothing contained in this subchapter shall be construed to prohibit the use of additional equipment and accessories, not inconsistent with or prohibited by this subchapter, provided such equipment and accessories do not decrease the safety of operation of the motor vehicles on which they are used.

§ 393.5 Definitions.

As used in this part, the following words and terms are construed to mean:

Agricultural Commodity Trailer. A trailer that is designed to transport bulk agricultural commodities in off-road harvesting sites and to a processing plant or storage location, as evidenced by skeletal construction that accommodates harvest containers, a maximum length of 28 feet, and an arrangement of air control lines and reservoirs that minimizes damage in field operations.

Brake. An energy conversion mechanism used to stop, or hold a vehicle stationary.

Brake tubing/hose. Metallic brake tubing, nonmetallic brake tubing and brake hose are conduits or lines used in a brake system to transmit or contain the medium (fluid or vacuum) used to apply the motor vehicle's brakes.

Bus. A vehicle designed to carry more than 15 passengers, including the driver.

Chassis. The load-supporting frame in a truck or trailer, exclusive of any appurtenances which might be added to accommodate cargo.

Clearance Lamp. A lamp used on the front and the rear of a motor vehicle to indicate its overall width and height.

Container Chassis. A semitrailer of skeleton construction limited to a bottom frame, one or more axles, specially built and fitted with locking devices for the transport of cargo containers, so that when the chassis and container are assembled, the units serve the same function as an over the road trailer.

Converter dolly. A motor vehicle consisting of a chassis equipped with one or more axles, a fifth wheel and/or equivalent mechanism, and drawbar, the attachment of which converts a semitrailer to a full trailer.

Curb weight. The weight of a motor vehicle with standard equipment, maximum capacity of fuel, oil, and coolant; and, if so equipped, air conditioning and additional weight of optional engine. Curb weight does not include the driver.

Emergency Brake System. A mechanism designed to stop a vehicle after a single failure occurs in the service brake system of a part designed to contain compressed air or brake fluid or vacuum (except failure of a common valve, manifold brake fluid housing or brake chamber housing).

Fifth Wheel. A device mounted on a truck tractor or similar towing vehicle (e.g., converter dolly) which interfaces with and couples to the upper coupler assembly of a semitrailer.

Fuel Tank Fitting. Any removable device affixed to an opening in the fuel tank with the exception of the filler cap.

Grommet. A device that serves as a support and protection to that which passes through it.

Hazard Warning Signal. Lamps that flash simultaneously to the front and rear, on both the right and left sides of a commercial motor vehicle, to indicate to an approaching driver the presence of a vehicular hazard.

Head Lamps. Lamps used to provide general illumination ahead of a motor vehicle.

Heater. Any device or assembly of devices or appliances used to heat the interior of any motor vehicle. This includes a catalytic heater which must meet the requirements of § 177.834(1) of this title when flammable liquid or gas is transported.

Heavy Hauler Trailer. A trailer with one or more of the following characteristics:

(1) Its brake lines are designed to adapt to separation or extension of the vehicle frame; or

(2) Its body consists only of a platform whose primary cargo-carrying surface is not more than 40 inches above the ground in an unloaded condition, except that it may include sides that are designed to be easily removable and a permanent "front-end structure" as that term is used in Section 393.106 of this title.

Identification Lamps. Lamps used to identify certain types of commercial motor vehicles.

Lamp. A device used to produce artificial light.

License Plate Lamp. A lamp used to illuminate the license plate on the rear of a motor vehicle.

Parking Brake System. A brake system used to hold a vehicle stationary.

Play. Any free movement of components.

Pulpwood Trailer. A trailer that is designed exclusively for harvesting logs or pulpwood and constructed with a skeletal frame with no means for attachment of a solid bed, body, or container, and with an arrangement of air control lines and reservoirs designed to minimize damage in off-road operations.

Rear Extremity. The rearmost point on a vehicle when the vehicle's cargo doors, tailgate or other permanent structure are positioned as they normally are when the vehicle is being driven. Non-structural protrusions such as tail lights, hinges, and latches are deleted from the determination of the rearmost point.

Reflective Material. A material conforming to Federal Specification L–S–300, "Sheeting and Tape, Reflective; Non-exposed Lens, Adhesive Backing," (September 7, 1965) meeting the performance standard in either Table 1 or Table 1A of SAE Standard J594f, "Reflex Reflectors" (January, 1977).

Reflex Reflector. A device which is used on a vehicle to give an indication to an approaching driver by reflected lighted from the lamps on the approaching vehicle.

Saddle-mount. A device, designed and constructed as to be readily demountable, used in driveaway-towaway operations to perform the functions of a conventional fifth wheel:

(1) Upper-half. "Upper-half" of a "saddle-mount" means that part of the device which is securely attached to the towed vehicle and maintains a fixed position relative thereto, but does not include the "king-pin;"

(2) Lower-half. "Lower-half" of a "saddle-mount" means that part of the device which is securely attached to the towing vehicle and maintains a fixed position relative thereto but does not include the "king-pin;" and

(3) King-pin. "King-pin" means that device which is used to connect the "upper-half" to the "lower-half" in such manner as to permit relative movement in a horizontal plane between the towed and towing vehicles.

Service Brake System. A primary brake system used for slowing and stopping a vehicle.

Side Extremities. The outermost point on the sides of the vehicle. Nonstructural protrusions such as tail lights, hinges, and latches are excluded from the determination of the outermost point.

Side Marker Lamp (Intermediate). A lamp shown to the side of a trailer to indicate the approximate middle of a trailer 30 feet or more in length.

Side Marker Lamps. Lamps used on each side of a trailer to indicate its overall length.

Steering Wheel Lash. The condition in which the steering wheel may be turned through some part of a revolution without associated movement of the front wheels.

Stop Lamps. Lamps shown to the rear of a motor vehicle to indicate that the service brake system is engaged.

Tail Lamps. Lamps used to designate the rear of a motor vehicle.

Turn Signals. Lamps used to indicate a change in direction by emitting a flashing light on the side of a motor vehicle towards which a turn will be made.

Upper Coupler Assembly. A structure consisting of an upper coupler plate, king-pin and supporting framework which interfaces with and couples to a fifth wheel.

Upper Coupler Plate. A plate structure through which the king-pin neck and collar extend. The bottom surface of the plate contacts the fifth wheel when coupled.

3. Subpart B is amended by revising § 393.11 and removing §§ 393.12, 393.13, 393.14, 393.15, 393.16 and 393.18 as follows:

Subpart B—Lighting Devices, Reflectors, and Electrical Equipment

§ 393.11 Lighting devices and reflectors.

The following Table 1 sets forth the required color, position, and required lighting devices by type of commercial motor vehicle. Diagrams illustrating the locations of lighting devices and reflectors, by type and size of commercial motor vehicle, are shown immediately following Table 1. All lighting devices on motor vehicles placed in operation after (the effective date of this regulation) must meet the requirements of 49 CFR 571.108 in effect at the time of manufacture of the vehicle. Motor vehicles placed in operation on or before (the effective date of this regulation) must meet either the requirements of this Subchapter or Part 571 of this title in effect at the time of manufacture.

TABLE 1.—REQUIRED COMMERCIAL VEHICLE LIGHTING EQUIPMENT

Item on the vehicle	Quantity	Color	Location	Position	Height above road surface in inches measured from the center of the lamp at curb weight	Required lighting devices/vehicles
Headlamps	2 At Least	White	Front	On the front at the same height, an equal number at each side of the vertical centerline as far apart as practicable.	Not less than 22 nor more than 54.	A, B, C

TABLE 1.—REQUIRED COMMERCIAL VEHICLE LIGHTING EQUIPMENT—Continued

Item on the vehicle	Quantity	Color	Location	Position	Height above road surface in inches measured from the center of the lamp at curb weight	Required lighting devices/vehicles
Turn Signal (Front) See Footnotes #2 & 12.	2	Amber	At or Near Front.	One on each side of the vertical centerline at the same height and as far apart as practicable.	Not less than 15 nor more than 83.	A, B, C
Identification Lamp (Front) Footnote #1.	3	Amber	Front	Mounted on the vertical centerline of the vehicle or the vertical centerline of the cab where different from the centerline of the vehicle.	All three on same level as close as practicable to the top of the vehicle with lamp centers spaced not less than 6 inches or more than 12 inches apart.	B, C
Tail Lamp See Footnotes #5 & 11.	2	Red	Rear	One lamp each side of the vertical centerline at the same height and as far apart as practicable.	Both on the same level between 15 and 72.	A, B, C, D, E, F, G, H
Stop Lamp See Footnotes #5 & 13.	2	Red	Rear	One lamp each side of the vertical centerline at the same height and as far apart as practicable.	Both on the same level between 15 and 72.	A, B, C, D, E, F, G
Clearance Lamps See Footnotes #9, 10, & 15.	2	Amber	One on each side of front.	One on each side of the vertical centerline to indicate width.	Both on same level as high as practicable.	B, C, D, G, H
	2	Red	One on each side of rear.	One on each side of the vertical centerline to indicate overall width.	Both on same level as high as practicable.	B, D, G, H
Side Marker Lamp, Intermediate	2	Amber	One on each side.	At or near midpoint between front and rear side marker lamps, if over 30' in length.	Not less than 15	A, B, D, F, G
Reflex Reflector Intermediate (Side).	2	Amber	One on each side.	At or near midpoint between front and rear side reflectors if over 30' in length.	Between 15 and 60	A, B, D, F, G
Reflex Reflector (Rear) See Footnotes #5, 6, & 8.	2	Red	Rear	One on each side of vertical centerline, as far apart as practicable.	Both on same level, between 15 and 60.	A, B, C, D, E, F, G
Reflex Reflector (Rear Side) Footnote #4.	2	Red	One on each side (rear).	As far to the rear as practicable	Both on same level, between 15 and 60.	A, B, D, F, G
Reflex Reflector (Front Side)	2	Amber	One on each side (front).	As far to the front as practicable	Between 15 and 60	A, B, C, D, F, G
License Plate Lamp Rear See Footnote #11.	1	White	At rear license plate.	To illuminate the license plate from the top or sides.	No requirements	A, B, C, D, F, G
Side Marker Lamp (Front)	2	Amber	One on each side.	As far to the front as practicable	Not less than 15	A, B, C, D, F
Side Marker Lamp (Rear) See Footnotes #4 & 8.	2	Red	One on each side.	As far to the rear as practicable	Not less than 15 and on the rear of trailer, not more than 60.	A, B, D, F, G
Turn Signal (Rear) See Footnotes #5 & 12.	2	Amber or Red.	Rear	One lamp on each side of the vertical centerline as far apart as practicable.	Both on the same level, between 15 and 83.	A, B, C, D, E, F, G
Identification Lamp (Rear) See Footnotes # 3, 7 & 15.	3	Red	Rear	One as close as practicable to vertical centerline. One on each side with lamp centers spaced not less than 6" or more than 12" apart.	All three on same level as close as practicable to the top of the vehicle.	B, D, G
Vehicular Hazard Warning Flashing Lamps See Footnote # 12.	2	Amber	Front	One lamp on each side of vertical centerline as far apart as practicable.	Both on same level, between 15 and 83.	A, B, C, D, E, F, G
	2	Amber or Red.	Rear			
Backup Lamp See Footnote # 14.	1	White	Rear	Rear	No requirement	A, B, C
Parking Lamp	2	Amber or white.	Front	One lamp on each side of vertical centerline as far apart as practicable.	Both on same level, between 15 and 72.	A

* Lighting Required per Type of Commercial Vehicle as Shown **Last Column of Table.**

A. Small buses and trucks less than 80 inches in overall width.
B. Buses and trucks 80 inches or more in overall width.
C. Truck Tractors.
D. Large semitrailers and full trailers 80 inches or more in overall width except converter dollies.
E. Converter dolly.
F. Small semitrailers and full trailers less than 80 inches in overall width.
G. Pole Trailers.
H. Projecting loads.
Lamps and reflectors may be combined as permitted by Paragraphs 393.22 and S4.4 of 49 CFR 571.108, Equipment combinations.

Footnote—1

Identification lamps may be mounted on the vertical centerline of the cab where different from the centerline of the vehicle, except where the cab is not more than 42 inches wide at the front roofline, then a single lamp at the center of the cab shall be deemed to comply with the requirements for identification lamps. No part of the identification lamps or their mountings may extend below the top of the vehicle windshield.

Footnote—2

Unless the turn signals on the front are so constructed (double-faced) and located as to be visible to passing drivers, two turn signals are required on the rear of the truck tractor, one at each side as far apart as practicable.

Footnote—3

The identification lamps need not be visible or lighted if obscured by a vehicle in the same combination.

Footnote—4

Any semitrailer or full trailer vehicles manufactured on and after March 1, 1979, shall be equipped with rear side-marker lamps at a height of not less than 15 inches (381 mm) nor more than 60 inches (1524 mm) above the road surface, as measured from the center of the lamp on the vehicle at curb weight. The rear side marker lamps shall be visible in the vehicle's rearview mirrors when the trailer is tracking straight.

Footnote—5

For purposes of these regulations, each converter dolly shall be equipped with one stop lamp, one tail lamp, and two reflectors on the rear at each side when towed singly by another vehicle. Each converter dolly shall be equipped with turn signals at the rear if the converter dolly obscures the turn signals at the rear of the towing vehicle when towed singly by another vehicle.

Footnote—6

Pole trailers will have two reflectors, one on each side, placed to indicate extreme width of the trailer.

Footnote—7

Pole trailers may have three identification lamps mounted on the vertical centerline of the rear of the cab of the truck tractor drawing the pole trailer, and higher than the load being transported, in lieu of the three identification lamps mounted on the rear vertical centerline of the trailer.

Footnote—8

Pole trailers shall have on the rearmost support for the load, one combination marker lamp or two single lamps showing amber to the front and red to the rear and side, mounted on each side to indicate maximum width of the pole trailer; and one red reflector on each side of the rearmost support for the load.

Footnote—9

Any motor vehicle transporting a load which extends more than 4 inches beyond the width of the motor vehicle, or having projections beyond the rear of such vehicles, shall be equipped with the following lamps in addition to other required lamps, have the loads marked

Loads projecting more than 4 inches beyond sides of motor vehicles:

(1) The foremost edge of the projecting load at its outermost extremity shall be marked with an amber lamp visible from the front and both sides.

(2) The rearmost edge of the projecting load at its outermost extremity shall be marked with a red lamp visible from the rear and side.

(3) If any portion of the projecting load extends beyond both the foremost and rearmost edge, it shall be marked with an amber lamp visible from the front, both sides, and rear.

(4) If the protecting load does not measure more than 3 feet from front to rear, it shall be marked with an amber lamp visible from the front, both sides, and rear, except that if the projection is located at or near the rear it shall be marked by a red lamp visible from front, side, and rear.

Footnote—10

Projections beyond rear of motor vehicles. Motor vehicles transporting loads which extend more than 4 feet beyond the rear of the motor vehicle, or which have these tailboards or tailgates extending more than 4 feet beyond the body, shall have projections marked as follows:

(1) On each side of the projecting load, one red lamp, visible from the side, located so as to indicate maximum overhang.

(2) On the rear of the projecting load, two red lamps, visible from the rear, one at each side; and two red reflectors visible from the rear, one at each side, located so as to indicate maximum width.

Footnote—11

To be illuminated when tractor headlamps are illuminated.

Footnote—12

Every bus, truck, and truck tractor shall be equipped with a signaling system that, in addition to signaling turning movements, shall have a switch or combination of switches that will cause the two front turn signals and the two rear signals to flash simultaneously as a vehicular traffic signal warning, required by § 392-22(a). The system shall be capable of flashing simultaneously with the ignition of the vehicle on or off.

Footnote—13

To be actuated upon application of service brakes.

Footnote—14

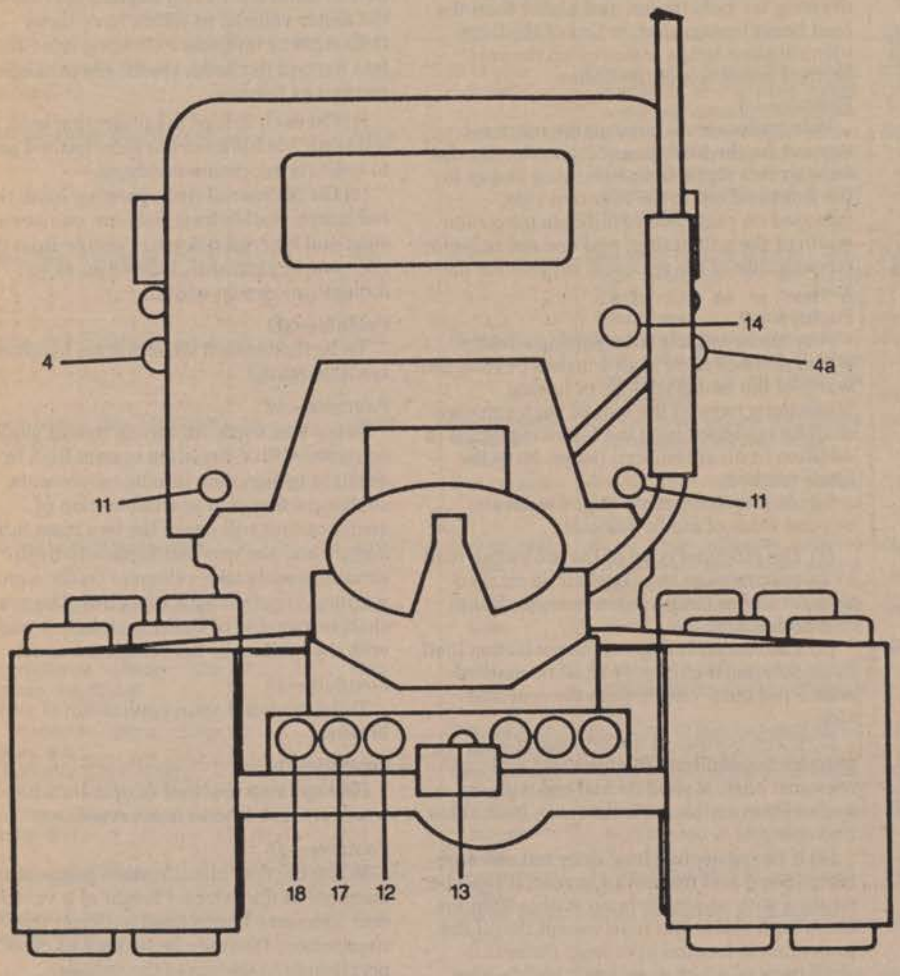
Backup lamp required to operate when bus, truck, or truck tractor is in reverse.

Footnote—15

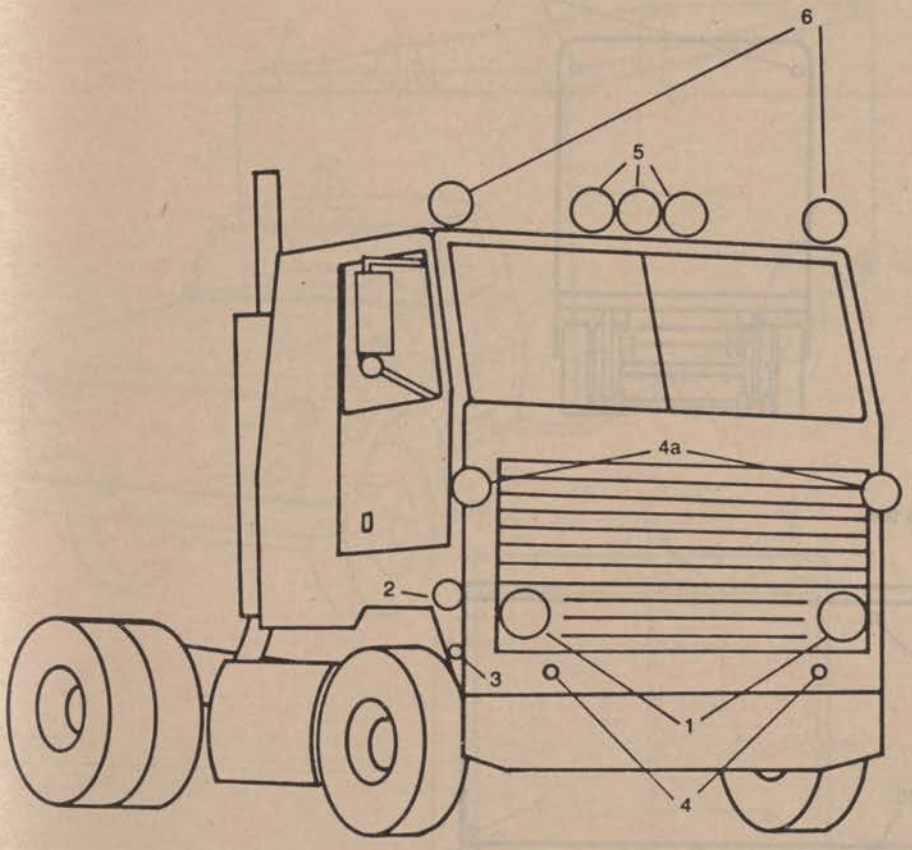
When the rear identification lamps are mounted at the extreme height of a vehicle, rear clearance lamps need not meet the requirement that they be located as close as practicable to the top of the vehicle.

BILLING CODE 4910-22-M

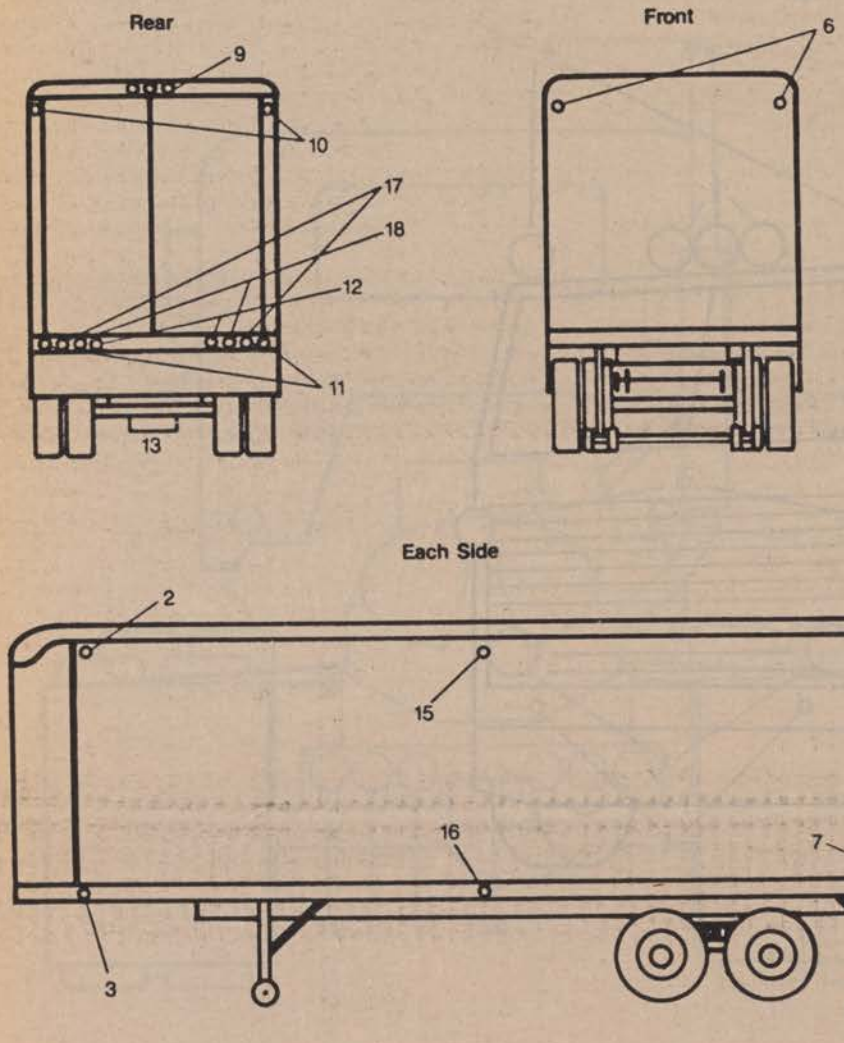
Truck Tractor
Rear View



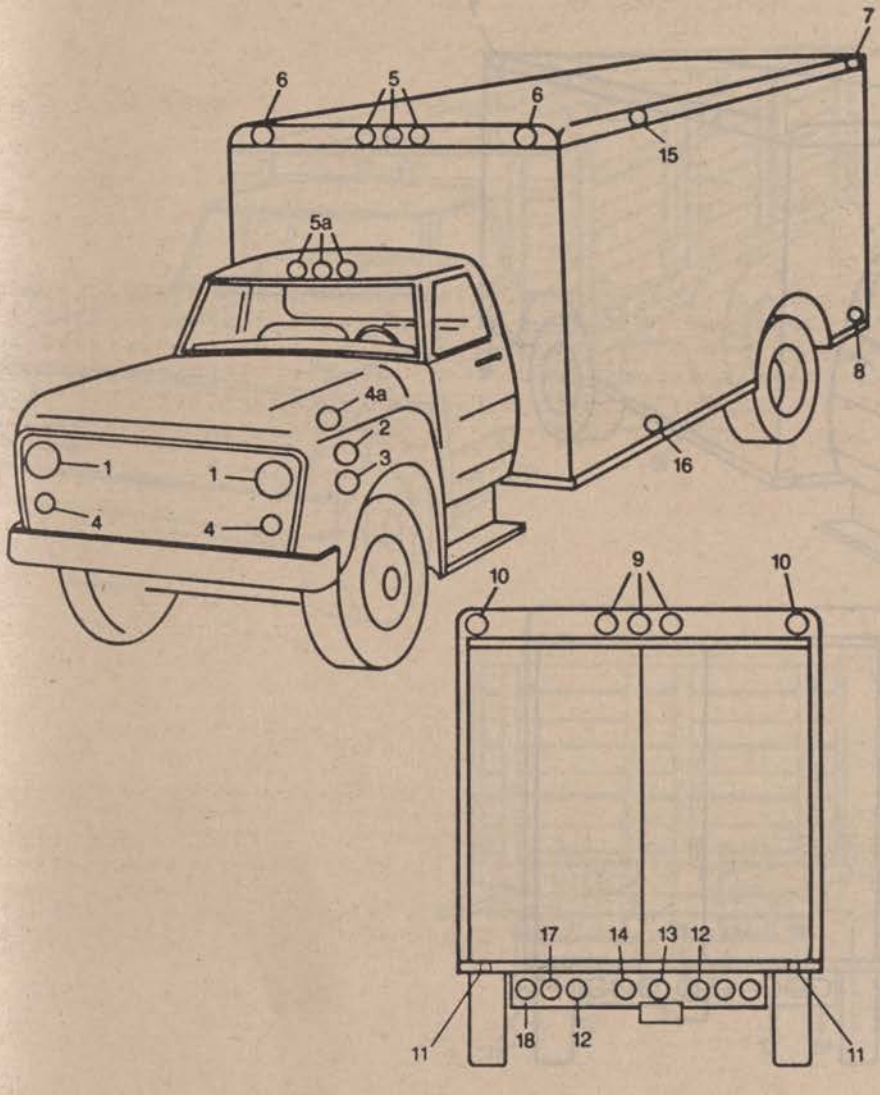
Truck Tractor
Front & Side View



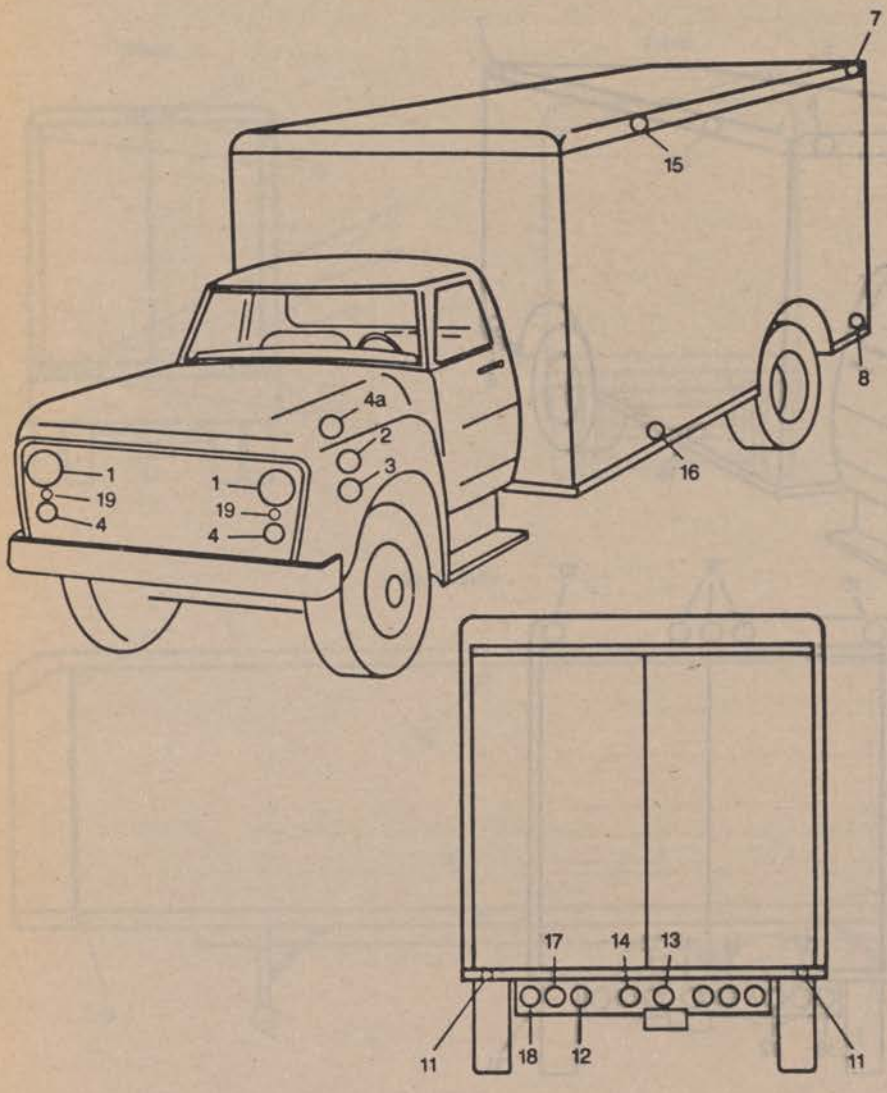
Large Trailers



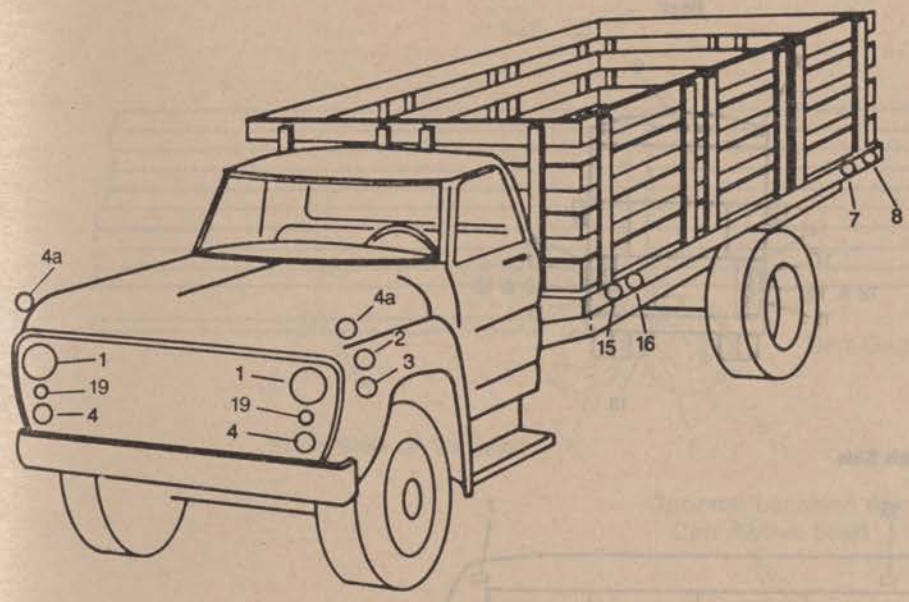
Over 80 Inches

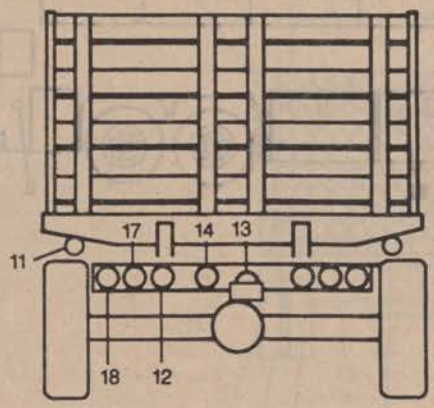


Under 80 Inches



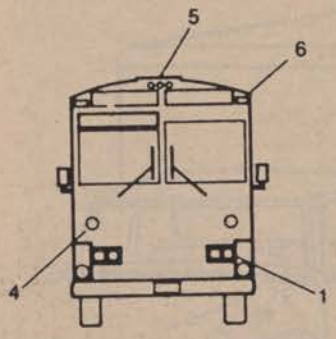
Under 80 Inches



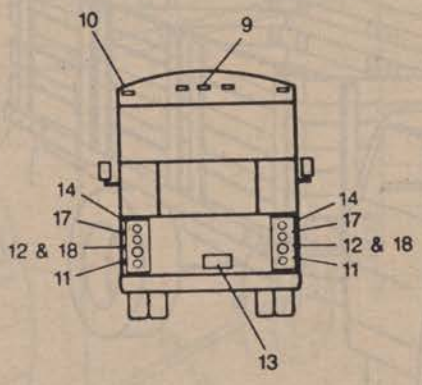


Large Bus

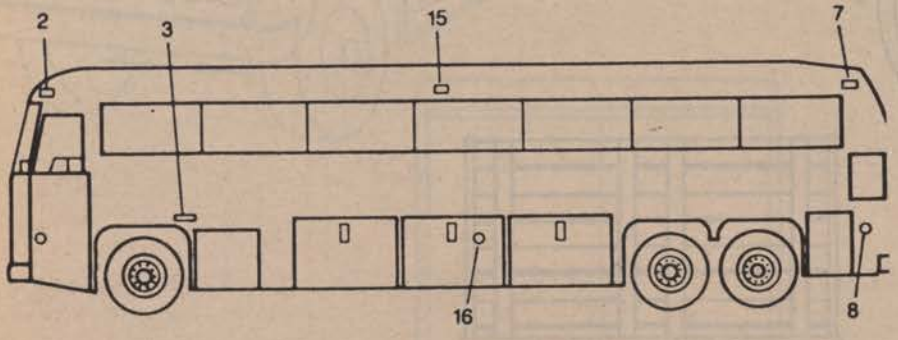
Front



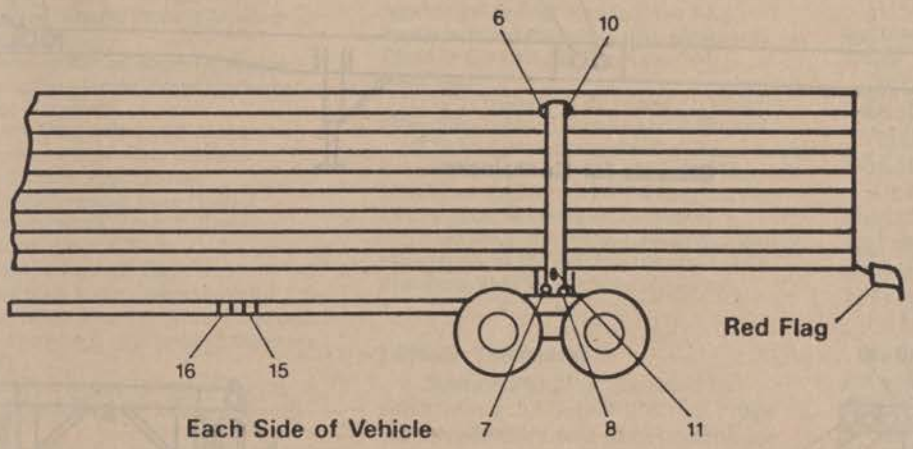
Rear

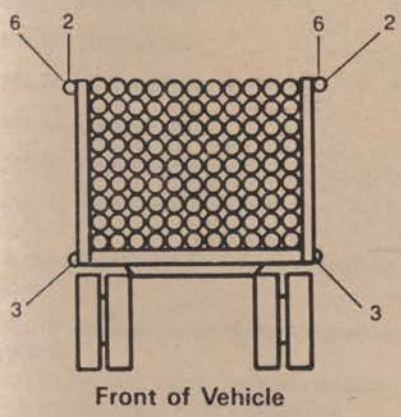


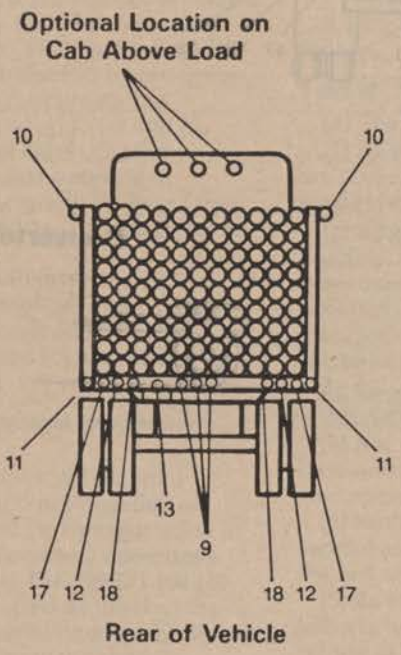
Each Side



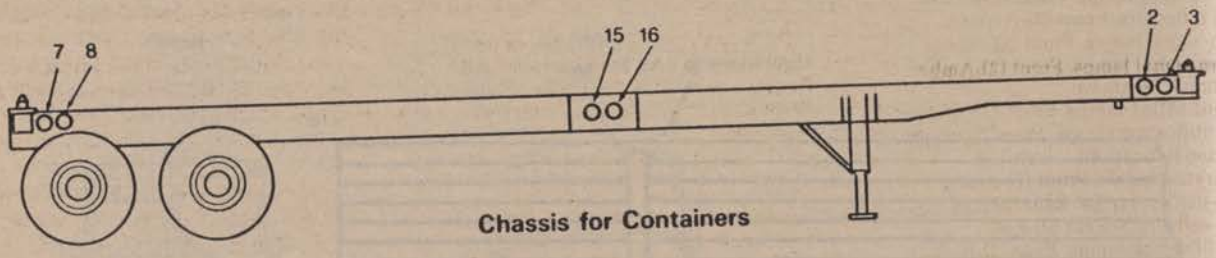
Pole Trailers — All Vehicle Widths



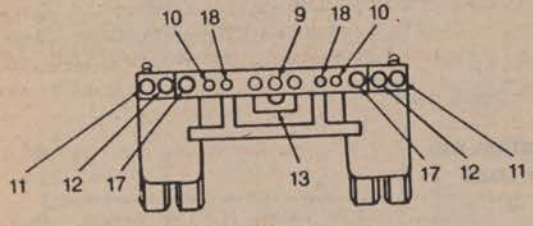




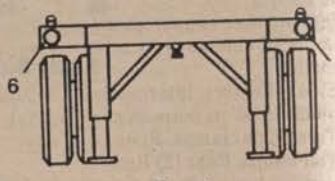
Container Chassis



Chassis for Containers

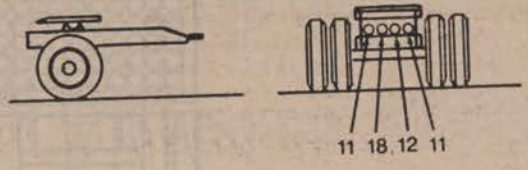


Rear



Front

Converter Dolly



BILLING CODE 4910-22-C

Legend (Used in Illustrations)

1. Headlamps (2)-White (4 optional)
2. Side-marker lamps. Front (2)-Amber
3. Side reflectors. Front (2)-Amber
4. Turn-signal lamps. Front (2)-Amber
4a. Turn-signal lamps. Front (2)-Amber (Optional location)
5. Identification lamps. Front (3)-Amber
5a. Identification lamps. Front (3)-Amber (Optional location)
6. Clearance lamps. Front (2)-Amber
7. Side-marker lamps. Rear (2)-Red
8. Side-reflectors. Rear (2)-Red
9. Identification lamps. Rear (3)-Red
10. Clearance lamps. Rear (2)-Red
11. Reflectors Rear (2)-Red
12. Stop lamps. Rear (2)-Red
13. License plate lamp. Rear (1)-White
14. Backup lamp. Rear (1)-White (location optional provided optional requirements are met)
15. Side-marker lamps. Intermediate (2)-Amber (if vehicle is 30' or more overall length)
16. Side reflectors. Intermediate (2)-Amber (if vehicle is 30' or more overall length)
17. Turn signal lamps. Rear (2)-Amber or Red
18. Tail lamps. Rear (2)-Red
19. Parking lamps. Front 2-Amber or White

§ 393.12 [Removed]

§ 393.13 [Removed]

§ 393.14 [Removed]

§ 393.15 [Removed]

§ 393.16 [Removed]

§ 393.18 [Removed]

* * * * *

4. Section 393.19 is revised to read as follows:

§ 393.19 Requirements for turn signaling systems.

(a) Every bus, truck, or truck tractor shall be equipped with a signaling system that in addition to signaling turning movements shall have a switch or combination of switches that will cause the two front turn signals and the two rear turn signals to flash simultaneously as a vehicular traffic hazard warning as required by § 392.22 with the ignition on or off.

(b) Every semitrailer and full trailer shall be equipped so as to have the two rear turn signals to flash simultaneously with the two front turn signals of the towing vehicle as a vehicular traffic hazard warning as required by § 392.22(a).

5. The footnote to § 393.24(c) is amended by revising paragraph (a), removing paragraphs (b) and (c) and adding a new paragraph (b) to read as follows:

§ 393.24 Requirements for head lamps and auxiliary road lighting lamps.

* * * * *

1 * * *

(a) As found in the 1985 edition of the SAE Handbook with respect to parts and accessories other than lighting devices and reflectors.

(b) When reference is made in these regulations to SAE Standards or SAE Recommended Practices, they shall be as found in the 1985 edition of the SAE Handbook:

(1) With respect to parts and accessories other than lighting devices and reflectors:

(2) Lighting devices and reflectors on motor vehicles manufactured on and after March 7, 1990, shall conform to FMVSS 571.108 (49 CFR 571.108) in effect at the time of manufacture of the vehicle. Should a conflict arise between FMVSS 571.108 and a SAE Standard, FMVSS 571.108 will prevail.

* * * * *

§ 393.25 [Amended]

6. Section 393.25 is amended by substituting the date "1985" for "1959" in the introductory text of paragraph (c) and paragraphs (c)(2) and (3); amending the introductory text of paragraph (d) to remove the year "1959" preceding the words "SAE Standards"; by removing paragraph (e); by redesignating paragraphs (f) and (g) to (e) and (f), respectively; and correcting the reference in the last sentence of redesignated paragraph (f), Stop lamp operation, to read as "paragraph (e) of this section."

7. Section 393.26 is revised by removing paragraph (d) and redesignating paragraph (e) as (d). Paragraphs (b) and (c) are revised to read as follows:

§ 393.26 Requirements for reflectors.

* * * * *

(b) *Specifications.* All required reflectors except those installed on vehicles tendered for transportation in driveaway and towaway operations shall comply with FMVSS 571.108 (49 CFR 571.108) in effect at the time the vehicle was manufactured or the current FMVSS 571.108 requirements.

(c) *Certification and markings.* All reflectors required to conform to the specifications in paragraph (b) shall be certified by the manufacturer or supplier that they do so conform, by marking with the manufacturer's or supplier's name or trade name and the letters "SAE-A". The marking in each case shall be visible when the reflector is in place on the vehicle.

* * * * *

8. Section 393.27 is revised to read as follows:

§ 393.27 Wiring specifications.

(a) Wiring for both low voltage (tension) and high voltage (tension) circuits shall be constructed and installed so as to meet design requirements. Wiring shall meet or exceed, both mechanically and electrically, the following SAE Standards as found in the 1985 edition of the SAE Handbook:

(1) Commercial vehicle engine ignition systems-SAE J557-High Tension Ignition Cable.

(2) Commercial vehicle battery cable-SAE J1127-Jan 80-Battery Cable.

(3) Other commercial vehicle wiring-SAE J1128-Low Tension Primary Cable.

(b) The source of power and the electrical wiring shall be of such size and characteristics as to provide the necessary voltage as the design requires to comply with FMVSS 571.108.

(c) Lamps shall be properly grounded.

Note: This shall not prohibit the use of the frame or other metal parts of a motor vehicle as a return ground system provided truck-tractor semitrailer/full trailer combinations are electrically connected.

9. Section 393.28 is revised to read as follows:

§ 393.28 Wiring to be protected.

(a) The wiring shall—

(1) Be so installed that connections are protected from weather, abrasion, road splash, grease, oil, fuel and chafing;

(2) Be grouped together, when possible, and protected by nonconductive tape, braid, or other covering capable of withstanding severe abrasion or shall be protected by being enclosed in a sheath or tube;

(3) Be properly supported in a manner to prevent chafing;

(4) Not be so located as to be likely to be charred, overheated, or enmeshed in moving parts;

(5) Not have terminals or splices located above the fuel tank except for the fuel sender wiring and terminal; and

(6) Be protected when passing through holes in metal by a grommet, or other means, or the wiring shall be encased in a protective covering.

(b) The complete wiring system including lamps, junction boxes, receptacle boxes, conduit and fittings must be weather resistant.

(c) Harness connections shall be accomplished by a mechanical means.

10. In § 393.31 the first sentence shall be numbered (a) and the second sentence is designated as paragraph (b) and revised to read as follows:

§ 393.31 Overload protective devices.

* * * * *

(b) Trucks, truck-tractors, and buses meeting the definition of a commercial motor vehicle and manufactured after June 30, 1953 shall have protective devices for electrical circuits arranged so that:

(1) the headlamp circuit or circuits shall not be affected by a short circuit in any other lighting circuits on the motor vehicle; or

(2) the protective device shall be an automatic reset overload circuit breaker if the headlight circuit is protected in common with other circuits.

11. In Subpart C, § 393.41(a) is revised to read as follows:

§ 393.41 Parking brake system.

(a) Every commercial motor vehicle manufactured on and after [one year after [the effective date of this rulemaking]], except an agricultural commodity trailer, converter dolly, heavy hauler or pulpwood trailer, shall at all times be equipped with a parking brake system adequate to hold the vehicle or combination under any condition of loading as required by FMVSS 571.121. An agricultural commodity trailer, heavy hauler or pulpwood trailer shall carry sufficient chocking blocks to prevent movement when parked.

* * * * *

§ 393.42 [Amended]

12. Section 393.42 is amended to add at the end of the section an illustration for brake requirements for light trailers as follows:

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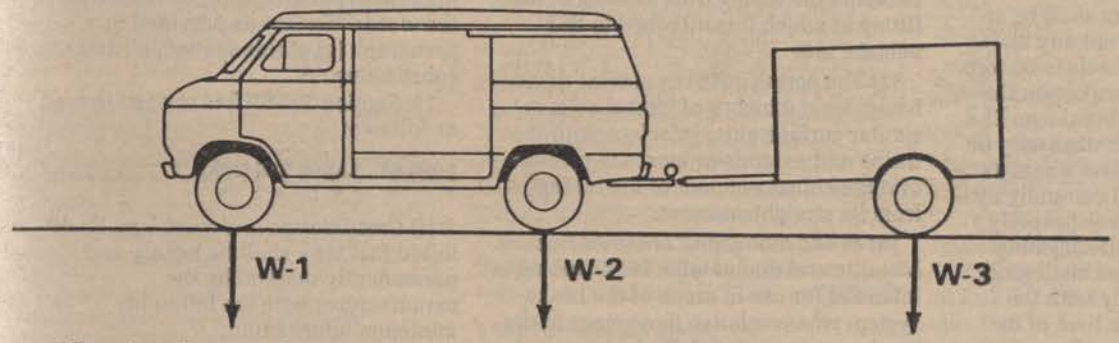
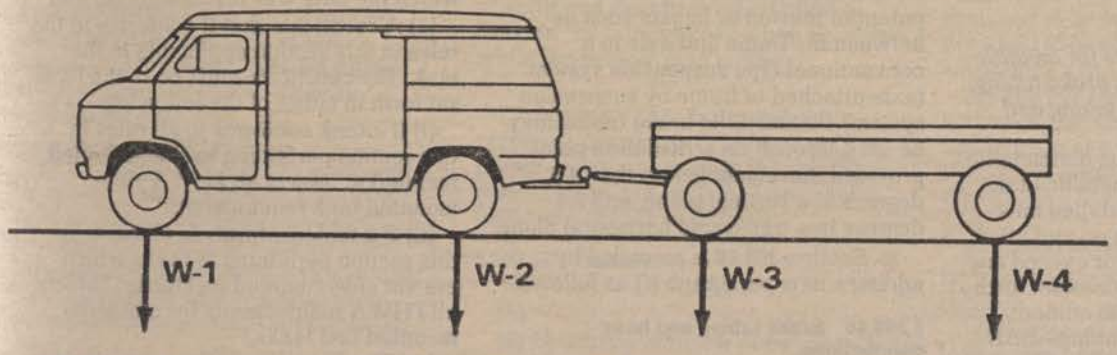
(Diagrams to illustrate § 393.42 for brake requirements for light trailers.)



(Semitrailer or 2-wheel pole trailer of 3,000 pounds gross weight or less must be equipped with brakes if W-3 is greater than 40 percent of the sum of W-1 and W-2.)



(Full trailer or 4-wheel pole trailer of 3,000 pounds gross weight or less must be equipped with brakes if the sum of W-3 and W-4 is greater than 40 percent of the sum of W-1 and W-2.)

BILLING CODE 4910-22-C

13. Section 393.44 is revised to read as follows:

§ 393.44 Front brake lines, protection.

On every bus, if equipped with air brakes, the braking system shall be so constructed that in the event any brake line to any of the front wheels is broken, the driver can apply the brakes on the rear wheels despite such breakage. The means used to apply the brakes may be located forward of the driver's seat as long as it can be operated manually by the driver when the driver is properly restrained by any seat belt assembly provided for use. Every bus shall meet this requirement or comply with the regulations in effect at the time of its manufacture.

14. Section 393.45 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 393.45 Brake tubing and hose, adequacy.

* * * * *

(b) *Special requirements for metallic brake tubing, nonmetallic brake tubing, coiled nonmetallic brake tubing and brake hose.*

(1) Metallic brake tubing, nonmetallic brake tubing, coiled nonmetallic brake tubing, and brake hose installed on a commercial motor vehicle on and after March 7, 1989, must meet or exceed one of the following specifications set forth in the SAE Handbook, 1985 edition:

(i) Metallic Air Brake Tubing—SAE Recommended Practice J1149—Metallic Air Brake System Tubing and Pipe—July 76.

(ii) Nonmetallic Air Brake Tubing—SAE Recommended Practice J844—Nonmetallic Air Brake System Type B—OCT 80.

(iii) Air Brake Hose—SAE Recommended Practice J1402—Automotive Air Brake Hose and Hose Assemblies—JUN 85.

(iv) Hydraulic Brake Hose—SAE Recommended Practice J1401 Road Vehicle-Hydraulic Brake Hose Assemblies for Use with Non-Petroleum Base Hydraulic Fluid JUN 85.

(v) Vacuum Brake Hose—SAE Recommended Practice J1403 Vacuum Brake Hose JUN 85.

(2) Except as provided in paragraph (c) of this section, brake hose and brake tubing installed on a motor vehicle before March 7, 1989, must conform to 49 CFR 393.45 effective October 31, 1983.

(c) *Nonmetallic brake tubing.* Coiled nonmetallic brake tubing may be used for connections between towed and towing vehicles or between the frame of a towed vehicle and the unsprung subframe of an adjustable axle of that vehicle if—

(1) The coiled tubing has a straight segment (pigtail) at each end that is at least 2 inches in length and is encased in a spring guard or similar device which prevents the tubing from kinking at the fitting at which it is attached to the vehicle; and

(2) The spring guard or similar device has at least 2 inches of closed coils or similar surface at its interface with the fitting and extends at least 1½ inches into the coiled segment of the tubing from its straight segment.

(d) *Brake tubing and brake hose, uses.* Metallic and nonmetallic brake tubing is intended for use in areas of the brake system where relative movement in the line is not anticipated. Brake hose and coiled nonmetallic brake tubing is intended for use in the brake system where substantial relative movement in the line is anticipated or the hose/coiled nonmetallic brake tubing is exposed to potential tension or impact such as between the frame and axle in a conventional type suspension system (axle attached to frame by suspension system). Nonmetallic brake tubing may be used through an articulation point provided movement is less than 4.5 degrees in a vertical plane, and 7.4 degrees in a transverse horizontal plane.

15. Section 393.46 is amended by adding a new paragraph (f) as follows:

§ 393.46 Brake tubing and hose connections.

* * * * *

(f) Splices in tubing if installed on a vehicle after March 7, 1989, must use fittings that meet the requirements of SAE Standard J512–OCT 80 Automotive Tube Fittings or for air brake systems SAE J246—March 81 Spherical and Flanged Sleeve (Compression) Tube Fittings as found in the SAE Handbook 1985 edition.

16. Section 393.50(a) is revised and paragraph (c) is removed as follows:

§ 393.50 Reservoirs required.

(a) *General.* Every commercial motor vehicle using air or vacuum for breaking shall be equipped with reserve capacity or a reservoir sufficient to ensure a full service brake application with the engine stopped without depleting the air pressure or vacuum below 70 percent of that pressure or degree of vacuum indicated by the gauge immediately before the brake application is made. For purposes of this section, a full service brake application is considered to be made when the service brake pedal is pushed to the limit of its travel.

* * * * *

§ 393.51 [Amended]

17. Section 393.51 is amended by removing paragraph (g) and in the introductory text of paragraphs (c) and (d), and in paragraph (e) by removing the words "Except as provided in paragraph (g) of this section, a" and substituting "A".

18. Section 393.67(f) is revised to read as follows:

§ 393.67 Liquid fuel tanks.

* * * * *

(f) *Certification and markings.* Each liquid fuel tank shall be legibly and permanently marked by the manufacturer with the following minimum information:

(1) The month and year of manufacture,

(2) The manufacturer's name on tanks manufactured on and after July 1, 1988, and means of identifying the facility at which the tank was manufactured, and

(3) A certificate that it conforms to the rules in this section applicable to the tank. The certificate must be in the form set forth in either of the following:

(i) If a tank conforms to all rules in this section pertaining to side-mounted fuel tanks: "Meets all FHWA side-mounted tank requirements."

(ii) If a tank conforms to all rules in this section pertaining to tanks which are not side-mounted fuel tanks: "Meets all FHWA requirements for non-side-mounted fuel tanks."

(iii) The form of certificate specified in paragraph (f)(3) (i) or (ii) of this section may be used on a liquid fuel tank manufactured before July 11, 1973, but it is not mandatory for liquid fuel tanks manufactured before March 7, 1989. The form of certification manufactured on or before March 7, 1989, must meet the requirements in effect at the time of manufacture.

§ 393.69 [Amended]

19. Section 393.69(a) introductory text is amended by revising the address for the National Fire Protection Association to read as follows: "National Fire Protection Association, Battery March Park, Quincy, MA 02269,".

20. Section 393.71 is amended by revising paragraphs (h)(7) and (h)(9) and removing and reserving paragraph (i), as follows:

§ 393.71 Coupling devices and towing methods, driveaway-towaway operations.

* * * * *

(h) * * *

(7) *Tracking.* The tow-bar shall be so designed, constructed, maintained, and mounted as to cause the towed vehicle to follow substantially in the path of the

towing vehicle. Tow-bars of such design on in our condition as to permit the towed vehicle to deviate more than 3 inches to either side of the path of a towing vehicle moving in a straight line as measured from the center of the towing vehicle are prohibited.

* * * * *

(9) *Marking tow-bars.* Every tow-bar acquired and used in driveaway-towaway operations by a motor carrier shall be plainly marked with the following certification of the manufacturer thereof (or words of equivalent meaning):

This tow-bar complies with the requirements of the Federal Highway Administration for (maximum gross weight for which tow-bar is manufactured) vehicles.
Allowable Maximum Gross Weight ———
Manufactured ———
(month and year)
by ———
(name of manufacturer)

Tow-bar certification manufactured before the effective date of this regulation must meet requirements in effect at the time of manufacture.

(i) [Reserved]

* * * * *

21. In Subpart G, § 393.75 is amended by revising paragraphs (a) and (f) to read as follows and by removing Table I, "Tire Load Limits at Various Cold Inflation Pressures," and redesignating Table II to read "Table I—Inflation Pressure Measurement Correction for Heat":

§ 393.75 Tires.

(a) No motor vehicle shall be operated on any tire that (1) has body ply or belt material exposed through the tread or sidewall, (2) has any tread or sidewall separation, (3) is flat or has an audible leak, or (4) has a cut to the extent that the ply or belt material is exposed.

* * * * *

(f) Tire load rating [1]. (1) General rule: No motor vehicle shall be operated with tires that carry a greater weight than that specified for the tires in any of the publications of the standardizing bodies listed in FMVSS 571.119 (49 CFR 571.119) and marked on the sidewall of the tire unless:

(i) The vehicle is being operated under the terms of a special permit issued by the State, and

(ii) The vehicle is being operated at a reduced speed that is appropriate to compensate for tire loading in excess of the manufacturer's normal rated capacity.

(2) Tire pressure. No motor vehicle shall be operated on a tire which has a cold inflation pressure less than that specified for the load being carried.

(3) If the inflation pressure of the tire has been increased by heat because of the recent operation of the vehicle, the cold inflation pressure shall be estimated by subtracting the inflation buildup factor shown in Table I from the measured inflation pressure.

22. In Subpart G, § 393.76 is amended by revising paragraph (e)(2)(iv) and removing paragraph (e)(2)(v) as follows:

§ 393.76 Sleeper berth.

* * * * *

(e) * * *

(2) * * *

* * * * *

(iv) A mattress filled with a fluid and of sufficient thickness when filled to prevent "bottoming-out" when occupied while the vehicle is in motion.

* * * * *

23. Section 393.77 is amended by removing paragraph (a), redesignating paragraphs (b) and (c) as (a) and (b), respectively, and revising paragraphs (b)(5) and (b)(11) as follows:

§ 393.77 Heaters.

* * * * *

(b) * * *

(5) *Operating controls to be protected.* On every bus designed to transport more than 15 passengers, including the driver, means shall be provided to prevent unauthorized persons from tampering with the operating controls. Such means may include remote control by the driver; installation of controls at inaccessible places; control of adjustments by key or keys; enclosure of controls in a locked space, locking of controls, or other means of accomplishing this purpose.

* * * * *

(11) *Heater fuel tank location.* Every bus designed to transport more than 15 passengers, including the driver, with heaters of the combustion type shall have fuel tanks therefor located outside of and lower than the passenger space. When necessary, suitable protection shall be afforded by shielding or other means against the puncturing of any such tank or its connections by flying stones or other objects.

* * * * *

24. Section 393.83 is revised to read as follows:

§ 393.83 Exhaust systems.

(a) Every motor vehicle having a device (other than as part of its cargo) capable of expelling harmful combustion fumes shall have a system to direct the discharge of such fumes. No part shall be located where its location would likely result in burning, charring, or damaging the electrical wiring, the fuel supply, or any combustible part of the motor vehicle.

(b) No exhaust system shall discharge to the atmosphere at a location immediately below the fuel tank or the fuel tank filler pipe.

(c) The exhaust system of a bus powered by a gasoline engine shall discharge to the atmosphere at or within 6 inches forward of the rearmost part of the bus.

(d) The exhaust system of a bus using fuels other than gasoline shall discharge to the atmosphere either:

(1) At or within 15 inches forward of the rearmost part of the vehicle; or

(2) To the rear of all doors or windows designed to be open, except windows designed to be opened solely as emergency exits.

(e) The exhaust system of every truck and truck tractor shall discharge to the atmosphere at a location to the rear of the cab or, if the exhaust projects above the cab, at a location near the rear of the cab.

(f) No part of the exhaust system shall be temporarily repaired with wrap or patches.

(g) No part of the exhaust system shall leak or discharge at a point forward of or directly below the driver/sleeper compartment. The exhaust outlet may discharge above the cab/sleeper roofline.

(h) The exhaust system must be securely fastened to the vehicle.

(i) Exhaust systems may use hangers which permit required movement due to expansion and contraction caused by heat of the exhaust and relative motion between engine and chassis of a vehicle.

25. Section 393.84 is revised to read as follows:

§ 393.84 Floors.

The flooring in all motor vehicles shall be substantially constructed, free of unnecessary holes and openings, and shall be maintained so as to minimize the entrance of fumes, exhaust gases, or fire. Floors shall not be permeated with oil or other substances likely to cause injury to persons using the floor as a traction surface.

26. Section 393.87 is revised to read as follows:

§ 393.87 Flags on projecting loads.

Any motor vehicle having a load or vehicle component which extends beyond the sides more than 4 inches or

[1] The load and cold inflation pressure imposed on the rim and wheel must not exceed the rim and wheel manufacturer's recommendations even though the tire may be approved for a higher load or inflation. Rims and wheels may be identified (stamped) with a maximum load and maximum cold inflation rating.

more than 4 feet beyond the rear shall have the extremities of the load marked with a red flag, not less than 12 inches square, at each point where a lamp is required by Table 1, § 393.11.

§ 393.89 [Amended]

27. In § 393.89, delete the following: ", except buses having a seating capacity of eight or less persons,".

28. Section 393.91 is revised to read as follows:

§ 393.91 Buses, aisle seats prohibited.

No bus shall be equipped with aisle seats unless such seats are so designed and installed as to automatically fold and leave a clear aisle when they are unoccupied. No bus shall be operated if any seat therein is not securely fastened to the vehicle.

29. A new Subpart J is added to Part 393 to read as follows:

Subpart J—Frames, Cab and Body Components, Wheels, Steering, and Suspension Systems

Sec.
393.201 Frames.
393.203 Cab and body components
393.205 Wheels.
393.207 Suspension systems.
393.209 Steering wheel systems.

Subpart J—Frames, Cab and Body Components, Wheels, Steering, and Suspension Systems

§ 393.201 Frames.

(a) The frame of every bus, truck, and truck tractor shall not be cracked, loose, sagging or broken.

(b) Bolts or brackets securing the cab or the body of the vehicle to the frame must not be loose, broken, or missing.

(c) The frame rail flanges between the axles shall not be bent, cut or notched, except as specified by the manufacturer.

(d) All accessories mounted to the truck tractor frame must be bolted or riveted.

(e) No holes shall be drilled in the top or bottom rail flanges, except as specified by the manufacturer.

(f) Field repairs are allowed.

§ 393.203 Cab and body components.

(a) The cab compartment doors or door parts used as an entrance or exist shall not be missing or broken. Doors shall not sag so that they cannot be properly opened or closed. No door shall be wired shut or otherwise secured in the closed position so that it cannot be readily opened. **Exception:** When the vehicle is loaded with pipe or bar stock that blocks the door and the cab has a roof exit.

(b) Bolts or brackets securing the cab or the body of the vehicle to the frame shall not be loose, broken, or missing.

(c) The hood must be securely fastened.

(d) All seats must be securely mounted.

(e) The front bumper must not be missing, loosely attached, or protruding beyond the confines of the vehicle so as to create a hazard.

§ 393.205 Wheels.

(a) Wheels and rims shall not be cracked or broken.

(b) Stud or bolt holes on the wheels shall shall not be elongated (out of round).

(c) Nuts or bolts shall not be missing or loose.

§ 393.207 Suspension systems.

(a) Axles. No axle positioning part shall be cracked, broken, loose or missing. All axles must be in proper alignment.

(b) Adjustable axles. Adjustable axle assemblies shall not have locking pins missing or disengaged.

(c) Leaf springs. No leaf spring shall be cracked, broken, or missing nor shifted out of position.

(d) Coil springs. No coil spring shall be cracked or broken.

(e) Torsion bar. No torsion bar or torsion bar suspension shall be cracked or broken.

(f) Air Suspensions. The air pressure regulator valve shall not allow air into the suspension system until at least 55 psi is in the braking system. The vehicle shall be level (not tilting to the left or right). Air leakage shall not be greater than 3 psi in a 5-minute time period when the vehicle's air pressure gauge shows normal operating pressure.

§ 393.209 Steering wheel systems.

(a) The steering wheel shall be secured and must not have any spokes cracked through or missing.

(b) The steering wheel lash shall not exceed the following parameters:

Steering wheel diameter	Manual steering system	Power steering system
16" or less	2"+	4½"+
18"	2¼"+	4¾"+
20"	2½"+	5¼"+
22"	2¾"+	5¾"+

(c) Steering column. The steering column must be securely fastened.

(d) Steering system. Universal joints shall not be worn, faulty or repaired by welding. The steering gear box shall not have loose or missing mounting bolts or cracks in the gear box or mounting brackets. The pitman arm on the steering gear output shaft shall not be loose. Steering wheels shall turn freely through the limit of travel in both directions.

(e) Power steering systems. All components of the power system must be in operating condition. No parts shall be loose or broken. Belts shall not be frayed, cracked or slipping. The system shall not leak. The power steering system shall have sufficient fluid in the reservoir.

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DEPARTMENT OF TRANSPORTATION

49 CFR Part 396

[FHWA Docket No. MC-113; Notice No. 87-02]

RIN 2125-AB34

Inspection, Repair and Maintenance

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending Part 396, Inspection, Repair and Maintenance of the Federal Motor Carrier Safety Regulations (FMCSRs) to require that commercial motor vehicles operated in interstate or foreign commerce pass an inspection at least annually. The amendments permit the motor carrier operating the vehicle to meet the inspection requirements through periodic inspection programs administered by the States, or by a self-inspection, a roadside inspection or an inspection performed by a commercial garage or similar commercial business, so long as the inspection complies with Federal standards or on State inspection standards that are as effective as the Federal standards. The Federal standards are based on Part 393, Parts and Accessories Necessary for Safe Operation and are similar to the North American Uniform Driver-Vehicle Inspection Procedure (NAUD-VIP). This action is being taken to implement section 210 of the Motor Carrier Safety Act of 1984 (the Act) and to improve the safe operation of commercial motor vehicles by requiring that such vehicles be inspected for compliance with Federal standards.

EFFECTIVE DATE: March 7, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Paul L. Brennan, Office of the Chief Counsel, (202) 366-1353, 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.

SUPPLEMENTARY INFORMATION: On October 11, 1984, Congress passed the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, 98 Stat. 2829). The Act was signed into law by the President on October 30, 1984.

This supplementary information contains background information, on overview of the periodic inspection requirements for commercial motor vehicles, a section-by-section analysis of the rule, and a discussion of the FHWA's activities to monitor the effectiveness of this final rule. A discussion of the comments received in response to a notice of proposed rulemaking (NPRM) in the **Federal Register** on February 26, 1987 (52 FR 5913), proposing revisions to Part 396 is included in the section-by-section analysis.

Background

Section 210 of the Act requires that the Secretary of Transportation establish standards for annual or more frequent inspection of commercial motor vehicles and for the retention by motor carriers of records of such inspections. These standards would also apply to foreign motor carriers operating in the United States. Foreign motor carriers were covered under the NPRM; this final rule clarifies their status under certain sections of the rule.

On January 10, 1985, the FHWA published an advance notice of proposed rulemaking (ANPRM) at 50 FR 1245 seeking public comment concerning possible modifications to Parts 393 and 396 of the FMCSRs. Approximately 50 comments were received concerning these potential changes. Due to the complexity of these two areas, the FHWA established a separate docket for Part 393 (i.e., OMC Docket No. MC–127). The final rule for Part 393 is found elsewhere in today's **Federal Register.** While the dockets for Parts 393 and 396 were separated, the FHWA has reviewed both parts together because of the close relationship of their subjects.

The February 26, 1987, NPRM proposed an annual inspection and permitted self-inspections by motor carriers with five or more vehicles. The comment period for the NPRM was extended to June 29, 1987.

The FHWA received a total of 66 comments to Docket No. MC–113. The responses included:

24 from truck and bus industry trade organizations,
6 from individual motor carriers,
12 from government agencies,
11 from individual drivers,
9 from manufacturers, and
4 requests for extension of comment period.

Overall, the commenters were in favor of a periodic inspection. Over half of those expressing an opinion favored an annual, rather than a more frequent, inspection.

Overview of Inspection Requirements

Presently, §§ 392.7, 396.11 and 396.13 of the FMCSRs require the driver to perform a pre-trip and post-trip inspection of the vehicle driven that day. The driver is required to evaluate the vehicle's components and note any defects or deficiencies. The defects must be repaired prior to the vehicle's further use. In addition, the motor carrier is required by § 396.3 to develop and implement a systematic inspection program, including prescribed maintenance records, for the vehicles it operates. Furthermore, §§ 393.1 and 396.3(a)(1) require that the parts and accessories specified in Part 393, as well as any additional parts and accessories as allowed by § 393.2, shall be in safe and proper operating condition at all times.

The FMCSRs allow for inspections of vehicles in operation, i.e., roadside inspections, by certain FHWA personnel or special agents of the FHWA. Many of the current roadside inspections are being performed by State personnel and funded through grants from the FHWA under the Motor Carrier Safety Assistance Program (MCSAP). In addition to these federally supported inspection programs, States perform vehicle safety inspections as part of random roadside inspection programs and periodic inspections. Currently, 21 States have some form of a periodic inspection for commercial motor vehicles.

The fundamental requirement being added by this final rule is that a motor carrier, including a foreign carrier, will be required to ensure that all commercial motor vehicles operating in the United States in interstate or foreign commerce under the motor carrier's control are inspected and meet the vehicle component standards at least once every 12 months. Furthermore, this inspection is to be based on Federal inspection standards, also being added by this rule, or on State inspection standards as effective as the Federal standards. The section which addresses this requirement is § 396.17, Periodic inspection.

A commercial motor vehicle meeting the requirements of a State periodic inspection program will satisfy the inspection requirement of this rule, unless the State's program is not as effective as the Federal requirements. The FHWA requests that States with inspection programs provide FHWA with information on their programs and an assessment of whether the State program is as effective as this rule. The FHWA believes that relying on ongoing inspections programs administered by the States will eliminate any unnecessary duplication of inspections while maintaining a high level of confidence that an effective annual inspection is being performed.

This rule does not inhibit State's prerogatives in administering their programs. The FHWA agrees that the vehicle parts (e.g., brakes, tires, suspension, etc.) included for review by the State-developed and endorsed NAUD–VIP are essential to safe vehicle operations. Thus, the FHWA believes that any vehicle inspection program should look at the NAUD–VIP listed parts. The FHWA recognizes that States have a variety of periodic inspection programs. The FHWA believes that States with these various programs or States intending to implement such programs to meet this rule, do not have to adopt this rule verbatim to have a program as "effective" or "comparable" to this rule. States have flexibility to implement the procedure in this rule or to administer alternative methods to determine whether vehicles are in safe operating condition.

This rule does not affect situations where a vehicle may be subject to more than one State administered inspection because the vehicle is registered in more than one State that has a periodic inspection program. The requirements that the vehicle be inspected through a State administered program will be met if one of the programs meets the requirements of this rule. State authorized inspection programs are discussed in § 396.23 of this final rule.

If a vehicle is not subject to a mandatory State inspection program, or if the FHWA determines that the State's program is not as effective as this rule, then the requirement for a periodic inspection may be met by one of several methods. Section 396.17(d) permits the motor carrier to self-inspect the commercial motor vehicles under its control. Motor carriers may also meet the requirements of the Federal periodic inspection through systematic inspection, maintenance, and repair programs, if those programs meet the requirements of the Federal standards in this rule. Section 396.17(e) permits the motor carrier to have the inspection performed by a qualified commercial business, such as a commercial garage, fleet leasing company, or truck stop. A

random roadside or periodic inspection conducted by a State or provincial government may also satisfy the annual inspection requirement, as provided in § 396.17(f).

Foreign motor carriers may use the periodic inspection requirement of the foreign jurisdiction in which its vehicles are registered provided that the carrier determines that the inspection program is at least as effective as this rule. This provides a greater assurance of a valid inspection while not placing an additional burden on these carriers. If those jurisdictions do not have an acceptable periodic inspection requirement, motor carriers must meet the requirements of Appendix G through self-inspection, use of a commercial garage, or acceptable roadside inspection, or through a State inspection program that is as effective as the Federal standards in this rule.

The periodic inspection requirement of this rule is intended to complement and be consistent with existing inspection programs. In those States with an acceptable periodic inspection requirement, motor carriers whose vehicles are required under State law to be inspected through the State's inspection program must continue to use that mechanism to meet the requirement of the rule.

Current State periodic inspection programs include a variety of inspection procedures, including the allowance for self-inspection by motor carriers if they meet certain requirements (such as motor carrier size). Some state programs allow self-inspection for only certain types of vehicles. The FHWA fully endorses these types of inspection procedures and if the specific program is as effective as this rule, such programs will meet the requirements of this rule.

Nothing precludes or is intended to imply that vehicles should only be checked once a year. To the contrary, the FHWA continues to encourage motor carriers to establish preventive maintenance programs whereby vehicles are inspected, repaired and maintained on a systematic schedule. As noted in § 396.3(a), motor carriers shall systematically inspect, repair and maintain all vehicles subject to its control. If a motor carrier chooses to meet the periodic inspection requirement through its systematic inspection program, then all vehicle components identified in Appendix G must meet the requirements of Appendix G at least every 12 months. If certain components are inspected at different times (i.e., a complete vehicle inspection is not performed at one time), then the inspection report (§ 396.21) must identify the date that each component passed the inspection. All persons performing these inspections must be identified and must meet the requirements of § 396.19, Inspector qualifications.

The FHWA is establishing a 1-year transition period, as proposed in the NPRM, during which compliance with the periodic inspection requirement will be recommended but not required. Comments on this provision were negligible. The FHWA believes a 12-month period will be needed to receive an assessment of and information on periodic inspection programs in the States and to determine if the State inspection programs are as effective as the standards established under this rule.

The FHWA intends to request that each State which has a periodic commercial motor vehicle inspection program submit a self-assessment and description of its program. The FHWA will then confirm or determine if the State program is as effective as that required under this rule. If a positive determination is made, without condition, all commercial motor vehicles passing the State's periodic inspection program will have met the requirements of this final rule. If a State's periodic inspection program is determined to be not as effective as the Federal program and the State wishes to modify its program to be as "effective" or comparable to this rule, the FHWA will work with the State to identify where modifications are required to make the State program acceptable. If the State decides not to change its program, or if a State does not have a periodic inspection program, motor carriers will need to comply with the annual inspection requirements through programs in other States or by relying on the other alternate inspection options in the rule. The basis for review of the State inspection programs is contained in a subsequent section of the Preamble entitled "FHWA Activities to Monitor the Effectiveness of this Rule." It is FHWA's intention to rely heavily on the States' initial assessments in making the determination of the effectiveness of each State's program. Section 210(b) of the Act clearly assigns the responsibility to the Secretary to make the final determination on the effectiveness of a State's program. Nothing in this rule implies that the FHWA intends to preempt a State from conducting periodic inspection of vehicles, or that a State's inspection program does not improve highway safety. The FHWA believes that any inspection of a vehicle, even under programs not as effective as this rule, should contribute to the removal of unsafe vehicles from the highway.

The FHWA will not require foreign jurisdictions to submit detailed descriptions of their inspection programs although they are encouraged to do so voluntarily. It is the responsibility of the carrier to assure that the program of the foreign jurisdiction in which its vehicles are registered is as effective as that required under this rule, and, if not, to meet the FHWA standard by one of the alternative methods established under this rule. The FHWA will use a post-inspection evaluation of carriers as a means to monitor the foreign carrier's compliance with the inspection requirements of this rule.

Section-by-Section Analysis

Section 396.15 Driveaway-towaway operations and inspections

The FHWA proposed to expand the driveaway-towaway exemption to include an exemption from the periodic inspection requirements of this rule. There were no comments in opposition; therefore, the exemption as proposed is included in this final rule.

Section 396.17 Periodic inspection

The FHWA proposed in the NPRM that the periodic inspection be performed at least once during the preceding 365 days. Several commenters indicated that a day-specific requirement was too restrictive and inconsistent with most inspection program periods. The FHWA agrees and has modified the time period to be once every 12 months. The FHWA believes that this is consistent with the congressional intent of the Act that there be an "annual" inspection.

The NPRM proposed that self-inspection by motor carriers be allowed. It further proposed that no governmental approval be required before self-inspection can be conducted. The majority of the commenters favored allowing self-inspection with some form of government approval. They were concerned that, without government oversight, some motor carriers might falsify inspection records or otherwise fail to comply with the inspection requirements. Three commenters were strongly opposed to any type of self-inspection. They contend that the annual inspection required by the Act should be performed by parties other than the owner or operator of the vehicle. Those in favor of the NPRM proposal contend that there would be an unduly burdensome paperwork requirement if government pre-approval is required.

The self-inspection option is consistent with the congressional intent, provided that adequate safeguards are in place to ensure that the requirements are followed. The Senate Committee on Commerce, Science, and Transportation stated "Many motor carriers currently have excellent self-inspection programs. The Committee expects and intends that the inspection requirement could be met by such programs." (S. Rep. No. 98–424, 98 Cong., 2d Sess. 15–16 (1984)). The requirements for documentation of the inspection and the inspector qualifications will provide the necessary proof for enforcement personnel to take corrective action if a motor carrier is found to violate these requirements.

In addition, the FHWA believes that a periodic inspection will improve safety but is not the only method to ensure that vehicle components are operating safely. The FHWA will continue to support roadside inspections as a primary means to monitor the condition of commercial motor vehicles and to remove unsafe vehicles from the road. The FHWA will also work for full implementation of SAFETYNET (a system whereby State roadside inspection results are telecommunicated to the FHWA for inclusion in the FHWA's individual motor carrier files). SAFETYNET and Motor Carrier Management Information System will be used to monitor the condition of vehicles on the road for individual motor carriers and to evaluate the effectiveness of the various motor carrier safety program elements. While commenters to the docket raised legitimate issues regarding the self-inspection option, the FHWA believes that there are compelling arguments to allow such an option at this time.

The FHWA has decided that the self-inspection option will not be available if the motor vehicle is required under State law to be inspected in the State's periodic motor vehicle inspection (PMVI) program, unless the State program provides for self-inspection. Commercial motor vehicles participating in State PMVI programs would meet the Federal standards through meeting the State inspection procedures and standards if they are determined to be compatible with or as effective as this rule. If a State's PMVI program allows for self-inspection, then the motor carrier must follow that State's requirements for self-inspection. The FHWA would prefer to have all States handle the periodic inspection of commercial motor vehicles, but the statute does not mandate such inspection programs. Regardless of whether a State's inspection program is as effective as the Federal standards, vehicles subject to that State's laws must continue to abide by them. This means that in States with an inspection program that is not as effective as the Federal standards, a vehicle would have to meet the State requirements as well as the Federal standards. Most State programs require certification or licensing of inspectors along with minimum requirements for the inspection facilities. The FHWA has noted that most State PMVI programs have some element of self-inspection of commercial vehicles by motor carriers. These self-inspection programs have some type of pre-certification or post-inspection audit. The FHWA has decided to use a post-inspection evaluation as the means to monitor the self-inspection program element. With a significant level of FHWA Motor Carrier Safety personnel already devoted to conducting safety reviews and compliance reviews, a review of a motor carrier's self-inspection program elements (inspector qualifications, documentation, etc.) is possible. A review and pre-certification of self-inspection programs prior to use of such an option is not possible given the relatively small number of Federal field personnel, the large number of motor carriers, and the desire of States and provinces, as evidenced by a recent vote of the Commercial Vehicle Safety Alliance, to devote resources to roadside inspection and not motor carrier site visits.

In a recent report, Feasibility of Required Periodic Inspection of Trucks (October 1987), the Maryland Department of Transportation (MDOT) conducted a literature review of state periodic motor vehicle inspection (PMVI) program studies. The MDOT concluded that most of the studies were inconclusive or conflicting when assessing the effectiveness of PMVI programs. In a 1985 report entitled "Cost Effectiveness of Periodic Motor Vehicle Inspection (PMVI): A Review of the Literature" (NHTSA, DOT HS 806750, January 1985), NHTSA found that "* * * not one of them [41 studies] was able to provide definitive evidence on the question of PMVI cost effectiveness." In light of these findings, there does not appear to be evidence which supports PMVI programs over random roadside inspection programs or the FHWA's Safety Review and Compliance Review Activities.

For these same reasons, it is also not practical for the FHWA to require that independent commercial garages be certified prior to their use by motor carriers for the vehicle inspection. Since the FHWA has direct authority over motor carriers and can penalize motor carriers who violate the periodic inspection requirements, the FHWA will review motor carrier files to determine if the motor carrier has asssurance that the independent commercial station meets the inspection qualifications. A later section of the Preamble, "FHWA Activities to Monitor the Effectiveness of this Rule," addresses the process which the FHWA will use to monitor the periodic inspection requirements, particularly the self-inspection element, and to make changes to the final rule if warranted.

The NPRM proposed that self-inspection be permitted only for those motor carriers with five or more vehicles. Many comments were received on this issue as well as on how to count the vehicles under a motor carrier's control. Comments were equally split on the threshold question—some indicating that the figure should be higher and others recommending that all motor carriers, including owner-operators, be permitted to self-inspect as long as the person performing the inspection meets certain minimum requirements.

With regard to the question of how to determine the number of commercial motor vehicles a motor carrier has, the FHWA received a variety of suggestions. Some commenters suggested that either a mileage-based or a gross receipts-based criterion be established, instead of a minimum number of vehicles. Others were concerned that, within a 1-year period, the size of a motor carrier's fleet varies and that to establish a fleet size criterion that is equitable and verifiable would be very difficult. Other commenters took issue with the FHWA's premise that motor carriers with larger fleets have better maintenance practices.

Based on the comments and the lack of any economic or safety data being submitted to support establishing a threshold level, using any criterion, the FHWA has deleted the fleet size requirement. All motor carriers will be permitted to self-inspect, provided the State in which the vehicle is registered does not have a periodic inspection program that the FHWA has determined is as effective as this rule (unless the State program allows self-inspection) and provided the carrier complies with the inspector qualifications and inspection standards requirements of §§ 396.17 and 396.19.

It should be noted that it is the responsibility of the motor carrier to meet the requirements of this rule. The existence or absence of a State

inspection program does not relieve the motor carrier of responsibility to ensure that the commercial motor vehicle under the carrier's control pass an inspection at least once every 12 months. The penalty provisions provided by 49 U.S.C. 521(b) apply to the motor carrier.

Commercial motor vehicles inspected through an acceptable State inspection program are required to follow the procedures of such programs. Commercial motor vehicles inspected through other means that do not pass the inspection (i.e., one or more components do not meet the standards contained in Appendix G) are considered not to have met the requirements of this rule even if the defective component was repaired immediately after the commercial motor vehicle left the site of the inspection. If the commercial motor vehicle was repaired at the site to the inspector's satisfaction and it is so recorded on the inspection report, then the FHWA will consider the commercial motor vehicle to have passed the inspection. A commercial motor vehicle which has not passed an inspection in accordance with the requirements of this part within the previous 12 months cannot be used.

If defective or missing vehicle components are noted during the inspection that are contained in Part 393 but not in Appendix G to the subchapter, the vehicle is considered to have met the requirements of this part. However, the defective or missing components must be repaired in accordance with § 396.9(d) (if the defective and/or missing component was noted during a State, provincial, or Federal roadside inspection) or §§ 393.1 and 396.3(a)(1) (if the defective and/or missing components were noted during an inspection performed by the motor carrier). Section 396.9(d) requires that the defective and/or missing component be repaired/replaced and that an FHWA field office be so notified within 15 days.

In keeping with the congressional intent that the requirement for a periodic inspection not be burdensome, the FHWA, in the ANPRM, requested comments on whether or not the Commercial Vehicle Safety Alliance (CVSA)/Essential Element Examination (roadside) type inspection should be considered as effective as an annual (periodic) or more frequent inspection system. As noted in the NPRM, the commenters pointed out the differences between random critical element roadside inspections and what they perceived as the intent of § 210 of the Act. They indicated that a random roadside inspection was basically concerned with ensuring that the vehicle did not pose an imminent danger on the roadway. The focus is on checking the more critical components such as brakes, headlights, brake lights, and steering and suspension systems. In contrast, a periodic inspection should be more concerned with the general overall safety condition of the vehicle, including those parts, which if defective, worn, or missing do not pose an immediate danger but nevertheless should be corrected as soon as possible. Therefore, the rule requires that roadside inspections meet the minimum standards contained in Appendix G in order to meet the periodic inspection requirements.

Section 396.19 Inspector qualifications

The FHWA believes that the qualification of the person performing the inspection is a very critical aspect of any inspection program. Comments on proposed § 396.19, Inspector qualifications, strongly supported this belief. Most commenters supported the proposed inspector qualification except the requirement that the combined training and experience total 2 years. Those commenting on this issue believed that 1 year of experience/training would be adequate. The FHWA agrees and has revised the qualifications to reflect this.

Persons who have successfully completed a Federal or State-sponsored training program or course or have a State or provincial certificate which qualifies them to perform commercial motor vehicle safety inspections would not have to meet the 1-year requirement. The FHWA believes that a person with such credentials is capable of performing an inspection without the need for a year of experience, provided he/she meets the other qualifications. Even when a State's PMVI is found not to be as effective as the Federal standards, if the individual conducting the inspection meets the minimum Federal inspector qualification requirements, then that person may certify that the vehicle being inspected meets the Federal standards as well as the State requirements.

The FHWA is deleting the requirement that the person performing the inspection "can read and write the English language to the extent necessary to understand the inspection criteria and prepare the required documentation." The FHWA believes that it is essential that the inspector understand the inspection criteria and methods and can complete the inspection report. However, the FHWA believes that the language requirement is unnecessary since the person performing the inspection need only be able to converse with the motor carrier. The ability to read and write English does not indicate a person's proficiency in identifying vehicle defects. Also, the FHWA is unaware of any potential safety problems which the elimination of such a requirement may cause. However, if the person performing the inspection is also a driver, as is the case for owner-operators, who comes in contact with law enforcement officers or the general public, the person must be able to meet the English language requirements of 49 CFR 391.11(b)(2).

The FHWA did not proposed specific minimum standards for inspection facilities; however, comments were requested on this issue. No comments were received. It is the motor carrier's and the inspector's responsibility to ensure that the proper tools and equipment are available and properly used to perform the inspection. Section 396.19 reflects this determination.

As with the self-inspection provisions, several commenters indicated that some type of certification or pre-authorization program needs to be established for inspectors. The general sentiment expressed is that allowing a motor carrier to ensure that the person performing the inspection (in the case of self-inspections) is qualified, without any precheck, is unenforceable and lacks the necessary quality control. The FHWA disagrees. The requirement that the motor carrier maintain documentation of the inspector's qualification (in the case of self-inspection) as well as the identification of the inspector on the inspection report will provide sufficient information to assist the FHWA in enforcing the inspector qualifications requirement during safety and/or compliance reviews. The FHWA also believes that it would be administratively impractical to establish a Federal inspector qualification program. For States and provinces with an acceptable periodic inspection program and that allow self-inspections, the State and provincial inspector qualification requirements would be used as long as they were comparable to the Federal standards. As discussed later in the Preamble, the FHWA will be evaluating the adequacy of self-inspections versus State periodic or roadside inspections. Based on the results of those studies the FHWA may reevaluate the provision for self-inspection in this rule.

Section 396.21 Recordkeeping

The comments on the NPRM proposal echoed those received on the ANPRM with regard to the need for some type of

evidence of the periodic inspection to be carried or placed on the vehicle. However, the commenters were almost unanimously opposed to the NPRM proposal that the vehicle be marked with the letters "PI" followed by the inspection date. The FHWA has decided that, as suggested by some commenters, a copy of the inspection report is to be carried in the vehicle.

Several other commenters suggested that decals be used. The FHWA does not believe this to be a viable alternative since it would be virtually impossible to manage the distribution of the decals. A situation could arise where a vehicle could pass an inspection but not have a decal because the carrier did not receive a sufficient supply. The FHWA believes that the requirement for evidence of an inspection needs to be flexible so that it will be applicable to different inspection scenarios. It must also provide adequate documentation to ensure enforcement officials that the requirements are being met. The FHWA is unaware of any inspection procedure where some form of written proof is not prepared which includes at least the information proposed. The documentation may be in a variety of formats, so long as the required information, specified in § 396.21, is included. The FHWA will encourage States, during random roadside inspections, to check for evidence of the periodic inspection. The proposal that the original or a copy of the inspection report for vehicles under the motor carrier's control for 30 days or more be retained by the motor carrier for 1 year from the date of the inspection is adopted in this final rule.

The statement in § 396.21(a)(7) that an inspector failing to comply with this section would be subject to the penalties provided in 49 U.S.C. 521(b) was deleted. The FHWA believes that the statement could cause confusion, inasmuch as the FHWA has jurisdiction only over motor carriers and their employees and has no authority to penalize inspectors who may be independent contractors of a motor carrier. Section 396.17(h) of the final rule states that motor carriers are subject to the penalty provisions of 49 U.S.C. 521(b) for failure to ensure that the annual inspection is properly performed.

Section 396.23 Equivalent to periodic inspection

As proposed in § 396.23, Equivalent to periodic inspection, the periodic inspection requirement of this rule must be met through a State periodic inspection program for those vehicles required under State law to be inspected through the State's inspection program, if the FHWA determines that the State program is as effective as this rule (§ 396.23(b)). For those vehicles not subject to a mandatory State periodic inspection or where the State program has *not* been determined by the FHWA to be as effective as that established under this final rule, the motor carrier may self-inspect or accept an inspection performed by someone else (§ 396.23(a)). The inspection performed by someone else may include, but is not limited to, inspections performed as part of State and provincial-sponsored random roadside inspections or inspections performed at commercial garages or dealerships. Only two comments were received on this Section, and they were supportive of the proposal. In any case, the inspection must meet the standards set forth in § 396.17 to be accepted as periodic inspections under this rule. Motor carriers do not have to maintain documentation of inspector qualifications for those inspections performed either as part of a periodic inspection program or at the roadside as part of a random roadside inspection program.

Appendix G Minimum Periodic Inspection Standards

The majority of the comments received in response to the NPRM addressed the specific technical inspection standards proposed in § 396.25. For example, several commenters suggested different allowable depths for tire treads. After thoroughly considering all the comments, the FHWA compared the proposed § 396.25 to the revised specifications contained in 49 CFR Part 393 (published elsewhere in today's **Federal Register**). The FHWA also compared the proposed § 396.25 with the vehicle out-of-service criteria (October 1986) adopted by the CVSA and the vehicle portion of the North American Uniform Driver-Vehicle Inspection Procedure (NAUD-VIP). Note that the NAUD-VIP is the recently changed name for the FHWA National Uniform Driver-Vehicle Inspection Procedure (NUD-VIP). Since all three inspection standards (CVSA, Appendix G, and NUD-VIP) have their bases in the specifications contained in the current 49 CFR Part 393, all were quite similar.

In reaching a decision on the inspection standards, the FHWA reviewed the proposed standards, the congressional intent (discussed earlier), comments to the proposal, as well as an analysis of existing inspection practices and requirements. This review led the FHWA to conclude that a new set of inspection standards, as proposed in the NPRM, would add extra burden and unnecessary complexity to the overall motor carrier safety inspection procedure. The NPRM, in effect, required almost every element of a vehicle to be inspected regardless of that item's propensity to affect safety of operation of the vehicle. The NPRM also required some disassembly of certain parts during the inspection. One commenter pointed out that disassembly/reassembly of parts could lead to premature failure of some parts. The FHWA agrees. The current inspection standards associated with the CVSA or NUD-VIP focus on random roadside inspections and examine certain key components of a vehicle to detect those defects most often identified as causing or contributing to the severity of commercial motor vehicle accidents. The CVSA or NUD-VIP standards, by their very nature, do not require disassembly of parts to effect a thorough inspection. The FHWA believes that the criteria on which to judge whether or not the vehicle passes the inspection should be more thorough than that used during roadside inspections. Appendix G contains a discussion of the comparison between the NUD-VIP and Appendix G criteria.

Under current rules, all vehicles must be equipped and operated in accordance with the requirements and specifications of 49 CFR Part 393 (49 CFR 393.1(a)). Furthermore, the FMCSRs also require motor carriers to systematically inspect, repair and maintain vehicles under their control. The parts and accessories on these vehicles shall be in a safe and proper operating condition at all times and based on the specifications in 49 CFR Part 393 (49 CFR 396.3(a)(1)). The FHWA believes that by also basing the periodic inspection requirement on the specifications contained in 49 CFR Part 393 there will be greater consistency and compliance with all three requirements (49 CFR Part 393, roadside inspections and periodic inspections).

The specifications in 49 CFR Part 393, however, do not provide adequate criteria for a vehicle inspection, whether it be performed on the road or in a garage. The specifications in 49 CFR Part 393 are comprehensive, and deal with vehicle manufacturing standards, as well as the condition of key safety components of the motor vehicle. The specfications in 49 CFR Part 393 were not intended for those purposes. Inspection criteria have been developed, however, through the years based on the specifications contained in 49 CFR Part 393. Of note are the CVSA vehicle out-of-service criteria and the NUD-VIP. Both sets of criteria have been used extensively. The FHWA has decided

that the vehicle portion of the FHWA North American Uniform Driver-Vehicle Inspection Procedure will be used as the criteria for successful completion of the periodic inspection. The FHWA has chosen to promulgate, in Appendix G of this rule, a modification of NUD-VIP, because it will provide the necessary inspection-related pass/no criteria for the periodic inspection at a more stringent level than the vehicle out-of-service criteria. The NUD-VIP will also provide the proper level of Federal oversight in establishing and revising the criteria.

The FHWA believes that most motor carriers are familiar with the requirements contained in 49 CFR Part 393 and the inspection criteria of NAUD-VIP and CVSA and that this familiarity will allow the Appendix G periodic inspection standards to be integrated into the existing inspection programs with minimum additional burden to the motor carrier industry.

The modified NAUD-VIP (vehicle portion) is included as Appendix G to the FMCSRs. Therefore, proposed § 396.25 is no longer needed and has been eliminated.

Vehicles subjected to random roadside vehicle checks which inspect vehicles using the criteria included in Appendix G will be considered to have met the requirements of this rule if they pass the inspection. Note that the current CVSA out-of-service criteria, while very similar to that contained in Appendix G, are not identical. The fact that a vehicle is subjected to and passes roadside inspection (e.g., receiving a CVSA decal) does not necessarily satisfy the requirements of the periodic inspection under this rule. In order to meet the requirements for a periodic inspection during a roadside inspection, the inspection must be performed using, as a minimum, the criteria contained in Appendix G of this subchapter. Included in Appendix G is a comparison of the standards in Appendix G and the CVSA out-of-service criteria.

By relating a portion of the periodic inspection standards (those relating to 49 CFR Part 393) to the standards used for other inspections and the general vehicle condition requirements noted earlier, the FHWA believes that a coherent and comprehensive inspection program will result.

FHWA Activities To Monitor the Effectiveness of this Rule

Over the next year, the FHWA will continue to work with the States, The Canadian Council of Motor Transport Administrators, the CVSA and the motor carrier industry to examine, and if necessary, strengthen existing inspection programs. Specifically, States will be encouraged to utilize their periodic vehicle inspection programs to meet the purposes of this rule. Those States which do not provide a State inspection program may wish to consider the safety benefits of such programs. Further, States which certify third parties (e.g., dealerships, garages, service centers) to perform inspections are encouraged to consider similar certification programs for motor carriers that wish to self-inspect under the provisions of this rule. The industry is also encouraged to focus on the quality of motor vehicle inspectors and institute programs to assure that those inspectors are aware of the most current and effective inspection techniques.

In order to implement § 396.23(b)(2), the FHWA will request that the State with periodic inspection programs provide FHWA with an assessment of whether its program is comparable or as "effective" as this rule. The FHWA also requests that States submit appropriate supporting data. The FHWA will review the information and will determine, based on the requirements of this part, if a State's periodic commercial motor vehicle inspection program, for States with such a program, is as effective as that required under this rule. If the States does not submit an assessment, the FHWA will initiate the review and determination absent that information. The FHWA does not envision that each element of a State's program will have to match exactly the requirements of this rule. However, the FHWA will expect the program be conducted at least annually and include a comprehensive inspection of the vehicle's key safety components. Inspection standards, recordkeeping, inspector qualifications and provisions/contracts for self-inspection or third party inspection (i.e., by commercial garages, dealers, etc.) will be evaluated. If only certain vehicle types are included in the State inspection programs which otherwise is as effective as the Federal standard, then approval could be given for those vehicle types included in the State program. The FHWA will notify the State of its determination and will publish this information in the **Federal Register** by September 5, 1989, to inform the public of its determinations.

The FHWA's evaluation of the States' periodic inspection programs for commercial motor vehicles is in no way intended to represent a Federal preemption of such programs. States would still be permitted, and encouraged, to conduct such periodic inspection programs. The intent of the evaulation is to determine whether a State's periodic inspection program is as effective as the Federal standards contained in this rule. If the State program is determined to be not as effective, commercial motor vehicles registered in that State will be required to self-inspect or obtain an inspection from a third party, or undergo an acceptable periodic inspection performed in another State, as set forth in § 396.17. The third party may be the State inspector conducting the State inspections.

The FHWA also intends to take a very active role in evaluating the effectiveness of this rule and inspection progams in general. Specifically, the FHWA will be performing special studies to determine levels of compliance as part of random roadside checks and motor carrier safety/compliance reviews. Documentation of inspector qualifications will be a key item to be checked during safety and/or compliance reviews. The FHWA fully intends to review and enforce these periodic inspection requirements and sanction motor carriers found to be violating the requirements. Use of unqualified inspectors will nullify the inspection performed by such individuals.

The FHWA intends to evaluate compliance with these requirements by motor carriers who choose to self-inspect and to evaluate the effectiveness of state sanctioned self-inspection programs. Particular attention will be given to the size of the carrier and the type of self-inspection performed (e.g., frequency, completeness, follow-up repair and maintenance procedures). The factors considered when evaluating the effectiveness of self-inspections will include: (1) The last date of State inspection, (2) whether inspection was done at a public inspection station or if the motor carrier self-inspected the vehicle, (3) mechanical deficiencies, and other factors deemed appropriate. The results of the FHWA's evaluations of State self-inspections will be reported to the Secretary within 1 year of publication of this final rule. As noted earlier, the FHWA intends to take a very active role in evaluating the effectiveness of this rule. An initial report on the overall effectiveness of this rule to the Secretary is anticipated to be completed by 1 year from the effective date of this rule.

The results of these evaluations will determine if more stringent requirements or other amendments are needed. If so, the FHWA fully intends to initiate further rulemaking in this area.

Effect on State Laws and Regulations; Preemption

Section 210(b) of the Act requires that the Secretary establish Federal standards for annual or more frequent inspections of commercial motor vehicles and retention by employers of records of such inspections.

Section 210(d)(1) states that except as provided in paragraph (2), this chapter of the United States Code shall not be construed as:

(A) Preventing any State or voluntary group of States from imposing more stringent standards for use in their own periodic roadside inspection programs of commercial motor vehicles;

(B) Preventing any State from having in effect and enforcing a program for inspection of commercial motor vehicles which the Secretary determines is as effective as the Federal standards established under subsection (b) of this section;

(C) Preventing any State from having in effect and enforcing a program for inspection of commercial motor vehicles which meets the requirements for membershp in the Commercial Vehicle Safety Alliance as such requirements were in effect on October 30, 1984;

(D) Requiring any State which has in effect and is enforcing a program described in subparagraph (B) or (C) to enforce any Federal standard established under subsection (b) of this section or to adopt any provision pertaining to inspection of commercial motor vehicles in addition to such program in order to comply with such Federal standards.

Section 210(d)(2) states that if, after notice and an opportunity for a hearing, the Secretary determines that any State which has in effect and is enforcing a program described in paragraph (1)(C) of this subsection is not enforcing such program in a manner which achieves the objectives of this section, the Federal standards established under subsection (b) of this section shall preempt such program, with respect to the inspection of commercial motor vehicles in such State and such program shall not be in effect and enforced with respect to such vehicles.

Section 210(f) states that the Federal standards established in this rule shall have no effect and shall not be enforced with respect to the inspection of commercial motor vehicles in any State which has in effect and is enforcing a program that is as effective as the Federal standards or which meets the requirements for membership in the CVSA if the Secretary determines that such Federal standards not having effect and being enforced with respect to such inspection is in the public interest and consistent with public safety.

The FHWA interprets the above provisions of law to mean that States or voluntary groups of States may, for their own purposes, impose more stringent standards for periodic roadside inspection programs than those established in this rule. However, commercial motor vehicles need only meet the Federal standards in this rule (or a States inspection program which is determined to be as effective as this rule) in order to satisfy the inspection requirements of this rule. States may also conduct inspection programs that are determined by the Secretary to be as effective as the standards established in this rule. States may also conduct inspection programs which meet the requirements for membership in the CVSA, unless, after notice and an opportunity for a hearing, the Secretary determines that the State is not enforcintg such a program in a manner which achieves the objectives of this section of the Act. In that case, the State roadside inspection program would not be available to the motor carrier to meet the requirements of this rule and the motor carrier must use an alternative means to meet the Federal standards. States that conduct inspection programs which are as effective as the Federal standards established in this rule and States that conduct inspection programs which meet the requirements for membership in the CVSA are not required to enforce the Federal standards in this rule or to adopt any inspection provision in addition to such programs in order to comply with the Federal standards in this rule.

States that have periodic inspection programs, other than the roadside programs, which are determined "not as effective" as this rule will not be preempted by this rule. Such programs, while not satisfying the motor carrier's annual vehicle inspection requirement, provide a supplemental review of the vehicle's condition, and as such, should contribute to the safe operation of a commercial vehicle.

Regulatory Impacts

Because the impact of this proposal will not result in an annual effect on the economy of $100 million, a major increase in costs or prices, or significant adverse effects on the American economy, the FHWA has determined that this document does not contain a major rule under Executive Order 12291 but is a significant regulation under the regulatory policies and procedures of the Department of Transportation because of the public interest involved. Pursuant to Executive Order 12498, this rulemaking is included on the Regulatory Program for Significant Actions. The FHWA evaluation indicates that accident reduction resulting from the rule would amount to approximately $93 million per year. The incremental cost of compliance would be about $16 million annually. Thus, the net benefit to society would be on the order of $77 million per year, and would be expected to continue for the life of the rule. A regulatory evaluation has been prepared and is available for review in the public docket.

Under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action does not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 99–511), the recordkeeping provisions that are included in this regulation are being submitted to the Office of Management and Budget.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Federalism Impact

In promulgating this rule, the FHWA has considered the President's Executive Order on "Federalism" issued on October 26, 1987. (E.O. 12612, 52 FR 41685) The purpose of the Executive Order is to assure the appropriate division of governmental responsibilities between the national government and the States. This rule implements a specific legislative directive to establish minimum Federal safety standards for commercial motor vehicles in interstate commerce contained in section 206 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 2505). Therefore, it has been determined that the Federalism implications to be considered under the Executive Order do not apply to this rule.

In addition, the FHWA believes its requirement to determine if a State's periodic inspection program is as effective as that contained in this rule does not in any way place a requirement on a State to modify and/or develop a periodic inspection program and therefore, preserves a State's flexibility as required by the Executive Order.

In consideration of the foregoing, the FHWA hereby amends Title 49, Code of Federal Regulations, Chapter III, Subchapter B as set forth below.

List of Subjects in 49 CFR Part 396

Highway safety, Motor carriers, Motor vehicle safety, and Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on November 21, 1988.

Robert E. Farris,

Federal Highway Administrator.

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

1. The authority citation for 49 CFR Part 396 is revised to read as follows:

Authority: Section 210 of Pub. L. 98–554, October 30, 1984, 98 Stat. 2839 (49 U.S.C. App. 2509); 49 U.S.C. 3102; 49 CFR 1.48.

2. Section 396.15 is amended by revising the heading and paragraph (a) to read as follows:

§ 396.15 Driveaway-towaway operations and inspections.

(a) *General.* Effective December 7, 1989, every motor carrier, with respect to motor vehicles engaged in driveaway-towaway operations, shall comply with the requirements of this part. **Exception:** Maintenance records required by § 396.3, the vehicle inspection report required by § 396.11, and the periodic inspection required by § 396.17 of this part shall not be required for any vehicle which is part of the shipment being delivered.

* * * * *

3. Part 396 is amended by adding §§ 396.17, 396.19, 396.21 and 396.23 to read as follows:

§ 396.17 Periodic inspection.

(a) Every commercial motor vehicle shall be inspected as required by this section. The inspection shall include, at a minimum, the parts and accessories set forth in Appendix G of this subchapter.

Note: The term commercial motor vehicle includes each vehicle in a combination vehicle. For example, for a tractor semitrailer, fulltrailer combination, the tractor, semitrailer, and the fulltrailer (including the converter dolly if so equipped) shall each be inspected.

(b) Except as provided in § 396.23, a motor carrier shall inspect or cause to be inspected all motor vehicles subject to its control.

(c) A motor carrier shall not use a commercial motor vehicle unless each component identified in Appendix G has passed an inspection in accordance with the terms of this section at least once during the preceding 12 months and a copy of the inspection report is on the vehicle.

(d) A motor carrier may perform the required annual inspection for vehicles under the carrier's control which are not subject to an inspection under § 396.23(b)(1).

(e) In lieu of the self inspection provided for in paragraph (d) of this section, a motor carrier may choose to have a commercial garage, fleet leasing company, truck stop, or other similar commercial business perform the inspection as its agent, provided that business operates and maintains facilities appropriate for commercial vehicle inspections and it employs qualified inspectors, as required by § 396.19.

(f) Vehicles passing roadside or periodic inspections performed under the auspices of any State government or equivalent jurisdiction or the FHWA, meeting the minimum standards contained in Appendix G of this subchapter, will be considered to have met the requirements of an annual inspection for a period of 12 months commencing from the last day of the month in which the inspection was performed, except as provided in § 396.23(b)(1).

(g) It shall be the responsibility of the motor carrier to ensure that all parts and accessories not meeting the minimum standards set forth in Appendix G to this subchapter are repaired promptly.

(h) Failure to perform properly the annual inspection set forth in this section shall cause the motor carrier to be subject to the penalty provisions provided by 49 U.S.C. 521(b).

§ 396.19 Inspector qualifications.

(a) It shall be the motor carrier's responsibility to ensure that the individual(s) performing an annual inspection under § 396.17 (d) or (e) is qualified as follows:

(1) Understands the inspection criteria set forth in 49 CFR Part 393 and Appendix G of this subchapter and can identify defective components;

(2) Is knowledgeable of and has mastered the methods, procedures, tools and equipment used when performing an inspection; and

(3) Is capable of performing an inspection by reason of experience, training, or both as follows:

(i) Successfully completed a State or Federal-sponsored training program or has a certificate from a State or Canadian Province which qualifies the person to perform commercial motor vehicle safety inspections, or

(ii) Have a combination of training and/or experience totaling at least 1 year. Such training and/or experience may consist of:

(A) Participation in a truck manufacturer-sponsored training program or similar commercial training program designed to train students in truck operation and maintenance;

(B) Experience as a mechanic or inspector in a motor carrier maintenance program;

(C) Experience as a mechanic or inspector in truck maintenance at a commercial garage, fleet leasing company, or similar facility; or

(D) Experience as a commercial vehicle inspector for a State, Provincial or Federal Government.

(b) Evidence of that individual's qualifications under this section shall be retained by the motor carrier for the period during which that individual is performing annual motor vehicle inspections for the motor carrier, and for one year thereafter. However, motor carriers do not have to maintain documentation of inspector qualifications for those inspections performed either as part of a State periodic inspection program or at the roadside as part of a random roadside inspection program.

§ 396.21 Periodic inspection recordkeeping requirements.

(a) The qualified inspector performing the inspection shall prepare a report which:

(1) Identifies the individual performing the inspection, including the individual's printed or typed name and signature;

(2) Identifies the registered owner of the vehicle;

(3) Identifies the motor carrier operating the vehicle, if other than the registered owner;

(4) Identifies the date and location of the inspection;

(5) Identifies the license plate number and vehicle identification number of the vehicle being inspected;

(6) Identifies the vehicle components inspected and describes the results of the inspection, including the identification of those components not meeting the minimum standards set forth in Appendix G to this subchapter; and

(7) Certifies the accuracy and completeness of the inspection as complying with all the requirements of this section.

(b)(1) The original or a copy of the inspection report shall also be retained by the motor carrier under whose control the vehicle operates for 30 consecutive days or more, for a period

of 1 year. The inspection report shall be retained where the vehicle is either housed or maintained.

(2) The original or a copy of the inspection report shall be maintained on the vehicle and available for inspection upon demand of an authorized Federal, State or local official.

§ 396.23 Equivalent to periodic inspection.

(a) The motor carrier may meet the requirements of § 393.17 through a State or other jurisdiction's roadside inspection program. The inspection must have been performed during the preceding 12 months. In using the roadside inspection, the motor carrier would need to retain a copy of an annual inspection report showing that the inspection was performed in accordance with the minimum periodic inspection standards set forth in Appendix G to this subchapter. When accepting such an inspection report, the motor carrier must ensure that the report complies with the requirements of § 396.21(a).

(b)(1) If a commercial motor vehicle is subject to a mandatory State inspection program which is determined by the Administrator to be as effective as § 396.17, the motor carrier shall meet the requirement of § 396.17 through that State's inspection program. Commercial motor vehicle inspections may be conducted by State personnel, at State authorized commercial facilities, or by the motor carrier under the auspices of a State authorized self-inspection program.

(2) Should the FHWA determine that a State inspection program, in whole or in part, is not as effective as § 396.17, the motor carrier must ensure that the periodic inspection required by § 396.17 is performed on all commercial motor vehicles under its control in a manner specified in § 396.17.

4. Subchapter B is amended by adding Appendix G to read as follows:

Appendix G to Subchapter B—Minimum Periodic Inspection Standards

A vehicle does not pass an inspection if it has one of the following defects or deficiencies:

1. *Brake System.*

a. *Service brakes.*—(1) Absence of braking action on any axle required to have brakes upon application of the service brakes (such as missing brakes or brake shoe(s) failing to move upon application of a wedge, S-cam, cam, or disc brake).

(2) Missing or broken mechanical components including: shoes, lining, pads, springs, anchor pins, spiders, cam rollers, push-rods, and air chamber mounting bolts.

(3) Loose brake components including air chambers, spiders, and cam shaft support brackets.

(4) Audible air leak at brake chamber (Example-ruptured diaphragm, loose chamber clamp, etc.).

(5) Readjustment limits. The maximum stroke at which brakes should be readjusted is given below. Any brake ¼" or more past the readjustment limit or any two brakes less than ¼" beyond the readjustment limit shall be cause for rejection. Stroke shall be measured with engine off and reservoir pressure of 80 to 90 psi with brakes fully applied.

BOLT TYPE BRAKE CHAMBER DATA

Type	Effective area (sq. in.)	Outside dia. (in.)	Maximum stroke at which brakes should be readjusted
A	12	6 15/16	1⅜
B	24	9 3/16	1¾
C	16	8 1/16	1¾
D	6	5¼	1¼
E	9	6 3/16	1⅜
F	36	11	2¼
G	30	9⅞	2

ROTOCHAMBER DATA

Type	Effective area (sq. in.)	Outside dia. (in.)	Maximum stroke at which brakes should be readjusted
9	9	4 9/32	1½
12	12	4 13/16	1½
16	16	5 13/32	2
20	20	5 15/16	2
24	24	6 13/32	2
30	30	7 1/16	2¼
36	36	7⅝	2¾
50	50	8⅞	3

CLAMP TYPE BRAKE CHAMBER DATA

Type	Effective area (sq. in.)	Outside dia. (in.)	Maximum stroke at which brakes should be readjusted
6	6	4½	1¼
9	9	5¼	1⅜
12	12	5 1/16	1⅜
16	16	6⅜	1¾
20	20	6 25/32	1¾
24	24	7 7/32	[1] 1¾
30	30	8 3/32	2
36	36	9	2¼

[1] (2" for long stroke design).

Wedge Brake Data.—Movement of the scribe mark on the lining shall not exceed 1/16 inch.

(6) Brake linings or pads.

(a) Lining or pad is not firmly attached to the shoe;

(b) Saturated with oil, grease, or brake fluid; or

(c) Non-steering axles: Lining with a thickness less than ¼ inch at the shoe center for air drum brakes, 1/16 inch or less at the shoe center for hydraulic and electric drum brakes, and less than ⅛ inch for air disc brakes.

(d) Steering axles: Lining with a thickness less than ¼ inch at the shoe center for drum brakes, less than ⅛ inch for air disc brakes and 1/16 inch or less for hydraulic disc and electric brakes.

(7) Missing brake on any axle required to have brakes.

(8) Mismatch across any power unit steering axle of:

(a) Air chamber sizes.

(b) Slack adjuster length.

b. *Parking Brake System.* No brakes on the vehicle or combination are applied upon actuation of the parking brake control, including driveline hand controlled parking brakes.

c. *Brake Drums or Rotors.*

(1) With any external crack or cracks that open upon brake application (do not confuse short hairline heat check cracks with flexural cracks).

(2) Any portion of the drum or rotor missing or in danger of falling away.

d. *Brake Hose.*

(1) Hose with any damage extending through the outer reinforcement ply. (Rubber impregnated fabric cover is not a reinforcement ply). (Thermoplastic nylon may have braid reinforcement or color difference between cover and inner tube. Exposure of second color is cause for rejection.

(2) Bulge or swelling when air pressure is applied.

(3) Any audible leaks.

(4) Two hoses improperly joined (such as a splice made by sliding the hose ends over a piece of tubing and clamping the hose to the tube).

(5) Air hose cracked, broken or crimped.

e. *Brake Tubing.*

(1) Any audible leak.

(2) Tubing cracked, damaged by heat, broken or crimped.

f. *Low Pressure Warning Device* missing, inoperative, or does not operate at 55 psi and below, or ½ the governor cut-out pressure, whichever is less.

g. *Tractor Protection Valve.* Inoperable or missing tractor protection valve(s) on power unit.

h. *Air Compressor.*

(1) Compressor drive belts in condition of impending or probable failure.

(2) Loose compressor mounting bolts.

(3) Cracked, broken or loose pulley.

(4) Cracked or broken mounting brackets, braces or adapters.

i. *Electric Brakes.*

(1) Absence of braking action on any wheel required to have brakes.

(2) Missing or inoperable breakaway braking device.

j. *Hydraulic Brakes. (Including Power Assist Over Hydraulic and Engine Drive Hydraulic Booster).*

(1) Master cylinder less than ¼ full.

(2) No pedal reserve with engine running except by pumping pedal.

(3) Power assist unit fails to operate.

(4) Seeping or swelling brake hose(s) under application of pressure.
(5) Missing or inoperative check valve.
(6) Has any visually observed leaking hydraulic fluid in the brake system.
(7) Has hydraulic hose(s) abraded (chafed) through outer cover-to-fabric layer.
(8) Fluid lines or connections leaking, restricted, crimped, cracked or broken.
(9) Brake failure or low fluid warning light on and/or inoperative.
k. *Vacuum Systems.* Any vacuum system which:
(1) Has insufficient vacuum reserve to permit one full brake application after engine is shut off.
(2) Has vacuum hose(s) or line(s) restricted, abraded (chafed) through outer cover to cord ply, crimped, cracked, broken or has collapse of vacuum hose(s) when vacuum is applied.
(3) Lacks an operative low-vacuum warning device as required.
2. *Coupling devices.*
a. *Fifth Wheels.*
(1) Mounting to frame.
(a) Any fasteners missing or ineffective.
(b) Any movement between mounting components.
(c) Any mounting angle iron cracked or broken.
(2) Mounting plates and pivot brackets.
(a) Any fasteners missing or ineffective.
(b) Any welds or parent metal cracked.
(c) More than ⅜ inch horizontal movement between pivot bracket pin and bracket.
(d) Pivot bracket pin missing or not secured.
(3) Sliders.
(a) Any latching fasteners missing or ineffective.
(b) Any fore or aft stop missing or not securely attached.
(c) Movement more than ⅜ inch between slider bracket and slider base.
(d) Any slider component cracked in parent metal or weld.
(4) Lower coupler.
(a) Horizontal movement between the upper and lower fifth wheel halves exceeds ½ inch.
(b) Operating handle not in closed or locked position.
(c) Kingpin not properly engaged.
(d) Separation between upper and lower coupler allowing light to show through from side to side.
(e) Cracks in the fifth wheel plate.
Exceptions: Cracks in fifth wheel approach ramps and casting shrinkage cracks in the ribs of the body of a cast fifth wheel.
(f) Locking mechanism parts missing, broken, or deformed to the extent the kingpin is not securely held.
b. *Pintle Hooks.*
(1) Mounting to frame.
(a) Any missing or ineffective fasteners (a fastener is not considered missing if there is an empty hole in the device but no corresponding hole in the frame or vice versa).
(b) Mounting surface cracks extending from point of attachment (e.g., cracks in the frame at mounting bolt holes).
(c) Loose mounting.
(d) Frame cross member providing pintle hook attachment cracked.
(2) Integrity.
(a) Cracks anywhere in pintle hook assembly.
(b) Any welded repairs to the pintle hook.
(c) Any part of the horn section reduced by more than 20%.
(d) Latch insecure.
c. *Drawbar/Towbar Eye.*
(1) Mounting.
(a) Any cracks in attachment welds.
(b) Any missing or ineffective fasteners.
(2) Integrity.
(a) Any cracks.
(b) Any part of the eye reduced by more than 20%.
d. *Drawbar/Towbar Tongue.*
(1) Slider (power or manual).
(a) Ineffective latching mechanism
(b) Missing or ineffective stop.
(c) Movement of more than ¼ inch between slider and housing.
(d) Any leaking, air or hydraulic cylinders, hoses, or chambers (other than slight oil weeping normal with hydraulic seals).
(2) Integrity.
(a) Any cracks.
(b) Movement of ¼ inch between subframe and drawbar at point of attachment.
e. *Safety Devices.*
(1) Safety devices missing.
(2) Unattached or incapable of secure attachment.
(3) Chains and hooks.
(a) Worn to the extent of a measurable reduction in link cross section.
(b) Improper repairs including welding, wire, small bolts, rope and tape.
(4) Cable.
(a) Kinked or broken cable strands.
(b) Improper clamps or clamping.
f. *Saddle-Mounts.*
(1) Method of attachment.
(a) Any missing or ineffective fasteners.
(b) Loose mountings.
(c) Any cracks or breaks in a stress or load bearing member.
(d) Horizontal movement between upper and lower saddle-mount halves exceeds ¼ inch.
3. *Exhaust System.*
a. Any exhaust system determined to be leaking at a point forward of or directly below the driver/sleeper compartment.
b. A bus exhaust system leaking or discharging to the atmosphere:
(1) Gasoline powered—excess of 6 inches forward of the rearmost part of the bus.
(2) Other than gasoline powered—in excess of 15 inches forward of the rearmost part of the bus.
(3) Other than gasoline powered—forward of a door or window designed to be opened. (exception: Emergency exits).
c. No part of the exhaust system of any motor vehicle shall be so located as would be likely to result in burning, charring, or damaging the electrical wiring, the fuel supply, or any combustible part of the motor vehicle.
4. *Fuel System.*
a. A fuel system with a visable leak at any point.
b. A fuel tank filler cap missing.
c. A fuel tank not securely attached to the motor vehicle by reason of loose, broken or missing mounting bolts or brackets (some fuel tanks use springs or rubber bushings to permit movement).
5. *Lighting Devices.* All lighting devices and reflectors required by Section 393 shall be operable.
6. *Safe Loading.*
a. Part(s) of vehicle or condition of loading such that the spare tire or any part of the load or dunnage can fall onto the roadway.
b. Protection Against Shifting Cargo—Any vehicle without a front-end structure or equivalent device as required.
7. *Steering Mechanism.*
a. *Steering Wheel Free Play (on vehicles equipped with power steering the engine must be running).*

Steering wheel diameter	Manual steering system	Power steering system
16"	2"	4½"
18"	2¼"	4¾"
20"	2½"	5¼"
22"	2¾"	5¾"

b. *Steering Column.*
(1) Any absence or looseness of U-bolt(s) or positioning part(s).
(2) Worn, faulty or obviously repair welded universal joint(s).
(3) Steering wheel not properly secured.
c. *Front Axle Beam and All Steering Components Other Than Steering Column.*
(1) Any crack(s).
(2) Any obvious welded repair(s).
d. *Steering Gear Box.*
(1) Any mounting bolt(s) loose or missing.
(2) Any crack(s) in gear box or mounting brackets.
e. *Pitman Arm.* Any looseness of the pitman arm on the steering gear output shaft.
f. *Power Steering.* Auxiliary power assist cylinder loose.
g. *Ball and Socket Joints.*
(1) Any movement under steering load of a stud nut.
(2) Any motion, other than rotational, between any linkage member and its attachment point of more than ¼ inch.
h. *Tie Rods and Drag Links.*
(1) Loose clamp(s) or clamp bolt(s) on tie rods or drag links.
(2) Any looseness in any threaded joint.
i. *Nuts.* Nut(s) loose or missing on tie rods, pitman arm, drag link, steering arm or tie rod arm.
j. *Steering System.* Any modification or other condition that interferes with free movement of any steering component.
8. *Suspension.*
a. Any U-bolt(s), spring hanger(s), or other axle positioning part(s) cracked, broken, loose or missing resulting in shifting of an axle from its normal position. (After a turn, lateral axle displacement is normal with some suspensions. Forward or rearward operation in a straight line will cause the axle to return to alignment).
b. *Spring Assembly.*
(1) Any leaves in a leaf spring assembly broken or missing.
(2) Any broken main leaf in a leaf spring assembly. (Includes assembly with more than one main spring).

(3) Coil spring broken.
(4) Rubber spring missing.
(5) One or more leaves displaced in a manner that could result in contact with a tire, rim, brake drum or frame.
(6) Broken torsion bar spring in a torsion bar suspension.
(7) Deflated air suspension, i.e., system failure, leak, etc.

c. *Torque, Radius or Tracking Components.* Any part of a torque, radius or tracking component assembly or any part used for attaching the same to the vehicle frame or axle that is cracked, loose, broken or missing. (Does not apply to loose bushings in torque or track rods.)

9. *Frame.*

a. *Frame Members.*

(1) Any cracked, broken, loose, or sagging frame member.
(2) Any loose or missing fasteners including fasteners attaching functional component such as engine, transmission, steering gear, suspension, body parts, and fifth wheel.

b. *Tire and Wheel Clearance.* Any condition, including loading, that causes the body or frame to be in contact with a tire or any part of the wheel assemblies.

c. (1) *Adjustable Axle Assemblies (Sliding Subframes).* Adjustable axle assembly with locking pins missing or not engaged.

10. *Tires.*

a. Any tire on any steering axle of a power unit.

(1) With less than 4/32 inch tread when measured at any point on a major tread groove.
(2) Has body ply or belt material exposed through the tread or sidewall.
(3) Has any tread or sidewall separation.
(4) Has a cut where the ply or belt material is exposed.
(5) Labeled "Not for Highway Use" or displaying other marking which would exclude use on steering axle.
(6) A tube-type radial tire without radial tube stem markings. These markings include a red band around the tube stem, the word "radial" embossed in metal stems, or the word "radial" molded in rubber stems.
(7) Mixing bias and radial tires on the same axle.
(8) Tire flap protrudes through valve slot in rim and touches stem.
(9) Regrooved tire except motor vehicles used solely in urban or suburban service (see exception in 393.75(e).
(10) Boot, blowout patch or other ply repair.
(11) Weight carried exceeds tire load limit. This includes overloaded tire resulting from low air pressure.
(12) Tire is flat or has noticeable (e.g., can be heard or felt) leak.
(13) Any bus equipped with recapped or retreaded tire(s).
(14) So mounted or inflated that it comes in contact with any part of the vehicle.

b. All tires other than those found on the steering axle of a power unit:

(1) Weight carried exceeds tire load limit. This includes overloaded tire resulting from low air pressure.
(2) Tire is flat or has noticeable (e.g., can be heard or felt) leak.
(3) Has body ply or belt material exposed through the tread or sidewall.
(4) Has any tread or sidewall separation.
(5) Has a cut where ply or belt material is exposed.
(6) So mounted or inflated that it comes in contact with any part of the vehicle. (This includes a tire that contacts its mate.)
(7) Is marked "Not for highway use" or otherwise marked and having like meaning.
(8) With less than 2/32 inch tread when measured at any point on a major tread groove.

11. *Wheels and Rims.*

a. *Lock or Side Ring.* Bent, broken, cracked, improperly seated, sprung or mismatched ring(s).

b. *Wheels and rims.* Cracked or broken or has elongated bolt holes.

c. *Fasteners (both spoke and disc wheels).* Any loose, missing, broken, cracked, stripped or otherwise ineffective fasteners.

d. *Welds.*

(1) Any cracks in welds attaching disc wheel disc to rim.
(2) Any crack in welds attaching tubeless demountable rim to adapter.
(3) Any welded repair on aluminum wheel(s) on a steering axle.
(4) Any welded repair other than disc to rim attachment on steel disc wheel(s) mounted on the steering axle.

12. *Windshield Glazing.* (Not including a 2 inch border at the top, a 1 inch border at each side and the area below the topmost portion of the steering wheel.) Any crack, discoloration or vision reducing matter except: (1) coloring or tinting applied at time of manufacture; (2) any crack not over 1/4 inch wide, if not intersected by any other crack; (3) any damaged area not more than 3/4 inch in diameter, if not closer than 3 inches to any other such damaged area; (4) labels, stickers, decalcomania, etc. (see 393.60 for exceptions).

13. *Windshield Wipers.* Any power unit that has an inoperative wiper, or missing or damaged parts that render it ineffective.

Comparison of Appendix G, and the new North American Uniform Driver-Vehicle Inspection Procedure (North American Commercial Vehicle Critical Safety Inspection Items and Out-Of-Service Criteria)

The vehicle portion of the FHWA's North American Uniform Driver-Vehicle Inspection Procedure (NAUD–VIP) requirements, CVSA's North American Commercial Vehicle Critical Safety Inspection Items and Out-Of-Service Criteria and Appendix G of subchapter B are similar documents and follow the same inspection procedures. The same items are required to be inspected by each document. FHWA's and CVSA's out-of-service criteria are intended to be used in random roadside inspections to identify critical vehicle inspection items and provide criteria for placing a vehicle(s) out-of-service. A vehicle(s) is placed out-of-service only when by reason of its mechanical condition or loading it is determined to be so imminently hazardous as to likely cause an accident or breakdown, or when such condition(s) would likely contribute to loss of control of the vehicle(s) by the driver. A certain amount of flexibility is given to the inspecting official whether to place the vehicle out-of-service at the inspection site or if it would be less hazardous to allow the vehicle to proceed to a repair facility for repair. The distance to the repair facility must not exceed 25 miles. The roadside type of inspection, however, does not necessarily mean that a vehicle has to be defect-free in order to continue in service.

In contrast, the Appendix G inspection procedure requires that all items required to be inspected are in proper adjustment, are not defective and function properly prior to the vehicle being placed in service.

Differences Between the Out-of-Service Criteria & FHWA's Annual Inspection

1. *Brake System.*

The Appendix G criteria rejects vehicles with any defective brakes, any air leaks, etc. The out-of-service criteria allows 20% defective brakes on non-steering axles and a certain latitude on air leaks before placing a vehicle out-of-service.

2. *Coupling Devices.*

Appendix G rejects vehicles with any fifth wheel mounting fastener missing or ineffective. The out-of-service criteria allows up to 20% missing or ineffective fasteners on frame mountings and pivot bracket mountings and 25% on slider latching fasteners. The out-of-service criteria also allows some latitude on cracked welds.

3. *Exhaust System.*

Appendix G follows Section 393.83 verbatim. The CVSA out-of-service criteria allows vehicles to exhaust forward of the dimensions given in Section 393.83 as long as the exhaust does not leak or exhaust under the chassis.

4. *Fuel System.*

Same for Appendix G and the out-of-service criteria.

5. *Lighting Devices.*

Appendix G requires all lighting devices required by Section 393 to be operative at all times. The out-of-service criteria only requires one stop light and functioning turn signals on the rear most vehicle of a combination vehicle to be operative at all times. In addition one operative head lamp and tail lamp are required during the hours of darkness.

6. *Safe Loading.*

Same for both Appendix G and the out-of-service criteria.

7. *Steering Mechanism*

Steering lash requirements of Appendix G follows the new requirements of § 393.209.

8. *Suspension*

Appendix G follows the new requirements of § 393.207 which does not allow any broken leaves in a leaf spring assembly. The out-of-service criteria allows up to 25% broken or missing leaves before being placed out-of-service.

9. *Frame*

The out-of-service criteria allows a certain latitude in frame cracks before placing a vehicle out-of-service. Appendix G follows the new requirements of 393.201 which does not allow any frame cracks.

10. *Tires*

Appendix G follows the requirements of 393.75 which requires a tire tread depth of 4/32 inch on power unit steering axles and 2/32 inch on all other axles. The out-of-service criteria only requires 2/32 inch tire tread depth

on power unit steering axles and 1/32 inch on all other axles.

11. *Wheel and Rims*

The out-of-service criteria allows a certain amount latitude for wheel and rim cracks and missing or defective fasteners. Appendix G meets the requirements of the new 393.205 which does not allow defective wheels and rims non-effective nuts and bolts.

12. *Windshield Glazing*

The out-of-service criteria places in a restricted service condition any vehicle that has a crack or discoloration in the windshield area lying within the sweep of the wiper on the drivers side and does not address the remaining area of the windshield. Appendix G addresses requirements for the whole windshield as specified in 393.60.

13. *Windshield Wipers*

Appendix G requires windshield wipers to be operative at all times. The out-of-service criteria only requires that the windshield wiper on the driver's side to be inspected during inclement weather.

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Part III

Environmental Protection Agency

40 CFR Parts 122, 123, 124 and 504
National Pollutant Discharge Elimination System Permit Application Regulations for Storm Water Discharges; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124 and 504

[FRL 3376-8]

National Pollutant Discharge Elimination System Permit Application Regulations for Storm Water Discharges

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Section 405 of the Water Quality Act of 1987 (WQA) added Section 402(p) of the Clean Water Act (CWA) to require the Environmental Protection Agency (EPA) to establish regulations setting forth National Pollutant Discharge Elimination System (NPDES) permit application requirements for: storm water discharges associated with industrial activity; discharges from a municipal separate storm sewer system serving a population of 250,000 or more; and discharges from a municipal separate storm sewer system serving a population of 100,000 or more, but less than 250,000. Today's notice requests comments on proposed permit application requirements for these discharges and for storm water discharges which are designated on a case-by-case basis for a permit for which the Administrator, or State, as the case may be, determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

Section 401 of the WQA amended Section 402(1)(2) to provide that NPDES permits shall not be required for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of such operations. Today's notice requests comments on regulations proposed to clarify and implement this provision.

DATES: Comments on this proposed rule must be received on or before March 7, 1989.

Public meetings are scheduled as follows:

(1) January 13, 1989, 9:00 a.m. to 12:00 p.m. to discuss permit application and notification requirements for storm water discharges associated with industrial activity and 1:00 p.m. to 4:00 p.m. to discuss requirements for municipal separate storm sewer systems, in Washington, DC.

(2) January 24, 1989, 9:00 a.m. to 12:00 p.m. to discuss permit application and notification requirements for storm water discharges associated with industrial activity and 1:00 p.m. to 4:00 p.m. to discuss requirements for municipal separate storm sewer systems, in Chicago, IL.

(3) January 26, 1989, 9:00 a.m. to 12:00 p.m. to discuss permit application and notification requirements for storm water discharges associated with industrial activity and 1:00 p.m. to 4:00 p.m. to discuss requirements for municipal separate storm sewer systems, in Dallas, TX.

(4) January 31, 1989, 9:00 a.m. to 12:00 p.m. to discuss permit application and notification requirements for storm water discharges associated with industrial activity and 1:00 p.m. to 4:00 p.m. to discuss requirements for municipal separate storm sewer systems, in Oakland, CA.

(5) February 7, 1989, 9:00 a.m. to 12:00 p.m. to discuss permit application and notification requirements for storm water discharges associated with industrial activity and 1:00 p.m. to 4:00 p.m. to discuss requirements for municipal separate storm sewer systems, in Jacksonville, FL.

(6) February 9, 1989, 9:00 a.m. to 12:00 p.m. to discuss permit application and notification requirements for storm water discharges associated with industrial activity and 1:00 p.m. to 4:00 p.m. to discuss requirements for municipal separate storm sewer systems, in Boston, MA.

The morning and afternoon sessions may be adjourned earlier if there are no remaining comments.

Persons wishing to make oral presentations must restrict them to 15 minutes and are encouraged to have written copies of their complete comments for inclusion in the official record.

ADDRESSES: The public should send an original and two copies of their comments to Tom Seaton, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The public record is located at EPA Headquarters, NE-208, and is available for viewing from 9:30 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling Yvonne Marshall at (202)-475-7460. Copies cost $.15/page.

Public meetings will be held at the following addresses:

(1) Washington—Auditorium of the EPA Education Center at U.S. Environmental Protection Agency Headquarters, 401 M St. SW; Washington, DC 20460.

(2) Chicago—Lakeview Conference Room, Southeast Corner, 16th Floor, U.S. Environmental Protection Agency Region V, 230 South Dearborn St., Chicago, IL 60604.

(3) Dallas—Arkansas Room, 12th Floor, U.S. Environmental Protection Agency Region VI, 1445 Ross Ave., Dallas TX 75270.

(4) Oakland—Hyatt at Oakland International, 455 Hegenberger Rd., Oakland, CA 94621.

(5) Jacksonville—Jacksonville Hilton, 14000 Dixie Clipper Drive, Jacksonville Airport, Jacksonville, FL 32218.

(6) Boston—John F. Kennedy Federal Building, Room 2003, U.S. Environmental Protection Agency Region I, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed rule contact: James Gallup, Kevin Weiss, or Tom Seaton, Office of Water Enforcement and Permits (EN-336), United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202)-475-9518.

SUPPLEMENTARY INFORMATION:

SUPPLEMENTARY INFORMATION:

I. Background

A. Water Quality Concerns

The 1972 amendments to the Federal Water Pollution Control Act (referred to as the Clean Water Act or CWA), prohibit the discharge of any pollutant to navigable waters from a point source unless the discharge is authorized by a NPDES permit. Efforts to improve water quality under the NPDES program have traditionally focused primarily on reducing pollutants in discharges of industrial process wastewater and municipal sewage. This program emphasis has developed for a number of reasons. At the onset of the program in 1972, many sources of industrial process wastewater and municipal sewage were not adequately controlled, and represented pressing environmental problems. In addition, sewage outfalls and industrial process discharges were easily identified as responsible for poor, often drastically degraded water quality conditions. However, as pollution control measures were initially developed for these discharges, it became evident that more diffuse sources (occurring over a wide area) of water pollution, such as agricultural and urban runoff were also major causes of water quality problems. Some diffuse sources of water pollution, such as agricultural storm water discharges and irrigation return flows, are statutorily exempted from the NPDES program. Controls for other diffuse sources have been slow to develop under the NODES program.

Since enactment of the 1972 amendments to the CWA, considering the rise of economic activity and population, significant progress in cleaning up water pollution has been made, particularly with regard to industrial process wastewater and municipal sewage. Expenditures by EPA, the States, and local governments to construct and upgrade sewage treatment facilities have substantially increased the population serviced by higher levels of treatment. Permitting backlogs for industrial process wastewater discharges have been reduced. Continuing improvements are expected for these discharges as the NPDES program continues to shift to toxic and water quality-based pollution control.

Although assessments of water quality are extremely difficult to perform and verify, several National assessments of water quality are available. For the purpose of these assessments, urban runoff is considered to be a diffuse source or nonpoint source pollution, although legally, most urban runoff is discharged through conveyances such as separate storm sewers or other conveyances which are point sources under the CWA, and are subject to the NPDES program. The "National Water Quality Inventory, 1986 Report to Congress" provides a general assessment of water quality based on biennial reports submitted by the States under Section 305(b) of the CWA. In preparing the Section 305(b) Reports, the States were asked to indicate the fraction of the States' waters that were fully supporting, partly supporting, or not supporting designated uses. The Report indicates that of the rivers, lakes, and estuaries that were assessed by States (approximately one-fifth of stream miles, one-third of lake acres and one-half of esturine waters), roughly 75% are supporting the uses for which they are designated. For waters with use impairments, States were asked to determine impacts due to nonpoint (agricultural and urban runoff and other sources), municipal sewage, industrial (process wastewaters), combined sewer overflows, natural, and other sources, then combine impacts to arrive at estimates of the relative percentage of State waters affected by each source. In this manner, the relative importance of the various sources of pollution causing use impairments was assessed and weighted national averages were calculated. Based on 37 States that provided information of sources of pollution, industrial process wastewaters were cited as the cause of nonsupport for 9% for rivers and streams, 1% lakes, and 8% for estuaries. Municipal sewage was the cause of nonsupport for 17% of rivers and streams, 8% lakes, and 22% estuaries. Nonpoint sources was the cause of nonsupport for 65% of rivers and streams, 76% lakes and 45% estuaries. The Assessment concluded that pollution from diffuse sources such as runoff from agricultural and urban areas is cited by the States as the leading cause of water quality impairment. These sources appear to be increasingly important contributors of use impairment as discharges of industrial process wastewaters and municipal sewage plants come increasingly under

control and intensified data collection efforts provide additional information.

The States conducted a more comprehensive study of diffuse pollution sources under the sponsorship of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) and EPA. The study resulted in the report "America's Clean Water—The States' Nonpoint Source Assessment, 1985" which indicated that 38 States reported urban runoff as a major cause of beneficial use impairment. In addition, 21 States reported construction site runoff as a major cause of use impairment.

To provide a better understanding of the nature of urban runoff from commercial and residential areas, from 1978 through 1983, EPA provided funding and guidance to the Nationwide Urban Runoff Program (NURP). The NURP program included 28 projects across the Nation, conducted separately at the local level but centrally reviewed, coordinated, and guided.

One focus of the NURP program was to characterize the water quality of discharges from separate storm sewers which drain residential, commercial, and light industrial (industrial parks) sites. The majority of samples collected in the study were analyzed for eight conventional pollutants and three metals. Data collected in NURP indicated that on an annual loading basis, suspended solids in discharges from separate storm sewers draining runoff from residential, commercial and light industrial areas are around an order of magnitude or more greater than effluent from sewage treatment plants receiving secondary treatment. In addition, the study indicated that annual loadings of chemical oxygen demand (COD) is comparable in magnitude to effluent from sewage treatment plants receiving secondary treatment. When analyzing annual loadings associated with urban runoff, it is important to recognize that discharges of urban runoff are highly intermittent, and that the short-term loadings associated with individual events will be high and may have shockloading effects on receiving water such as sag in dissolved oxygen levels. NURP data also showed that fecal coliform counts in urban runoff are typically in the tens to hundreds of thousand per 100 ml of runoff during warm weather conditions, although the study suggested that fecal coliform may not be the most appropriate indicator organism for identifying potential health risks in storm water runoff. Although NURP did not evaluate oil and grease, other studies have demonstrated that urban runoff is an extremely important source of oil pollution to receiving waters, with hydrocarbon levels in urban runoff typically being reported at a range of 2 to 10 mg/1. These hydrocarbons tend to accumulate in bottom sediments where they may persist for long periods of time, and exert adverse impacts on benthic organisms.

A portion of the NURP program involved monitoring 120 priority pollutants in storm water discharges from lands used for residential, commercial and light industrial activities. Seventy-seven priority pollutants were detected in samples of storm water discharges from residential, commercial and light industrial lands taken during the NURP study, including 14 inorganic and 63 organic pollutants. Table A–1 shows the priority pollutants which were detected in at least ten percent of the discharge samples which were sampled for priority pollutants.

Priority Pollutants Detected in at Least 10% of NURP Samples

TABLE A–1

	Frequency of detection (percent)
Metals and Inorganics:	
Antimony	13
Arsenic	52
Beryllium	12
Cadmium	48
Chromium	58
Copper	91
Cyanides	23
Lead	94
Nickel	43
Selenium	11
Zinc	94
Pesticides:	
Alpha-hexachlorocyclohexane	20
Alpha-endosulfan	19
Chlordane	17
Lindane	15
Halogenated aliphatics: Methane, dichloro	11
Phenols and cresols:	
Phenol	14
Phenol, pentachloro-	19
Phenol, 4-nitro	10
Phthalate esters: Phthalate, bis(2-ethylhexyl)	22
Polycyclic aromatic hydrocarbons:	
Chrysene	10
Fluoranthene	16
Phenanthrene	12
Pyrene	15

The NURP data also showed a significant number of these samples exceeded various freshwater water quality criteria.

The NURP study provides insight on what can be considered background levels of pollutants for urban runoff, as the study focused primarily on monitoring runoff from residential, commercial and light industrial areas. However, NURP concluded that the quality of urban runoff can be adversely impacted by several sources of pollutants that were not directly evaluated in the study and are generally not reflected in the NURP data, including illicit connections, construction site runoff, industrial site runoff and illegal dumping.

Other studies have shown that many storm sewers contain illicit discharges of non-storm water, and that large amounts of wastes, particularly used oils, are improperly disposed in storm sewers. Removal of these discharges present opportunities for dramatic improvements in the quality of storm water discharges. Storm water discharges from industrial facilities may contain, in addition to illicit connections and improperly disposed wastes, toxics and conventional pollutants when material management practices allow exposure to storm water.

In some municipalities, illicit connections of sanitary, commercial and industrial discharges to storm sewer systems have had a significant impact on the water quality of receiving waters. Although the NURP study did not emphasize identifying illicit connections to storm sewers other than to assure that monitoring sites used in the study were free from sanitary sewage contamination, the study concluded that illicit connections can result in high bacterial counts and dangers to public health. The study also noted that removing such discharges presented opportunities for dramatic improvements in the quality of urban storm water discharges.

Other studies have shown that illicit connections to storm sewers can crate severe, wide-spread contamination problems. For example, the Huron River Pollution Abatement Program inspected 660 businesses, homes and other buildings located in Washtenaw County, Michigan and identified 14% of the buildings as having improper storm drain connections. Illicit discharges were detected at a higher rate of 60% for automobile related businesses, including service stations, automobile dealerships, car washes, body shops and light industrial facilities. While some of the problems discovered in this study were the result of improper plumbing or illegal connections, a majority were approved connections at the time they were built.

Intensive construction activities may result in severe localized impacts on water quality because of high unit loads of pollutants, primarily sediments. Construction sites can also generate other pollutants such as phosphorus and

nitrogen from fertilizer, pesticides, petroleum products, construction chemicals and solid wastes. These materials can be toxic to aquatic organisms and degrade water for drinking and water-contact recreation. Sediment runoff rates from construction sites are typically 10 to 20 times that of agricultural lands, with runoff rates as high as 100 times that of agricultural lands, and typically 1,000 to 2,000 times that of forest lands. Even a small amount of construction may have a significant negative impact on water quality in localized areas. Over a short period of time, construction sites can contribute more sediment to streams than was previously deposited over several decades.

B. Previous Regulatory Approaches

The appropriate means of regulating storm water point sources within the National Pollutant Discharge Elimination System (NPDES) program has been a matter of serious concern since implementation of the NPDES program. Each attempt to devise a workable program has been the focus of substantial controversy, in view of the large number of storm water sources, the nature of storm water runoff and the realities of program priorities and resources. In 1973, EPA promulgated its first storm water regulations exempting from permit requirements those conveyances carrying storm water runoff uncontaminated by industrial or commercial activity unless the particular storm water discharger had been identified by the NPDES Director as a significant contributor of pollution (38 FR 13530 (May 22, 1973)). The Agency maintained that, while these sources fell within the definition of a point source, they were nonetheless ill-suited to the traditional end-of-pipe, technology-based controls that are the basis of the NPDES program for process discharges and discharges from Publicly-Owned Treatment Works (POTWs). Because of the intermittent, variable and unpredictable nature of storm water discharges, EPA reasoned that the problems caused by storm water discharges were better managed at the local level through nonpoint source controls such as the imposition of specific management practices to prevent the pollutants from entering the runoff. The Agency also justified its decision by noting that issuing individual NPDES permits for the hundreds of thousands of storm water point sources in the United States would create an overwhelming administrative burden and would divert resources away from control of industrial process wastewater and municipal sewage, which at the time, were more pressing and identifiable environmental problems.

In the first in a series of challenges to the storm water regulations, the Natural Resources Defense Council (NRDC) brought suit in the U.S. District Court for the District of Columbia, challenging the Agency's authority to selectively exempt categories of point sources from permit requirements, *NRDC v. Train*, 396 F.Supp. 1393 (D.D.C. 1975), *aff'd, NRDC v. Costle*, 568 F.2d 1369 (D.C. Cir. 1977). The District Court held that EPA could not exempt discharges identified as point sources from regulation under the NPDES permit program. However, in acknowledging the administrative burden placed on the Agency by requiring individual permits, the court recognized EPA's discretion to use certain administrative devices, such as area permits, to help manage its workload. In addition, the court recognized some discretion on EPA's part to define what constitutes a point source.

In response to the District Court's decision in *NRDC v. Train*, EPA issued a rule on March 18, 1976, (41 FR 11307) establishing a comprehensive permitting program for all storm water discharges except for rural runoff uncontaminated by industrial or commercial activity. This rule substantially increased the number of storm water discharges subject to the NPDES program. Permits continued to be required for conveyances carrying contaminated storm water runoff from areas used for industrial or commercial activities, as well as storm water discharges designated by the permit-issuing authority as significant contributors of pollution. These sources were required to submit the then-existing individual permit applications required of industrial and commercial process wastewater dischargers. In addition, the 1976 rule brought into the permitting program separate storm sewers which were defined as "conveyance or system of conveyances . . . located in an urbanized area and primarily operated for the purpose of collecting and conveying storm water runoff." Channelized storm water runoff from rural areas continued to be defined as non-point sources unless designated otherwise by the permitting authority. Individual permit applications were not required for separate storm sewers at that point in time. EPA planned to study such discharges and issue "general" or area permits to such sources as these discharges were expected to be less significant than storm water contaminated by industrial wastes.

On June 7, 1979 and May 19, 1980, EPA published comprehensive revisions to the NPDES regulations (44 FR 32854 (June 7, 1979); 45 FR 33290 (May 19, 1980)). With regard to storm water discharges, these rules essentially retained the March 18, 1976 broad definition of storm water discharges subject to NPDES permit requirements, but applied new application requirements to storm water point sources. Under these regulations the same application information required of all industrial and commercial process wastewater dischargers would be required of all storm water point sources. This meant that the new individual permit application requirements of the 1979/1980 rules applicable to process wastewater discharges would also be required for all storm water discharges. These new requirements included testing under certain circumstances for a substantially greater number of pollutants identified in the 1977 amendments to the Clean Water Act (CWA) which stressed the control of toxic pollutants.

This regulation brought suits in several Court of Appeals and District Courts by a number of major trade associations, several of their member companies, NRDC and Citizens for a Better Environment. The suits challenged many aspects of the NPDES regulations, including the storm water provisions. Eventually all petitions for review were consolidated in the D.C. Circuit Court of Appeals (*NRDC v. EPA*, 673 F.2d 392 (D.C. Cir. 1980)).

After two years of intensive settlement negotiations with representatives of most of the petitioners, the Agency and industry petitioners signed a settlement agreement on July 7, 1982, which addressed a number of issues relating to the NPDES program, including storm water. Under the terms of the agreement, EPA agreed to propose changes to the storm water regulations (47 *FR* 52073 (November 18, 1982)). The proposal reflected the Agency's attempt to balance the environmental concerns associated with such discharges with the practical limitations of individual NPDES permits and the reality of limited resources. Thus, the proposal significantly narrowed the definition of storm water point source and reduced the application requirements. The proposal defined storm water point sources as consisting only of conveyances of storm water contaminated by process wastes, raw materials, toxics, hazardous pollutants or oil and grease.

The proposal also reduced application requirements. Storm water discharges were proposed to be divided into two groups based on their potential for significant pollution problems. Group I sources (expected to pose more significant pollution problems) would continue to be required to submit Application Forms 1 and 2C applicable to industrial and commercial process wastewater dischargers except that effluent testing data would be required only for conventional pollutants. For all other pollutants, the applicant would only have to indicate whether they believed any such pollutants were present or absent and explain why. Application requirements were further reduced for Group II. Essentially, the only information that would be required for Group II sources would consist of basic information to identify the type, number and location of Group II discharges. No effluent testing data was proposed to be required at that time from these sources. The Agency also proposed to extend the deadline for submission of storm water permit applications to six months after promulgation of a final rule.

Finally, as also agreed to in the Settlement Agreement, EPA issued a letter stating that while the proposal was pending, EPA would not take enforcement action against storm water dischargers other than those (1) covered by an existing NPDES permit; (2) subject to effluent limitations guidelines or toxic pollutant standards; or (3) designated as a significant contributor of pollutants. This "non-enforcement policy" did not apply to existing enforcement actions, and did not affect the right of an approved NPDES State or citizens group to bring a suit against a storm water discharger.

EPA's 1982 proposal to address the storm water issue again generated considerable reaction and comment from industrial groups and trade associations. They asserted that the proposal did not go far enough in restricting the definition of storm water point sources. They maintained that most storm water discharges were *de minimis* sources of pollution and thus are not appropriately regulated under the NPDES program. States and environmental groups took the position that the CWA requires permits for storm water discharges regardless of the level of pollutants present in such discharges. They contended that the proposal went too far in narrowing the scope of coverage and questioned whether EPA had a legally sufficient or technically supportable basis for the Group I/Group II designations in the proposal. EPA considered these public comments and published final storm water regulations on September 26, 1984 (49 FR 37998).

The 1984 final rule recognized that there are two fundamental issues regarding the NPDES regulation of storm water: (1) which storm water discharges are point sources and therefore within the NPDES program, and (2) what is the best way to regulate these sources.

On the first issue, the Agency was persuaded by commenters that the 1982 proposal had gone too far in narrowing the scope of coverage. Data available to EPA, such as the National Urban Runoff Program (NURP) study, indicated that there are water quality problems associated with storm water runoff in some situations. Thus, the final rule retained the broad coverage of the 1980 rule in mandating the permitting of all storm water point sources that discharge pollutants into waters of the United States. The September 26, 1984 rule defined a storm water point source as a channelized conveyance of storm water runoff that (1) is located in an urbanized area as defined by the Bureau of Census, or (2) discharges from lands of facilities used for industrial or commercial activities, or (3) is designated by the Director.

To address the second issue of how to regulate these sources administratively, the final rule retained the two-tiered classification described in the November 18, 1982 proposal. Thus, the final rule set forth two categories of storm water point sources with different application requirements for each. Group I storm water point sources were defined as those subject to effluent limitations guidelines, located at an industrial plant or plant associated area, or designated by the Director. All other storm water point sources were classified as Group II. Group I dischargers were required to complete both Form 1 and Form 2C, the NPDES Application Form for industrial and commercial process wastewater discharges, including certain sampling and testing data. The application requirements for Group II were significantly reduced from their existing requirements. Group II sources were required to submit only Form 1 plus a narrative description of the drainage area, receiving water, and any treatment applied to the discharge. Since Group II sources were expected to pose less significant pollution problems generally and therefore be a lower priority for permit issuance, additional information could be collected on these sources at a later date when permits were issued to these sources.

The final rule also revoked the non-enforcement letter issued as part of the Settlement Agreement and a new permit application deadline of April 26, 1985 was established.

These storm water regulations generated considerable controversy (through post-promulgation comment) and, once again, suits were filed. With regard to coverage, it was claimed that the new definitions would subject thousands of discharges to the program for the first time. In fact, the EPA's view, the coverage of storm water point sources under the NPDES program was essentially unchanged by the September 26 rulemaking. The 1984 rules deleted the term "contaminated" and relied instead on geographic criteria. However, this change in nomenclature resulted in the same coverage of discharges.

In post-promulgation comments on the 1984 rule, various industries and trade associations claimed that the April 26 application deadline would be impossible for many dischargers to meet. It was argued that many discharges were located in areas where testing during the winter months would not be feasible. It was also pointed out that the intermittent and unpredictable nature of storm water would result in difficult and time-consuming data gathering, and that six months was not enough time to locate, identify, sample and test thousands of storm water point sources. Many comments expressed the view that requiring full samplying from every single Group I discharger was excessive in terms of providing sufficient data for general permits, the preferred means of regulating these sources. They argued that the Agency would be overwhelmed with an unmanageble amount of data that would only be outdated by the time EPA and the States were able to issue permits. Commenters also objected to the expense of the testing when such data might not be utilized in a timely manner.

The environmental groups maintained that, at a minimum, EPA's decisions as reflected in the final rule were supported by the record and should not be changed without strong justification supported by hard data. They expressed concern that any change or delay would only exacerbate what they perceived as EPA's failure to regulate these sources of pollutants.

Upon consideration of these post-promulgation comments, EPA concluded that it was essential to obtain additional data on storm water discharges to assess their significance as an enviromental problem, and to identify the best means of control. However, even though the number of dischargers

required to submit quantitative testing data had been reduced by the 1984 rule, tens of thousands of storm water point sources remained to be identified, tested and analyzed. Despite the improvments made in the 1984 regulation, EPA realized it was appropriate to request comment on whether the collection of data from each individual Group I discharger was necessary and efficient. In addition, EPA realized that new deadlines would need to be established. Thus, in an attempt to balance environmental concerns with administrative and practical feasibility, EPA published proposed changes to the storm water regulations on March 7, 1985 at 50 FR 9362.

II. March 7, 1985, Proposed Rule

A. Discussion

Several changes to the application requirements for Group I sources were proposed in the March 7, 1985 proposal. For industrial facilities, the system proposed in the March 7 notice would rely primarily on voluntary, written commitments from trade associations to submit quantitative data from selected representative Group I sources. In this way, EPA could obtain a manageable quantity of data to allow for the establishment of permitting priorities and the development of general permits, thereby reducing the cost to applicants and the administrative burden on EPA and State resources.

EPA proposed that the requirement that Group I dischargers submit Form 2C (sampling and analysis data of effluent) be eliminated. In lieu thereof, Group I dischargers would submit Form 1 and the narrative already required of Group II, with two additions: Group I applicants would also submit any available existing quantitative data for certain pollutants, and would identify (no sampling required) the presence of pollutants listed in the rule: oil and grease, total organic carbon, chemical oxygen demand, and any pollutant listed in Appendix D of 40 CFR Part 122 that the applicant knew or had reason to believe were present in its storm water discharge. The March 7 notice proposed no changes to the Group II application requirements.

As noted above, in proposing to suspend Form 2C, the Agency was relying in part on commitments from industries and trade associations that they would submit representative quantitative effluent testing data during 1985. In December 1984 and February 1985, EPA held meetings with representatives of several industries and trade associations who had raised concerns with the requirements of the September 26 final rule. At those meetings, a number of industry groups indicated a willingness to provide the Agency with representative data on the storm water discharges of their membership.

To follow up on these assurances, the Agency held a meeting on March 7, 1985, in order to clarify the details of this data-gathering initiative. This meeting was attended by representatives of several dozen industry trade associations, a few individual companies and an environmental group. At this meeting, EPA set forth criteria and minimum standards for the voluntary group data submissions. EPA requested that trade associations make a formal commitment to provide representative data and submit these data to EPA by Septembr 1, 1985. The Agency envisioned that these data would supplement existing data available to it and could provide a basis for establishing permitting priorities and setting permit terms and conditions. EPA held a second meeting on March 22 to further refine and explain the data-gathering process. Twenty-nine commitment letters were ultimately received.

With regard to the application deadline, the March 7 proposal suggested a deadline of December 31, 1985, and requested comments on the possibility of extending the deadline still further for Group II storm water point sources. As discussed in greater detail below, this part of the proposal was addressed in a final rule (50 FR 35200 (August 29, 1985)). The August 29 rule extended the deadline to December 31, 1987 for Group I, and June 30, 1989 for Group II.

The March 7 proposal also requested comments on whether, in the event the Form 2C requirement was retained, the regulations should include discretionary authority for the Director of the Office of Water Enforcement and Permits to waive the quantitative data submission requirement for a class or category of Group I storm water point sources.

B. Reaction of Comments

On hundred and thirty-two comments on the March 7 proposal were received from industries, trade associations, States, cities, Federal agencies and environmental groups. All but two commenters supported EPA's proposal as a manageable and environmentally sound approach to the storm water permitting problem. The two environmental groups commenting on the proposal objected to it on a number of grounds. At a minimum, they favored withdrawal of the proposal and retention of the September 26 requirements.

After evaluating the comments received on the March 7 proposal, assessing the commitments received from trade associations, and re-examining the issues, EPA decided to reopen the comment period on the March 7 notice to provide additional information and issues for public comment.

III. August 12, 1985, Reopener Notice

A. Group Application Option, Process and Procedures

On August 12, 1985 (50 FR 32548), EPA reopened the comment period on the March 7 proposal and requested comments on a group application approach for Group I applicants that essentially would codify the plan for submission of representative data detailed in the March 7, 1985 proposal and discussed at the two public meetings held that same month with representatives of trade associations, individual companies, and an environmental group.

Although EPA had received 29 commitment letters from trade associations (and a few individual companies) that indicated a willingness to voluntarily submit representative storm water data from their memberships, the Agency was concerned that such letters might not provide a sufficient basis for suspending the Application Form 2C requirement for all Group I sources. In EPA's view, the voluntary data submissions would not necessarily justify the elimination of testing requirements for those Group I sources that were either not covered by a trade association submission or chose not to participate in the voluntary data submissions. The 29 commitment letters that the Agency received also indicated widespread confusion about the scope of coverage for the data submissions by the trade associations. In addition, there was confusion about the appropriate pollutants to be sampled and analyzed and then submitted to the Agency as representative of the storm water discharges of the members of the group.

Nevertheless, the Agency still regarded the submission of representative data as the most practical and efficient means of determining appropriate permit terms and conditions, as well as permitting priorities, for the multitude of storm water point source discharges requiring NPDES permits. The August 12 proposal attempted to build upon the efforts expended by both the Agency and those

trade associations that cooperated under the March 7 voluntary approach.

The major element of the August 12 proposal was that all Group I storm water point sources would have to submit either an individual NPDES application (Form 1 and Form 2C) or participate in an approved group application. The group application was an optional alternative to the submission of the usual individual NPDES application, with the normal regulatory provisions governing permit application and issuance still applicable.

Under the proposed group application option, representative data on storm water discharges would be compiled by a trade association or similar representative entity for a subcategory or category of dischargers. The group submission would satisfy the application requirements for any storm water discharger falling within the particular subcategory or category.

The group application was to consist of two parts: Part 1 and Part 2. Part 1 would be a commitment by the trade association or representative entity to submit quantitative data from individual representative facilities within the subcategory or category, as well as a complete description of the group's data collection plans. Part 1 would also characterize the facilities covered under the group application and provide an identification of those individual facilities that would do the actual pollutant sampling and analyses. EPA proposed that those individual facilities submitting quantitative data would have to appropriately represent the subcategory or category covered by the group application. Factors proposed to ensure representativeness were a range of operations, sizes and geographic locations, facilities with and without treatment of their storm water discharges, data from facilities connected to sanitary sewers and from facilities discharging storm water directly to waters of the U.S. The Agency also proposed that the group application contain submissions from 10 percent of the subcategory or category, with a minimum of 10 individual facilities. Any historical data on storm water discharges from facilities within the group application were also to be submitted. Other discharges covered by the group application would not be required to submit individual Forms 1 and 2C.

EPA proposed to accept group applications based upon industrial subcategories as defined in 40 CFR Subchapter N. The Agency felt that the submission of a group application covering a subcategory of dischargers would allow for more effective analysis of any quantitative data received, as well as provide a clearer basis for subsequently developed permit terms and conditions. Submission on the basis of subcategories was also considered appropriate to avoid the "blurring of categories" due to the overlap of trade associations' memberships identified in the 29 voluntary commitment letters. However, the Agency did not preclude the submission of data by categories as long as the criteria for representativeness was met. Comments were requested on the acceptance of group applications based upon subcategories.

The August 12 notice also proposed that Part 1 of a group application would be submitted to the Office of Water Enforcement and Permits (OWEP) at EPA Headquarters in Washington, D.C. no later than 90 days after the publication date of any final rule. The Agency also solicited public comments on whether any group application should be accepted after the 90-day deadline. The Agency stated that it preferred the 90-day deadline be mandatory, such that failure to submit a Part 1 within that time would preclude the group application option for those dischargers within the subcategory or category.

Part 1 applications submitted to OWEP would be reviewed for acceptability based on the proposed representative ceriteria and in accordance with 40 CFR 122.21(e) [completeness of NPDES permit applications]. Comments were solicited on the appropriateness of the proposed representative criteria.

The Agency proposed that a notice would be published in the Federal Register if OWEP determined that a Part 1 application was accepted for a particular subcategory or category of storm water dischargers. If a Part 1 application were unacceptable, OWEP could either deny the group application or request changes to the application and then make a final decision on the acceptability of the group application. Even if a group application were accepted, permitting authorities would retain the right to require an individual permit application from any individual storm water discharger.

Any storm water discharger falling within a subcategory or category for which a group application had been accepted would have the option of being covered under the group application or submitting an individual NPDES permit application. If the discharger chose coverage under the group application, no individual information would be required (unless that discharger was identified as one of the individual facilities submitting quantitative data for the group application). The Agency proposed that in lieu of all sources covered by the group application submitting a Form 1, sources would submit a Notice of Intent (NOI) to the permitting authority if the facility wished to be covered under the general permit for that subcategory or category.

Any Group I source that did not fall within a group application (or desiring not to be covered by the group application) would submit an individual NPDES permit application for their storm water discharges. Individual permit applications would be submitted to the applicable permitting authority (i.e., an EPA Regional Office or an NPDES State). the deadline for submittal of individual applications would be the same as that for Part 2 of the group application, December 31, 1987.

The August 12 proposal explained that Part 2 of the group application would consist of the actual quantitative effluent data from the representative facilities within the covered subcategory or category. Those individual facilities selected to perform sampling and analyses under the group application were to test for:

- Any pollutant limited in an effluent limitations guideline for its subcategory or category;
- Any pollutant listed in the individual facility's NPDES permit for its process wastewater;
- Oil and grease, TOC, COD, pH, BOD; and
- Any information on the discharge required under 40 CFR 122.21 (g)(7)(iii) (A) and (B).

The Agency requested public comments on the suitability of the pollutants to be tested, and their sufficiency to determine accurately the characteristics of storm water discharges.

EPA also proposed that those individual facilities selected to provide quantitative data under the group application would sample all of their storm water outfalls. EPA stated that since the individual facilities' data would be considered representative of the subcategory or category, it was appropriate to require information on all storm water outfalls in order to fully characterize the facilities' discharges.

Further, the August 12 proposal requested comment on the possibility of a waiver from testing certain pollutants for group applicants. 40 CFR 122.21(g)(7)(i)(B) of the existing NPDES regulations provides authority to the permitting authority to waive permit application reporting requirements for certain pollutants if the applicant

demonstrates to the satisfaction of the permitting authority that such information is unnecessary. Comment was also solicited on what data should be furnished to support such a waiver request.

Each individual facility submitting actual quantitative data under Part 2 of the group application would complete an NPDES permit Application Form 1 and form 2C. Both Form 1 and Form 2C would be signed by the individual facilities in accordance with the signatory requirements contained in 40 CFR 122.22.

The trade association or representative entity that submitted Part 1 of the group application would compile the individual Form 1s and Forms 2Cs, and would attach a narrative certifying that the Part 2 submission corresponds to the submission described in Part 1. The Agency requested comments on its proposal that the Part 2 narrative would be signed by an association officer (or comparable individual) responsible for policy or decision making functions and to whom authority to sign documents on behalf of the group applicants had been assigned. All Form 1s and Form 2Cs would be signed by the individual facilities in accordance with the general signatory requirements of 40 CFR 122.22.

Like Part 1 of the group application, Part 2 would be submitted to OWEP for review and used to develop permit issuance priorities and model general permit terms and conditions. The group application option and process comported with the Agency's intent to issue general permits in most instances to cover storm water point sources.

The August 12 proposal explained that the group application option, if promulgated as proposed, would only apply to those facilities in States not approved to administer the NPDES permit program (i.e., where EPA is the permit-issuing authority). Facilities within approved NPDES States must follow existing State regulations. Approved NPDES States, of course, would be free to amend their regulations to adopt the group application option for all storm water dischargers or as an alternative to individual storm water permit applications in certain cases. The Agency requested that States, especially NPDES States, comment on the proposed group application process. In addition, EPA strongly recommended in the proposal that NPDES States without general permit authority approved by EPA seek such authority since the ability to issue general permits provide an effective and efficient means of permitting certain storm water point sources and would allow States to make the best use of the results of the group applications.

B. Classification of Publicly-Owned Separate Storm Sewers

The August 12 reopener notice also requested comments on the Agency's clarification of whether publicly-owned separate storm sewers located in urbanized areas were classified as Group I or Group II storm water point sources. The Agency considered the September 26, 1984 final regulations to be ambiguous on this point, as evidenced by the numerous telephone inquiries received immediately after publication of the final rule addressing this issue. The August 12 proposal stated the Agency's view that municipal storm water sewers designed only to convey storm water runoff (a.k.a., publicly-owned separate storm sewers) are Group I storm water point sources based on the data available to the Agency through the National Urban Runoff Program (NURP) study. The NURP study found that in many instances storm water discharged from publicly-owned separate storm sewers was indeed contaminated with conventional pollutants (e.g., suspended solids and fecal coliform) as well as heavy metals (e.g., lead, copper, zinc, and cadmium). Because of the significance such discharges can have for water quality, the Agency felt that it was appropriate to classify publicly-owned separate storm sewers as Group I sources. The Agency requested comments on whether this clarification/classification was appropriate.

C. Discharges into Publicly-Owned Separate Storm Sewers

Under the September 26, 1984 final rule, dischargers into a publicly-owned separate storm sewer must either be covered by an individual NPDES permit or by a permit issued to the municipality or public entity operating the system. This provision, one of the items clarified under the terms of the NPDES Settlement Agreement (June 1982), which EPA proposed in November 1982, allowed the operator of the outfall discharging directly to waters of the U.S. to decline responsibility for discharges into the system while applying for a permit for the outfall.

The "either/or" nature of the September 26 rule allowed a municipality to decline responsibility for non-municipal storm water discharges into the publicly-owned separate storm sewer system. In this case, all non-municipal dischargers into the municipal system would be responsible for applying for and obtaining individual NPDES permits. This approach might conceivably mean that hundreds of thousands of individual NPDES permit applications would be received duplicating the information contained in the municipal storm water permit application(s).

The catch basins, pipes and outfalls that comprise a publicly-owned separate storm sewer system may be owned by a municipality, a flood control district, or various other public service entities. Under the NPDES regulations, such systems are not considered to be a "publicly-owned treatment works" (POTW) because they do not convey discharges to the POTW. For purposes of the NPDES regulations, separate storm sewers are non-POTW point sources and are subject to regulation in a manner that is analogous to privately-owned treatment systems. Under 40 CFR 122.44[m] [privately-owned treatment works], the Agency can require permits for any, some, or all of the contributors to the system.

In the August 12 notice, EPA solicited public comment on the appropriateness of relying on the issuance of permits to the municipality or public entity responsible for the separate storm sewer system, thereby relieving all dischargers of storm water into the system of the need to apply for and obtain individual NPDES permits. The permitting authority would retain the authority to designate operators of such contributing storm water discharges as co-permittees or to require individual permits.

EPA proposed that the municipality or other public entity responsible for the separate storm sewer would be required to identify all those Group I discharges into the system but would not be required to identify those Group II discharges into the system. The Agency stated that this was the most feasible means of covering the hundreds of thousands of discharges into publicly-owned storm water collection systems. Since the public entity (e.g., a municipality) is currently required to obtain an NPDES permit for the separate storm sewer system's individual outfalls, a "single permit" approach would relieve the paperwork burden on both potential permittees and permitting authorities. The Agency also felt that such an approach was likely to be the most environmentally sound, since the ability of permitting authorities to issue quality permits and address the cumulative impacts of storm water discharges would be enhanced.

IV. Water Quality Act of 1987

At the same time that EPA was evaluating the appropriate means to regulate storm water discharges,

Congress was examining the storm water issue in the course of the reauthorization of the Clean Water Act. Both the Senate and the House of Representatives passed bills to amend the Clean Water Act in the summer of 1985 that contained provisions addressing the storm water issue. The separate House and Senate bills were reconciled in Conference Committee in 1986, and on February 4, 1987, Congress passed the Water Quality Act of 1987 (WQA).

The WQA contains three provisions which specifically address storm water discharges. The central provision governing storm water discharges is section 405 which adds section 402(p) to the CWA. Section 402(p)(1) provides that EPA or NPDES States cannot require a permit for certain storm water discharges until October 1, 1992 except for storm water discharges exempted under section 402(p)(2). Section 402(p)(2) lists five types of storm water discharges which are required to obtain a permit prior to October 1, 1992:

(A) A discharge with respect to which a permit has been issued prior to February 4, 1987;

(B) A discharge associated with industrial activity;

(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more;

(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more, but less than 250,000; or

(E) A discharge for which the Administrator or the State, as the case may be, determines that the storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States.

Section 402(p)(2) requires EPA to promulgate final regulations governing storm water permit application requirements for storm water discharges associated with industrial activity and discharges from large municipal separate storm sewer systems (systems serving a population of 250,000 or more), by "no later than two years" after the date of enactment (i.e., no later than February 4, 1989). The WQA also requires EPA to promulgate financial regulations governing storm water permit application requirements for discharges from medium municipal separate storm sewer systems (systems serving a population of 100,000 or more but less than 250,000) by "no later than four years" after enactment (i.e., no later than February 4, 1991).

In addition, Section 402(p)(4) provides that permit applications for storm water discharges associated with industrial activity and discharges from large municipal separate storm sewer systems "shall be filed no later than three years" after the date of enactment of the WQA (i.e., no later than February 4, 1990). Permit applications for discharges from medium municipal systems must be filed "no later than five years" after enactment (i.e., no later than February 4, 1992).

NPDES permits for all other storm water discharges cannot be required until October 1, 1992, unless a permit for the discharge was issued prior to the date of enactment of the WQA (i.e., February 4, 1987), or the discharge is determined to be a significant contributor of pollutants to waters of the United States or is contributing to a violation of water quality standards.

The WQA clarified and amended the requirements for permits for storm water discharges in the new CWA section 402(p)(3). The Act clarified that permits for discharges associated with industrial activity must meet all of the applicable provisions of section 402 and section 301 including technology and water quality based standards. However, the new Act makes significant changes to the permit standards for discharges from municipal storm sewers. Section 402(p)(3)(B) provides that permits for such discharges:

(i) May be issued on a system- or jurisdiction-wide basis;

(ii) Shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers; and

(iii) Shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Director determines appropriate for the control of such pollutants.

These changes, including the standard of maximium extent practicable (MEP), are discussed in more detail later in today's notice.

The EPA, in consultation with the States, is required to conduct two studies on storm water discharges that are in the class of discharges for which EPA and NPDES States cannot require permits prior to October 1, 1992. The first study will identify those storm water discharges or classes of storm water discharges for which permits are not required prior to October 1, 1992 and determine, to the maximum extent practicable, the nature and extent of pollutants in such discharges. The second study is for the purpose of establishing procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality. Based on the two studies, the EPA in consultation with State and local officials, is required to issue regulations by no later than October 1, 1992 which designate additional storm water discharges to be regulated to protect water quality and establish a comprehensive program to regulate such designated sources. This program must, at a minimum, (A) establish priorities, (B) establish requirements for State storm water management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

Section 401 of the WQA amends section 402(l)(2) of the CWA to provide that the EPA shall not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities if the storm water discharge is not contaminated by contact with, or does not come into contact with, any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of such operations.

Section 503 of the WQA amends section 502(14) of the CWA to exclude agricultural storm water discharges from the definition of point source.

V. Remand of 1984 Regulations

On December 4, 1987, the United States Court of Appeals for the District of Columbia Circuit vacated 40 CFR 122.26 (as promulgated on September 26, 1984), and remanded the regulations to EPA for further rulemaking (*NRDC* v. *EPA*, No. 80–1607). EPA had requested the remand because of significant changes made by the storm water provisions of the WQA. The effect of the decision was to invalidate the storm water discharge regulations then found at § 122.26.

At the time of remand, § 122.26 set forth, among other things, the definitions for "storm water point source", "Group I storm water discharge", and "Group II storm water discharge" and criteria for designating a conveyance or system of conveyances as a storm water point source on a case-by-case basis.

On February 12, 1988 (53 FR 4157), EPA published a notice which deleted § 122.26 pursuant to the Court of Appeals' remand. The February 12, 1988, notice also deleted the deadlines for submittal of Group I and Group II storm water discharge permit applications set forth in § 122.21(c)(2). Section 122.21(c)(2) provided that permit applications must be submitted by

December 31, 1987, for Group I storm water discharges and June 30, 1989, for Group II storm water discharges. The section also required that any discharge that is designated on a case-by-case basis pursuant to § 122.26 must submit a storm water discharge permit application within 6 months of notification.

Storm water discharges which have been issued an NPDES permit prior to February 4, 1987, were not affected by the Court remand or the February 12, 1988, rule. (See section 402(p)(2)(A) of the CWA.) Similarly, the remand and the rulemaking did not affect the authority of EPA or an NPDES State to require a permit for any storm water discharge (except an agricultural storm water discharge) designated under section 402(p)(2)(E) of the CWA. The notice clarified that such designated discharges meet the regulatory definition of point source found at 40 CFR 122.2 and that EPA or an NPDES State can rely on the statutory authority and require the filing of an application (Form 1 and Form 2C) for an NPDES permit with respect to such discharges, on a case-by-case basis.

VI. Codification Rule

In the near future, EPA intends to publish a final rule which will codify numerous provisions of the WQA into EPA regulations. The codification rule will include several provisions dealing with storm water discharges. The codification rule will promulgate the language found at sections 402(p) (1) and (2) of the amended Clean Water Act at 40 CFR 122.26(a)(1). In addition, the codification rule will promulgate Section 503 of the WQA which exempted agricultural storm water discharges from the definition of point source at 40 CFR 122.2. Finally, EPA intends to codify Section 401 of the WQA addressing uncontaminated storm water discharges from mining or oil and gas operations at 40 CFR 122.26(a)(2).

In the codification notice, EPA intends to codify the statutory authority of section 402(p)(2)(E) of the CWA for the Administrator or the State, as the case may be, to designate storm water discharges for a permit on a case-by-case basis at 40 CFR 122.26(a)(1)(v). The provision authorizes such a designation if the Administrator or the State determines that the storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. The case-by-case designation authority can be used to require a designated storm water discharge associated with industrial activity or a discharge from a municipal separate storm water system serving a population of 100,000 or more to obtain a permit prior to the time frame proposed in today's notice for the particular class of storm water discharges in question. In addition, the designation authority applies to storm water discharges that are not otherwise required to obtain a permit prior to October 1, 1992, under section 402(p)(1), but that are contributing to a violation of a water quality standard or are a significant contributor of pollutants to waters of the United States.

In determining that a storm water discharge contributes to a violation of a water quality standard or is a sigificant contributor of pollutants to waters of the United States for the purpose of a designation under section 402(p)(2)(E), the legislative history for the provision provides that "EPA or the State should use any available water quality or sampling data to determine whether the latter two criteria (contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States) are met, and should require additonal sampling as necessary to determine whether or not these criteria are met". Conference Report, *Cong. Rec.* S16443 (daily ed. October 16, 1986). In accordance with this legislative history, EPA intends to require storm water dischargers whose discharges are being considered for designation to submit permit applications in accordance with the requirements of 40 CFR 122.21 to be used to aid in the determination of whether the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. The agency will consider a number of factors when determining whether a storm water discharge is a significant contributor of pollution to the waters of the United States. These factors include: the location of the discharge with respect to waters of the United States; the size of the discharge; the quantity and nature of the pollutants reaching waters of the United States; and any other relevant factors. Today's notice proposes to incorporate these factors at 40 CFR 122.26(a)(1)(v).

Today's notice proposes to modify the permit application requirements for certain storm water discharges, including discharges designated on a case-by-case basis. Until these requirements are promulgated, operators of storm water discharges considered for designation must submit permit applications in accordance with the requirements of 40 CFR 122.21 (Form 1 and Form 2C). The exemption from certain application requirements given to Group II storm water discharges does not apply to facilities designated on a case-by-case basis. The Group II classification, which was remanded by the Court of Appeals in its December 4, 1987, order, was never intended to apply to storm water discharges which were designated on a case-by-case basis.

Until today's notice is promulgated and becomes effective, case-by-case designations, where appropriate, will be modeled after existing regulatory procedures found at 40 CFR 124.52 for NPDES permits required on a case-by-case basis. The procedures at 124.52 require that whenever the Regional Administrator decides that an individual permit is required, the Regional Administrator shall notify the discharger in writing of the decision that the discharge requires a permit and the reasons for the decision. In addition, an application form is to be sent with the notice. In implementing § 402(p)(2)(E), the Regional Administrator generally will notify the discharger in writing that the discharge is being considered for designation, and the reasons for the consideration. An application form will be sent with the notice. Deadlines for submitting permit applications will also be established on a case-by-case basis. Section 124.52 provides a 60 day period from the date of notice for submitting a permit application. Although this 60 day period may be appropriate for many designated storm water discharges, site specific factors may dictate that the Administrator or NPDES State provide additional time for submitting a permit application. For example, due to the complexities associated with designation of a municipal separate storm sewer system for a system- or jurisdiction-wide permit, the Administrator or NPDES State may provide the applicant with additional time to submit relevant information or may require that information be submitted in several phases.

VII. Today's Notice

Because of the long and complex history of the storm water permit application rulemaking and the subsequent enactment of the WQA, significant changes from the March 7, 1985 proposal and August 12, 1985 reopener have been made in today's notice. Where appropriate, EPA addresses major comments to these earlier proposals in the presentation of today's notice. However, to avoid potential confusion between current and past proposals, EPA requests that comments submitted on today's notice focus on the regulatory proposal

presented in today's notice. EPA intends to promulgate final regulations based on a consideration of comments received on today's notice and will not necessarily address comments received during previous proposals in the final rule. In printing the proposed regulatory changes at the end of today's notice, where existing regulations are modified, this notice may contain the existing regulatory language along with proposed changes. The existing regulatory language that is printed without proposed change is printed for the purpose of clarifying associated proposed changes for commenters. EPA does not request comment on existing regulatory language that is printed without proposed change.

A. Overview

Section 405 of the WQA alters the regulatory approach to control pollutants in storm water discharges by adopting a phased and tiered approach. The new provision phases in permit application requirements, permit issuance deadlines and compliance with permit conditions for different categories of storm water discharges. The approach is tiered in that storm water discharges associated with industrial activity must comply with sections 301 and 402 of the CWA (requiring control of the discharge of pollutants that utilize the Best Available Technology (BAT)), but permits for discharges from municipal separate storm sewer systems must require controls to reduce the discharge of pollutants to the maximum extent practicable (MEP) and must include a requirement to effectively prohibit non-storm water discharges into the storm sewers. Furthermore, EPA in consultation with State and local officials must develop a comprehensive program to designate and regulate other storm water discharges to protect water quality.

Section 402(p)(1) of the amended CWA provides that EPA or NPDES States shall not require, with certain exceptions, permits for storm water discharge prior to October 1, 1992. During this grace period, EPA has three tasks.

EPA's first task is to identify storm water discharges which should be designated for immediate permitting because they contribute to a water quality standard violation or are significant contributors of pollutants to waters of the United States. Today's notice proposes to clarify the authority of the Administrator or NPDES State to require a permit for a storm water discharge prior to October 1, 1992, applies to any storm water discharge which the Administrator or NPDES State determines contributes to a water quality violation or is a significant contributor of pollutants to waters of the United States, unless the discharge is explicitly excluded from the NPEDES program (e.g., agricultural storm water discharges).

The second task is to begin to implement the storm water program by establishing permit application requirements and issuing permits for classes of storm water discharge that were specifically identified in section 402(p)(2). These priority storm water discharges include storm water discharges associated with industrial activity and discharges from a municipal separate storm sewer serving a population of 100,000 or more.

During this time, EPA will evaluate appropriate modifications for permit application requirements for storm water discharges which are designated for immediate permitting because they contribute to a water quality violation or are significant contributors of pollutants to waters of the United States.

EPA's third task under section 402(p) of the CWA is to consult with the States and conduct studies for the purpose of identifying storm water dischargers or classes of discharges for which permits are temporarily not required; determining the nature and extent of pollutants in such discharges; and establishing procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality. EPA is then required to issue regulations on or before October 1, 1992 which identify storm water discharges for which permits will be required to protect water quality. Identified storm water discharges are to be regulated under the comprehensive program which, at a minimum, establishes priorities, requirements for State storm water management programs, and expeditious deadlines.

Congress did not intend to limit the scope of the studies authorized by Section 402(p)(5) to the definition of storm water point source that was in EPA's regulations at 40 CFR 122.26(b)(1) on the date of enactment of the WQA. For example, the legislative history accompanying the provision states that after October 1, 1992, "*all* municipal separate storm sewers are subject to the requirements of sections 301 and 402." (emphasis added) (Vol. 132 Cong. Rec. H10576 (daily ed. October 15, 1986) Conference Report). Under the Agency's 1984 regulations, municipal separate storm sewers located outside urban areas were not storm water point sources unless designated on a case-by-case basis. However, Congress clearly did not intend to exclude these discharges from the section 402(p)(5) studies.

Today's notice does not propose to revive the remanded regulatory definition of storm water point source at this time. This action is taken to minimize the confusion between the regulatory program for storm water that was in place before the WQA was enacted and the new program that will be developed in accordance with the manadates of Section 405 of the WQA. In accordance with Congressional intend, EPA will continue to define the scope of the comprehensive program to regulate storm water discharges in rulemaking authorized under section 402(p)(6) of the CWA after completing the CWA section 402(p)(5) studies.

Until the scope of the storm water regulatory program is more completely defined, EPA will define which storm water discharges are required, in accordance with section 402(p)(2), to obtain permits. EPA will rely on the regulatory definition of "point source" at 40 CFR 122.2 to provide authority for requiring permits for those storm water discharges which are to be permitted prior to the completion of the rulemaking authorized under section 402(p)(6).

In addition, EPA does not propose to revive the remanded regulatory definitions of Group I and Group II storm water discharges. EPA is proposing and requesting comments on technical amendments to existing NPDES regulations to remove references to these terms.

B. Definition of Storm Water

Today's notice proposes to clarify the definition of storm water at 122.26(b)(10) as storm water runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration (other than infiltration contaminated by seepage from sanitary sewers or by other discharges) and drainage related to storm events or snow melt. This proposed definition is consistent with the regulatory definition of "storm sewer" at 40 CFR 35.2005(b)(47) which is used in the context of grants for construction of treatment works. This definition aids in distinguishing separate storm sewer conveyances from sanitary sewers, combined sewers, process discharges and non-storm water non-process discharges.

In the WQA and other places, the term "storm water" is presented as a single word. The Agency, in preparing this notice, has attempted to consistently use the Government

Printing Office's approved form where storm water appears as two words. The Agency requests comment on the form (one-word or two) of the term perferred by the public.

C. Responsibility for Storm Water Discharges Associated with Industrial Activity into Municipal Separate Storm Sewers

1. Prior Approaches

In past rulemakings concerning permit applications and applicability for storm water discharges, EPA has, within the framework of the CWA, attempted to balance the need for addressing the environmental risk associated with storm water discharges with the administrative burden associated with processing permits and permit applications for the large number of storm water discharges. The regulatory term "storm water point source" was used to define which storm water discharges were subject to the NPDES program. However, under previous regulatory schemes, not all storm water point sources were required to submit an individual permit application. Under regulations promulgated under the September 26, 1984 final rule, one permit could be issued covering all storm water point sources that are discharged to a storm water conveyance system. Under this approach, all "storm water point sources" that discharge into a storm water conveyance system had to be covered either by an individual permit or a permit issued to an operator of the portion of conveyance which discharges directly to waters of the United States. Any permit written to cover more than one operator would have been required to identify the limitations applicable to each discharge. This "either/or" approach in the September 26, 1984 rule allowed the operator of the portion of the conveyance which discharges directly to waters of the United States to decline to assume responsibility for certain discharges into its separate storm sewer system. In that situation, operators of individual storm water point source discharges into the conveyance would have been responsible to file permit applications for their discharges.

In the August 12, 1985 (50 *FR* 32552) reopener notice, EPA requested comments on a proposal that would primarily hold municipalities responsible for obtaining a permit that would cover all the storm water point sources that discharged to a municipal storm water system. Under this approach, all operators of storm water point source discharges into a municipal separate storm sewer were to be relieved of the responsibility of having to obtain individual permits, unless the permitting authority designated such dischargers as a co-permittee with the municipality or required an individual permit from the operator of the discharge into the system. Under the August 12, 1985 proposal, the municipality responsible for the system would be required to identify Group I discharges into the municipal system. Sampling requirements for municipal separate storm sewers that received discharges from non-municipal Group I discharges were not specifically addressed in the August 12, 1985 notice, although the regulations in effect at that time required that applications for discharges from storm sewer systems contain any information regarding discharges into the system that would be required if separate applications were submitted for those discharges.

Fifty-seven (57) commenters addressed the proposal in the August 12 notice that would place the responsibility for applying for and obtaining an NPDES permit for all storm water discharges into the system upon the municipality or public service entity. Twenty-six (26) of the 57 felt that such an approach would relieve many individual operators of discharges from having to obtain permits, which would thereby reduce paperwork, but not reduce EPA's ability to address pollution problems. One municipality felt that under this approach, critical pollution sources could be identified and permitted individually if necessary. One industry representative claimed that individual municipalities are in the best position to determine if individual permits are needed for specific storm water discharges into the municipal system, while another industry representative argued that industrial dischargers into a municipal system should not be singled out for individual permits over discharges from shopping centers, parking lots, etc., which may have significant water quality impacts.

Twenty-one (21) commenters of the 47 were opposed to municipalities being responsible for obtaining a permit covering all discharges of storm water into the system. Eight (8) commenters, a county public service agency, 6 municipalities, and a land development company, cited the substantial costs involved in making a municipality responsible for all storm water discharges into its system, both in terms of identifying all discharges into the system and sampling and analytical costs. Three commenters (a county agency, a municipality, and a State) pointed out that a municipality may lack the authority to regulate non-municipal storm water point source discharges into its system, as well as nonpoint source runoff from many sources that drain into the municipal storm water sewer system. Two municipalities felt that industrial storm water discharges should be controlled by EPA, not the municipalities, while several other municipalities stated that the pollution generator may not be held responsible under the proposed approach.

Several municipalities argued that it is impossible to monitor all storm water inlets to the municipal system since municipalities, stated at least one municipal commenter, do not maintain records identifying dischargers into the system. Another municipality claimed that municipalities have already implemented activities to control storm water discharges (e.g., controls on construction site runoff, spill prevention and abatement ordinances, etc.) in order to improve water quality.

Several commenters objected to the requirement that municipalities identify all industrial storm water discharges into the municipal system since it shifts the burden of the regulatory requirements from the individual facility discharging to the municipal system to the municipality. They argued that there is no benefit to the municipalities under the proposed approach, and that the proposed approach was very complex and counterproductive. A county flood control district commented that a municipal storm water system does not create water pollution or change its ultimate destination. One municipality felt that any municipal group application should not require data on discharges into the municipal system, since that data should be similar to data from direct discharges.

An individual company felt that municipalities should not have the option of excluding non-municipal storm water discharges into the system in the permit covering the system, while on the other hand, two municipalities argued strongly that municipalities should be able to decline to assume responsibility for non-municipal discharges into the municipal system.

2. Today's Proposal Regarding Storm Water Discharges Associated with Industrial Activity into Large and Medium Municipal Separate Storm Sewer Systems

Under the scheme of section 405 of the WQA, operators of large municipal separate storm sewer systems (systems serving a population of 250,000 or more) and medium municipal separate storm sewer systems (systems serving a

population of 100,000 or more but less than 250,000), are required to submit permit applications for discharges from these systems prior to October 1, 1992. However, generally, permits are not required from operators of many storm water discharges (such as storm water discharges from certain commercial and residential facilities) into these large or medium municipal separate storm sewer systems prior to October 1, 1992, unless the Administrator or NPDES State determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States. Thus, in enacting the WQA, Congress endorsed a regulatory scheme where municipalities responsible for obtaining NPDES permits for discharges from large and medium municipal separate storm sewer systems are clearly responsible for many storm water discharges which discharge into these municipal systems.

In addition to receiving storm water discharges that are generally not required to obtain a permit prior to October 1, 1992 under section 402(p)(1), large and medium municipal separate storm sewer systems receive storm water discharges that are also excluded from section 402(p)(1), including: storm water discharges which have been issued a permit prior to the enactment of the WQA (section 402(p)(2)(A)); storm water discharges associated with industrial activity (section 402(p)(2)(B)); and storm water discharges which the Administrator or NPDES State determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States (section 402(p)(2)(E)).

Today's notice requests comments on whether EPA should hold operators of large and medium municipal separate storm sewer systems primarily responsible for obtaining system-wide or area permits which cover storm water discharges associated with industrial activity which discharge into the municipal system, or if non-municipal operators of storm water discharges associated with industrial activity which discharge to large or medium municipal systems should be required to submit individual permit applications (or participate in a group application) for such discharges.

After a consideration of comments on the August 12, 1985 reopener, and reevaluation of the issue in light of the WQA, EPA still favors holding municipal operators of large or medium municipal storm sewer systems primarily responsible for applying for and obtaining an NPDES permit covering system discharges as well as storm water discharges to the system. Holding municipalities primarily responsible for obtaining a permit to cover storm water discharges associated with industrial activity which discharge into the municipal system would reduce the tremendous administrative burden associated with preparing and processing the thousands of permit applications that would be necessary if each storm water discharge associated with industrial activity that goes into a large or medium municipal separate storm sewer system had to apply individually (or as part of a group application). The Agency believes this approach is the most practical option available and holds the most promise for long-term environmental improvements.

The permit application requirements that EPA is proposing for large and medium municipal separate storm sewer systems, discussed in more detail later in today's notice, are intended to begin the development of this approach. EPA is proposing that municipal permit applications include the location of facilities which discharge storm water associated with industrial activity to the municipal system (see § VII.G.6 of the preamble). In addition, EPA is proposing that municipal applicants provide a description of a proposed management program to reduce, to the maximum extent practicable, pollutants from storm water discharges associated with industrial activity which discharge to the municipal system (see § VII.G.8.c of the preamble). The proposed management program will identify priorities and procedures for inspecting industrial facilities and for establishing and implementing measures to reduce the discharge of pollutants in such discharges. The municipal application will be used by permit writers to develop management programs which will be incorporated as permit conditions in the permit issued for discharges from the municipal separate storm sewer system.

Controls developed in management plans for municipal system permits may take a variety of forms. Where necessary, municipal permittees can pursue local remedies to develop measures to reduce pollutants or halt troublesome discharges into the large or medium municipal storm sewer system. This approach is consistent with several comments to the August 12, 1985 proposal, which stated that many local entities have already implemented ordinances or laws that regulate the discharge of pollutants, while other municipalities have developed a variety of techniques to control pollutants in storm water. Alternatively, where appropriate, municipal permittees may develop end-of-pipe controls such as wet detention ponds or diverting flow to Publicly Owned Treatment Works. Finally, municipal applicants will be provided with an opportunity to bring individual storm water discharges which cannot be adequately controlled by the municipal permittees to the attention of the permitting authority who then could, at the Director's discretion, require an individual permit for the storm water discharges into the public system or require such dischargers to be co-permittees to the municipal system permit by establishing conditions applicable to such users.

Some municipal agencies with certain storm water responsibilities have commented on previous rulemakings that they lack legal authority to regulate discharges into their system. The Agency's initial analysis of legal authorities such as ordinances and controls on construction site runoff indicate that such local municipalities have adequate legal authority either to control storm water flows or control pollutant discharges to municipal systems, to the degree necessary to implement the programs envisioned in today's proposal. The Agency requests comments on the legal authority of municipal permittees, including detailed legal analysis of the legal authority of municipalities which contend that they are precluded from exercising adequate authority to implement such controls due to lack of authorization from the State in which the municipality is located. The Agency requests comments on the circumstances when it is not appropriate to hold a municipality responsible for discharges to municipal systems and under what circumstances it is feasible to rely on treatment of storm water discharges in lieu of controls which require legal authority to implement.

Section 402(p)(3) of the CWA estabishes different standards for permits for storm water discharges associated with industrial activity and discharges from municipal separate storm sewers. Where individual permits are required for storm water discharges associated with industrial activity, these permits are required to meet all the applicable provisions of sections 402 and 301 of the Clean Water Act, including technology-based and, where necessary, water-quality based requirements. Permits for discharges from municipal separate storm sewers are required to adopt controls to reduce

the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. EPA anticipates that the application of maximum extent practicable controls developed in management programs in municipal system permits will generally result in similar levels of control on industrial discharges to the municipal separate storm sewer system as conditions placed in individual NPDES permits for storm water discharges associated with industrial activity.

In comparing the control mechanisms of individual permits and management plans developed in municipal separate storm sewer permits, it is important to note that currently, EPA has established effluent guideline limitations for storm water discharges for eight subcategories of industrial dischargers (Cement Manufacturing (40 CFR Part 411), Feedlots (40 CFR Part 412), Fertilizer Manufacturing (40 CFR Part 418), Petroleum Refining (40 CFR Part 419), Phosphate Manufacturing (40 CFR Part 422), Steam Electric (40 CFR Part 423), Coal Mining (40 CFR Part 434), and Ore Mining and Dressing (40 CFR Part 440)). Most of the existing facilities in these subcategories already have individual permits for their storm water discharges. Under today's proposal, facilities with existing NPDES permits for storm water discharges to a municipal storm sewer will generally be required to maintain these permits. EPA requests comments on whether storm water discharges associated with industrial activity from industries with promulgated effluent guidelines which discharge to municipal storm sewers should be required to obtain individual permits.

In order to aid municipalities in developing and implementing management programs, EPA is proposing that operators of storm water discharges associated with industrial activity which discharge to a large or medium municipal separate storm sewer system are not required to submit individual permit applications (or participate in a group application) provided:

- The operator of such a storm water discharge submits to the municipality responsible for the municipal separate storm sewer receiving the discharge the name of facility; the location of the discharge; and a certification that the discharge has been tested for the presence of non-storm water discharges;
- Such discharge is composed entirely of storm water;
- Such discharge is in compliance with applicable conditions of the NPDES permit issued for the discharge from the municipal separate storm sewer which receives the storm water discharge associated with industrial activity provided the discharger has been notified of such conditions; and
- Such discharge does not contain a hazardous substance in excess of reporting quantities established at 40 CFR 117.3 or 40 CFR 302.4.

The Agency specifically requests comments on requiring municipal permittees to develop controls to reduce pollutants in storm water discharges associated with industrial activity into municipal systems as an alternative to requiring individual permits (or issuing general permits) for storm water discharges associated with industrial activity.

3. Today's Proposal Regarding Storm Water Discharges Associated with Industrial Activity from Federal Facilities into Large and Medium Municipal Separate Storm Sewer Systems

EPA recognizes that storm water discharges associated with industrial activity from Federal facilities to municipal separate storm sewer systems may pose unique legal and administrative situations. In today's notice, the Agency favors proposing regulations which address storm water discharges from Federal facilities to municipal systems in the same manner as privately-owned storm water discharges to municipal storm sewers. That is, storm water discharges associated with industrial activity from Federal facilities to municipal storm sewers are generally covered by the permit issued for the municipal storm sewer system discharges and are not required to obtain an individual NPDES permit unless the Director of the NPDES program designates the discharge as a co-permittee with the municipality or requires an individual permit. However, the Agency specifically requests comments on applying this approach to Federal facilities, and whether Federal facilities which discharge storm water associated with industrial activity into municipal systems should be required to submit individual applications (or, where appropriate, participate in a group application), and obtain individual permits for such discharges.

4. Today's Proposal Regarding Storm Water Discharges Associated with Industrial Activity into Municipal Separate Storm Sewer Systems Serving a Population of Less than 100,000

Sections 402(p) (1) and (2) of the CWA provides that discharges from municipal separate storm sewer systems serving a population of less than 100,000 are not required to obtain a permit prior to October 1, 1992, unless designated on a case-by-case basis under section 402(p)(2)(E). Such discharges are to be included in the set of storm water discharges to be studied under section 402(p)(5) of the CWA and are subject to regulation under section 402(p)(6) of the Act. However, NPDES permits could be required under section 402(p)(2)(B) for storm water discharges associated with industrial activity which discharge into these municipal systems prior to October 1, 1992. EPA requests comments on whether industrial facilities discharging storm water to these systems should not be required to obtain a permit until after the completion of the studies mandated under section 402(p)(5) of the CWA. Evaluating these discharges under the studies mandated under section 402(p)(5) would provide EPA additional flexibility to evaluate procedures and methods to control these storm water discharges to the extent necessary to mitigate impacts on water quality and to determine whether the municipalities responsible for discharges from municipal separate storm sewer systems serving a population of less than 100,000 or the industrial facility generating the discharge to the municipal system should be responsible for obtaining a NPDES permit. Alternatively, operators of storm water discharges associated with industrial activity to municipal systems serving less than 100,000 would be required to submit permit applications (or participate in group applications) in accordance with the deadlines established for other storm water discharges associated with industrial activity that would be required to obtain a permit under today's proposal.

D. Storm Water Discharge Sampling

Storm water discharges are intermittent by their nature. Pollutant concentrations in storm water discharges will be highly variable. Not only will variability arise between given events, but the flow rate and pollutant concentrations of such discharges will vary with time during an event. This variability raises two technical problems: what is the best way to

characterize the discharge associated with a single storm event; and what is the best way to characterize the variabilty beween discharges of different events that may be caused by seasonal changes, changes in material management practices, and other factors.

The current regulations at 40 CFR 122.21(g)(7) require that applicants for storm water discharges submit quantitative data based on one grab sample taken every hour of the discharge for the first four hours of discharge. In today's notice, EPA is proposing to modify this requirement such that instead of collecting and analyzing four grab samples individually, applicants provide data as indicators of two sets of conditions; first flush pollutant concentrations and flow-weighted average storm event concentrations.

Data describing pollutants in the first flush (i.e., a grab sample taken during the first twenty minutes of the discharge) can often be used as a screen for illicit discharges and illegal dumping to the storm water because pollutants associated with such activities may be flushed out of the system during the initial portion of the discharge. In addition, first flush data is useful because much of the traditional structural technology used to control storm water discharges, including detention and retention devices, may only provide controls for the first flush of the discharge, with relatively little or no treatment for the remainder of the discharge. First flush data will give an indication of the potential usefulness of these techniques to reduce pollutants in storm water discharges. Also, first flush discharges may be primarily responsible for pollutant shocks to the ecosystem in receiving waters.

Studies such as NURP have shown that flow-weighted average concentrations of storm water discharges are useful for estimating pollutant loads and estimating pollutant loads and for evaluating certain concentration-based water quality impacts. The use of flow-weighted composite samples are also consistent with comments raised by various industry representatives during previous Agency rulemakings that continuous monitoring of discharges from storm events is necessary to adequately characterize such discharges.

In order to provide flexibility where it is not feasible to obtain a flow weighted composite sample, EPA is also proposing that applicants may, in lieu of submitting data based on a flow weighted composite, submit quantitive data from individual samples taken during a representative storm event.

EPA requests comment on the feasibility of the proposed modification of sampling procedures at § 122.21(g)(7) and the ability to characterize pollutants in storm water discharges with an average concentration and a first flush concentration compared to collecting and separately analyzing four grab samples. The Agency invites commenters to submit any data that can be used to compare the accuracy and the cost of the proposed changes relative to the exisiing regulations.

In the proposed regulation, the entire provision at 122.21(g)(7) has been presented to provide ease of review. Today's notice only requests comments on those portions of § 122.21(g)(7) that relate to sampling storm water discharges.

E. Storm Water Discharges Associated with Industrial Activity

1. Permit Applicability

a. Storm Water Discharges to Municipal Storm Sewers. As discussed in more detail in § VII.C of today's notice, EPA is proposing that, in general, the operator of a storm water discharge associated with industrial activity will not be required to individually obtain a permit if their discharge goes to a municipal separate storm sewer serving a population of 250,000 or more, or a population of 100,000 or more, but less than 250,000, but that the operators of these municipal separate storm sewer systems are primarily responsible for obtaining system-wide or area permits which cover storm water discharges associated with industrial activity which discharge into the municipal system. In addition, EPA is proposing that operators of storm discharges associated with industrial activity which discharge to municipal separate storm sewer systems serving a population of less than 100,000 are not required to obtain a permit prior to the completion of studies mandated under section 402(p)(5) of the CWA. In these cases, the Director may still designate such discharges for an individual permit or to be co-permittee.

b. Storm Water Discharges to Non-Municipal Conveyances. Today's notice proposes at § 122.26(a)(5) to require all operators of storm water discharges associated with industrial activity that discharge into a privately or Federally owned storm water conveyance (a storm water conveyance that is not a municipal separate storm sewer) to either be covered by an individual permit or a permit issued to the operator of the portion of the system that directly discharges to waters of the United States. This "either/or" approach, which is similar to the approach taken in the September 26, 1984 final rule, allows a non-municipal operator of a storm water conveyance to decline to assume responsibility for the non-municipal storm water discharges into the non-municipal conveyance.

EPA considers this approach to be appropriate because some of the permit applications requirements proposed in today's notice require the applicant to have access to information regarding the site where the storm water is generated. Operators of non-municipal systems will generally be in a poorer position to gain knowledge of pollutants in storm water discharges and to impose controls water discharges from other facilities than will municipal system operators. In addition, best management practices and other site-specific controls are often most appropriate for reducing pollutants in storm water discharges and operators of non-municipal separate storm sewers may not be able to institute such controls. Also, some non-municipal operators of storm water conveyances which receive storm water runoff from industrial facilities may not be industrial facilities themselves and therefore should generally be excluded from obtaining a permit prior to October 1, 1992, unless specifically designated.

EPA requests comments on the advantages and disadvantages of retaining the "either or" approach for non-municipal storm sewers. Alternatively, EPA could adopt an approach where the operator of the portion of the conveyance which discharges directly to waters of the United States is responsible for obtaining a permit which covers all discharges to the non-municipal storm sewer.

2. Scope of "Associated with Industrial Activitity"

The September 26, 1984 final regulation divided those discharges that met the regulatory definition of storm water point source into two groups. The term Group I storm water discharges was defined in an attempt to identify those storm water discharges which had a higher potential to contribute significantly to environmental impacts. Group I included those discharges that contained storm water from an industrial plant or plant associated areas. Other storm water discharges (such as those from parking lots and administrative buildings) located on lands used for industrial activity were classifed as Group II discharges. The regulations defined the term "plant

associated areas" by listing several examples of areas that would be associated with industrial activities. However, the resulting definition led to confusion among the regulated community regarding the distinctions between the Group I and Group II classifications.

When enacting section 405 of the WQA, Congress did not explicitly adopt EPA's regulatory classification of Group I and Group II discharges. Rather, Congress required EPA to develop permit application requirements for storm water "discharges associated with industrial activity" by no later than February 1, 1989. In light of the adoption of the term "associated with industrial activity" in the WQA, and the ongoing confusion surrounding the previous regulatory definition. EPA has eliminated the regulatory terms "Group I storm water discharge" and "Group II storm water discharge" pursuant to the Court remand and does not propose to revive it. In addition, EPA is proposing to define the term "storm water discharge associated with industrial activity" at § 122.26(b)(13) and to clarify the scope of the term.

In describing the scope of the term "associated with industrial activity", several members of Congress explained in the legislative history that the term applied if a discharge was "directly related to manufacturing, processing or raw materials storage areas at an industrial plant." (Vol. 132 Cong. Rec. H10932, H10936 (daily ed. October 15, 1986); Vol. 133 Cong. Rec. H176 (daily ed. January 8, 1987). EPA is proposing to clarify the regulatory definition of "associated with industrial activity" by adopting the language used in the legislative history and supplementing it with a description of various types of areas that are directly related to an industrial process (e.g., industrial plant yard, immediate access roads and rail lines, drainage ponds, material handling sites, sites used for the application or disposal of process waters, sites used for the storage and maintenance of material handling equipment, and sites that are presently or have been used in the past for residual treatment, storage or disposal). Today's proposal would clarify that the term applies to plant areas that are no longer used for such activities as well as areas that are currently being used for industrial processes.

The same comments in the legislative history cited above were careful to state that the term "associated with industrial activity" does not include storm water "discharges associated with parking lots and administrative and employee buildings". To accommodate this legislative intent, EPA is proposing that generally, segregated storm water discharges from these areas will not be required to obtain a permit prior to October 1, 1992. However, if a storm water discharge from a parking lot at an industrial facility is mixed with a storm water discharge associated with industrial activity, the combined discharge is subject to permit application requirements for storm water discharges associated with industrial activity.

Storm water discharges from parking lots and administrative buildings along with other discharges from industrial lands that do not meet the regulatory definition of "associated with industrial activity" and that are segregated from such discharges may be required to obtain a NPDES permit prior to October 1, 1992 under certain conditions. For example, large parking facilities, due to their impervious nature may generate large amounts of runoff which may contain significant amounts of oil and grease and heavy metals which may have adverse impacts on receiving waters. The Administrator or NPDES State has the authority under section 402(p)(2)(e) of the amended CWA to require a permit prior to October 1, 1992 by designating storm water discharges such as those from parking lots that are significant contributors of pollutants or contribute to a water quality standard violation. EPA will address storm water discharges from lands used for industrial activity which do not meet the regulatory definition of "associated with industrial activity" in the section 402(p)(5) study to determine the appropriate manner to regulate such discharges.

EPA requests comments on clarifying the types of facilities that involve industrial activities and generate storm water. EPA prefers basing the clarification, in part, on the use of Standard Industrial Classification (SIC) codes, which have been suggested in comments to prior storm water rulemakings because they are commonly used and accepted and would provide definitions of facilities involved in industrial activity.

EPA requests comments on the scope of the definition (types of facilities addressed) as well as the clarity of regulation. EPA has identified the following types of facilities which it requests comments on with respect to suitability for inclusion in the regulatory definition as facilities which generate and discharge storm water associated with industrial activity:

(i) Facilities subject to effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards;

(ii) Facilities classified as Standard Industrial Classification 20 through 39 (manufacturing industry);

(iii) Facilities classified as Standard Industrial Classification 10 through 14 (mineral industry) including active or inactive mining operations and oil and gas exploration, production, processing, or treatment operations, or transmission facility that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations;

(iv) Hazardous waste treatment, storage, or disposal facilities that are operating under interim status or a permit under Subtitle C or RCRA;

(v) Landfills, land application sites, and open dumps that receive industrial wastes and that are subject to regulation under Subtitle D of RCRA;

(vi) Facilities involved in significant recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards;

(vii) Steam electric power generating facilities, including coal handling sites, and onsite and offsite ancillary transformer storage areas;

(viii) Transportation facilities classified as Standard Industrial Classification 40 through 45, and 47 which have vehicle maintenance shops, material handling facilities, equipment cleaning operations and airport deicing operations. Only those facilities or portions of facilities that are either involved in vehicle maintenance, loading, storage or unloading activities, or equipment cleaning operations or which are subject to another subparagraph under this paragraph are associated with industrial activity;

(ix) POTW lands used for land application treatment technologies, sludge disposal, handling or processing areas, and chemical handling and storage areas;

(x) Facilities classified as Standard Industrial Classification 15 and 16 (General building contractors and heavy construction contractors) including clearing, grading and excavation activities except operations that result in the disturbance of less than 1 acre total land area which are not part of a larger common plan of development or sale; or that are designed to serve single family residential projects, including duplexes, triplexes or quadruplexes, that result in the disturbance of less than 5

acre total land areas which are not part of a larger common plan of development or sale.

(xi) Automotive repair shops classified as Standard Industrial Classification 751 or 753 including general automotive repair shops, paint shops, and body repair shops, and miscellaneous repair shops classified as Standard Industrial Classification 769;

(xii) Gasoline service stations classified as Standard Industrial Code 5541;

(xiii) Lands other than POTW lands (offsite facilities) used for sludge management;

(xiv) Lumber and building materials retail facilities classified as Standard Industrial Classification 5211;

(xv) Landfills, land application sites, and open dumps that do not receive industrial wastes and that are subject to regulation under Subtitle D of RCRA.

(xvi) Facilities classified as Standard Industrial Classification 46 (pipelines, except natural gas), and 492 (gas production and distribution); and

(xvii) Major electrical powerline corridors.

Of the facilities listed above, EPA prefers that storm water discharges from facilities listed in paragraphs (xi) through (xvii) not be classified as storm water discharges associated with industrial activity, but rather be part of the class of discharges for which storm water permits are not required prior to October 1, 1992, unless designated under section 402(p)(2)(E) of the CWA. EPA prefers to study under section 402(p)(5) of the CWA storm water discharges from these and other facilities for appropriate regulation under section 402(p)(6). In addition, storm water discharges from certain facilities listed above that are not associated with industrial activity (such as storm water discharges from parking lots which are not used for material management), and which are segregated from storm water discharges will be studied under section 402(p)(5).

EPA is requesting comments on how the regulatory definition of "associated with industrial activity" can be further clarified and on clarifying the types of facilities that are engaged in industrial activities. Some activities at certain facilities will be listed in more than one category. For example, an inorganic chemical facility with an SIC code of 28 may have an on-site unit which is subject to Subtitle C of RCRA. Although the majority of Subtitle C facilities will be addressed by other classifications listed above, listing Subtitle C facilities separately provides additional clarification. EPA requests comments on further classifications that would serve to clarify the proposed definition of storm water discharge associated with industrial activity (for example, are distinct categories for treatment, storage or disposal facilities for source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq. or sites listed on the National Priority List (other than sites that are Fund-financed pursuant to CERCLA section 106 which are exempt from permitting (see 40 CFR 300.65(f)) necessary to clarify that these are facilities covered by the definition?) Today's proposal is intended to address Department of Defense and Department of Energy facilities which are engaged in the industrial activities listed above, even though SIC codes do not apply to these facilities. EPA requests comments on whether the proposed regulatory language should be clarified with respect to these facilities.

EPA also requests comment on limiting the definition of storm water discharge associated with industrial activity to those discharges which do not discharge into municipal separate storm sewers. This limitation may be useful in clarifying which discharges are required to submit permit applications and obtain an NPDES permit.

If EPA promulgates a final regulatory definition of "storm water discharge associated with industrial activity" that does not include certain facilities that are listed in today's proposal, then those facilities would be studied under Section 402(p)(5) of the CWA for appropriate regulation after October 1, 1992 under Section 402(p)(6) of the Act. Comments which oppose inclusion of proposed facilities to the regulatory definition of "storm water discharge associated with industrial activity" should address the nature and extent of pollutants in the storm water discharge as well as the appropriate procedures and methods to control pollutants in storm water discharges from such facilities to the extent necessary to mitigate impacts on water quality. For facilities which EPA requests comments on in today's notice, but that the Agency does not include in the final definition of "storm water discharge associated with industrial activity", the information received during the rulemaking, along with other information, will constitute a portion of the Section 402(p)(5) study. In such a case, the Agency, where appropriate, will consider today's request for comments as a proposal for regulation under Section 402(p)(6) and establish appropriate regulations (such as delaying the date of permit application submittal) based on today's proposal.

Today's proposed permit application requirements for storm water discharges associated with industrial activity at §122.26(c)(1)(i) include special requirements for storm water discharges originating from mining operations, oil or gas operations (§ 122.26(c)(1)(ii), and from the construction operations listed above (§ 122.26(c)(1)(iii)). These requirements are discussed in more detail in § VII.E.7 and § VII.E.9 of today's notice.

3. Individual Application Requirements

Today's notice addresses whether the requirements for permit applications for discharges which contain storm water associated with industrial activity should be modified from the requirements associated with the Form 1 and Form 2C permit applications. The proposed modifications to the permit application requirements would apply to both storm water discharges associated with industrial activity that are required to submit a permit application (§ VII.E.1 of the preamble discusses permit applicability) and to other discharges from non-municipal separate storm sewers which have been designated by the Administrator or NPDES State as contributing to a violation of a water quality standard or as a significant contributor of pollutants to waters of the United States.

As discussed earlier in today's notice, the September 26, 1984 regulation required operators of Group I storm water discharges to submit the full NPDES Form 1 and Form 2C permit applications. In response to post-regulation comments received on that rule, EPA proposed new permit application requirements (March 7, 1985, (50 FR 9362) and August 12, 1985, (50 FR 32548)) which would have decreased the analytical sampling requirements of the Form 2C and provided procedures for group applications. The passage of the WQA has given the EPA additional time to consider the appropriate permit application requirements for storm water discharges.

Today's notice proposes to modify the permit application requirements found at 122.21 by providing special requirements for storm water discharges associated with industrial activity at § 122.26(c). In response to comments on earlier rulemakings addressing storm water discharges, EPA is proposing to shift the emphasis of the permit application requirements for storm water discharges associated with industrial activity from the existing requirements for collection of quantitative data (sampling data) in Form 2C towards collection of less

quantitative data supplemented by additional information needed for evaluation of the nature of the storm waters discharges. The permit application requirements proposed for storm waters discharges reduce the amount of quantitative data required in the permit application and exempt discharges which contain entirely storm water (and contain no other discharge that, without the storm water component, would require a NPDES permit), from certain reporting requirements of the Form 2C. The proposed modifications also would exempt applicants for discharges which contain entirely storm water from several non-quantitative information collection provisions currently required in the Form 2C. The proposed modifications would rely more on descriptive information for assessing impacts of the storm water discharge.

A proposed application form, Form 2F, for storm water discharges has been included with today's notice. A complete permit application for discharges composed entirely of storm water, will be comprised of Form 2F and Form 1. Operators of discharges which are composed of both storm water and non-storm water will submit a Form 1, an entire Form 2C (or Form 2D) and Form 2F when applying. In this case, the applicant will provide quantitative data describing the discharge during a storm event in Form 2F and quantitative data describing the discharge during non-storm events in Form 2C. Non-quantitative information reported in the Form 2C will not have to be reported again in the Form 2F.

Under today's proposal, Form 2F for storm water discharges associated with industrial activity would not require the submittal of all the quantitative information required in Form 2C, but would require that quantitative data be submitted for:

- Any pollutant limited in an effluent guideline for its subcategory;
- Any pollutant listed in the facility's NPDES permit for its process wastewater;
- Oil and grease, TOC, TSS, COD, pH, BOD_5, total phosphorus, total nitrogen; and
- Any information on the discharge required under 40 CFR 122.21(g)(7) (iii) and (iv).

In order to characterize the discharge(s) sampled, the applicant would be required to submit information regarding the storm event(s) that generated the sampled discharge, including the date(s) the sample was taken, flow measurements or estimates of the duration of the storm event(s) sampled, rainfall measurements or estimates from the storm event(s) which generated the sampled runoff, and the duration between the storm event sampled and the end of the previous storm event. Information regarding the storm event(s) sampled is necessary to evaluate if the discharge(s) sampled was generally representative of other discharges expected to occur during storm events, and to characterize the amount and nature of runoff discharges from the site.

Today's notice proposes that the applicant test for oil and grease, COD, pH, BOD_5, TSS, total nitrogen and total phosphorus. Oil and grease and TSS are a common component of storm water and can have serious impacts on receiving waters. Oxygen demand (COD and BOD_5) will help the permitting authority evaluate the oxygen depletion potential of the discharge. BOD_5 is the most commonly used indicator of oxygen demand. COD is considered a more inclusive indicator of oxygen demand, especially where metals interfere with the BOD_5 test. The pH will provide the permitting authority with important information on the potential availability of metals to the receiving flora, fauna and sediment. Total nitrogen and total phosphorus are measures of nutrients which can impact water quality.

The proposed Form 2F requirements regarding submission of quantitative data are intended to allow tailoring the sampling and reporting of pollutants to site-specific parameters that potentially have an impact on the quality of the storm water discharge. In addition to the conventional pollutants listed above, today's notice proposes to require applicants to, when appropriate, sample other pollutants based on a consideration of site-specific factors. These pollutants account for pollutants associated with materials used for production and maintenance, finished products, waste products and non-process materials such as fertilizers and pesticides associated with the facility. Today's notice proposes that the applicant sample for any pollutant limited in an effluent guideline applicable to the facility or limitation in the facility's NPDES permit. These pollutants will generally be associated with the facility's manufacturing process or wastes. Other process and non-process-related pollutants, will be addressed by complying with the requirements of 40 CFR 122.21(g)(7) (iii) and (iv).

Section 122.21(g)(7)(iii) requires an applicant to indicate whether the applicant knows or has reason to believe that any pollutant listed in Table IV (conventional and nonconventional pollutants) of Appendix D to 40 CFR Part 122 are discharged. If such pollutant is either directly limited or indirectly limited by the expressed terms of the permit through limitations on an indicator, the applicant must report quantitative data. For pollutants that are not limited in an effluent limitations guideline, the applicant must either report quantitative data or describe the reasons the pollutant is expected to be discharged. With regard to pollutants listed in Table II (organic pollutants) or Table III (metals, cyanide and total phenol) of Appendix D, the applicant must indicate whether he knows or has reason to believe such pollutants are discharged from each outfall and, if they are discharged in amounts greater than 10 parts per billion (ppbs), the applicant must report quantitative data. An applicant qualifying as a small business under 40 CFR 122.21(g)(8), (e.g., coal mines with a probable total annual production of less than 100,000 tons per year or, for all other applicants, gross total annual sales averaging less than $100,000 per year (in second quarter 1980 dollars)), is not required to analyze for pollutants listed in Table II of Appendix D (the organic toxic pollutants).

Section 122.21(g)(7)(iv) requires an applicant to indicate whether it knows or has reason to believe that any pollutant in Table V of Appendix D to 40 CFR Part 122 (certain hazardous substances) is discharged. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any existing quantitative data it has for the pollutant.

When collecting data for permit applications, applicants may make use of 40 CFR 122.21(g)(7), which provides that "when an applicant has two or more outfalls with substantially identical effluents, the Director may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls." Where the facility has availed itself of this provision, an explanation of why the untested outfalls are "substantially identical" to tested outfalls must be provided in the application. Where the amount of flow associated with the outfalls with substantially identical effluent differs, measurements or estimates of the total flow of each of the outfalls must be provided.

The outfalls are to be sampled in accordance with the requirements of 40 CFR 122.21(g)(7), which are discussed in this section and section VII.D of today's

notice. EPA is proposing that the facility must sample during "representative storm events." EPA request comments on the following definition of a representative storm event. A representative storm event is one that is typical for the area in terms of duration and severity. The event must be greater than 0.1 inch and must be at least 96 hours from previously measurable (greater than 0.1 inch rainfall) storm event. In general, variance of the parameters such as the duration of the event and the total rainfall of the event should not exceed 50 percent from the average rainfall event in that area. EPA also requests comments on addressing snow melt events under this definition.

Today's proposal would also modify the Form 2C requirements by exempting applicants from the requirements at § 122.21(g)(2) (line drawings), (g)(4) (intermittent flows), (g)(7) (i), (ii), and (v) (various sampling requirements to characterize discharges) if the discharge covered by the application is composed entirely of storm water. Permit applications for discharges containing storm water associated with industrial activity would require applicants to provide other non-quantitative information which will aid permit writers to identify which storm water discharges are associated with industrial activity and to characterize the nature of the discharge.

Under existing permit application regulations, 40 CFR 122.21(f)(7) requires all permit applicants to submit as part of Form 1 a topographic map extending one mile beyond the property boundaries of the source, depicting the facility and each intake and discharge structure; each hazardous waste treatment, storage, or disposal facility; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in the map area in public records or otherwise known to the applicant within one-quarter mile of the facility property boundary. (See 47 *FR* 15604, April 8, 1982). However, the information provided under § 122.21(f)(7) is generally not sufficient by itself for evaluating the nature of storm water discharges associated with industrial activity.

EPA is proposing that application requirements for storm water discharges associated with industrial activity include a drainage map of the site in addition to the topographic map required with the Form 1. A drainage map can provide important site specific information for evaluating the nature of the storm water discharge than the existing requirements, which require a larger map with only general information. The volume of a storm water discharge and the pollutants associated with it will depend on the configuration and activities occurring at the industrial site. The Agency requests comments under what conditions, if any, it would appropriate to submit a site drainage map in lieu of the Form 1 topographic map.

EPA is also proposing that a narrative description be submitted to accompany the drainage map. The proposed narrative will provide a description of on-site features, including existing structures (buildings which cover materials and other material covers, dikes, diversion ditches, etc.) and non-structural controls (employee training, visual inspections, preventive maintenance, and housekeeping measures) that are used to prevent or minimize the potential for release of toxic and hazardous pollutants; a description of significant materials that are currently or in the past have been treated, stored or disposed outside; and the method of treatment, storage or disposal used. The narrative will also include a description of activities at materials loading and unloading areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; a description of the soil; the impact of storm water runoff on production areas; and a description of the areas which are predominantly responsible for first flush runoff.

Today's notice is also proposing that permit applicants for storm water discharges associated with industrial activity certify that all of the outfalls covered in the permit application have been tested for non-storm water discharges which are not covered by a NPDES permit. Section 405 of the WQA added section 402(p)(3)(B)(ii) to the CWA to require that permits for municipal separate storm sewers effectively prohibit non-storm water discharges to the storm sewer system. As discussed in § VII.F.7.b of today's notice, untreated non-storm water discharges to storm sewers can crate severe, wide-spread contamination problems and removing such discharges presents opportunities for dramatic improvements in the quality of such discharges. Although section 402(p)(3)(B)(ii) specifically addresses municipal separate storm sewers, EPA believes that illicit non-storm water discharges are as likely to be mixed with storm water at a facility that discharges directly to the waters of the United States as it is at a facility that discharges to a municipal storm sewer. Accordingly, EPA feels that is appropriate to consider potential non-storm water discharges in permit applications for storm water discharges associated with industrial activity. The certification requirement would not apply to outfalls where storm water is intentionally mixed with process waste water streams which are already identified in and covered by a permit.

EPA is proposing to provide regulatory language that would provide that appropriate tests for non-storm water discharges include smoke tests, fluorometric dye tests and analysis of accurate schematics. EPA requests comment on whether analysis of storm water discharges associated with industrial activity for various parameters (such as fecal coliform, fecal streptococcus, volatile organic carbon (VOC), residual chlorine and detergents) would be an appropriate method for satisfying the certification requirement. EPA requests comments on other technologies and the use of visual observations of flow during dry weather conditions which may be appropriate for this certification requirement. The Agency also requests comments on when a variance from this provision may be appropriate.

Today's proposal would also require applicants to submit known information regarding the history of significant spills at the facility. Such information is necessary to aid in the determination of which drainage areas are likely to generate storm water discharges associated with industrial activity, evaluate pollutants of concern and to develop appropriate permit conditions. Significant spills at a facility would generally include releases of oil or hazardous substances in excess of reportable quantities under section 311 of the Clean Water Act (see 40 CFR 110.20 and 40 CFR 117.21) or section 102 of CERCLA (see 40 CFR 302.4).

Like the regular NPDES permit applications, individual applications are submitted to the State if it is approved to administer the NPDES program, otherwise to the appropriate EPA Regional Office.

In the August 12, 1985 notice, EPA requested comments on the appropriateness of allowing for a waiver from the requirement to submit quantitative data if the applicant can demonstrate that the information is unnecessary for permit issuance. Although overall the commenters supported such a waiver, EPA is not proposing this type of a waiver in this notice. A waiver is inappropriate since EPA is proposing to reduce the number of pollutants that must be sampled and

analyzed from previous regulations. The proposed requirements for quantitative data are limited to pollutants that are appropriate for given site-specific operations, thereby making a waiver unnecessary.

Although the concept of a waiver is attractive because of the perceived potential reduction in burdens for applicants, the Agency believes that because the storm water discharge testing reequirements have already been streamlined, a waiver would not in practice provide significant reductions in burden for either applicants or permitting authorities. Requirements to provide and verify data demonstrating that a waiver is appropriate for a storm water discharge may prove to be more of a burden to the applicant and the permitting authorities. Establishing such a waiver procedure would be administratively complex and time-consuming for both the Agency and the applicants, without any justifiable benefit. Therefore, today's proposal does not include a waiver provision.

4. Group Applications

For two major reasons, EPA continues to support the group application approach. First, group applications will reduce the burden on the regulated community associated with submitting permit applications by requiring the submission of quantitative data from only selected members of the group. Second, the group application process will reduce the burden on the permit issuing authority by forming an appropriate basis and providing adequate information for issuing general permits. Where general permits are not appropriate or cannot be issued, a group application can be used to develop model individual permits, which can significantly reduce the burden of issuing individual permits.

Today's notice refines and clarifies the proposal for the group application approach set forth in the August 12, 1985 Reopener Notice. The proposal would establish a regulatory procedure whereby a representative entity, such as a trade association, may submit a group application to the Office of Water Enforcement and Permits (OWEP) at EPA headquarters, in which quantitative data from certain representative members of a group of industrial facilities is supplied. Information received in the group application will be used by OWEP to develop models for individual permits or general permits. These model permits are not issued permits, but rather they will be used by EPA Regions and the NPDES States to issue individual or general permits for participating facilities in the State. In developing such permits, the Region or NPDES States will, where necessary, adapt the model permits to take into account the hydrological conditions and receiving water quality in their area.

a. Facilities Covered. Today's proposal differs from the August 12 proposal in that the group application is submitted for only the facilities specifically listed in the application, and not necessarily for an entire industry. This is quite different from the August 12 proposal, which proposed that the application was to be submitted for, and be representative of, the industry as a whole, and any facility fitting within the industry subcategory did not have to submit an individual application. Based on comments to the August 12, 1985 proposal, the Agency agrees that submitting an application for an entire industry is simply unworkable. Under the August 12 proprosal, it was likely that there would have been only one application for an entire industry, and the one submission would have had to be representative of the industry as a whole. Under today's proposal, a group application will only cover facilities listed in the application, and not the industry as a whole. The facilities in the group application selected to do sampling must be representative of the group, not of the industry. This approach eliminates the problem expressed by some trade associations that because they represented only a portion of the industry, they would be unable to assure representativeness.

Facilities that would be sufficiently similar to members of a group application, but that are not identified in the group application must, if they are required to obtain a permit, submit individual NPDES permit applications in accordance with the deadlines that will be established in the final rule. Storm water discharges that are sufficiently similar to those covered in a general permit that commence discharging after an applicable general permit has been issued must refer to the provisions of that general permit to determine if they are eligible for coverage and the procedures established in the general permit for obtaining coverage. Facilities that have already been issued an individual permit for their storm water discharge would generally not be eligible for participation in a group application.

b. Scope of Group Applications. In the August 12, 1985 notice, EPA proposed that the groups would be based on EPA subcategories for process waste water (as defined by 40 CFR Subchapter N). Over half of the comments which addressed this issue supported the use of subcategories over categories. However, several commenters to the August 12, 1985 proposal noted that this was too restrictive, and would deny the group application option to those industries not defined by one of the Agency's subcategories or to facilities with integrated operations, where processes could fall within several subcategories.

EPA subcategories are functional classifications, breaking down facilities into groups, for purposes of setting effluent limitations guidelines. Thus, they are tighter than the EPA categorical designations and narrow the wide differences among processes within a broad category. The use of EPA subcategories will save time for both applicants and permitting authorities in determining whether a particular group is appropriate for a group application.

EPA recognizes that the subcategory designations may not always be available. Also, there are situations where processes that are subject to different subcategories are combined. The Agency agrees that the group application option should be flexible enough to allow groups to be created where facilities are integrated or overlap into other subcategories. For these reasons, today's proposal does not limit the submission to EPA subcategories alone, but rather allows groups to be formed where facilities are similar enough to be appropriate for general permit coverage.

In determining whether a group is appropriate for general permit coverage, EPA intends that the group applicant use the factors set forth in 40 CFR 122.28(a)(2)(ii), the current general permit regulation, as a guide. If facilities all involve the same or similar types of operations, discharge the same types of wastes, have the same effluent limitation and same or similar monitoring requirements, where applicable, they would probably be appropriate for a group application. The criteria currently used for defining group application coverage are reasonable for defining the scope of a group application in view of the logical assumption that similar types of industrial facilities are likely to have some similar pollutants in their storm water runoff.

C. Group Application Requirements. The group application requirements proposed today will consist of a Part 1 and a Part 2 application which are to be submitted on different dates. In Part 1 of the application, applicants are to provide information to demonstrate that participants in the group application are sufficiently similar to be included in one group and preliminarily identify

representative facilities which will be responsible for collecting and submitting quantitative data on behalf of the entire group. In Part 2 of the application, representative facilities approved by EPA will be responsible for collecting and submitting quantitative data on behalf of the entire group.

Part 1 of the group application will consist of two components, Part 1A and Part 1B. Part 1A of the application will be used to provide an overview of the group. The second component of Part 1, Part 1B, will provide site-specific information which will be used to evaluate whether individual facilities are appropriate for the group application and whether the representative facilities selected in Part 1A will indeed provide representative quantitative data.

Part 1A of the Group Application. Part 1A will consist of four elements: (1) The name and location of all facilities participating in the group application; (2) a narrative description summarizing the major industrial activities of the participants in the group application and why the participants are appropriate for a group application; (3) a list of the significant materials stored outside by members of the group, and a description of the primary materials management practices, if any; and (4) a commitment to provide quantitative sampling data from representative facilities in Part 2 of the permit application, and a list of the facilities which will provide quantitative information.

EPA is proposing that in Part 1A of the group application, the names of facilities participating in the group application be divided into nine subdivisions based on the facility location relative to nine precipitation zones [see attached map, Appendix E]. These nine divisions will enable the data in the permit application to be more easily analyzed and patterns observed on the basis of hydrology and other regional factors. The need to identify precipitation zones arises because the amount of rainfall is likely to have a significant impact on the quality of the receiving water. According to a recent EPA study (Methodology for Analysis of Detention Basins for Control of Urban Runoff Quality; Office of Water, Nonpoint Source Branch, Sept. 1986) the United States can be divided into nine general precipitation zones. These zones are characterized by differences in precipitation volume, precipitation intensity, precipitation duration, and precipitation intervals. Industrial facilities that seek general permits via the group application option may show significantly different loading rates as a result of these regional precipitation differences. As an example, precipitation in Seattle, Washington, located in Zone 7, approaches the mean annual storm intensity of .024 inches/hour with a mean annual storm duration of 20 hours for that Zone. In contrast, precipitation in Atlanta, Georgia, located in Zone 3 approaches the mean annual storm intensity of .102 inches/hour and a mean storm duration 6.2 hours for that Zone. Atlanta, receives on the average four times more precipitation per hour with storms lasting one-third as long. As a result of these differences, if identical facilities within a group application were situated in each of these areas, their storm water discharges would likely exhibit different pollutant characteristics.

As mentioned above, the group application must provide a list of significant materials stored outside by members of the group. Such a list shall include, for example, raw materials (fuels, storage piles); intermediate materials, such as solvents and detergents; finished materials such as metallic products; and waste products such as ashes, slag and sludge. EPA is proposing that materials are significant, for the purpose of preparing a group application, if they are periodically used or stored in quantities that, if released and mixed with storm water, could result in impacts to receiving waters. As an example, materials in quantities sufficient to be stored in a 55-gallon drum generally would be regarded as significant. However, some materials are sufficiently toxic that smaller quantities would be considered significant, such as certain pesticides and solvents. Therefore, any materials conistently used that are known to be highly toxic in small quantities would also be regarded as significant materials.

With regard to the materials identified, the applicant is to discuss the materials management practices employed by members of the group. For example, the applicant should identify whether such materials are commonly covered, contained, or enclosed, whether storm water runoff from materials storage areas is collected in settling ponds prior to discharge, or diverted away from such areas to minimize the likelihood of contamination. Also, the approximate percentge of facilities in the group with no practices in place to minimize materials stored outside is to be identified.

The Agency considers that the processes and materials used at a particular facility may have a bearing on the quality of the storm water. Thus, if there are different processes and materials used by members of the group, the application is to contain data from facilities utilizing the different processes and materials. Accordingly, if the group members are all very similar in their processes and materials, then such distinctions would not be necessary.

The fourth element of Part 1A of the group application is a commitment to submit quantitative data from ten percent of the facilities listed. EPA is proposing that there must be a minimum of ten and a maximum of one hundred facilities within a group that submit data. There must be a sufficient number of facilities submitting data for any patterns and trends to be detectable. However, it is felt that one hundred facilities would in most cases be sufficient to characterize the nature of the runoff. If not, EPA has the authority to request more sampling under section 308 of the CWA.

Because storm water loading rates may differ significantly as a result of regional precipitation differences, it is necessary that each precipitation zone containing representatives of a group application have some of those representatives take samples. Thus, today's proposal would require that Part 2 of the group application contain sampling data from at least two facilities within each precipitation zone in which two or more members of group are located (the application need contain sampling data for only one facility in a precipitation zone if that facility is the only member of the group located in that zone). Several commenters to the August 12, 1985 proposal suggested, and the Agency agrees, that the amount of rainfall will affect the degree of impact a storm water discharge may have on the receiving stream. In addition, facilities selected to do the sampling should be representative of the group as a whole in terms of those characteristics identifying the group which were described in the narrative, i.e., number and range of facilities, types of processes used, and any other relevant factors. If there is some variation in the processes used by the group (40 percent of the group of food processors are canners and 60 percent are canners and freezers, for example), the different processes are to be represented. Also, samples are to be provided from facilities utilizing the materials management practices identified, including those facilities which use no materials management practices. The representation of these different factors, to the extent feasible, is to be roughly equivalent to their proportion in the group.

Part 1B of the Group Application. Under today's proposal, Part 1B of the group application is intended to provide sufficient site specific information to allow EPA to evaluate whether all members of a group are sufficiently similar as to be appropriate for coverage in a group application or general permit, and to ensure that the facilities selected to collect quantitative data are representative of the group.

Each facility in the group application would be required to submit the non-quantitative information that is required in an individual application for storm water discharges associated with industrial activity: a drainage map, a narrative description of material management practices and control measures to control the discharge of pollutants in storm water discharges, and the history of significant spills at the facility.

EPA is requiring this information because the Agency is persuaded by comments on previous proposals suggesting that site-specific practices are likely to have a significant impact on the quality of the runoff. In addition, comparing the results of different control practices will assist in selecting management practices for inclusion in NPDES permits.

In addition, individual members of the group application will be required to certify that their facility has tested all outfalls that should contain entirely storm water discharges and which drain storm water associated with industrial activity for the presence of nonstorm water discharges which are not covered with a NPDES permit. Illicit discharges are by nature site-specific, and hence a representative analysis involving testing of a fraction of the facilities in the group is not appropriate for a group application.

Submittal of Part 1 of the Group Application. Each facility in the group can submit the information required in Part 1B on Form 1 and Form 2F. The entire Form 2F does not need to be completed—only that nonquantitative information for individual applicants described in today's proposal is required. Facilities participating in a group application will not be required to submit quantitative data describing their storm water discharges with Part 1 of the group application.

The Form 1 and Form 2F must be signed by an authorized corporate official of the facility submitting data, in accordance with the requirements of 40 CFR 122.22. This official will make the required certifications that the document was prepared under his supervision, and based on inquiry of the persons responsible for gathering the information, the information is, to the best of their knowledge and belief, true, accurate and complete.

These forms should be collected prior to submission to EPA and submitted at one time along with the information required under Part 1A to the EPA Office of Water Enforcement and Permits (OWEP) in Washington, DC. OWEP will review the Part 1 application for completeness (40 CFR 122.21(e), completeness of NPDES permit applications) and for compliance with the permit application requirements. Factors likely to contribute pollutants to storm water discharges, such as specific material management practices, will be considered in approving the facilities chosen for representative sampling of the group. Then a judgment will be made as to whether the described group, as a whole, is appropriate for a single group application. If a submission is deficient, EPA will either: reject the group application, limit the facilities participating in the group application, or request that corrections be made to the group application prior to a final decision on acceptability. If the application is rejected or if EPA determines that some facilities must be excluded from the group application, facilities no longer covered by the group application would be required to submit additional information such that complete individual applications can be evaluated.

Part 2 of the Group Application. Under today's proposal, groups for which the Part 1 permit application have been accepted will submit Part 2 of the group application within 18 months of the promulgation of a final rule. Part 2 of the application will consist of quantitative data from the representative facilities in the group that were selected in Part 1 of the application. Each facility submitting representative data in Part 2 will submit quantitative sampling data on Form 2F. The individual facilities themselves, in filling out permit applications for their facilities, certify that the data provided are true, accurate, and complete. Individual applications submitted in Part 2 of the group application will contain sampling from each outfall, except that individual applicants may avail themselves of 40 CFR 122.21(g)(7) for multiple outfalls at the same site with substantially identical effluents, as discussed under the proposed requirements for individual applications. These forms are to be submitted to the entity representing the group, which will compile them.

As with Part 1, Part 2 of the Group Application would be submitted to the Permits Division, Office of Water Enforcement and Permits, in Washington, DC. Submission of a Part 2 application which meets Part 1 commitments and the other standard NPDES regulatory requirements satisfies the application requirements for the facilities listed on Part 1. If the information is incomplete, or simply is found to be an inadequate basis for establishing general permit limits, EPA has the authority under section 308 of the Clean Water Act to require that more information be submitted, which may include sampling from facilities that were part of the group application but did not provide data with the initial submission. If the group application is used by a Region or NPDES State to issue a general permit, the general permit should specify procedures for additional coverage under the permit.

If a Part 2 is unacceptable or insufficient, EPA has the option to request additional information or to require that the facilities that participated in the group application submit complete individual applications (e.g., facilities that have submitted Form 1 with the group application would be required to submit Form 2F, and facilities which have submitted complete Form 1 and Form 2F information in the group application would generally not have to submit additional information).

Once the group applications are reviewed and accepted, EPA will use the information to establish draft permit terms and conditions for models for individual and general permits. The information will also allow States and EPA regional offices to estimate the pollutant loads from storm water dischargers associated with the group to assist in identifying groups for which individual permits may be more appropriate. NPDES-approved States and EPA regional offices will continue to be the permit-issuing authority for storm water discharges. The NPDES-approved States accepting the group application approach and the EPA Regions may then take the model permits and adapt them for their particular area, making adjustments for local water quality standards and other localized characteristics, and making determinations as to the need for an individual storm water permit where general permit coverage is felt to be inappropriate. Permits would be proposed by the Region or NPDES-approved State in accordance with current regulations for public comment before becoming final. In NPDES States without general permit authority, or where an individual permit is deemed appropriate, the model permit can serve

as the basis for issuing individual permits.

The group application is an NPDES permit application just like any other, and as such would be handled through normal permitting procedures, subject to the regulatory provisions applicable to permit issuance. Incomplete or otherwise inadequate submissions would be handled in the same manner as any other permit application. The permitting authority would retain the right to require submission of Form 1, Form 2C and Form 2F from any individual discharger it designates.

5. Group Application: Applicability in NPDES States

The relationship between EPA and the States that are authorized to administer the NPDES program (there are 39 such States, called "approved States") that will implement the storm water program is one of the most complicated aspects of today's proposal. Approved States must have requirements that are at least as stringent as the federal program; they may be more stringent if they choose. Authority to issue general permits is opptional with NPDES States. If they choose to issue general permits they may include such authority in their NPDES program and, upon approval of the program by EPA, may then issue general permits. There are currently thirteen approved States that have authority to issue general permits: Arkansas, Colorado, Illinois, Kentucky, Minnesota, Missouri, Montana, New Jersey, Oregon, Rhode Island, Utah, West Virginia and Wisconsin.

Because today's group application option is a relaxation of existing NPDES permit application requirements, the State is free to adopt this option, but is not required to. If the State chooses to adopt the group application and it does not have general permit authority, the group application can be used to issue individual permits. However, EPA recommends that such States consider obtaining general permit authority as a means to efficiently issue permits for storm water discharges. These States should contact the Office of Water Enforcement and Permits at EPA Headquarters (see the **FOR FURTHER INFORMATION** section at the beginning of this notice), as soon as possible.

If an approved State chooses not to adopt the group application, facilities that discharge storm water associated with industrial activity that are located in that State must submit individual applications to the respective State permitting authority. For facilities that discharge storm water associated with industrial activity which are named in a group application, the Director may require an individual facility to submit an individual application where it determines that general permit coverage would be inappropriate for the particular facility.

6. Group Application: Procedural Concerns

Comments received on the August 12, 1985 group application proposal included comments from an environmental group that the proposed group application process and procedures violated federal law. This commenter claimed that EPA was abrogating its responsibility by allowing a trade association to design a data collection plan in lieu of completing an NPDES application form designed by the Agency, thus violating the Federal Advisory Committee Act. The commenter stated that EPA would be improperly influenced by special interests if trade associations were able to design their own storm water data gathering plans. The commenter further asserted that any decisions by EPA on the content of specific group applications would be rulemakings and thus subject to the provisions of the Administrative Procedure Act.

EPA disagrees with the comment that the group application violates the Federal Advisory Committee Act (FACA). FACA governs only those groups that are established or "utilized" by an agency for the purpose of obtaining "advice" or "recommendations". The group application option does not solicit or involve any "advice" or "recommendations". It simply allows submission of data by certain members of a group in accordance with specific regulatory criteria for determining which facilities are "representative" of a group. As such, the group application is merely a submission in accordance and in compliance with specific regulatory requirements and does not contain discretionary uncircumscribed "advice" or "recommendations" as to which facilities are representative of a group.

Thus, the determination of which facilities should submit testing data in accordance with regulatory criteria is little different from many other regulatory requirements where an applicant must submit information in accordance with certain criteria. For example, under 40 CFR 122.21 all outfalls must be tested except where two or more have "substantially identical" effluents. Similarly, quantitative data for certain pollutants is to be provided where the applicant knows or "has reason to believe" such pollutants are discharged. Both of these provisions allow the applicant to exercise discretion in making certain judgments but such action is circumscribed by regulatory standards. EPA further has authority to require these facilities to submit individual applications. In none of these instances are "recommendations" or "advice" involved. EPA also notes that it is questionable whether, in providing for group applications, it is "soliciting" advice or recommendations from groups of that such groups are being "utilized" by the Agency as a "preferred source" of advice. See 48 FR 19324 (April 28, 1983). Furthermore, this data collection effort may be supplemented by EPA if, after review of the data, EPA determines additional data is necessary for permit issuance. Other information gathering may act as a check on the group applications received.

EPA also does not agree with commenters' claims that the group application scheme represents an impermissible delegation of the Administrator's function in violation of the CWA regarding data gathering. The Administrator has the broadest discretion in determining what information is needed for permit development as well as the manner in which such information will be collected. The CWA does not require every discharger required to obtain a permit to file an application. Nor does the CWA require that the Administrator obtain data on which a permit is to be based through a formal application process (see 40 CFR 122.21). For years "applications" have not been required from dischargers covered by general permits. EPA currently obtains much information beyond that provided in applications pursuant to section 308 of the CWA. This is especially true with respect to general permit and effluent limitations guidelines development. The group application option is simply another means of data gathering. The Administrator may always collect more data should he determine it necessary upon review of a groups' data submission. And, he may obtain such additional data by whatever means permissible under the Statue that he deems appropriate. Thus, it can hardly be said that by this initial data gathering effort the Administrator has delegated his data gathering responsibilities. In addition, since groups are required to select "representative" facilities, etc., in accordance with specific regulatory requirements established by the Administrator and because EPA will scrutinize Part 1 of the group applications and either accept or reject the group as appropriate for a group application, no impermissible delegation

has occurred. EPA will make an independent determination of the acceptability of a group application in view of the information required to be submitted by the group applicant, other information available to EPA (such as information on industrial subcategories obtained in developing effluent limitations guidelines as well as individual storm water applications received as a result of today's rule) and any further information EPA may request to supplement Part 1 pursuant to section 308 of the CWA. Moreover, any concerns that a general permit may be based upon biased data can be dealt with in the public permit issuance process.

Finally, EPA also does not agree that the group application option violates the Administrative Procedures Act. Again, the group application scheme is simply a data gathering device. EPA could very well have determined to gather data informally via specific requests pursuant to section 308 of the CWA. In fact, general permit and effluent limitations guideline development proceed along these lines. It would make little sense if the latter informal data gathering process were somehow illegal simply because it is set forth in a rule that allows applicants some relief upon certain showings. In this respect, several of EPA's existing regulations similarly allow an applicant to be relieved from certain data submission requirements upon appropriate demonstrations. For example, testing for certain pollutants and or certain outfalls may be waived under certain circumstances. Most importantly, the operative action of concern that impacts on the public is actual general permit issuance based upon data obtained. As previously stated, ample opportunity for public participation is provided in the permit issuance proceeding.

7. Permit Applicability and Applications for Oil, Gas and Mining Operations

Section 401 of the WQA amended section 402(1)(2) of the CWA to prohibit the Director of the NPDES program from requiring permits for uncontaminated storm water discharges from oil and gas operations and from mining operations. In the near future, EPA intends to issue a notice that will codify this provision into 40 CFR 122.26(a)(2). Today's notice proposes to modify 40 CFR 122.26(a)(2) to clarify the scope of the provision.

As discussed in more detail earlier in today's notice, on March 18, 1976 (41 FR 11307), EPA promulgated permit application requirements for storm water discharges that were located in an urbanized area or that were from lands used for industrial or commercial activities that were contaminated by contact with materials or contaminated soils. The approach to regulating storm water discharges was modified on September 24, 1984 (49 *FR* 37998) which deleted the term "contaminated" and relied instead on geographic criteria which resulted in the same coverage (e.g., discharges meeting the geographic criteria were expected to meet the contaminated criteria).

Congress adopted a similar geographic criterion to generally define the scope of the first phases of the storm water program when enacting Section 405 of the WQA by requiring EPA to develop permit applications for storm water discharges associated with industrial activity and for discharges from municipal separate storm sewer systems serving populations of 250,000 or more or serving populations of 100,000 or more, but less than 250,000.

However, Section 401 of the WQA, amended Section 402(1)(2) of the CWA to provide that the Director shall not require a NPDES permit for storm water runoff from mining or oil and gas operations if the runoff is not contaminated by contact with, or does not come into contact with any overburden, raw material, intermediate product, finished product, byproduct or waste product located on the site. This provision relies on both a geographic criterion and a contamination criterion to define permit applicability.

The legislative history accompanying Section 402(1)(2) clarified that Congress intended that the factors considered in determining if storm water discharges from oil and gas operations are contaminated are different from the factors considered for storm water discharges from mining operations. Congress intended that for these discharges, if the storm water is "not contaminated by contact with such materials, as determined by the Administrator, permits are also not required. With respect to oil or grease or hazardous substances, the determination of whether stormwater is 'contaminated by contact with' such materials, as established by the Administrator, shall take into consideration whether these materials are present in such stormwater runoff in excess of reportable quantities under section 311 of the Clean Water Act or Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or in the case of mining operations, above natural background levels." (Vol. 132 Cong. Rec. H10574 (daily ed. October 15, 1986) Conference Report).

a. Gas and Oil Operations. EPA is proposing that contaminated storm water from oil and gas operations includes, but is not limited to, runoff that contains a hazardous substance in excess of reporting quantities (RQs) established at 40 CFR 117.3 or 40 CFR 302.4; or contains oil in excess of the reporting quantity established at 40 CFR 110.3.

In order to implement the storm water permit requirements for oil and gas operations, the Agency is proposing to rely primarily on notification requirements for releases in excess of RQs established under the CWA and CERCLA to trigger the submittal of permit applications for storm water discharges from oil and gas operations. EPA is proposing that oil and gas operations which do not or have not in the past discharged storm water which contains an RQ of a hazardous substance or oil are not required to submit a permit application for such storm water discharges unless the Director requests a permit application on a case-by-base basis.

Oil and gas operations that have been required to notify the release of a RQ of either oil or a hazardous substance via a storm water route will be required to submit a permit application, including quantitative sampling data, in accordance with proposed § 122.26(c)(1)(iii). Oil and gas operations which have had a release via a storm water route in excess of an RQ will be required to obtain a NPDES permit even if the quantitative data submitted in the application does not indicate that the storm water discharge sampled contained a hazardous substance or oil in excess of a reportable quantity.

The proposal also provides the Director authority to require, on a case-by-case basis, operators of oil and gas operations which have certified that its discharge is not contaminated to submit a permit application. In addition, the Director may require an operator of an oil and gas operation to submit information regarding the storm water discharge under Section 308 of the CWA.

Based on a consideration of pollutants in a storm water discharge from an oil or gas facility, the Director may determine that the discharge is contaminated even though the discharge does not contain oil or a hazardous substance in amounts which exceeds an RQ. Also, RQs only serve as one guide in allowing the Director to determine if the discharge is contaminated. RQs have not been developed for some pollutants, such as suspended solids and other various indicator parameters (BOD, COD, pH,

etc.), which are not classified as oil or a hazardous substance.

b. Use of Reportable Quantities to Determine if a Storm Water Discharge from an Oil or Gas Operation Is Contaminated. Section 311(b)(5) of the CWA requires reporting of certain discharges of oil or a hazardous substance into navigable waters (see 44 FR 50766 (August 29, 1979)). Section 304(b)(4) of the Act requires that quantities of oil and hazardous substances that require notification be determined at quantities which may be harmful to the public health or welfare of the United States, including but not limited to fish, shellfish, wildlife, and public or private property, shorelines and beaches. Facilities which discharge oil or a hazardous substance in quantities equal to or in excess of an RQ, with certain exceptions, are required to notify the National Response Center (NRC).

Section 102 of CERCLA extended the reporting requirement for releases equal to or exceeding an RQ of a hazardous substance by adding chemicals to the list of hazardous substances, and by extending the reporting requirement (with certain exceptions) to any releases to the environment, not just those to navigable waters. Releases of oil are not addressed by the reporting requirements under CERCLA.

Pursuant to Section 311 of the CWA, EPA determined reportable quantities for discharges by correlating aquatic animal toxicity ranges with 5 reporting quantities, i.e. 1-, 10-, 100-, 1000-, and 5000-pounds per 24 hour period levels. Reportable quantity adjustments made under CERCLA relied on a different methodology. The strategy for adjusting reportable quantities begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each designated hazardous substance. The intrinsic properties examined, called "primary criteria", are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, and chronic toxicity. In addition, substances that were identified as potential carcinogens have been evaluated for their relative activity as potential carcinogens. Each intrinsic property is ranked on a five-tier scale, associating a specific range of values on each scale with a particular reportable quantity value. After the primary criteria reportable quantities are assigned, the hazardous substances are further evaluated for their susceptibility to certain extrinsic degradation processes called secondary criteria. Secondary criteria consider whether a substance degrades relatively rapidly to a less harmful compound, and can be used to raise the primary criteria reportable quantity one level.

Also pursuant to § 311, EPA has developed a reportable quantity for oil, and associated reporting requirements at 40 CFR 110. These requirements, known as the oil sheen regulation, defines the RQ for oil to be the amount of oil that violates applicable water quality standards or causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited.

Reportable quantities developed under the CWA and CERCLA were not developed as effluent guideline limitations which establish allowable limits for pollutant discharges to surface waters. Rather, a major purpose of the notification requirements is to alert government officials to releases of hazardous substances that may require rapid response to protect public health and welfare and the environment. Notification based on reportable quantities serves as a trigger for informing the government of a release so that the need for response can be evaluated and any necessary response undertaken in a timely fashion. The reportable quantities do not themselves represent any determination that releases of a particular quantity are actually harmful to public health or welfare or the environment.

In relying in today's proposal on the reporting requirements associated with releases in excess of RQs for oil or hazardous substances to trigger the submittal of permit applications for oil and gas operations, the Agency believes that the use of the reporting requirements for oil will be particularly useful. The Agency believes that the release of oil to a storm water discharge in amounts that cause an oil sheen is a good indicator of the potential for water quality impacts from storm water releases from oil and gas operations. In addition, given the extremely high number of such operations (the Agency estimates that there are over 750,000 oil wells alone in the United States), relying on the oil sheen test to determine if storm water discharges from such sites are "contaminated" is more appropriate than sampling. The detection of a sheen does not require sophisticated instrumentation since a sheen is easily perceived by visual observation.

EPA requests comments on the use of reportable quantities for determining whether storm water from mining operations or oil and gas operations is contaminated. EPA is particularly concerned with the use of RQs to define contamination for storm water discharges from oil and gas operations.

c. Mining Operations. Today's notice proposes to clarify that contaminated storm water runoff from mining operations includes runoff which contains pollutants above natural background levels. When evaluating whether a storm water discharge from a mining operation contains contaminates above background levels, EPA will consider both contaminate concentrations and flowrates to estimate total pollutant loads. Concentration values alone are not sufficient to indicate whether a discharge contains contaminates above background levels. Development of land generally causes increased runoff volumes. Thus, even where concentrations of pollutants remain the same as during predevelopment, an increase in runoff volumes will result in increases in pollutant loadings.

EPA is proposing that operators of mining operations will be required to submit permit applications for storm water discharges from active and inactive mining areas (except for areas of coal mining operations meeting the definition of a reclamation area under 40 CFR 434.11(l)) and haul roads where storm water comes into contact with any overburden, raw material, intermediate products, finished product, byproduct or waste products. EPA is proposing at § 122.26(b)(12)(iii) to define storm water discharges from these areas of a mining operation as storm water discharges associated with industrial activity. Accordingly, the permit application requirements proposed at § 122.26(c)(1) will apply to these dischargers. Data in the permit application, and if necessary, other data required by the Director under Section 308 of the CWA, will be used to determine if the discharge contains contaminants above background levels, and therefore a permit is necessary. Mining operations with storm water discharges that are known to be contaminated may participate in appropriate group applications which comply with proposed § 122.26(c)(2).

8. Application Requirements for Construction Activities

As discussed above, EPA is proposing that storm water discharges from facilities classified as Standard Industrial Codes 15 and 16 (General building contractors and heavy construction contractors) (except construction operations that result in the disturbance of less than one acre total land area which are not part of a larger common plan of development or sale; or

operations that are for single family residential projects, including duplexes, triplexes, or quadruplexes, that result in the disturbance of less than five acre total land areas which are not part of a larger common plan of development or sale), be included in the regulatory definition of storm water discharges associated with industrial activity.

The Agency believes that storm water permits are appropriate for the construction industry for two reasons. First, runoff generated while construction activities are occurring have potential for serious water quality impacts. Where construction activities are intensive, the localized impacts of water quality may be severe because of high unit loads of pollutants, primarily sediments. Construction sites can also generate other pollutants such as phosphorus, nitrogen and nutrients from fertilizer, pesticides, petroleum products, construction chemicals and solid wastes. These materials can be toxic to aquatic organisms and degrade water for drinking and water-contact recreation. Sediment runoff rates from construction sites are typically 10 to 20 times that of agricultural lands, with runoff rates as high as 100 times that of agricultural lands, and 1,000 to 2,000 times that of forest lands. Even small construction sites may have a significant negative impact on water quality in localized areas. Over a short period of time, construction sites can contribute more sediment to streams than was previously deposited over several decades.

Techniques to control pollutants in storm water discharges from construction are well developed and understood. A primary control technique is good site planning. A combination of nonstructural and structural best management practices are typically used on construction sites. Relatively inexpensive nonstructural vegetative controls, such as seeding and mulching, are effective control techniques. In some cases, more expensive structural controls may be necessary, such as detention basins or diversions. The most efficient controls result when a comprehensive storm water management system is in place.

The second major reason for addressing storm water discharges from the construction industry at this time is that studies such as NURP indicate that it is much more cost effective to develop measures to reduce pollutants during new development. Many of these controls, which can take the form of grading patterns as well as other controls, generally remain in place after the construction activities are completed.

a. Permit Application Requirements. In today's notice, EPA is proposing distinct permit application requirements for these construction activities, at 122.26(c)(1)(ii). Under the proposal, such facilities will be required to provide a narrative description of:

- The nature of the construction activity;
- The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;
- Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a description of applicable Federal requirements and State or local erosion and sediment control requirements;
- Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a description of applicable State or local requirements;
- An estimate of the runoff coefficient (fraction of total rainfall that will appear as runoff) of the site and the increase in impervious area after the construction addressed in the permit application is completed, a description of the nature of fill material and existing data describing the soil or the quality of the discharge; and
- The name of the receiving water.

EPA is proposing that permit application requirements for the covered construction activities will not include the submission of quantitative data. EPA believes that the changing nature of construction activities at the site to be covered by the permit application requirements generally would not be adequately described by quantitative data.

The Agency specifically requests comments on today's proposed permit application requirements for construction facilities which discharge storm water associated with industrial activity, on appropriate measures to reduce pollutants in construction site runoff, and on appropriate application deadlines.

The application requirements proposed in today's notice are designed to provide flexibility in developing controls to reduce pollutants in storm water discharges from construction sites. The proposed application requirements recognize that many State and local governments have implemented erosion and sediment control programs. The permit application requirements requiring a description of these programs are intended to ensure consistency between NPDES permit requirements and other State and local controls.

b. Administrative Burdens. Ideally, model individual permits and general permits will be issued for storm water discharges for construction activities subject to NPDES requirements to minimize administrative delays associated with permit issuance. EPA requests comment on administrative burdens and delays associated with issuing NPDES permits for storm water discharges from certain construction activities. In addressing the administrative burdens of regulation, commenters should consider the proposed limitation on the definition of storm water discharge associated with industrial activity and the proposed regulatory scheme for storm water discharges associated with industrial activity which discharge to municipal separate storm sewer systems.

Proposed § 122.26(b)(12)(x) limits the definition of "storm water discharge associated with industrial activity" by exempting from the definition construction operations that result in the disturbance of less than one acre total land area which are not part of the larger common plan of development or sale; or operations that are for single family residential projects, including duplexes, triplexes, or quadruplexes, that result in the disturbance of less than five acre total land areas which are not part of a larger common plan of development or sale. In considering the appropriate scope of the definition of storm water discharge associated with industrial activity as it relates to construction activities, EPA recognizes that a wide variety of factors can affect the water quality impacts associated with construction site runoff, including receiving waters, the size of the area disturbed, soil conditions, seasonal rainfall patterns, the slope of area disturbed, and the intensity of construction activities.

EPA favors the one acre/five acre limit primarily because of administrative concerns. EPA recognizes that State and local sediment and erosion controls may address construction activities disturbing less than one acre or five acres for residential development. The one acre/five acre limit proposed in today's notice is not intended to supersede more stringent State or local sediment and erosion controls. For construction facilities that are not included in the definition of storm water discharge associated with industrial activity, EPA will consider the appropriate procedures and methods to

reduce pollutants in construction site runoff under the studies authorized by section 402(p)(5) of the CWA. EPA will also consider under section 402(p)(5) appropriate procedures and methods during post-construction for maintaining structural controls developed pursuant to NPDES permits issued for storm water discharges associated with industrial activity from construction sites.

EPA favors distinguishing between single family residential development and other commercial development because other commercial development is more likely to occur in more densely developed areas. Also, other commercial development provides a more complete opportunity to develop controls that remain in place after the construction activity is completed, as continued maintenance, after the permit has expired, is more feasible.

EPA requests comments on the use of no limit or other limits such as 2, 10 or 20 acres. In addition, limitations could be based on or modified by other factors. Time limitations which consider the length of the construction activity or the season during which the activity occurs may provide a more workable administrative system while still addressing the major water quality impacts associated with construction activities. Other factors, such as steep slopes at the site, which affect the nature of the runoff, may be appropriate for defining special cases which would be addressed in this rulemaking. EPA also requests comments on other factors, such as the intensity of the development within the watershed, which affect the water quality impacts in receiving waters. Such site specific factors may be difficult to define in federal regulations. For example, a definition based on relatively easily interpreted criteria such as Census designated urban areas may not provide adequate protection for rapidly developing areas which are located outside the urban area. EPA requests comments on other factors which can be used to develop a limit on storm water discharges from construction sites which are classified as storm water discharges associated with industrial activity.

Proposed 122.26(a) would specify that storm water discharges, including construction site runoff, that discharge to municipal storm sewers are not required to obtain individual or group permits unless specifically designated by the Director. Under today's proposal, municipal permittees will be responsible for developing a proposed management plan to control pollutants in runoff from construction sites which discharge to large and medium municipal separate storm sewer systems (see § VII.G.8.d of the preamble). The Agency believes that the majority of construction sites do not discharge storm water directly to waters of the United States, but rather discharge to a municipal storm sewer or manage storm water on-site. For example, construction site runoff from a new subdivision which discharges to the drainage system of an existing road or a road that is being built by a developer for a municipality is, under this proposal, discharging to a municipal storm sewer.

9. Application Requirements for New Sources and New Discharges

Today's proposed permit application requirements provide that new sources and new discharges which discharge storm water include estimates of pollutants or parameters for which other storm water discharges are required to submit data. Under the proposal, operators of such discharges are required to provide the quantitative data which is required for other similar existing storm water discharges within two years after the commencement of the discharge, unless the data has already been reported under the monitoring requirements of the NPDES permit for the discharge.

F. Municipal Separate Storm Sewer Systems

1. Municipal Separate Storm Sewers

Today's notice proposes to define "municipal separate storm sewer" at § 122.26(b)(8) as any conveyance or system of conveyances that is owned or operated by a State or local government entity and is used for collecting and conveying storm water which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

It is important to note that the proposed permit application requirements for discharges from municipal separate storm sewers do not apply to discharges from combined sewers that are designed as both a sanitary sewer and a storm sewer. Discharges from combined sewer systems are not regulated under this proposed rule.

The Agency also wants to clarify that streams, wetlands and other water bodies that are waters of the United States are not storm sewers for the purpose of this rule. This use of the term "storm sewer" differs from the way that the term has often been used in the context of flood control, where natural streams and other water bodies are sometimes considered storm sewers. Activities such as stream channelization, and stream bed stabilization, which occur in waters of the United States would generally not be subject to permits issued under § 402 of the CWA. However, such activities occurring within waters of the United States may be subject to dredge and fill permits required under section 404 of the CWA by the Corps of Engineers. Applicants should consult the regulatory definition of "waters of the United States" at 40 CFR 122.2 to distinguish between storm sewers and waters of the United States.

Some municipalities have maintained in previous comments that difficulties may arise with determining owners or operators of municipal storm sewers as clear title to the storm sewer may not exist. Often, where the ownership of such conveyances is in question, the storm sewer is not maintained and hence an "operator" criteria is not particularly useful. EPA requests comments on different wording for the definition of municipal separate storm sewer to clarify responsibility under the NPDES permit system. Do legal classifications such as storm sewers that are not private (e.g., public, district or joint district sewers) provide a clearer definition than an owner or operator criteria? Does the definition need to be clarified by explicitly stating that municipal streets and roads with drainage systems (curb and gutter, ditches, etc.) are part of the municipal storm sewer system, and the owners or operators of such roads are responsible for such discharges? To what extent should the owner or operator concept apply to municipal governments with land-use authority over lands which contribute storm water runoff to the municipal storm sewer system, and how should this responsibility be clarified?

2. Effective Prohibition on Non-Storm Water Discharges

Section 402(p)(3)(B)(ii) of the amended CWA requires that permits for discharges from municipal storm sewers shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers.

EPA does not interpret the effective prohibition on non-storm water discharges to municipal separate storm sewers to apply to discharges that are not composed entirely of storm water, as long as such discharge has been issued a separate NPDES permit. Rather, an "effective prohibition" would require separate NPDES permits for non-storm water discharges to municipal storm sewers. In many cases in the past, applicants for NPDES permits for process wastewaters and other non-

storm water discharges have been granted approval to discharge into municipal separate storm sewers, provided that the permit conditions for the discharge are met at the point where the discharge enters into the separate storm sewer. Permits for such discharges must meet applicable technology-based and water-quality based requirements of Sections 402 and 301 of the CWA. If the permit for a non-storm water discharge to a municipal separate storm sewer contains water-quality based limitations, then such limitations should generally be based on meeting applicable water quality standards at the boundary of a State mixing zone (for States with mixing zones) located in a water of the United States. Water-quality based limitations would also generally be established during dry weather conditions, when the discharge would not be mixed with storm water in the municipal separate storm sewer (unless receiving water conditions during wet weather dictate more stringent water-quality based limitations).

The legislative history to Section 405 of the WQA supports EPA's interpretation of the non-storm water prohibition. Senator Durenberger stated that the prohibition on non-storm water discharges into municipal separate storm sewers provision applies to non-storm water discharges to municipal separate storm sewers that are currently illegal under the Act (Vol. 133 Cong. Rec. S752 (daily ed. January 14, 1987)). By stating that the provision applies to discharges that are currently illegal, it is clear that Senator Durenberger intended that the effective prohibition apply to non-storm water discharges without NPDES permits, which have been illegal under the CWA since 1972.

The Agency believes that the effective prohibition does not apply to discharges with separate NPDES permits because there would be no additional treatment or environmental benefit from constructing a new sewer line discharging into the same receiving water. If the discharge was not directed into a new discharge line, it might be forced into a Publicly Owned Treatment Works (POTW). However, certain discharges, such as high volumes of non-contact cooling water, may decrease the overall treatment efficiency of the POTW without notable treatment benefits for the cooling water. Overall, the quality of the receiving water is not likely to be improved by installing new discharge lines.

All options will be considered when an applicant applies for a NPDES permit for a non-storm water discharge to a municipal separate storm sewer. In some cases, permits will be denied for discharges to storm sewers that are causing water quality problems in receiving waters. However, not all discharges present such problems, and in these cases EPA or State permit writers may allow such discharges to municipal separate storm sewers within appropriate permit limits.

Today's notice proposes two permit application requirements that are designed to begin to implement the effective prohibition. The first proposed requirement, discussed in § VII.G.6.a, addresses a screening analysis which is intended to provide sufficient information to develop priorities for a program to detect and remove illicit discharges. The second provision, discussed in § VII.G.7.b, requires municipal applicants to develop a recommended site-specific management plan to detect and remove illicit discharges (or ensure they are covered by an NPDES permit) and to control improper disposal to municipal separate storm sewer systems.

Conveyances which continue to accept other "non-storm water" discharges (e.g., discharges without an NPDES permit) do not meet the definition of municipal separate storm sewer, and are not subject to section 402(p)(3)(B) of the CWA unless the non-storm water discharges are issued separate NPDES permits. Instead, conveyances which continue to accept non-storm water discharges which have not been issued separate NPDES permits are subject to section 301 and 402 of the CWA. For example, combined sewers which convey storm water and sanitary sewage are not separate storm sewers and must comply with permit application requirements at 40 CFR 122.21 as well as other regulatory criteria for combined sewers.

3. Site-Specific Storm Water Quality Management Programs for Municipal Systems

Today's notice proposes fundamental changes to EPA's approach to control the discharge of pollutants from municipal separate storm sewers. Prior to the enactment of the WQA, NPDES permits for such discharges were required to meet all applicable provisions of section 402 and section 301 of the CWA. The WQA amended this requirement by adding section 402(p)(3)(iii) to the CWA which mandates that permits for discharges from municipal separate storm sewers shall require controls to reduce the discharge of pollutants to the maximum extent practicable (MEP), including management practices, control techniques and systems, design and engineering methods, and such other provisions as the Director determines appropriate for the control of such pollutants.

When enacting this provision, Congress was aware of the difficulties in regulating discharges from municipal separate storm sewers solely through traditional end-of-pipe treatment and intended for EPA and NPDES States to develop permit requirements that were much broader in nature than requirements which are traditionally found in NPDES permits for industrial process discharges or POTWs. As Senator Stafford explained, municipal storm sewer system "permits will not necessarily be like industrial discharge permits. Often, an end-of-the-pipe treatment technology is not appropriate for this type of discharge. As an EPA official explained in a meeting of the conferees:

> These are not permits in the normal sense we expect them to be. These are actual programs. These are permits that go far beyond the normal permits we would issue for an industry because they in effect are programs for stormwater management that we would be writing into these permits." (Vol. 132 Cong. Rec. S16425 (daily ed. Oct. 16, 1986))

A shift towards comprehensive storm water quality management programs to reduce the discharge of pollutants from municipal separate storm sewer systems is appropriate for a number of reasons. First, discharges from municipal storm sewers are highly intermittent, and are usually characterized by very high flow rates occurring over relatively short time intervals. For this reason, municipal storm sewers are usually designed with an extremely high number of outfalls within a given municipality, to reduce potential flooding. Traditional end-of-pipe controls are limited by material management problems that arise with high volume, intermittent flows occurring at a large number of outfalls.

Second, the nature and extent of pollutants in discharges from municipal systems will depend on the activities occurring on the lands which contribute runoff to the system. Municipal separate storm sewers tend to discharge runoff drained from lands used for a wide variety of activities. Given the material management problems associated with end-of-pipe controls, management programs that are directed at pollutant sources are often more practicable than relying solely on end-of-pipe controls.

In past rulemakings, much of the critcism of the concept of subjecting discharges from municipal separate storm sewers to the NPDES permit

program focused on the perception that the rigid regulatory program applied to industrial process waters and effluents from public sewage treatment plants was not appropriate for the site-specific nature of the sources which are responsible for the discharge of pollutants from municipal storm sewers.

The water quality impacts of discharges from municipal separate storm sewer systems depends on a wide range of factors including: the magnitude and duration of rainfall events, the time period between events, soil conditions, the fraction of land that is impervious to rainfall, land use activities, the presence of illicit connections, and the ratio of the storm water discharge to receiving water flow. In enacting Section 405 of the WQA, Congress recognized that permit requirements for municipal separate storm sewer systems should be developed in a flexible manner to allow site-specific permit conditions to reflect the wide range of impacts that can be associated with these discharges. The legislative history accompanying the provision explained that "[p]ermits for discharges from municipal separate stormwater systems * * * must include a requirement to effectively prohibit non-stormwater discharges into storm sewers and controls to reduce the discharge of pollutants to the maximum extent practicable, * * * These controls may be different in different permits. All types of controls listed in subsection [(p)(3)(C)] are not required to be incorporated into each permit" (Vol. 132 Cong. Rec. H10576 (daily ed. October 15, 1986) Conference Report). Consistent with the intent of Congress, EPA intends to develop permit application requirements that are sufficiently flexible to allow the development of site-specific permit conditions.

4. Large and Medium Municipal Storm Sewer Systems

Earlier regulatory efforts addressing NPDES permit requirements for storm water discharges required permits for discharges from municipal separate storm sewers located in urbanized areas that were designated by the Census Bureau. The Census Bureau defines urbanized areas to provide a description of the separation of urbanized and rural population and housing in the vicinity of large cities. A designated urbanized area consists of a central city or cities and surrounding closely settled territory or "urban fringe". Urbanized areas comprise an incorporated place and adjacent densely settled surrounding area that together have a minimum population of 50,000. However, for a number of reasons, the NPDES permit program for municipal separate storm sewers was not successfully implemented.

During the reauthorization of the CWA, Congress intervened by reaffirming its intent to establish a permit program for municipal separate storm sewers and establishing phased deadlines for its implementation. The amended CWA establishes priorities for EPA to develop permit application requirements and issue permits for discharges from three classes of municipal separate storm sewer systems. The WQA requires that NPDES permits be issued for discharges from large municipal separate storm sewer systems (systems serving a population of more than 250,000) by no later than February 4, 1991. Permits for discharges from medium municipal separate storm sewer systems (systems serving a population of more than 100,000, but less than 250,000) must be issued by February 4, 1993. After October 1, 1992, the permit requirements of the CWA are restored for all other discharges from municipal separate storm sewers.

The priorities established in the Act are based on the size of the population served by the system because, in general, discharges from municipal separate storm sewers located in municipalities with higher populations are thought to present a higher potential for contributing to adverse water quality impacts. NURP and other studies have verified that the event mean concentration of pollutants in urban runoff from residential and commercial areas remains relatively constant from one area to another, indicating that pollutant loads from urban runoff strongly depend on the total area of developed land, which in turn is related to population.

The term "municipal separate storm sewer system" is not defined by the Act. By not defining the term, Congress intended to provide EPA discretion to define the scope of municipal systems consistent with the objectives of developing site-specific management programs in permits to reduce pollutants in discharges from municipal separate storm sewer systems.

In evaluating options for defining large and medium municipal separate storm sewer systems, EPA will consider:

- The inter-jurisdiction complexities associated with municipal governments;
- The fact that many municipal storm water management programs have traditionally focused on water quantity concerns, and have not evaluated water quality impacts of system discharges or developed measures to reduce pollutants in such discharges;
- The advantages of developing system-wide storm water management programs for municipal systems;
- The geographic basis necessary for planning of comprehensive management programs to reduce pollutants in discharges from municipal separate storm sewers to the maximum extent practicable;
- The geographic basis necessary to provide flexibility to target controls on areas where water quality impacts associated with discharges from municipal systems are the greatest and to provide an opportunity to develop cost-effective controls;
- Need to establish a reasonable number of permits for municipal systems during the initial phases of program development that will provide an adequate basis for a storm water quality management program for over 13,000 municipalities after the October 1, 1992 general prohibition on storm water permits expires; and
- Congressional intent to allow the development of jurisdiction-wide, comprehensive storm water management programs with priorities given to the most heavily populated areas of the country.

a. Geographic Basis for Developing Storm Water Quality Management Programs for Developed Areas. Municipal storm sewer systems are installed to provide drainage for developed lands. In larger urbanized areas, extensive development continues beyond the boundaries of individual incorporated cities and towns. The concentration of many pollutants in discharges from municipal separate storm sewers are often low relative to many industrial process and POTW discharges. However, where a widespread area supports a high population, the cumulative impact of pollution loads associated with discharges from many municipal separate storm sewers can have significant water quality impacts. Where water quality impacts are associated with discharges from municipal storm sewer systems, the opportunity to develop appropriate controls must be related to the pollution source.

Most larger urbanized areas in the country are comprised of one or more core cities surrounded by urbanized areas outside of the city boundaries. Often, the population which resides outside of the core cities greatly exceeds the population which resides within the core cities' boundaries. Generally, the core areas have experienced development earlier than surrounding areas, with most new development occurring outside of the boundaries of

the core cities. For urbanized areas which follow this model, it may often be practicable to emphasize different aspects of a comprehensive storm water quality management program to reduce pollutants in discharges from separate storm sewers in different parts of the urbanized area.

Problems associated with illicit discharges of non-storm water to municipal separate storm sewers are generally expected to be more severe in areas which have undergone extensive development prior to the enactment and implementation of ordinances and other controls which prohibit illicit discharges to separate storm sewers. In these areas, identification and removal of illicit discharges provides opportunities for dramatic improvements in the quality of discharges from separate storm sewers.

In heavily developed areas, the opportunities for municipalities to implement some types of controls to reduce pollutants in municipal separate storm sewer discharges may be limited by the scarcity of land for controls, the high cost of retrofitting and institutional constraints. Areas of new development offer municipalities a more practicable opportunity to reduce pollutants in storm water discharges for a number of reasons. First, land is more readily available for structural controls such as detention and retention devices, which when incorporated into the design of a developing area can often offer multipurpose amenities to the development and may raise the value of the development. Second, other controls such as grass swales and grading patterns can be more easily implemented during the initial phases of development. Also, programs such as those in Florida and Maryland have focused on controls on new development because the storm water program can be administratively coordinated with other administrative procedures associated with new development such as subdivision, grading or building approvals.

Ideally, storm water quality management controls should be planned, developed, and coordinated on a watershed basis. This is true because pollutants in discharges from municipal storm sewer systems can come from diffuse sources over a wide area and a comprehensive pollutant control program is often needed to adequately protect receiving water quality. This geographical approach to water quality management has been identified as a key element to success in reducing pollutant discharges associated with urban runoff. Also, watershed planning allows priorities to be evaluated as part of a comprehensive assessment of all pollutant sources (all point and non-point sources) to the receiving water and the physical nature of the receiving water. Finally, many storm water pollution controls also control peak flow rates. These measures to control water quality should be coordinated with water quantity control measures. For example, retention basins which discharge into the lower portions of a watershed may create larger peak flows in small or medium-sized rivers and streams by delaying discharges in the lower portion of the watershed to coincide with increased flows caused by runoff in the upper portions of the watershed. The increased peak flows may cause flooding problems or accelerate flow velocities which can accelerate stream-bank and stream-bed erosion. In this manner, situations where controls which affect the rate of flow have adverse impacts on downstream water quality can be avoided.

Unfortunately, several administrative burdens are associated with defining, for the purpose of implementing the WQA, municipal storm sewer systems on a watershed basis. First, it is difficult to accurately estimate the population served by a given watershed. Second, watersheds do not follow political boundaries, thereby creating administrative difficulties in developing basin-wide control programs. Finally, it is difficult to establish an objective definition for the appropriate size of watershed basins, as smaller streams combine to form larger ones. The EPA requests comments on the use of watershed boundaries to define large and medium municipal separate storm sewer systems. Although the Agency does not prefer this option for large and medium systems, the Agency does favor incorporating watershed planning concepts and controls into the permit application requirements proposed in today's notice, and ultimately into permits for municipal separate storm sewer systems. As discussed in more detail later in today's notice, the permit application requirements proposed in today's notice encourage that, where practicable, management plans be developed which are consistent with the nature of the watershed. EPA requests comments on adapting the permit application requirements discussed in today's notice to accommodate the development of management programs based on a watershed basis.

b. Municipal Governments. A wide range of municipal entities may have primary responsibility for municipal storm sewers, including cities, towns, counties, flood control districts, and State Departments of Transportation. These municipalities perform a wide variety of other functions and are delegated a wide variety of legal authority by the State in which they are located. The potential role of various municipalities in reducing pollutants in discharges from municipal separate storm sewers will vary greatly as reflected by the nature of the pollution problem and the legal authority, functions, and administrative and financial capabilities of the municipality.

As discussed above, in larger urbanized areas, water quality impacts associated with diffuse sources contributing pollutants to discharges from municipal separate storm sewers will extend beyond the boundaries of core cities. In these areas, it is possible that a significant number of municipalities may own or operate municipal separate storm sewers.

Section VII.G.2 of this preamble provides a proposed strategy for developing storm water quality management programs for reducing pollutants in discharges from municipal separate storm sewers through NPDES permits. The components of the storm water quality management programs discussed in today's notice can be divided into two general categories. The first category is comprised of measures that do not require the use of police powers to implement. These components include source identification measures associated with mapping, characterizing discharges by estimating flow rates, pollutant concentrations, pollutant loadings, sampling discharges and identifying illicit connections, and implementing certain controls to reduce pollutants such as public education measures to encourage proper oil disposal or recycling or proper pesticide use. This category also includes activities such as maintaining the separate sewers, and design and engineering methods such as designs for new roads to minimize curb and gutter storm water collection systems. Municipal dischargers generally will not lack legal authority to implement these components of the storm water quality management program.

The second category is comprised of measures that generally may require municipal police powers to implement. Examples of these types of controls include reducing pollutants in construction site or industrial site runoff which discharges to municipal separate storm sewers. The police power required to implement these provisions can take a variety of forms including the power to

develop and enforce ordinances, contracts, orders or similar means.

The municipal entity with primary control over a storm sewer may not have sufficient police powers to implement all aspects of a comprehensive storm water quality management plan. In such cases, a combination of municipal entities may be required in order to guarantee sufficient legal authority, financial capability and administrative capability to implement all components of a storm water quality management program. The degree to which municipalities without sufficient police powers are addressed is a major difference between the options presented below for defining large and medium municipal separate storm sewer systems.

C. Options Considered. EPA requests comments on a number of options for defining large and medium municipal separate storm sewer systems. Generally, the options on which EPA is requesting comments can be classified into two categories. The first category of options, listed below as Options 1, 2, 3, and 4 would define municipal systems in terms of the municipal entity which owns or operates storm sewers. The second category of options would define municipal systems on a geographic basis. With Options 5, 6, and 7, all municipal separate storm sewers within the specified geographic area would be part of the municipal system, regardless of which municipal entity owns or operates the storm sewer.

EPA favors those options for defining municipal separate storm sewer systems that rely primarily on the municipal entity which owns or operates or otherwise has jurisdiction over storm sewers. These options are preferred because they will lessen the administrative complexities of initially developing the permit program for discharges from municipal separate storm sewers by decreasing the number of municipal entities which will initially be subject to the permit program.

EPA requests comments on a wide range of options. The Agency will use the comments received on the various options when developing a final regulation defining large and medium municipal separate storm sewer systems. In addition, the Agency believes that in certain circumstances, comments received on the various options will be beneficial when developing strategies for designating municipal separate storm sewers on a system-wide basis under section 402(p)(2)(E) of the CWA for a permit prior to promulgation of final permit application regulations or prior to development of additional regulations under section 402(p)(6) of the CWA.

Also, EPA intends to consider those municipal separate storm sewers which are ultimately not included in the definition of large and medium separate storm sewer systems, along with other municipal storm sewers, in the studies mandated under section 402(p)(5) of the CWA for appropriate regulation after October 1, 1992 under section 402(p)(6) of the Act. Comments received during this rulemaking, along with other information, will constitute a portion of the section 402(p)(5) study. Therefore, EPA requests comments on the appropriateness of all options for study under section 402(p)(5), and on corresponding procedures and methods to reduce pollutant in discharges from municipal separate storm sewer systems described in each option that would be appropriate as regulations under section 402(p)(6). EPA will, where appropriate, consider today's request for comments on the discharges from those municipal separate storm sewers identified in the various options for defining municipal systems as a proposal for regulation under section 402(p)(6) and establish appropriate regulations (for example, the final regulation may define large and medium municipal separate storm sewer system as proposed in Option 1, and also promulgate permit application requirements for counties with a population of 100,000 or more in unincorporated areas (see Option 3) under section 402(p)(6) with a later date for permit application submittal).

It should be noted that discharges from municipal separate storm sewer systems that are not included in the final regulatory definition of large or medium municipal separate storm sewer system may still be required to obtain an NPDES permit if they are determined, under section 402(p)(2)(E) of the CWA, to be a significant contributor of pollutants or to be contributing to a violation of a water quality standard (see § 122.26(a)(1)(v) of the proposed regulation). The Agency is considering the use of the section 402(p)(2)(E) authority to determine the appropriate scope of large or medium municipal separate storm sewer systems on a case-by-case basis (see Option 2 below).

The Agency prefers to use different criteria to determine the appropriate scope of large or medium municipal separate storm sewer systems on a case-by-case basis (see Option 1 below).

The Agency also requests comments on whether non-municipal, non-industrial storm water discharges (e.g., storm water discharges from Federal facilities without industrial activities) that have been determined to be significant under section 402(p)(2)(E) should be addressed as part of a large or medium municipal separate storm sewer system.

In addition, the Agency requests comments on providing municipalities with an opportunity (see proposed § 122.26(f)(3)), to submit a petition to adjust the Census estimates of the population of the municipality to account for storm water discharges to combined sewers. The Agency prefers that storm water discharges to combined sewers be addressed in permits issued for discharges from combined sewer overflows (CSOs) and from publicly owned treatment works (POTWs).

Option 1: Systems Owned or Operated by Incorporated Places Augmented by Potential Inclusion of Interrelated Discharges. EPA proposes that the definition of large and medium municipal separate storm sewer system include those municipal separate storm sewers owned or operated by "incorporated places" with a population which exceeds the appropriate limit. (EPA is proposing to define the term "incorporated place" at 40 CFR 122.26(b)(3) to include the District of Columbia, or a city, town or village that is incorporated under the laws of the State in which it is located. The proposed term "incorporated place" does not include county governments, and certain other municipal entities such as flood control districts, and sewer districts.)

The Agency believes that this approach would provide for the initial development of core storm water management programs in the largest cities in the Nation. The Census Bureau estimates for 1986 indicate that 60 incorporated places have populations of more than 250,000 and that 122 places have populations of more than 100,000 but less than 250,000. The Agency recognizes that many of these cities currently do not have comprehensive programs to address storm water quality. In addition, most of the NPDES States and EPA Regions have limited experience in addressing storm water quality management in the comprehensive manner that is envisioned in this rulemaking. Because of the relative newness of the storm water NPDES program for discharges from municipal systems, the Agency anticipates that, generally, more resources will be needed to begin to implement the initial phases of the program, and therefore, Option 1 provides a reasonable and realistic basis for the initial phases of

development of this program. In addition, this option provides the maximum flexibility for EPA to continue to study the appropriate manner to expand the NPDES program after October 1, 1992 for discharges from municipal separate storm sewers. In this manner, additional flexibility to develop requirements which are tailored to the legal nature and capabilities of various municipalities will be provided.

Option 1 focusses primarily on discharges from municipal separate storm sewer systems that are owned or operated by one municipality, an "incorporated place" with a population of 250,000 or more, or of 100,000 or more. However, in many cases, discharges from municipal separate storm sewers owned or operated by "incorporated places" with a population of 250,00 or more, or of 100,000 or more, will have interrelated impacts and be otherwise interrelated (but not necessarily physically interconnected) to discharges from municipal separate storm sewers owned or operated by municipal entities *other than* an "incorporated place" with a population of 250,000 or more, or 100,000 or more. Wide differences in the physical nature and in water-quality impacts can be expected between drainage systems of various developed areas, as well as differences in the legal authorities and jurisdictions associated with municipalities responsible for storm water discharges.

EPA prefers the Director of the NPDES program make case-by-case decisions on the total scope of each large and medium municipal separate storm sewer system. The Agency is proposing that the definitions of large and medium municipal separate storm sewer system provide for case-by-case designation of interrelated discharges from municipal separate storm sewers that are owned or operated by municipal entities *other than* an "incorporated place" with a population of 250,000 or more, or 100,000 or more based on a discretionary consideration of: the physical interconnections between the municipal separate storm sewers; the location of discharges; the quantity and nature of pollutants discharged; the nature of the receiving waters; or other relevant factors (see proposed § 122.26(b)(4)(ii) and (7)(ii)). For example, discharges from separate storm sewers associated with a State highway running through an "incorporated place" with a population of over 100,000 along with discharges from separate storm sewers owned by the "incorporated place" may adversely impact a stream. In such a case, the Director may consider designating the discharge from the State highway as *part* of the municipal separate storm sewer system serving that "incorporated place".

Accordingly, the proposed definitions of the terms large and medium municipal separate storm sewer system are intended to provide, within the definitions themselves, a flexible and administratively simple way for the Director to decide, on a case-by-case basis, whether and how to include other relevant "interrelated" municipal discharges (for example, discharges from one or more other adjacent smaller municipalities' separate storm sewers systems) into each large or medium municipal separate storm sewer system for NPDES permitting purposes. The approach in the proposed definitions would not require the Director to first determine that the smaller municipality's discharge meets the standard of section 402(p)(2)(E).

Thus, under Option 1, a consideration of location-specific factors would provide flexibility to establish the appropriate total scope of each "municipal separate storm sewer system". In addition, this approach may reduce the burden on some municipalities designated into the "system" when they participate, with the "incorporated place" whose storm sewers are the core of the same system in the development of a single system-wide permit application.

The municipality to be designated into the NPDES-regulated "system" on this basis would not have to meet any criteria for size of population.

EPA requests comments on the appropriate criteria and procedures for designating other municipalities into the large and medium municipal separate storm sewer systems on a case-by-case basis.

Option 2: Systems Owned or Operated by Incorporated Places Augmented by Including Other Municipal Discharges Determined to be Significant Under Section 402(p)(2)(E) Authority. This Option is similar to Option 1, in that it would focus primarily on discharges from municipal separate storm sewer systems that are owned or operated by one municipality, an "incorporated place" with a population of 250,000 or more, or of 100,000 or more. However, this option would differ in the approach to addressing interrelated municipal separate storm sewer discharges from multiple municipalities.

Under Option 2, a discharge from a municipal separate storm sewer that is owned or operated by a municipal entity *other than* an incorporated place with a population of 250,000 or more or a population of 100,000 or more, but less than 250,000, could be designated as *part* of the large or medium municipal separate storm sewer system if the Director of the NPDES program determines that the discharge is contributing to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. Such a determination could be based on the consideration of: the location of the discharge with respect to waters of the United States; the size of the discharge; the quantity and nature of the pollutants discharged to waters of the United States; and other relevant factors (see § 122.26(a)(1)(v)(A)–(D) of the proposed regulation).

This option provides different designation criteria and standards and less administrative flexibility than the designation process described in Option 1. Option 2 would still allow consideration of location specific factors, but would establish a more stringent threshold which must be met before expanding the scope of a large or medium municipal separate storm sewer system on a case-by-case basis.

Municipalities included in the NPDES-regulated "system" on the basis of section 402(p)(2)(E) would not have to meet any specific criteria based on size of population.

As in Option 1, Option 2 may reduce the burden on some municipalities deemed to be part of the large or medium municipal separate storm sewer system when they participate, with the "incorporated place" whose storm sewers are the core of the same "system", in the development of a single system-wide permit application.

EPA request comments on the appropriate criteria and procedures for making case-by-case determinations of the scope of large and medium municipal separate storm sewer systems using the § 402(p)(2)(E) authority.

Option 3: Systems Owned or Operated by Counties. In most States, the primary divisions of the State are counties. In Louisiana, the primary divisions are parishes. In Alaska, the State is divided into organized or unorganized boroughs.

The importance of a county in the government structure of a State varies greatly from State to State. In some western and southern States, counties are divided into townships for limited administrative purposes. In these States, the county is the basic unit of government. In a group of States extending from New York and New Jersey into the Mid-West, the entire county may be divided into townships. In other States, the county is divided

into incorporated and unincorporated areas, with the importance of the county government varying throughout the county. Generally, counties have an important role in highway construction and maintenance (the Census Bureau estimates that, nation-wide, counties are responsible for 32 percent of the expenditures of local governments made for highways), and may assume other responsibilities for drainage.

EPA requests comments on extending the definition of large and medium municipal separate storm sewers to include, in addition to municipal separate storm sewer systems owned or operated by an incorporated place with a population equal to, or exceeding the appropriate limit, storm sewers that are owned or operated by a county government entity in counties with the appropriate population. Under this approach, municipal separate storm sewers owned or operated by cities, towns, townships, boroughs and other municipal entities with a population of less than 100,000 within the county would not be defined as part of the county system.

As discussed above, the legal authority of county governments will vary from State to State, and in many counties may vary throughout the county. To successfully implement this approach with respect to county owned or operated separate storm sewers, permits will have to incorporate storm water quality management programs which would reflect and be compatible with the variations in the county government's legal authority. Thus, the requirements in the management program may vary to reflect the legal authority of the county in a given location. For example, in unincorporated areas of the county, where the county is the primary municipal entity, the storm water quality management program may have all of the appropriate components that are discussed in today's notice. However, in certain areas of the county with incorporated places with a population of less than 100,000, the permit may only address control measures which do not require legal authority to implement (see above).

Census estimates for 1986 indicate that 185 counties have populations of 250,000 or more, while 225 counties have populations of 100,000 or more, but less than 250,000. After considering the number of permits that would be initially required under this option, along with the extensive surface area covered by the combined counties, the Agency believes that this option is not practicable for the initial phases of program development. Rather than addressing all counties with a population of 250,000 or more or between 100,000 and 250,000, many of which encompass extensive rural areas, in the initial phases of program development the Agency will consider various alternatives for establishing the size of the population which is served by the county.

EPA also requests comment on basing the definition of the population served by the municipal storm sewer system on the population of a county which resides within urbanized areas that have been defined by the Census Bureau. This system of measuring populations would provide a means to establish priorities for counties based on the amount of urban developed land in the county. Although all municipal storm sewers owned or operated by an applicable county would be part of the municipal separate storm sewer system, and would be subject to permit requirements, measures to reduce pollutants to the maximum extent practicable would be focused on where water quality improvements are needed, i.e., on the most heavily populated areas of the county and on industrial lands, which are generally expected to cause more water quality impacts.

EPA also requests comment on defining the population served by the county owned or operated municipal storm sewer system as that population of the county which resides outside of incorporated areas of the county. This approach would focus on counties with high populations in unincorporated areas, because these counties would be assumed to generally have greater legal authority, and financial capability for developing and implementing a storm water quality management program. This approach assumes that, in unincorporated areas of a county with a high population, the county government is the functional equivalent of an incorporated government.

Option 4: Systems Owned and Operated by States. Each State has an extensive separate storm sewer system that drains State highways. EPA requests comments on, in addition to other systems of municipal storm sewers, all separate storm sewers associated with State highways should constitute a single system. This approach may simplify the permit application and issuance process for State Departments of Transportation and for the permit issuing agency by consolidating all State highways into one system. In addition, this approach provides a basis for consistent regulation of municipal separate storm sewers associated with State highways which would allow priorities to be established on a consideration of the entire State system. EPA is considering this option in conjunction with other options (for example, EPA could define large municipal separate sewer systems to include municipal storm sewers described in Option 1 and Option 4).

Option 5: Incorporated Place Boundaries. Within the boundaries of an incorporated place, in addition to the storm sewer owned or operated by the incorporated place, some municipal separate storm sewers may be operated by county agencies, State agencies, flood control districts or sewer districts.

Option 5 differs from Option 1 in that all municipal separate storm sewers within an incorporated place with an appropriate population would always be part of the municipal system, instead of beginning with only those municipal storm sewers owned or operated by the incorporated place. Where multiple agencies within a single jurisdiction have storm water management responsibilities, the Agency would consider appropriate interagency agreements to ensure the development of comprehensive control programs and the development of permit conditions which may, for a given discharge, require one municipal entity to implement one set of controls which require police power to implement and another municipal entity to implement a different set of controls which pertain to the operation of the storm sewer.

This approach would create some additional complexity to the initial phases of development of the NPDES storm water program by increasing the scope of the program to include additional municipal permittees. Option 5 would also provide for case-by-case designations as discussed under Option 1 for interrelated discharges from municipal separate storm sewers outside of the incorporated place with a population of 250,000 or more, or of 100,000 or more.

However, the basis of the Option 5 approach would ensure that all discharges from municipal separate storm sewers within the incorporated place were initially addressed under the NPDES program and would provide a mechanism for developing intergovernmental agreements where necessary.

Option 6: County Boundaries. EPA requests comments on defining large and medium municipal separate storm sewer systems to include all municipal separate storm sewers that are located in a county with a population that exceeds the appropriate statutory population limit. Under this approach,

all municipal separate storm sewers that are located within a county with the appropriate population would constitute a large or medium municipal system.

The Agency does not favor defining large and medium municipal systems based on county boundaries at this time because of the extremely large number of municipal entities which would be affected during the initial phases of the storm water program. In addition to the 410 counties with populations of 100,000 or more, several thousand other municipal entities would be affected under this approach. The Agency prefers to develop core programs within the central cities before addressing these municipalities. For this reason, EPA prefers, at this time, to continue to consider this option under the studies mandated under Section 402(p)(5).

In comparing this option to option 1, it should be noted that addressing discharges from separate storm sewers within counties would, in larger urbanized areas, provide a geographic basis necessary for the planning of comprehensive programs to reduce pollutants in discharges from municipal separate storm sewer systems to the maximum extent practicable.

The EPA believes that basing the definition of large and medium municipal storm sewer systems on counties would offer additional flexibility in developing pollution control strategies and targeting controls where water quality improvements are needed and can be achieved in a practicable manner. For example, the NURP study indicated that it is much more feasible and cost-effective to develop controls for areas that are in the process of being developed than it is to develop controls for areas that are more fully developed. This option would allow municipalities flexibility to address storm water concerns associated with many areas of rapid development, rather than relying more heavily on retrofitting controls in older urban core areas defined by city limits.

The water quality impacts of urban runoff are generally more significant for smaller rivers and streams where the ratio of the portion of the drainage basin that is developed to the portion that is undeveloped is relatively high. The county option provides an adequate basis to address existing and future water quality impacts associated with municipal separate storm sewers for many of these water bodies.

Option 7: Unbanized Areas. The storm water permit application regulations that were promulgated in September 26, 1984 established the scope of the requirement to obtain a permit by limiting the definition of storm water point source as it related to municipal separate storm sewers to areas that were located on urbanized areas designated by the Bureau of Census. Prior to the enactment of the WQA, the use of the urbanized area designation to limit the scope of NPDES permit program served as an important tool to establish manageable limits on the large administrative burden associated with preparing and processing permit applications for individual discharges from municipal separate storm sewers. However, the WQA provides several mechanisms which ease this burden, including authorizing the Director to issue permits for municipal storm sewers on a system- or jurisdiction-wide basis, thereby greatly reducing the administrative burden associated with permitting municipal storm sewers. Under this new authority, the advantages of retaining the use of urban area designations to determine initial permit applicability are outweighed by the difficulties associated with defining which discharges are within the urban area and with using urban area boundaries which often do not follow political boundaries. Because the boundaries of urban areas do not follow political boundaries, this option may create additional administrative complexity where some discharges from in a given municipality are addressed initially, and other discharges in other parts of the municipality must be addressed later under regulations developed under section 402(p)(6). Further, the urban areas designated in 1980 do not include many other areas that are undergoing rapid development today. Using more recent estimates of urban areas may create uncertainty in the regulatory definition. Also, areas of new development would not be addressed until after the development had progressed significantly, and therefore, opportunities to limit pollutants from the areas of new development would be limited. Nationwide, urban areas increased by approximately 4% in area annually.

5. System-Wide Permit Applications

Section 402(p)(3)(B)(i) of the amended CWA provides that permits for municipal discharges from municipal storm sewers may be issued on a system-wide or jurisdiction-wide basis. This provision is an important tool towards reaching the goal of developing the comprehensive storm water management programs envisioned by the Act.

The system-wide permit approach represents a drastic change from the regulatory approach taken in the 1984 regulations, which required individual permit applications for each outfall located in a Census designated urban area. The 1984 permit applications were to serve as the basis for developing conditions for individual permits for each discharge. EPA proposes to abandon the individual permit approach for municipal storm sewer outfalls in favor of a program approach that will allow system-wide planning and implementation and appropriate targeting of controls based on an evaluation of priorities.

Under the permit application requirements proposed in today's rule, if the appropriate co-applicants are identified, one permit application may be submitted for a large or medium municipal separate storm sewer system (see § VII.E.4 above). System-wide permit applications can in turn be used to issue system-wide permits which could cover all discharges in the system.

Where several municipal entities are responsible for obtaining a permit for various discharges within a single systems, the Agency will encourage system-wide permit applications involving the several municipal entities for a number of reasons. The system-wide approach not only provides an appropriate basis for planning activities and coordinating development, but also provides municipal entities participating in a system-wide application the means to spread the resource burden of monitoring, evaluating water quality impacts, and developing and implementing controls. The system-wide approach provided in today's notice recognizes differences between individual municipalities with responsibilities for discharges from the municipal system by allowing for different permit conditions to apply to different municipalities. To encourage this flexibility, the permit application requirements proposed in today's notice allow individual municipalities participating in system-wide applications to submit information regarding municipality specific storm water quality management programs to reduce pollutants in system discharges.

In some cases, it may be undesirable for all municipal entities with storm water responsibility within a municipal system to be co-permittees under one system-wide permit. The permit application requirements proposed in today's notice allow individual municipal entities within the system to submit permit applications and obtain a permit for that portion of the storm sewer system for which they are responsible. Thus, several permits may be issued to cover various subdivisions of a single municipal system.

6. Co-Permittees to System-wide Permits

Although several of the proposed options for defining large and medium separate storm sewer systems focus primarily on municipal separate storm sewers that are owned or operated by incorporated cities, towns or villages with the appropriate population (e.g., options 1, 2, or 5), the definition of the "system" could be modified by the Director of the NPDES program on a case-by-case basis to include municipal separate storm sewers owned or operated by other municipal entities.

To accommodate the issuance of permits in which several municipalities are co-permittees, the permit applications for municipal storm sewers described in today's proposal have been designed to facilitate multiple municipal agencies (i.e. flood control districts, local governments, State Departments of Transportation) submitting a joint permit application appropriate for issuing system-wide permits with multiple co-permittees. EPA is requesting comments on this approach, and when it would be appropriate to tailor the permit application requirements to meet the needs of different types of municipal agencies (for example, should distinct permit application requirements be developed for State Departments of Transportation).

G. Permit Application Requirements for Large and Medium Municipal Systems

The August 12, 1985 notice had proposed to clarify that storm water discharges from municipal separate storm sewers would be classified as Group I storm water discharges. The Group I classification, indicating a higher potential for contributing to an adverse environmental impact, was justified on the basis of data from the NURP study of urban runoff which indicate that in many instances BOD loadings in urban runoff were estimated as comparable to that from secondary treatment facilities, while TSS loadings were estimated to be a factor of ten times higher than loadings from secondary treatment plants. The NURP study also found high levels of heavy metals and several organic chemicals in urban runoff.

The Group I classification triggered permit application requirements which included quantitative data sampling for each Group I outfall. In the August 12, 1985 notice, EPA proposed to require that quantitative sampling data for all outfalls from municipal separate storm systems be submitted in permit applications. Eight comments were received on this issue. Six of the commenters objected to the proposal because they felt that such a requirement would create an undue burden on municipalities which have many outfalls. Some municipalities suggested identifying the area drained by the system and then selecting points for representative sampling. Another commenter argued that if three or four outfalls are receiving similar runoff, the participant should only be required to sample one outfall. Other commenters suggested that only outfalls that are suspected of having pollution problems should be tested, although no basis for determining such "problem" outfalls were offered. Two of the eight commenters, both State agencies, felt that all outfalls should be tested.

Today's notice proposes to abandon the Group I classification system and requests comments on replacing the prior permit application system for discharges from municipal systems, based primarily on sampling all outfalls, with a system that involves comprehensive system-wide evaluation of pollutant sources. The permit application requirements for discharges from large and medium municipal separate storm sewer systems proposed in today's notice do not focus on the collection of data at each outfall of the municipal system, but rather require a screening analysis to identify areas of the system affected by illicit non-storm water discharges and some representative sampling.

The permit applications for municipal storm sewer systems proposed in today's notice are applicable to large municipal storm sewer systems (systems serving a population of more than 250,000); medium municipal storm sewer systems (systems serving a population of more than 100,000 but less than 250,000) and any other municipal separate storm sewer system that is required to obtain a permit that the Administrator or NPDES State designates under section 402(p)(2)(E).

1. Strategy for Implementing the Permit Program

Given the differing nature of discharges from municipal separate storm sewer systems in different parts of the country, and the varying water quality impact of municipal storm sewer discharges on receiving waters, EPA intends to develop permit application requirements designed to lead to the development of site-specific storm water management programs. In order to effectively implement this goal, EPA is currently rethinking the appropriate structure and purpose of the NPDES permit program as it applies to municipal separate storm sewers systems. EPA believes that the appropriate permitting strategy (including both the permit application and the permit) for controlling pollutants from municipal separate storm sewers should involve the following components:

- Identifying significant sources of pollutants;
- Characterizing pollutants associated with discharges from the municipal separate storm sewer system;
- Estimating expected changes in the characteristics of pollutants in discharges from the municipal separate storm sewer system associated with population growth and changes in land use activities;
- Initially assessing impacts on the water quality of receiving water bodies;
- Proposing controls to reduce pollutants to the maximum extent practicable;
- Estimating the changes in the characteristics of pollutants in discharges from municipal separate storm sewer systems associated with proposed controls;
- Modifying the proposal of controls to reduce pollutants to reach desired objective (control pollutants to the maximum extent practicable);
- Implementing controls; and
- Evaluating changes in water quality associated with implementing controls.

EPA is proposing to structure the permit application requirements for large- and medium-sized municipal systems to address:

- The development of a municipal storm water management program to control pollutants in municipal storm water discharges. Viable management programs must have adequate legal authority and financial capabilities to ensure compliance with permit conditions;
- A process to identify sources which contribute pollutants to municipal storm water discharges;
- Initial characterization of the discharges from the municipal storm sewer system; and
- Proposed management plans to reduce the discharge of pollutants from municipal storm sewers to the maximum extent practicable.

This information is necessary to allow permits to be based on site-specific best professional judgement evaluations of appropriate pollution control measures. EPA requests comment on the overall strategy for developing a permit program for discharges from municipal separate storm sewers and on which aspects of the strategy should be incorporated into permit applications.

2. Structure of the Permit Application

EPA is proposing a two part permit application that is consistent with the goal of developing site-specific water quality management programs for storm water in NPDES permits

a. Part 1 Application. Part 1 of the permit application is intended to provide an adequate basis for identifying sources of pollutants to the municipal storm sewer system; to preliminarily identify discharges of storm water that are appropriate for individual permits; and to formulate a strategy for characterizing the discharges from municipal separate storm sewer systems.

The components of Part 1 of the permit application include a description of:

- General information regarding the permit applicant or co-applicants (§ 122.26(d)(1)(i));
- A description of the existing legal authority of the applicant(s) to control pollutants in storm water discharges and a plan to augment legal authority where necessary (§ 122.26(d)(1)(ii));
- Source identification information including a description of the historic use of ordinances or other controls which limited the discharge of non-storm water discharges to municipal separate storm sewer systems and the location of known municipal separate storm sewer outfalls (§ 122.26(d)(1)(iii));
- Information characterizing the nature of system discharges including existing quantitative data, the results of a field screening analysis to detect illicit discharges and illegal dumping to the municipal system; an identification of receiving waters with known water quality impacts associated with storm water discharges; a proposed plan to characterize discharges from the municipal storm sewer system by estimating pollutant loads and the concentration of representative discharges, and a plan to obtain representative data (§ 122.26(d)(1)(iv)); and
- A description of existing structural and non-structural controls to reduce the discharge of pollutants from the municipal storm sewer (§ 122.26(d)(1)(v)).
- The submittal of Part 1 of the permit application will allow EPA, or approved NPDES States, to adjust the Part 2 permit application requirements to assure flexibility in developing permit application requirements that are appropriate for the permit applicant given the site specific characteristics of the municipal storm sewer system.

b. Part 2 Application. Part 2 of the proposed permit application is designed to supplement information provided in the Part 1 permit application and to provide municipalities with the opportunity of proposing a comprehensive program of structural and non-structural control measures that will control the discharge of pollutants, to the maximum extent practicable, from municipal storm sewers. The components of the proposed Part 2 permit application include:

- A demonstration that the legal authority of the permit applicant satisfies regulatory criteria (§ 122.26(d)(2)(i));
- Supplementation of the source identification information submitted in the Part 1 application to assure that all major outfalls are identified (§ 122.26(d)(2)(ii));
- Information to characterize discharges from the municipal system including quantitative data from a screening analysis for detecting illicit discharges and illegal dumping, representative data and estimates of pollutant loadings and concentrations of pollutants in discharges (§ 122.26(d)(2)(iii));
- A proposed management program to control the discharge of pollutants to the maximum extent practicable, from municipal storm sewers (§ 122.26(d)(2)(iv));
- Assessment of the performance of proposed controls (§ 122.26(d)(2)(v));
- A financial analysis estimating the cost of implementing the proposed management programs along with identifying sources of revenue (§ 122.26(d)(2)(vi)); and
- A description of the roles and responsibilities of co-applicants (§ 122.26(d)(2)(vii)).

In addition to providing site-specific information, the permit application requirements proposed in today's notice have been designed to allow municipalities an opportunity to propose the set of controls that, in the applicant's opinion, representing the most appropriate means of controlling the discharge of pollutants from municipal storm sewer systems. These proposed plans will be used by the permitting authority to develop permit conditions to control pollutants in the discharges from municipal separate storm sewer systems to the maximum extent practicable. This overall scheme recognizes that local government entities have a critical responsibility for evaluating the nature and sources of pollutant discharges from municipal separate storm sewer systems and for devising appropriate methods of control. Proper development of proposed municipal storm water management programs affords municipalities the opportunity to propose model conditions for their own permits.

3. Major outfalls

In past rulemakings, a controversial issue has been the appropriate sampling requirements for municipal separate storm sewer systems. Earlier storm water rulemakings have been based primarily on the principle that all discharges to waters of the United States from municipal separate storm sewers located in urban areas must be covered by an individual permit. This approach required that individual permit applications contain quantitative data to be submitted for all such discharges. This approach was criticized because of the extremely large number of outfalls in some municipal separate storm sewer systems. Most incorporated cities with a population of 100,000 or more do not know the exact number of outfalls from their municipal systems, but estimates range from 50 to 1,000 or more.

Under the approach taken in earlier rulemakings, the impacts of pollutant loads and impacts on ambient water concentration from municipal storm sewer systems would be analyzed by evaluating samples from all of the discharges from the system. This approach would involve evaluating water quality impacts through the use of models to estimate pollutant loads and to estimate ambient water concentrations during and immediately after storm events, and to calibrate the models using the quantitative data from each outfall. Under this earlier approach, limited information regarding pollutant sources would be available in the permit application to select appropriate models for estimating pollutant loads. Rather, relatively general models would be used which relied on limited quantitative data to assure that the model was calibrated.

In light of the increased flexibility provided by the WQA for regulating municipal separate storm sewer discharges, the approach proposed in today's notice will not require submittal of individual permit applications with quantitative data for each outfall of a municipal system, but rather will encourage systemwide permit applications to provide information suitable for developing effective storm water management programs. Under this approach, not all outfalls of the municipal system will be sampled, but rather more specific and accurate models for estimating pollutant loads and discharge concentrations will be used. The use of these models will require the identification of sources which are responsible for discharging

pollutants into municipal separate storm sewers and will not require as much data to calibrate due to the source-specific nature of the model. A number of standard and localized models have been developed for estimating pollutant loads from storm water discharges. For example, the United States Geological Survey (USGS) has developed four sets of regression equations for 10 pollutants in urban runoff (see "Estimation of the Urban Storm-Runoff Quality and Quantity Data in Metropolitan Areas throughout the United States", 1988). The NURP study provides event mean concentration estimates for 10 pollutants. EPA requests comments on the use of these and other standard and localized models.

By adopting an approach that incorporates source identification measures, the amount of quantitative data required to characterize discharges from the municipal systems will be reduced because of the increased accuracy of site-specific models which can be used. Consistent with a system-wide permit application approach, EPA is proposing to focus source identification measures on "major outfalls". The proposed definition of major outfalls includes any municipal separate storm sewer outfall that discharges from a pipe with a diameter of more than 36 inches or its equivalent (discharges from a drainage area of more than 50 acres); or municipal separate storm sewers that receive storm water from lands zoned for industrial activities, an outfall that discharges from a pipe with a diameter of more than 12 inches or its equivalent (discharges from a drainage area of 2 acres or more). EPA views that it is appropriate to focus source identification and characterization measures conducted as permit application requirements on these outfalls to provide initial screening information that will allow priorities to be set for the system. However, it should be clarified that *all* outfalls from medium and large municipal separate storm sewer systems need to be covered by the permit applications proposed in today's notice and that *all* outfalls from such systems will need to be covered by a permit.

EPA requests comments on the proposed definition of major outfall, and whether outfalls with a diameter of more than 36 inches or its equivalent, or for municipal separate storm sewers that receive storm water from lands zoned for industrial activities, an outfall that discharges from a pipe with a diameter of more than 12 inches or its equivalent provides an appropriate number of outfalls for focusing source identification requirements. Where practicable, comments should include data indicating the distribution of outfall sizes within municipal systems.

4. Viable Program

Perhaps the most important function of the NPDES permit program for municipal separate storm sewers is to ensure that local governments establish viable programs to control pollutants in discharges from municipal separate storm sewers. The proposed permit application requirements address three components of a viable local program for controlling pollutants in discharges from municipal separate storm sewers: legal authority, financial and administrative capability. The ability of a permit applicant or a set of permit applicants to satisfy these criteria will be evaluated in light of the site-specific proposed management plans proposed at 122.26(d)(2)(iv) (discussed in § VII.E.7 of the preamble).

Although pollutants in discharges from municipal separate storm sewers can be controlled by providing end-of-pipe treatment, many representatives from municipalities have expressed concerns that providing treatment for all outfalls from large and medium municipal separate storm systems is technically and economically infeasible. These representatives have expressed a willingness to explore alternative methods, such as developing a variety of preventive source control measures, to control pollutants in such discharges.

However, if source controls are to function in lieu of end-of-pipe treatment, then the permittee, or a set of co-permittees, must have adequate legal authority to ensure that controls on discharges to a municipal storm sewer are implemented and that permit conditions based on source control measures do not become ineffective "paper" requirements.

EPA is proposing that municipal separate storm sewer system permit applicants demonstrate legal authority established by statute, ordinance, or series of contracts which authorizes or enables the applicant at a minimum to:

- Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by each storm water discharge associated with industrial activity;
- Prohibit through ordinance, order or similar means, the discharge of illicit discharges to the municipal separate storm sewer;
- Control through ordinance, order or similar means, the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;
- Control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;
- Require compliance with conditions in ordinances, permits, contracts or orders; and
- Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and non-compliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

EPA requests comments on the process by which municipal applicants should demonstrate legal authority and how EPA should evaluate the legal authority of municipal applicants.

In order to ensure that all permit conditions, including both structural and source control measures, are implemented, EPA is proposing to require that permittees demonstrate that they have the fiscal resources and administrative capabilities to carry out the objectives of the permit.

EPA is proposing to require municipal permit applicants to submit a fiscal analysis of expenditures that will be required in order to implement the proposed management plans required in Part 2 of the application. The description of fiscal resources should include a description of the source of the funds.

EPA is requesting comments as to the appropriateness of these criteria for permit applicants for municipal separate storm sewer systems and on what additional criteria should be defined to ensure a viable program to control pollutants in discharges from municipal storm sewers.

5. Source Identification

The identification of sources which contribute pollutants to municipal separate storm sewers is a critical step in characterizing the nature and extent of pollutants in discharges and in developing appropriate control measures. Source identification can be useful for providing an analysis of pollutant source contribution and for identifying the relationship between pollutant sources and receiving water quality problems. In cases where end-of-pipe controls alone are not practicable, it is essential to identify the source of pollutants into the municipal storm sewer systems to support a targeted approach to control pollutant sources.

The relative contribution of pollutants from various sources will be highly site-specific. The first step in developing a

targeted approach for controlling pollutants in discharges from municipal storm sewer systems is identifying the various sources in each drainage basin that will contribute pollutants to the municipal storm sewer system.

Source identification information can serve as the basis for loading estimates (see § VII.E.6.C) and the identification of those discharges to the municipal system with a higher potential to create adverse environmental impacts.

EPA is proposing to phase in the source identification requirements of the permit program by establishing minimum objectives in Part 1 of the application and by requiring applicants to submit a source identification plan in Part 2 of the application to provide additional information during the term of the permit. The minimum source identification requirements of Part 1 have been designed to provide sufficient information to provide an initial characterization of pollutants in the discharges from the municipal storm sewer system. EPA realizes that with many large, complex municipal storm sewer systems, it may be difficult to identify all outfalls during the permit application process. EPA is proposing that known outfalls be reported in Part 1 of the application. Part 1 of the application will also include a description of procedures and a proposed program to identify additional major outfalls. The information required in the proposed Part 1 application also includes identification of the drainage area associated with known outfalls, a description of major land use classifications in each drainage area, descriptions of soils, the location of industrial facilities, open dumps, landfills or RCRA hazardous waste facilities which discharge storm water to the municipal storm sewer system.

Although many municipalities have extensive information regarding the network of conveyances in their municipal separate storm sewer systems, others do not. Municipalities without existing maps would face extreme difficulties in attempting to identify during the permit application process the network of conveyances in their municipal systems. Therefore, applicants are *not* required to identify the conveyance network of the municipal system, but rather need to provide the location of major outfalls (certain points where the municipal system discharges to waters of the United States) and estimates of the area drained by the portion of the system associated with the outfall.

In addition to identifying outfalls from municipal storm sewer systems for the development of a management program to reduce pollutants in storm water discharges, it is also important to identify the location of such outfalls to clarify where the storm sewer system ends and where waters of the United States begin. In many situations, waters of the United States that receive discharges from municipal storm sewers can be mistakenly considered to be part of the storm sewer system. Permit applicants should refer to the regulatory definition of waters of the United States at 40 CFR 122.2 for appropriate guidance. The Director of the NPDES program will be able to make any necessary clarifications during the application process.

The proposed Part 1 application requires applicants to submit ten year projections of population growth and development activities. Population data and development projections will be useful for future predictions of loadings to receiving waters from municipal storm sewer systems, and capacities required for treatment systems. In general, population projections should reflect various scenarios of development (high, medium, low relative to recent trends).

Part 2 of the application will supplement the information reported in the Part 1 application so that, at a minimum, all major outfalls are identified.

Some municipalities, in recognition of the importance of mapping and source identification, have already developed extensive maps of their municipal storm sewer system. In addition, much of the information required in today's proposal will usually have been compiled by other planning agencies in a variety of forms such as land use plans and soil survey maps. Population data are readily available from the Census Bureau, municipal planning departments or public utility records.

Although municipalities or public entities may not keep records identifying dischargers into the storm water collection system, methods usually exist from which such information can be gathered (e.g., water and sewer bills, tax records, zoning permits, etc.). EPA is also proposing that facilities that discharge storm water associated with industrial activity to large or medium municipal separate storm sewer systems submit notifications of the discharge to the municipality (see proposed § 122.26(a)(3)(vii)). Under today's proposal, municipal or public entities responsible for applying for and obtaining an NPDES permit will be required to identify the location of an open dump, sanitary landfill, municipal incinerator or hazardous waste treatment, storage, and disposal facility under RCRA which may discharge storm water to the system as well as all facilities which discharge storm water associated with industrial activity into a large or medium municipal separate storm sewer system.

Requiring these source identification measures is supported by the legislative history of section 405 of the WQA, which instructs that "[i]n writing any permit for a municipal separate storm sewer, EPA or the State should pay particular attention to the nature and uses of the drainage area and the location of *any* industrial facility, open dump, landfill, or hazardous waste treatment, storage, or disposal facility which may contribute pollutants to the discharge." (emphasis added) (Vol 133 Cong. Rec. S752 (daily ed. Jan. 14, 1987)).

EPA is requesting comment on the appropriate elements and level of detail of the source identification process. Comments should address the adequacy of the proposed requirements for preparing initial estimates of pollutant loads and for estimating the concentration of pollutants in discharges from the municipal system based on the minimum source identification requirement in Part 1 of the application and for developing appropriate background information or developing storm water management plans.

6. Characterization of Discharges

The characterization plan proposed in today's notice is comprised of several major components:

- A screening analysis to provide information to develop a program for detecting and controlling illicit connections and illegal dumping to the municipal separate storm sewer system;
- Initial quantitative data to allow the development of a representative sampling program to be incorporated as permit conditions;
- System-wide estimates of annual pollutant loadings and the mean concentration of pollutants in discharges resulting from a representative storm and a program to, during the life of the permit, provide estimates for each major outfall of the seasonal pollutant loadings and the event mean concentration of pollutants in discharges resulting from a representative storm; and
- An identification of receiving waters with known water quality impacts associated with storm water discharges.

a. Screening Analysis for Illicit Discharges. Illicit discharges (non-storm water discharges without a NPDES permit) and illegal dumping to municipal separate storm sewer systems occur in a

relatively haphazard manner. Due to the unpredictability of such discharges, a field analysis is necessary for the developing priorities for detecting and controlling such discharges. As discussed in greater detail in § VII.G.7.b of today's notice, EPA is proposing to require that municipal applicants submit a comprehensive plan to develop a program to detect and control illicit connections and illegal dumping. In order to develop appropriate priorities for these programs, EPA is proposing that applicants submit the results of a two-phased screening analysis to be performed on known major outfalls in the systems to detect the presence of illicit hookups and illegal dumping.

The results of the first phase of the screening analysis, referred to as the field screen, would be reported in Part 1 of the permit application. The information received from the field screen would be used to develop requirements for the second phase of the screening analysis, the results of which would be reported in Part 2 of the application.

Under the proposed requirements for a field screen, the applicant or co-applicants would submit a description of observations of dry weather discharges for all known major outfalls in Part 1 of the application. At a minimum, the field screen would include a description of visual observations made during a dry weather period. If any flow is observed during a dry weather period, two grab samples would be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observation regarding the potential presence of non-storm water discharges or illegal dumping would be provided. In addition, the results of a field screen using on-site methods to estimate pH, total chlorine, total copper, total phenol, total and hexavalant chromium, detergents (or surfactants) and free cyanide would be provided along with an estimate of the flow rate. EPA does not intend to require that analytical methods approved under 40 CFR Part 136 be used exclusively in the field screen. Rather, the use of inexpensive field sampling techniques such as the use of colormetric detection methods is anticipated. Where the field screen does not involve analytical methods approved under 40 CFR Part 136, the applicant would be required to provide a description of the method used which includes the name of the manufacturer of the test method, including the range and accuracy of the test. EPA is requesting comments on appropriate field techniques for a field screen of dry weather discharges. EPA also requests comments on requiring the field screen for all major outfalls, whether the proposed definition of major outfalls is appropriate for this purpose, or whether the number of major outfalls subject to the field screen in the Part 1 application should be limited.

It should be clarified that data from the field screen would generally not be appropriate for comprehensive evaluation of water quality impacts, or estimating pollutant loadings. Rather the Director will use the information from the field screen in Part 1 of the application, along with other information, such as the age of development and degree of industrial activity in the drainage basin, to identify major outfalls which are appropriate for study during the second phase of the screening analysis.

The Second phase of the screening analysis requires that wet-weather and dry-weather samples be collected and analyzed in accordance with analytical methods approved under 40 CFR 136 from designated major outfalls for the following pollutants:

TABLE M–1

pH	lead
fecal coliform	copper
fecal streptococcus	chromium
volatile organic carbon (VOC)	cadmium
surfactants (MBAS)	silver
oil and grease	nickel
TSS	zinc
total organic carbon (TOC)	cyanides
biological oxygen demand (BOD_5)	total phenol
chemical oxygen demand (COD)	total chlorine

These pollutants have been selected as indicators of illegal dumping and illicit connections of process and nonprocess waste waters as well as sanitary wastewaters. Fecal coliform, fecal streptococcus and chlorine were selected as indicators of municipal sanitary wastewater discharges. Oil and grease, surfactants (MBAS), pH, TSS COD BOD_5, and TOC were selected as indicators of illicit connections from commercial and industrial operations. VOC, TOC and total phenol were selected as indicators of illicit connections from facilities that discharge wastewaters contaminated by solvents and other organic materials. The metals selected are metals for which EPA has developed effluent guidelines for industires which are generally expected to be located in an urban setting.

EPA requests comments on the use of these parameters for performing a field screen to detect discharges containing illicit connections, particularly the use of fecal coliform and fecal streptococcus (see 41*FR* 8013 (March 7, 1986)). The Agency also requests comment on the usefulness of additional parameters for use in a field screen. In addition, the Agency requests comment on alternative procedures, such as inspections of separate storm sewers that are suspected to contain illicit connections, that can be relied on in lieu of the field screen procedures proposed as Part 2 application requirements. Also, the Agency requests comments on incorporating a maximum limit on the number of major outfalls that would be subject to field screen procedures of the Part 2 application requirements and what an appropriate limit may be. Under this approach, where information in the Part 1 field screen indicated a high potential for extensive illicit connections within the system, the field sceen requirements of the Part 2 application would be limited to a specified number of major outfalls (for example, 50 major outfalls for large systems, and 25 major outfalls for medium systems). In this case, premit conditions would be developed for studying, during the term of the permit, other major outfall with a high potential for illicit connections.

b. Representative data. The NURP study showed that pollutant concentrations in urban runoff can exhibit significant variation. Pollutant concentrations in such discharges vary during storm events and from storm event to storm event. Given the complex, variable nature of storm water discharges from municipal systems, EPA favors a permit scheme where the

collection of representative data is primarily a task that will be accomplished through monitoring programs during the term of the permit. Permit writers have the necessary flexibility to develop monitoring requirements that more accurately reflect the true nature of highly variable, complex discharges.

In today's notice, EPA is proposing a strategy for performing an initial assessment of water quality impacts of discharges from municipal separate storm sewers based primarily on source identification measures and existing information received in the permit application. This information will be used to characterize system discharges. The analysis developed under this approach will incorporate existing data bases such as the one developed under the NURP study. Under today's proposal, some quantitative data will be collected to ensure the system discharges can be appropriately represented by the various existing data bases and to provide a basis for developing a monitoring plan to be implemented as a permit condition.

EPA is proposing that quantitative data be submitted for representative storm events for between five and ten outfalls. The municipality will recommend and the Director will then designate the outfalls as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system, on the basis of information received in Part 1 of the application. The applicant will be required to collect samples of a storm discharge from a representative storm event for each outfall designated. In addition, for at least one outfall designated by the Director, the applicant will be required to collect samples of storm water discharges from three representative storm events that occur at least one month apart. This requirement will be modified by the Director if the type and frequency of storm events require different sampling. For example, the Director may require samples of discharges be collected during snow melts, or during specified seasons. The Director may also require additional testing during a single event if it is unlikely that there will be three storm events suitable for sampling during the year.

All samples collected will be analyzed for all pollutants listed in Table II (organic pollutants except bis (chlormethyl) ether, dichlorofluoromethane and trichlorofluoromethane) and Table III (toxic metals, cyanide and total phenol) of Appendix D of 40 CFR Part 122, and for:

TABLE M-2

total suspended solids (TSS)	dissolved solids
COD	BOD_5
oil and grease	fecal coliform
fecal streptococcus	pH
total nitrogen	dissolved phosphorus
total ammonia plus organic nitrogen	total phosphorus

Table M-2

A portion of the NURP program involved monitoring 120 priority pollutants in storm water discharges from lands used for residential, commercial and light industrial activities. The NURP program excluded testing for asbestos and dioxin. Results for seven other organic priority pollutants were not considered valid due to changes in, or constraints on test methods. Seventy-seven priority pollutants were detected in samples of storm water discharges from lands used for residential, commercial and light industries taken during the NURP study, including 14 inorganic and 63 organic pollutants. Table M-3 shows the priority pollutants which were detected in at least ten percent of the discharge samples which were sampled for priority pollutants.

TABLE M-3.—PRIORITY POLLUTANTS DETECTED IN AT LEAST 10% OF NURP SAMPLES

	Frequency of detection (percent)
Metals and Inorganics:	
Antimony	13
Arsenic	52
Beryllium	12
Cadmium	48
Chromium	58
Copper	91
Cyanides	23
Lead	94
Nickel	43
Selenium	11
Zinc	94
Pesticides:	
Alpha-hexachlorocyclohexane	20
Alpha-endosulfan	19
Chlordane	17
Lindane	15
Halogenated Aliphatics:	
Methane, dichloro-	11
Phenols and Cresols:	
Phenol	14
Phenol, pentachloro-	19
Phenol, 4-nitro	10
Phthalate Esters:	
Phthalate, bis(2-ethythexyl)	22
Polycyclic Aromatic Hydrocarbons:	
Chrysene	10
Fluoranthene	16
Phenanthrene	12
Pyrene	15

The NURP data also showed a significant number of these samples exceeded various freshwater water quality criteria. The exceedence of water quality criteria does not necessarily imply that an actual violation of standards will exist in the receiving water body in question. Rather, the enumeration of exceedences serves as a screening function to identify those constituents whose presence in urban storm water runoff may warrant high priority for further evaluation.

Members of this group represented all of the major organic chemical fractions found in Table II of Appendix D of Part 122 (volatiles, acid compounds, base/neutrals, pesticides). EPA favors requiring testing for all organic constituents in Table II (except bis (chlormethyl) ether, dichlorofluoromethane and trichlorofluoromethane which have been suspended from the list of organic toxic pollutants in the NPDES regulations (see 46 FR 2266, (January 8, 1981), and 46 FR 10723, (February 4, 1981)] rather than limiting the sampling requirements to the 24 toxic constituents found in the NURP study because they will provide a better description of the discharge at essentially the same cost. The NURP study focused on characterizing storm water discharges from lands used for residential, commercial and light industrial activities, and in general, did not focus on other sources of pollutants to municipal separate storm sewer systems, and therefore, does not reflect all potential pollutants that may be present in discharges from municipal separate storm sewer systems.

EPA is requesting comment on appropriate sampling requirements for discharges from large and medium municipal separate storm sewer systems and to what extent such requirements should be included in permit applications or developed as site-specific permit conditions. The option favored in today's proposal includes

sampling requirements to provide screening data for developing a more intensive program to detect illicit connections and illegal dumping. The sampling requirements proposed for the permit application address a limited number of outfalls and storm events, but require analysis of a wide range of pollutants. Sampling for a wide range of pollutants as a permit application requirement may provide permit writers with appropriate data to target more specific pollutants when developing requirements for a monitoring program established as a permit condition. In addition, the favored option requires limited sampling of representative outfalls. The favored option does not require applicants to submit quantitative data for storm water discharges associated with industrial activity as part of the permit application but instead requires applicants to submit a proposed program to monitor and control such discharges to the municipal system (see § VII.E.7.C).

EPA is working with the United States Geological Survey (USGS) to evaluate the availability of USGS technical assistance to municipalities through cooperative funding programs to aid in collecting representative quantitative data of storm water discharges from municipal systems.

USGS data collection programs with municipalities typically include storm water discharge samples obtained at various times during a storm hydrograph event. Various USGS filed procedures can be used to obtain discharge data for pipes, culverts, etc. typically found in urban areas. Pollutant models can be calibrated with data and long-term rainfall records to simulate the quality of system discharges and compared to other storm water models.

In addition, the Agency recognizes that many municipalities have participated in studies, such as NURP, that involve sampling of urban runoff as well as other components of discharges from municipal separate storm sewer systems. All existing storm water sampling data along with relevant water quality data, sediment data, fish tissue data or biosurvey data, taken over the last ten years is considered relevant and under today's proposal must be submitted with Part 1 of the application. Sampling data that is submitted must be accompanied with a narrative description of the drainage area served by the outfall monitored, a description of the sampling and quality control program, and the location of receiving water monitoring.

EPA requests comment on the use of existing data, such as that generated under the NURP study, to satisfy the requirement of providing representative sampling data. The Agency is concerned with establishing criteria that can be used to verify the validity of existing data.

c. Loading and Concentration Estimates. The assessment of the water quality impacts of discharges from municipal separate storm sewer systems on receiving waters requires the analysis of both pollutant loadings and concentrations of pollutants in discharges.

The loading and concentration estimates proposed in today's notice will be used to evaluate two types of water quality impacts: (1) Short-term impacts; and (2) long-term impacts.

Short term impacts from discharges from municipal separate storm sewers involve changes in water quality that occur during and shortly after storm events. Examples of short term impacts that can lead to impairments include periodic dissolved oxygen depression due to the oxidation of contaminants, high bacteria levels, fish kills, acute effects of toxic pollutants, contact recreation impairments and loss of submerged macrophytes. Characterization of instream pollutant concentrations based on estimated pollutant concentration in system discharges are important for evaluating these types of impacts.

Long-term water quality impacts from discharges from municipal separate storm sewers may be caused by contaminants associated with suspended solids that settle in receiving water sediments and by nutrients which enter receiving water systems with long retention times. Pollutant loading data are important for evaluation of impairments such as loss of storage capacity in streams, estuaries, reservoirs, lakes and bays, lake eutrophication caused by high nutrient loading, and destruction of benthic habitat. Other examples of the long-term water quality impacts include depressed dissolved oxygen caused by the oxidation of organics in bottom sediments and biological accumulation of toxics as a result of up-take by organisms in the food chain. An estimate of annual pollutant loading associated with discharges from municipal storm water sewer systems is necessary to evaluate the magnitude and severity of the environmental impacts of such discharges and to evaluate the effectiveness of controls which are imposed at a later time.

Municipal storm water sewer systems generally handle runoff from large drainage areas and the sources of pollution are usually very diffuse. The concentrations of many pollutants in discharges from these systems are often low relative to many industrial process and Publicly Owned Treatment Works discharges. The water quality impacts of low concentration pollution discharges tend to be cumulative and need to be evaluated in terms of aggregate loadings as well as pollutant concentrations. A site-specific loading analysis can be used to evaluate the relative contribution of various pollutant sources.

Physical impacts, such as streambed scour, streambank erosion and low stream flow during dry weather can be caused by urban runoff. Today's proposed regulations do not specifically require that the physical impacts of urban runoff be addressed in the permit application. Although NPDES permits in many jurisdictions may contain controls designed to limit these physical impacts, EPA believes that the most appropriate Federal policy is to encourage jurisdiction-specific decisions regarding the appropriateness of controls designed to lessen the physical impacts of urban runoff.

7. Proposed Storm Water Quality Management Programs

Traditionally, NPDES permits for industrial process waste discharges and for municipal sanitary sewers have relied primarily on end-of-pipe treatment technology. The basic approach for these discharges under the CWA, the application of uniform technology-based controls to classes of discharges, is often not appropriate for municipal separate storm sewer discharges. Instead, flexible site-specific and source-specific decisions on management controls are often appropriate.

A wide variety of control measures to reduce the discharge of pollutants from municipal storm sewer systems are currently available The performance of appropriate control measures is highly dependent on site-specific factors. It is therefore not practicable to define one standard set of controls which will control all pollutants in all municipalities.

In today's notice, EPA is proposing to facilitate the development of site-specific permit conditions by requiring permit applicants to submit, along with other information, a description of existing structural and non-structural control measures on discharges of pollutants from municipal storm sewers in Part 1 of the permit application. Proposed § 122.26(d)(2)(iv) requires the applicant to identify in Part 2 of the application, to the degree necessary to meet the MEP standard, additional

control measures which will be implemented during the life of the permit. Although, in many cases, it will not be possible to identify all control measures that are appropriate as permit conditions, EPA believes that the process of identifying components of a comprehensive control program should begin early and that applicants should be given the opportunity to identify and propose the components of the program that they believe are appropriate for controlling discharges of pollutants.

The permit application requirements in today's notice require the applicant or co-applicant to develop management programs for four types of pollutant sources which discharge to large and medium municipal storm sewer systems. Discharges from large and medium municipal storm sewer systems are usually expected to be composed primarily of (1) runoff from commercial and residential areas, (2) storm water runoff from industrial areas, (3) runoff from construction sites, and (4) non-storm water discharges. Part 2 of the proposed permit application has been designed to allow the applicant the opportunity to propose MEP control measures for each of these components of the discharge. Discharges from some municipal systems may also contain pollutants from other sources, such as runoff from land disposal activities (leaking septic tanks, landfills and land application of sewage sludge). Where other sources, such as land disposal, contribute significant amounts of pollutants to a municipal storm sewer system, appropriate control measures should be included on a site specific basis. Proposed management programs will then be evaluated in the development of permit conditions.

There is some overlap in the manner in which these pollutant sources are classified. Also, some control measures will reduce pollutant loads for multiple components of the municipal storm sewer discharge. These measures should be identified under all appropriate places in the application; as discussed below however, double counting of pollutant removal must be avoided when the total assessment of control measures is performed.

Although many land use programs involve multiple purposes which include measures to reduce pollutants in discharges from municipal separate storm sewer systems, the proposed management program in today's notice is intended to address only those controls which can be implemented by the permit applicant or co-applicants. The Agency cannot abrogate its responsibilities under the CWA to implement the NPDES permit program by relying on pollution control programs that are outside the NPDES program.

The Agency anticipates that storm water management programs will evolve and mature over time. The permits for discharges from municipal separate storm sewer systems will be written to reflect changing conditions that result from program development and implementation and corresponding improvements in water quality. The proposed permit applications will require applicants to provide a description of the range of control measures considered for implementation during the term of the permit. Flexibility in developing permit conditions will be encouraged by providing applicants an opportunity to identify in the permit application priority controls appropriate for the initial implementation of management programs. Applicants will propose priorities based on a consideration of appropriate controls including, but not limited to, consideration of controls that address reducing pollutants to municipal separate storm sewer system discharges that are associated with storm water from commercial and residential areas (§ 122.26(d)(2)(iv)(A)), illicit discharges and illegal disposal (§ 122.26(d)(2)(iv)(B)), storm water from industrial areas (§ 122.26(d)(2)(iv)(C)), and runoff from construction sites (§ 122.26(d)(2)(iv)(D)). Permits for different municipalities will place different emphasis on controlling various components of discharges from municipal storm sewers. For example, the potential for cross-connections (such as municipal sewage or industrial process wastewater discharges to a municipal separate storm sewer) is generally expected to be greater in municipalities with older developed areas. On the other hand, municipalities with larger areas of new development will have a greater opportunity to focus controls to reduce pollutants in storm water generated by the area after it is developed, discharges from construction sites, and other planning activities. EPA requests comments on the process and methods for developing appropriate priorities in management programs proposed in applications and how the development of these priorities can be coordinated with controls on other discharges to ensure the achievement of water quality standards and the goals of the Clean Water Act. In addition, the Agency requests comments on the costs of implementing various components of management programs.

The Agency requests comments on the appropriateness of the individual components of the proposed management programs and whether additional provisions should be added. Comments on various components of the management programs should address the cost of program development and implementation as well as the potential for pollutant removal and water quality benefits.

In addition, the Agency will continue to evaluate procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality in the studies required under Section 402(p)(5) of the CWA (see section IV of today's notice). One purpose of these studies will be to evaluate the costs and water quality benefits associated with implementing these procedures and methods. This evaluation will address a number of factors which impact the implementation costs associated with these programs, such as the extent to which similar municipal ordinances are currently being implemented, the degree to which existing municipal programs (such as flood management programs or construction site inspections) can be expanded to address water quality concerns, the resource intensiveness of the control, and whether the control program will involve public or private expenditures. This information, along with information gained during permit implementation will aid in the dynamic long-term development of municipal storm water management programs. EPA invites the public to submit information that can be used in the development of these studies.

a. Measures to Reduce Pollutants in Runoff from Commercial and Residential Areas. The NURP program evaluated runoff from lands primarily dedicated to residential and commercial activities. The areas evaluated in the study reflect some other activities, such as light industry, which are commonly dispersed among residential and commercial areas. The NURP study selected sampling locations that were thought to be relatively free of illicit discharges and storm water from heavy industrial sites including storm water runoff from heavy construction sites. Of course, in a study such as NURP, it was impossible to totally isolate various contributions to the runoff. In developing the proposed permit application requirements in today's notice, EPA has, in general, relied on the NURP definition of urban runoff, that is, runoff from lands used for residential, commercial and light industrial activities.

NURP and numerous other studies have shown the runoff from residential

and commercial areas washes a number of pollutants into receiving waters. Of equal importance is the volume of storm water runoff leaving urban areas during storm events. Large intermittent volumes of runoff can destroy aquatic habitat.

As the percentage of paved surfaces increases, the volume and rate of runoff and the corresponding pollutant loads also increase. Thus, the amount of storm water from commercial and residential areas and the pollutant loadings associated with storm water runoff increases as development progresses and remains at an elevated level for the lifetime of the development.

Proposed § 122.26(d)(2)(iv)(A) requires municipal storm sewer system applicants to provide in Part 2 of the application a description of a proposed management program that will describe priorities for implementing management programs based on a consideration of appropriate controls including:

- A description of maintenance activities and a maintenance schedule for structural controls;
- A description of planning procedures including a comprehensive master plan to control after construction is completed, the discharge of pollutants from municipal separate storm sewers which receive discharges from new development and significant redevelopment after construction is completed;
- A description of practices for operating and maintaining public highways and procedures for reducing the impact on receiving waters of such discharges from municipal storm sewer system;
- A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies; and
- A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

Water quality problems caused by municipal storm sewer discharges will generally be most acute in heavily developed areas. Usually, the most effective control measures are structural, and opportunities for implementing these measures may be limited in previously developed areas. Commonly used structural technologies include a wide variety of treatment techniques, including first flush diversion systems, detention/infiltration basins, retention basins, extended detention basins, infiltration trenches, porous pavement, oil/grit separators, grass swales, and swirl concentrators. A major problem associated with sound storm water management is the need for operating and maintaining the systems for their expected life.

The unavailability of land in highly developed areas often makes the use of structural controls infeasible for modifying many existing systems. Non-structural practices can play a more important role. Non-structural practices can include erosion control, streambank management techniques, street cleaning operations, vegetation/lawn maintenance controls, debris removal, road salt application management and public awareness programs.

The second component of the proposed program to reduce pollutants in storm water from commercial and residential areas which discharge to municipal storm sewer systems provides that applicants describe the planning procedures and a comprehensive master plan that will assure that increases of pollutant loading associated with newly developed areas are, to the maximum extent practicable, limited. These measures should address storm water from commercial and residential areas which discharge to the municipal storm sewer that occur after the construction phase of development is completed. Controls for construction activities are addressed later in today's notice.

As urban development occurs, the volume of storm water and its rate of discharge increases. These increases are caused when pavement and structures cover soils and destroy vegetation which otherwise would slow and absorb runoff. Development also accelerates erosion through alteration of the land surface. Areas that are in the process of development offer the greatest potential for utilizing the full range of structural and non-structural best management practices. If these measures are to provide controls to reduce pollutant discharges after the area has been developed, comprehensive planning must be used to incorporate these measures as the area is in the process of developing. These measures offer an important opportunity to limit increases in pollutant loads.

The third component of § 122.26(d)(2)(iv)(A) provides a description of practices for operating and maintaining public roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems. General guidelines recommended for managing highway storm water runoff include litter control, pesticide/herbicide use management, reducing direct discharges, reducing runoff velocity, grassed channels, curb elimination, catchbasin maintenance, appropriate streetcleaning, establishing and maintaining vegetation, development of management controls for salt storage facilities, education and calibration practices for deicing application, infiltration practices, and detention/retention practices.

The fourth component of § 122.26(d)(2)(iv)(A) provides that applicants identify procedures that enable flood management agencies to consider the impact of flood management projects on the water quality of receiving streams. A well-developed storm water management program can reduce the amount of pollutants in storm water discharges as well as benefit flood control objectives. As discussed above, increased development can increase both the quantity of runoff from commercial and residential areas and the pollutant load associated with such discharges. Disturbing the land cover, altering natural drainage patterns, and increasing impervious area all increase the quantity and rate of runoff, thereby increasing both erosion and flooding potential. Increases in the quantity of runoff can result in increasing the area of a flood plain. An integrated planning approach helps planners make the best decisions to benefit both flood control and water quality objectives.

The fifth component of § 122.26(d)(2)(iv)(A) would provide that municipal applicants submit a description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer. Such a program may include, as appropriate, controls such as educational activities and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities. Discharges of these materials to municipal storm sewer systems can be controlled by proper application of these materials.

b. Measures for Illicit Discharges and Improper Disposal. The WQA requires that NPDES permits for discharges from municipal storm sewers "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers." In today's proposal, EPA will begin to implement this statutory mandate by focusing on two types of discharges to large and medium

municipal separate storm sewer systems. One type of non-storm water discharges are illicit discharges which are plumbed into the system or that result from leakage of sanitary sewage system. The other class of non-storm water discharges result from the improper disposal of materials such as used oil and other toxic materials.

Illicit Discharges

In some municipalities, illicit connections of sanitary, commercial and industrial discharges to storm sewer systems have had a significant impact on the water quality of receiving waters. Although the NURP study did not emphasize identifying illicit connections to storm sewers other than to assure that monitoring sites used in the study were free from sanitary sewage contamination, the study concluded that illicit connections can result in high bacterial counts and dangers to public health. The study also noted that removing such discharges presented opportunities for dramatic improvements in the quality of urban storm water discharges.

Other studies have shown that illicit connections to storm sewers can create severe, wide-spread contamination problems. For example, the Huron River Pollution Abatement Program inspected 660 businesses, homes and other buildings located in Washtenaw County, Michigan and identified 14% of the buildings as having improper storm drain connections. Illicit discharges were detected at a higher rate of 60% for automobile related businesses, including service stations, automobile dealerships, car washes, body shops and light industrial facilities. While some of the problems discovered in this study were the result of improper plumbing or illegal connections, a majority were approved connections at the time they were built.

A wide variety of technologies exist for detecting illicit discharges. The effectiveness of these measures largely depends upon the site-specific design of the system. Under today's proposal, permit applicants would develop a description of a proposed management program, including priorities for implementing the program and a schedule to implement a program to identify illicit discharges to the municipal storm sewer system. The proposed program will identify initial priorities for analyzing various portions of the system and the appropriate detection techniques to be used.

Improper disposal

The permit application requirements proposed today for municipal storm sewer systems include a requirement that the municipal permit applicant describe a program to assist and facilitate in the proper management of used oil and toxic materials.

Improper management of used oil can lead to discharges to municipal storm sewers that in turn may have a significant impact on receiving water bodies. EPA estimates that annually, 267 million gallons of used oil, including 135 million gallons of used oil from do-it-yourself (DIY) automobile oil changes, are disposed improperly. An additional 70 million gallons of used oil, most coming from service stations and repair shops, are used for road oiling. Most of this oil contains metals, such as lead and chromium, at such high levels that the Agency proposed to list used oil as a hazardous waste (November 29, 1985, (50 *FR* 49258)). This proposal was not made final because the Agency thought that a hazardous waste listing of all used oil may discourage recycling. The Agency is presently considering listing used oil that is not recycled as a hazardous waste (March 10, 1986, (51 *FR* 8206), and November 19, 1986 (51 *FR* 41900). However, even if these rules are promulgated, due to various exclusions many individuals and facilities that generate or handle used oil are not regulated under RCRA.

Although EPA is developing a regulatory program under RCRA for the management of recycled oil, the RCRA regulations will likely only apply to certain facilities that will be classified as used oil marketers and used oil recyclers. DIY oil changers and certain other facilities are generally not subject to regulation under the RCRA program. A recent EPA report, "Revised Baseline Flow Data for Used Oil Modelling" (March 13, 1987) suggests that a large fraction of service stations no longer accept DIY used oil and that as a result DIYs are having increasing difficulty recycling oil, thereby leading to increases in uncontrolled disposal.

EPA is proposing that permit applicants for large and medium municipal storm sewer systems describe a program to facilitate the proper management of used oil. EPA requests comments on when various components of this program may be appropriate, including providing information to handlers of used oil and DIY generators and household toxic waste generators, adopting appropriate controls on road oiling, and establishing and operating oil and household waste recycling/disposal programs.

c. Measures to Reduce Pollutants in Storm Water Discharges Associated with Industrial Activities Into Municipal Systems. As discussed in § VII.B of today's notice, industrial facilities that discharge storm water to a large or medium municipal separate storm sewer system are not required to obtain an individual permit for such discharges unless the Director requires the facility to obtain a permit or to become a co-permittee. EPA is proposing to require the municipal storm sewer permittee to describe control programs for such discharges that are covered under the municipal storm sewer permit. At a minimum, the program would require the municipal applicant to identify such discharges (see source identification requirements at § 122.26(d)(1)(vi)(C)), provide for monitoring certain discharges and where necessary, implement control measures. Should a municipality suspect that an individual discharger into the system is causing a problem, and the municipality or management agency has no authority over the discharge, the municipality should contact the NPDES permitting authority and request that an individual permit be issued, or at a minimum, request that such a discharge be designated a co-permittee.

Although the Agency has not proposed specific regulatory language, EPA is requesting comment on two groups of options for programs to characterize storm water discharges associated with industrial activity that go to municipal separate storm sewers. Under the first group of options, municipal applicants would describe the development of a program to characterize discharges from certain outfalls from the municipal storm sewer system that contain runoff from industrial facilities. Under these options, the municipal applicant would submit a proposed characterization program as part of the permit application. Quantitative data collected under an approved monitoring program would be submitted during the life of the permit and would be used to develop a comprehensive control program. Under the second group of options, certain industrial facilities would be responsible for characterizing storm water discharges into large or medium municipal separate storm sewer systems.

Under the first group of options, several issues arise in the development of an appropriate characterization program for municipal systems. The first issue is identifying which storm water discharges from industrial facilities into municipal systems should be monitored. One approach would be to require data on portions of the municipal system which receives storm water from facilities which are listed in the proposed regulatory definition at § 122.26(b)(13) of "storm water discharge

associated with industrial activity" (with the exception of construction activities and uncontaminated storm water from oil and gas operations) which discharge into the municipal system. However, given the potentially large number of facilities that meet this definition and would discharge into municipal systems, a monitoring program that requires the submission of quantitative data regarding portions of the municipal systems receiving storm water from such facilities may not be practicable. Such a requirement could, for some systems, potentially become the most resource intensive requirements in the municipal permit. Therefore, EPA is considering various ways to develop appropriate targeting for monitoring programs.

EPA requests comments on a requirement that, at a minimum, monitoring programs address discharges from municipal separate storm sewer outfalls that contain storm water discharges from municipal landfills, hazardous waste treatment, disposal and recovery facilities, and runoff from industrial facilities that are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Section 313 of Title III requires that operators or certain facilities that manufacture, import, process, or otherwise use certain toxic chemicals report annually their releases of those chemicals to any environmental media. Section 313(b) of Title III specifies that a facility is covered for purposes of reporting if it meets all of the following criteria:

- The facility has ten or more full-time employees;
- The facility is in Standard Industrial Classification (SIC) codes 20 through 39;
- The facility manufactured (including quantities imported), processed, or otherwise used a listed chemical in amounts that exceed certain threshold quantities during the calendar year for which reporting is required.

Listed chemicals include 329 toxic chemicals listed at 40 CFR 372.45. After 1989, the threshold quantities of listed chemicals that the facility must manufacture, import or process in order to be required to submit a release report is 25,000 pounds per year. The threshold for a use other than manufacturing, importing or processing of listed toxic chemicals is 10,000 pounds per year. EPA promulgated a final regulation clarifying these reporting requirements on February 16, 1988 (53 FR 4500).

EPA requests comments on whether Section 313 of SARA identifies facilities which provide an appropriate basis for establishing priorities for municipal permittees to develop monitoring and control programs for storm water associated with industrial activity. Several advantages are associated with this approach. First, the potential for toxic materials in discharges from these facilities is relatively high due to the large volume of hazardous substances located at these facilities. Second, some information regarding storm water discharges and material management at these facilities will be available through the Section 313 of SARA reporting process.

The Agency requests comments on monitoring programs for municipal discharges, including the submission of quantitative data on the following constituents:

- Any pollutant limited in an effluent guideline for the industry subcategory, where applicable;
- Any pollutant listed in the facility's NPDES permit for its process wastewater, if it has one;
- Oil and grease, COD, pH, BOD_5, TOC, TSS, total phosphorus, total nitrogen, and
- Any information on the discharge required under 40 CFR 122.21(g)(7) (iii) and (iv).

These are the same constituents that EPA is proposing to require individual permit applicants for storm water discharges associated with industrial activity to provide quantitative data.

A third issue concerning appropriate monitoring programs for runoff from industrial facilities discharging to municipal systems involves the sampling location. Several commenters on earlier storm water proposals asserted that all pollutants discharged to waters of the United States via storm water runoff may not be of concern due to the dilution factor at a specific location. The Agency initially favors establishing monitoring requirements to be applied to those outfalls that directly discharge to waters of the United States. Monitoring of outfalls close to the point of discharge to waters of the United States is generally preferable when attempting to identify priorities for developing pollutant control programs. However, under certain circumstances, it may be preferable to monitor at the point where the runoff from the industrial facility discharges to the municipal system. For example, if many facilities discharge substantially similar storm water to a municipal system (e.g., storm water discharges from general automotive repair shops) it may be more practicable to monitor discharges from representative facilities in order to characterize pollutants in the discharge.

Under the second group of options considered under today's notice, all industrial facilities which discharge storm water into a large or medium municipal storm sewer system would submit information to either the Director of the NPDES program (the EPA or States with approved NPDES programs) or the municipal permit applicant for the municipal storm sewer that receives the discharge. The information that the facility would submit to the permit applicant would be the same information that would be required in an individual permit application for a facility that discharges storm water associated with industrial activity directly to waters of the United States. For example, of facilities that discharge storm water to municipal storm sewer systems, only municipal landfills, hazardous waste treatment, storage and disposal facilities and those facilities subject to Section 313 of Title III of SARA would be required to submit a permit application. Facilities that discharge storm water to a municipal storm sewer would have the option of participating in a group application in lieu of submitting information directly to the municipal applicant. These members of the group application would be required to indicate in the group application the municipal storm sewer to which they are discharging. EPA would forward a summary of the information in the group application to the appropriate municipal applicants for use in developing appropriate controls for the member of the group application.

EPA is also requesting comment on whether facilities that discharge to large and medium municipal storm sewer systems and that are not participating in a group application should submit individual permit applications to EPA regions or NPDES States. Under this option, the permit applications would be used to determine if an individual permit or a co-permittee arrangement is appropriate. Where it is not appropriate to require an individual permit or a co-permittee arrangement, the application would be sent to the appropriate municipal permit applicant (under the authority of Section 402(j) of the CWA), who would use the information to develop appropriate controls for the facility.

This option recognizes that the operator of the facility is in the best position to know which pollutants may be in the storm water discharge and to provide the non-quantitative information that is required in individual permit applications. Further, as with facilities discharging storm water associated with industrial activity directly to waters of the United States, the facility would be responsible for

certifying that it has tested its storm water outfalls for illicit connections. By shifting this burden to the facility discharging storm water associated with industrial activity, the applicant for the municipal storm sewer would be able to concentrate effort on detecting illicit connections from other types of facilities with a high potential for illicit connections.

EPA is requesting comment on these approaches to control pollutants in storm water from industrial facilities which discharge to a large or medium municipal separate storm sewer system. In particular, should municipalities or individual industrial facilities be required to collect sampling data? If high levels of pollutants are detected in samples from a municipal storm water outfall, and storm water from industrial facilities is a suspected contributor, how will municipalities determine which facilities are responsible? Is end-of-pipe treatment generally more appropriate than source controls for storm water from industrial facilities which discharge to municipal systems? If municipalities are responsible for sampling these discharges, are indicator parameters such as VOC more appropriate than the specific constituents that individuals industrial facilities with storm water discharges which do not discharge to municipal systems are required to sample under individual storm water permit application requirements?

d. Measures to Reduce Pollutants in Runoff from Construction Sites Into Municipal Systems. Section VII.D.2 of today's notice discusses EPA's proposal to define the term "storm water discharge associated with industrial activity" to include runoff from construction facilities classified as Standard Industrial Codes 15 and 16 (general building contractors and heavy construction contractors) including preconstruction activities, *except:* (a) operations that result in the disturbance of less than 1 acre total land area which are not part of a larger common plan of development or sale; or (b) that are designed to serve single family residential projects, including duplexes, triplexes, or quadruplexes, that result in the disturbance of less than 5 acre total land areas which are not part of a larger common plan of development or sale. Under today's proposal, facilities that discharge runoff from construction sites that meet this definition will be required to submit permit applications under today's rulemaking unless they are to be covered by another NPDES permit or discharge to a municipal separate storm sewer (see § VII.C.1). Permit application requirements for such discharges are proposed at 40 CFR 122.26(c)(1)(ii).

Section 122.26(d)(2)(iv)(D) of the proposed regulations would require applicants for a permit for large or medium municipal separate storm sewer systems to submit a description of a proposed management program to control pollutants in all construction site runoff that discharges to municipal systems. Under the proposed provision, municipal applicants will submit a proposed program for implementing and maintaining structural and non-structural best management practices for controlling storm water runoff at construction sites. The program will address procedures for site planning; enforceable requirements for nonstructural and structural best management practices; procedures for inspecting sites and enforcing control measures; and educational and training measures.

Generally, construction site ordinances are effective when they are implemented. However, in many areas, even though ordinances exist, they have limited effectiveness because they are not adequately implemented. Maintaining best management practices also presents problems. Retention and infiltration basins fill up and silt fences may break or be overtopped. Weak inspection and enforcement point to the need for more emphasis on training and education to complement regulatory programs.

8. Assessment of Controls

EPA is proposing that municipal applicants provide an initial assessment of the effectiveness of the control method for structural or non-structural controls which have been proposed in the management program. Such an assessment is needed because the performance of appropriate management controls is highly dependent on site-specific factors. The assessment will be used in the development of pollutant loading and concentration estimates (see VII.E.6.C) and the evaluation of water quality benefits associated with implementing controls. Such assessments do not have to be verified with quantitative data, but can be based on accepted engineering design practices.

H. Annual reports

As discussed earlier in today's notice, EPA is proposing flexible permit application requirements to facilitate the development of site-specific programs to control the discharge of pollutants from large and medium municipal separate storm sewer systems. Many municipalities are in early stages of the complex task of developing a program suitable for controlling pollutants in discharges under a NPDES permit, while other municipalities have relatively sophisticated programs in place. In order to ensure that such site-specific programs are developed at the maximum extent practicable rate, EPA is proposing to require permittees of municipal separate storm sewer systems to submit annual status reports which reflect the development of their control programs.

The reports will be used by the permitting authority to aid in evaluating compliance with permit conditions and where necessary, modify permit conditions to address changed conditions. EPA requests comments on the appropriate content of the annual reports.

I. Application Deadlines

The WQA provided a statutory time frame for implementing the storm water permit application requirements. The Act establishes deadlines for EPA to establish permit applications, permit application submittal and permit compliance.

The WQA requires EPA to promulgate permit application requirements for storm water discharges associated with industrial activity and large municipal separate storm sewer systems by "no later than two years" after the date of enactment (i.e., no later than February 4, 1989). In conjunction with this requirement, the Act requires that permit applications for these classes of discharges be submitted within one year after the statutory date by which EPA is to promulgate permit application requirements by providing that such applications "shall be filed no later than three years" after the date of enactment of the WQA (i.e., no later than February 4, 1990).

The WOA also requires EPA to promulgate final regulations governing storm water permit application requirements for discharges from municipal separate storm sewer systems serving a population of 100,000 or more but less than 250,000 by "no later than four years" after enactment (i.e. no later than February 4, 1991). Permit applications for medium municipal separate storm sewer systems "shall be filed no later than five years" after the date of enactment of the WQA (i.e., no later than February 4, 1992). The WQA did not establish the time period between designation and permit application submittal for case-by-case designations under section 402(p)(2)(E).

Comments on earlier rulemakings involving storm water application

deadlines have indicated that applicants need adequate time to obtain "representative" storm water samples, at least one full rain year. This is because many discharges are located in areas where testing during dry seasons or winter would not be feasible. The intermittent and unpredictable nature of storm water discharges can result in difficult and time-consuming data gathering. Moreover, some operators have many storm water discharges associated within industrial activity which can require considerable time to identify, analyze, and submit applications. This creates a tremendous practical problem for the extremely high number of unpermitted storm water discharges. The Agency's and the public's interest in a sound storm water program and the development of a useful data base on these sources is best served by establishing an application deadline which will allow sufficient time to gather, analyze, and submit meaningful applications. Based on a consideration of these factors, EPA favors proposing that individual permit applications for storm water discharges associated with industrial activity which currently are not covered by a permit and that are required to obtain a permit be submitted not later than one year after the final rule is promulgated.

Operators of storm water discharges which are currently covered by a permit, will, of course, not be required to submit a permit application until their existing permit expires. Facilities which must reapply for a permit for a storm water discharge prior to the promulgation of a final rule based on today's proposal are required to submit complete Form 1 and Form 2C applications. In recognition of the time required to collect storm water discharge data, EPA will consider allowing facilities that currently have a NPDES permit for a discharge and which must reapply for permit renewal the option of applying in accordance with existing Form 1 and Form 2C requirements in lieu of applying in accordance with the revised application requirements during the first year following promulgation of the revised permit application requirements.

As discussed in § VII.E.4 and § VII.G.2 of today's notice, EPA favors a two part permit applications for both group applications for sufficiently similar facilities that discharge storm water associated with industrial activity and for operators of large or medium municipal separate storm sewer systems. The deadlines for submitting permit applications that are proposed in today's notice are based on providing adequate time for: applicants to prepare Part 1 of the application, adequate review of Part 1 of the application by EPA or, in the case of permit applications for large and medium municipal storm sewer systems, approved NPDES States, and preparation of the contents of the Part 2 application.

For permit applications for storm water discharges associated with industrial activity, EPA is proposing that Part 1 of the group application be submitted within 120 days from the publication of final permit application regulations. This time is necessary to form groups and for individual members of the group to prepare the non-quantitative information required in Part 1 of the application. Part 1 of the group application will be submitted to EPA Headquarters in Washington, DC and approved or disapproved within 60 days after being received. Part 2 of the application would then be submitted within one year after the Part 1 application is approved.

For large municipal separate storm sewer systems (systems serving a population of more than 250,000), EPA is proposing that Part 1 of the permit applications be submitted within one year of the date of the final rule. The Director will approve or disapprove the provisions of the Part 1 permit application within 90 days after receiving the Part 1 application. The Part 2 portion of the application shall then be submitted within two years of the date of the final rule.

For medium municipal separate storm sewer systems (systems serving a population of more than 100,000, but less than 250,000), EPA is proposing that permit applications will be required on November 4, 1990. The Director will approve or disapprove the provisions of the Part 1 permit application within 90 days after receiving the Part 1 application. The Part 2 portion of the application shall then be submitted no later than February 4, 1992, one year after the Part 1 application has been approved.

Operators of storm water discharges that are not normally required to obtain a permit, may be required to obtain a permit for their discharge on the basis of a case-by-case designation by the Administrator or the NPDES State. EPA is proposing that operators of storm water discharges associated with industrial activity which discharge to municipal separate storm sewers are generally not required to obtain a NPDES permit for their discharge, unless required by the Director on a case-by-case basis. The Administrator or NPDES State may also designate storm water discharges (except agricultural storm water discharges) that contribute to a violation of a water quality standard or that are significant contributors of pollutants to waters of the United States for a permit. Prior to a case-by-case determination that an individual permit is required for a storm water discharge, the Administrator or NPDES State may require the operator of the discharge to submit a permit applcation. EPA is proposing at § 124.52(c) to require the operator of designated discharges to submit a permit application within 60 days of notice, unless permission for a later date is granted. The 60-day deadline is consistent with the procedures for designating other discharges for a NPDES permit on a case-by-case basis found at § 124.52. The 60-day deadline recognizes that case-by-case designations often require an expedited response, but at the same time, is flexible to allow for case-by-case adjustments.

In recognition of the time required to promulgate rational final regulations which address the complex issues associated with storm water permit application requirements, the Agency realizes that given the date of this proposal, the agency may not be able to promulgate permit application requirements by the statutory deadline of February 4, 1989 for storm water discharges associated with industrial activities and discharges from large municipal separate storm sewer systems. Based on an analysis of the comments received on today's proposal, the Agency will consider promulgating a final rule specifying permit application requirements for storm water discharges associated with industrial activity prior to the date of promulgation of permit application requirements for large and medium municipal storm sewer systems.

EPA requests comments on the relationship between the proposed deadlines and the proposal for a two part permit application for discharges from a large or medium municipal separate storm sewer system. Specifically, EPA requests comments on an alternative approach to a two part permit application where only some of the requirements discussed in today's notice (primarily the Part 1 application requirements) would be established as application requirements and other requirements (primarily the Part 2 application requirements) would be established as permit conditions. Under this approach, applicants would be required to include plans to submit information with the Part 1 application. These plans would be used to develop compliance schedules which would be

incorporated as permit conditions. This option is not favored in today's notice because of the Agency's concerns about the additional complexities associated with the scheme and the additional time that may be required to develop and implement municipal storm water management programs.

J. State Storm Water Management Programs

Today's notice proposes permit application requirements which apply to only the following storm water discharges:

- A discharge with respect to which a permit has been issued prior to February 4, 1987;
- A discharge associated with industrial activity;
- A discharge from a municipal separate storm sewer system serving a population of 250,000 or more;
- A discharge from a municipal separate storm sewer system serving a population of 100,000 or more, but less than 250,000; or
- A discharge for which the Administrator or NPDES State determines that the storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States.

The EPA, or NPDES approved States cannot require NPDES permits for other discharges composed entirely of storm water prior to October 1, 1992. EPA is required to submit to Congress a report on a study, conducted in consultation with the States, for the purpose of;

- Identifying those storm water discharges or classes of storm water discharges for which permits are not required prior to October 1, 1992; and
- Determining, to the maximum extent practicable, the nature and extent of pollutants in such discharges.

Not later than October 1, 1989, EPA, in consultation with the States, is required to conduct a study for the purpose of establishing procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality.

These studies are to be used by EPA, in consultation with State and local officials, to issue regulations which designate additional storm water discharges to be regulated to protect water quality and to establish a comprehensive storm water quality regulatory program. Section 402(p)(6) of the CWA requires that the comprehensive regulatory program shall, at a minimum, establish priorities, establish requirements for State storm water management programs, and establish expeditious deadlines. The provision provides EPA with broad authority and discretion to fashion the comprehensive regulatory program, which may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

As stated earlier in today's notice, one goal in evaluating public comments received in response to today's notice is to gather information for these studies. To facilitate information gathering for the studies, the Agency is proposing an initial framework for State storm water management programs. This initial framework is intended to encourage States to participate in the development of the Section 402(p)(5) studies, and the subsequent development of regulations. EPA will use information collected in this manner, along with other information, such as section 305(b) reports, as guidance in developing storm water programs with the flexibility to target priorities of individual States to the extent necessary to mitigate impacts on water quality associated with storm water discharges.

VIII. Economic Impact

EPA has prepared an Information Collection Request for the purpose of estimating the information collection burden imposed on Federal, State and local governments and industry by proposed revisions to NPDES permit application requirements for storm water discharges codified in 40 CFR Part 122. The Agency is proposing these revisions in response to Section 402(p)(4) of the Clean Water Act, as amended by the Water Quality Act of 1987 (WQA). The proposed revisions would apply to: storm water discharges associated with industrial activity; discharges from municipal separate storm sewer systems serving a population of 250,000 or more and discharges from municipal separate storm sewer systems serving a population of 100,000 or more, but less than 250,000.

The annual cost for applying for NPDES permits for discharges from municipal separate storm sewer systems was estimated to be $5.7 million. EPA estimates that an average application for a permit for all discharges from a municipal separate storm sewer system serving a population of 250,000 or more would cost $131,200 to prepare, or 8,534 hours, while an average application for a permit for all discharges from a municipal separate storm sewer system serving a population of 100,000 or more, but less than 250,000 would cost $83,600 to prepare, or 5,438 hours, annually. The annual respondent cost for NPDES permit applications for storm water discharges for industrial activities was estimated to be $7.6 million or 238,644 hours. EPA estimates that an average application for a permit application for a storm water discharge associated with industrial activity (other than construction activities) would cost $1011.20, or 31.6 hours to prepare. The average cost to prepare a prepare a permit application for a storm water discharge associated with industrial activity from a construction activities would be $144.00 or 4.5 hours. The annual respondent cost for facilities which discharge storm water associated with industrial activity to a municipal separate storm sewer system serving a population of 100,000 or more to notify the operator of the municipal storm sewer is estimated to be $9.4 million. The average cost for facilities which discharge storm water associated with industrial activity to municipal separate storm sewer system serving a populaton of 100,000 or more to notify the operator of the municipal separate storm sewer system would be $195.20 or 6.1 hours. The annual cost to the Federal Government and approved states for administration of the program was estimated to be $0.46 million. In summary, the total burden for municipalities, industry, and state and federal authorities was estimated to equal $23.4 million.

In general, the cost estimates provided in the ICR focus primarily on the costs associated with developing, submitting and reviewing the permit applications associated with today's notice. The Agency will continue to evaluate procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality in the studies required under Section 402(p)(5) of the CWA (see section IV of today's notice). One purpose of these studies will be to evaluate the costs and water quality benefits associated with implementing these procedures and methods. This information, along with information gained during permit implementation will aid in the dynamic long-term development of storm water control efforts. EPA invites the public to submit information regarding the cost of implementing storm water controls to aid in the completion of these studies.

IX. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory analyses of major regulations. Major rules are those which impose a cost on the economy of $100 million or more annually or have certain other economic impacts. Today's proposed amendments

would generally make the NPDES permit application regulations more flexible and less burdensome for the regulated community. These regulations would not, if promulgated satisfy any of the criteria specified in section 1(b) of the Executive Order and, as such, would not constitute a major rule. This regulation was submitted to the Office of Management and Budget (OMB) for review.

X. 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 (ICR) document has been prepared by EPA (ICR No. 0226.04) and a copy may be obtained from: Florice Farmer, Information Policy Branch; EPA; 401 M St., SW. (PM-223); Washington, DC or by calling (202) 382-2740.

Public reporting burden for permit applications for storm water discharges associated with industrial activity (other than from construction facilities) is estimated to average 31.6 hours per response. The public reporting burden for permit applications for storm water discharges associated with industrial activity from a construction activities is estimated to average 4.5 hours per response. The public reporting burden for facilities which discharge storm water associated with industrial activity to municipal separate storm sewers serving a population of 100,000 to notify the operator of the municipal separate storm sewer system is estimated to average 6.1 hours per response.

The reporting burden for system-wide permit applications for discharges from municipal separate storm sewer systems serving a population of 250,000 or more is estimated to average 945.5 hours per response in the Part 1 application and 7589 hours per response in the Part 2 application. The reporting burden for system-wide permit applications for discharges from municipal separate storm sewer systems serving a population of 100,000 or more, but less than 250,000 is estimated to average 515.5 hours per response in the Part 1 application and 4923 hours per response in the Part 2 application. Estimates of reporting burden include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20490; and to the Office of Information and Regulatory Affairs, Office of Management and Budget; Washington, DC 20503, marked "Attention: Desk Officer for EPA.". The final rule will respond to OMB or public comments on the information collection requirements contained in this proposal.

XI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 USC 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's proposed amendments to the regulations would generally make the NPDES permit applications regulations more flexible and less burdensome for permittees. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that these amendments would not, if promulgated, have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Parts 122,123, 124 and 504

Administrative practice and procedure, Environmental protection, Reporting and recordkeeping requirements, Water pollution control.

Authority: Clean Water Act, 33 USC 1251 *et seq.*

Lee M. Thomas,

Administrator.

Date: November 23, 1988.

For the reasons stated in the preamble, Parts 122, 123, 124 and 504 of Title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS; THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart B—Permit Application and Special NPDES Program Requirements

1. The authority citation for Part 122 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

2. Section 122.1 is amended by revising paragraph (b)(2)(iv) to read as follows:

§ 122.1 Purpose and scope.

* * * * *

(b) * * *

(2) * * *

(iv) Discharges composed entirely of storm water as set forth in § 122.26; and

* * * * *

3. Section 122.21 is amended by revising paragraph (c), removing paragraph (f)(9), amending paragraph (g)(3) by adding the sentence shown below, revising paragraph (g)(7), removing and reserving paragraph (g)(10) and revising the introductory text of paragraph (k) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

* * * * *

(c) *Time to apply.* Any person proposing a new discharge, (including new discharges containing storm water associated with industrial activity), shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Director. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 180 day requirement to avoid delay. See also paragraph (k) of this section and paragraphs 122.26(c)(1)(i)(G) and 122.26(c)(1)(ii).

* * * * *

(f) * * *

(9) (removed)

* * * * *

(g) * * *

(3) * * * The average flow of point sources composed of storm water may be estimated and the rainfall event and the method of estimation that the estimate is based on must be indicated.

* * * * *

(7) *Effluent characteristics.* Information on the discharge of pollutants specified in this paragraph (except information on storm water discharges which is to be provided as specified in § 122.26). When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the Director may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in paragraphs (g)(7)(iii)

and (iv) of this section that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the Director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. For storm water discharges, all samples shall be collected from the discharge resulting from the first storm event after a minimum period of 96 hours without a measurable (greater than 0.1 inch rainfall) storm event. For storm water discharges, a grab sample shall be taken during the first twenty minutes of the discharge, and a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes. However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples quantitative data must be reported for the grab sample taken during the first twenty minutes of the discharge for all pollutants specified in § 122.26, and for flow-weighted composites, quantitative data must be reported for all pollutants specified in § 122.26 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform and fecal streptococcus. The Director may establish appropriate site-specific sampling requirements, including the location of the outfall to be sampled, the season the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled and the form of percipitation sampled (snow melt or rain fall). An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

* * * * *

(g)(10) (removed and reserved)

* * * * *

(k) *Application requirements for new sources and new discharges.* New manufacturing, commercial, mining and silvicultural dischargers applying for NPDES permits (except for new discharges of facilities subject to the requirements of § 122.21(h) or new discharges of storm water associated with industrial activity which are subject to the requirements of § 122.26(c)(1) and this section (except as provided by § 122.26(c)(1)(ii)) shall provide the following information to the Director, using the application forms provided by the Director:

* * * * *

4. Section 122.22 is amended by revising paragraph (b) introductory text, to read as follows:

§ 122.22 Signatories to permit applications and reports (applicable to State programs, see § 123.25).

* * * * *

(b) All reports required by permits, and other information requested by the Director shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

* * * * *

5. Section 122.26 is revised to read as follows:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* (1) Prior to October 1, 1992, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except:

(i) A discharge with respect to which a permit has been issued prior to February 4, 1987;

(ii) A discharge associated with industrial activity;

(iii) A discharge from a large municipal separate storm sewer system;

(iv) A discharge from a medium municipal separate storm sewer system;

(v) A discharge which the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under paragraph (a)(2) of this section or agricultural storm water runoff which is exempted from the definition of point source at 122.2. The Director or the EPA Regional Administrator may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Director or the EPA Regional Administrator may consider the following factors:

(A) The location of the discharge with respect to waters of the United States;

(B) The size of the discharge;

(C) The quantity and nature of the pollutants discharged to waters of the United States; and

(D) Other relevant factors.

(2) The Director may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation, runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations. Contaminated storm water runoff from mining operations includes runoff which contain pollutants above natural background levels. Contaminated storm water runoff from oil and gas exploration, production, processing or treatment operations or transmission facilities includes, but is not limited to, runoff which:

(i) Contains a hazardous substance in excess of reporting quantities established at 40 CFR 117.3 or 40 CFR 302.4;

(ii) Contains oil in excess of the reporting quantity established at 40 CFR 110.3; or

(iii) Contributes to a violation of a water quality standard.

(3) *Large and Medium Municipal Separate Storm Sewer Systems.*

(i) Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

(ii) The Director may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

(iii) The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must either:

(A) Participate in a permit application (to be a permittee or a co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system; or

(B) Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible.

(iv) One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The Director may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

(v) Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

(vi) Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

(vii) (A) Operators of storm water discharges associated with industrial activity which discharge to a municipal separate storm sewer system are not required to submit an individual NPDES permit application or participate in a group application for such discharge provided:

(*1*) The operator of such a storm water discharge submits, to the municipality responsible for the municipal separate storm sewer receiving the discharge by no later than [*insert 180 days from date of publication of final rule*] or prior to commencing such discharge: the name of the facility; the location of the discharge; a description (such as SIC codes) which best reflects the principal products or services provided by each facility; existing quantitative data (including flow estimates and sampling data) describing the discharge; and a certification that, if feasible, the discharge has been tested for the presence of non-storm water discharges. The certification shall include a description of the results of any test for the presence of non-storm water discharges, the method used, the date of any testing, and the on-site drainage points that were directly observed during a test, or why the test was not feasible;

(*2*) Such discharge is composed entirely of storm water;

(*3*) Such discharge is in compliance with applicable conditions of the NPDES permit issued for the discharge from the municipal separate storm sewer which receives the storm water discharge associated with industrial activity, provided the discharger has been notified of such conditions; and

(*4*) Such discharges do not contain a hazardous substance in excess of reporting quantities established at 40 CFR 117.3 or 40 CFR 302.4.

(B) Notwithstanding paragraph (a)(3)(vii) (A) of this section, for the purpose of appropriate oversight and enforcement, the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, may require an individual permit for a discharge of storm water associated with industrial activity to a municipal separate storm sewer. Cases where an individual permit may be required include, but are not limited to:

(*1*) The discharge is not compliance with the provisions of paragraph (a)(3)(vii) (A) of this Section; or

(*2*) The discharge potentially contains toxic pollutants or hazardous substances in amounts that may interfere with water quality objectives.

(viii) All discharges to a municipal separate storm sewer that are not composed entirely of storm water must obtain a NPDES permit in accordance with the requirements of Part 122.

(4) *Other Municipal Separate Storm Sewers.* The Director may issue permits for municipal separate storm sewers that are designated under paragraph (a)(1)(v) of this section on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.

(5) *Non-Municipal Separate Storm Sewers.* For storm water discharges associated with industrial activity from point sources which do not discharge to a municipal separate storm sewer, the Director, in his discretion, may issue a single NPDES permit covering all storm water discharges associated with industrial activity which discharge into the same set of conveyances which discharge from a single outfall, or multiple permits which cover all storm water discharges associated with industrial activity into such a system.

(i) All storm water discharges associated with industrial activity that discharge into a storm water discharge system that is not a municipal separate storm sewer must either be covered by an individual permit or a permit issued to the operator of the portion of the system that directly discharges to waters of the United States.

(ii) Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must be identified in the application submitted by the operator of the portion of the system that discharges directly to waters of the United States. Any such application shall include all information regarding storm water discharges associated with industrial activity that discharge into the system that would be required if the dischargers submitted separate applications. The operator of a storm water discharge so identified shall not be required to obtain an individual NPDES permit unless the Director specifies otherwise.

(iii) Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

(6) *Combined Sewer Systems.* Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must

obtain NPDES permits in accordance with the procedures of § 122.21 and are not subject to the provisions of this section.

(7) Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this section shall have no bearing on whether the owner or operator of the discharge is eligible for funding under Title II, Title III or Title VI of the Clean Water Act. See 40 CFR Part 35, Subpart I, Appendix A(b)H.2.j.

(b) *Definitions.*

(1) "Co-permittee" means a permittee to a NPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

(2) "illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water, except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer.)

(3) "incorporated place" means the District of Columbia, or a city, town or village that is incorporated under the laws of the State in which it is located.

(4) "Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(i) Owned or operated by an incorporated place with a population of 250,000 or more as determined by the most recent Bureau of Census estimates; or

(ii) Owned or operated by a municipality other than an incorporated place with a population of 250,000 or more, and that are designated by the Director as part of the large municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(4)(i) of this Section. In making this determination the Director may consider the following factors:

(A) Physical interconnections between the municipal separate storm sewers;

(B) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (b)(4)(i) of this section;

(C) The quantity and nature of pollutants discharged to waters of the United States;

(D) The nature of the receiving waters; or

(E) Other relevant factors.

(5) "Major municipal separate storm sewer outfall" (or "major outfall") means a municipal separate storm sewer outfall that discharges from a pipe with a diameter of more than 36 inches or its equivalent (discharges from conveyances other than circular pipe which are associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a pipe with a diameter of 12 inches or more or from its equivalent (discharges from other than a circular pipe associated with a drainage area of 2 acres or more).

(6) "Major outfall" means a major municipal separate storm sewer outfall.

(7) "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(i) Owned or operated by an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the most recent Bureau of Census estimates; or

(ii) Owned or operated by a municipality other than an incorporated place with a population of 100,000 or more, and that are designated by the Director as part of the medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(7)(i) of this section. In making this determination the Director may consider the following factors:

(A) Physical interconnections between the municipal separate storm sewers;

(B) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (b)(7)(i) of this section;

(C) The quantity and nature of pollutants discharged to waters of the United States;

(D) The nature of the receiving waters; or

(E) Other relevant factors.

(8) "Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems) that:

(i) Is owned or operated by a city, town, borough, country, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;

(ii) That is designed solely for collecting or conveying storm water; and

(iii) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

(9) "Outfall" means "point source" as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

(10) "Runoff coefficient"' means the fraction of total rainfall that will appear at the conveyance as runoff.

(11) "Significant materials" includes raw materials; fuels; materials such as solvents and detergents; finished materials such as metallic products; and waste products such as ashes, slag and sludge that are used or stored in quantities at an industrial plant that, if released and mixed with storm water, could result in impacts to receiving waters.

(12) "Storm water" means storm water runoff, snow melt runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration (other than infilitration contaminated by seepage from sanitary sewers or by other discharges) and drainage.

(13) "Storm water discharge associated with industrial activity" means any "point source" as defined by 40 CFR 122.2 which is used for collecting and conveying storm water and which is located at an industrial plant or directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term includes, but is not limited to, storm water discharges from drainage areas in which are located: industrial plant yards; immediate access roads and rail lines; drainage ponds; material handling sites; refuge sites; sites used for the application or disposal or process waters; sites used for the storage and maintenance of material handling equipment; and sites that are presently or have been used in the past for residual treatment, storage or disposal. Material handling activities include: storage, loading and unloading of any raw material, intermediate product, finished product, byproduct or waste product. The term excludes areas located on plant lands separate from the

plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from lands used for the plant's Industrial activities. industrial plants (including industrial plants at Federally owned or operated facilities) include, but are not limited to, the following:

(i) Facilities subject to effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards (see 40 CFR Subchapter N);

(ii) Facilities classified as Standard Indistrial Classifications 20 through 39 (manufacturing industry);

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations meeting the definition of a reclamation area under 40 CFR 434.11(1)) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations;

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(v) Active and inactive landfills, land application sites, and open dumps and that have received any industrial wastes, including those that are subject to regulation under Subtitle D of RCRA;

(vi) Facilities involved in significant recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards;

(vii) Steam electric power generating facilities, including coal handling sites, and onsite and offsite ancillary transformer storage areas;

(viii) Transportation facilities classified as Standard Industrial Classifications 40 through 45, and 47 which have vehicle maintenance shops, material handling facilities, equipment cleaning operations or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance, loading, storage and unloading activities or equipment cleaning operations, or which are subject to another subparagraph under this paragraph are associated with industrial activity;

(ix) POTW lands used for land application treatment technologies, sludge disposal, handling or processing areas, and chemical handling and storage areas; and

(x) Facilities classified as Standard Industrial Classifications 15 and 16 (General building contractors and heavy construction contractors) including clearing, grading and excavation activities except: (A) operations that result in the disturbance of less than 1 acre total land area which are not part of a larger common plan of development or sale; or (B) that are designed to serve single family residential projects, including duplexes, triplexes, or guadruplexes, that result in the disturbance of less than 5 acre total land areas which are not part of a larger common plan of development or sale.

(c) *Application requirements for storm water discharges associated with industrial activity*— (1) *Individual application.* Any discharge that contains storm water associated with industrial activity and that an operator is required to obtain a permit for, or any discharge of storm water which the Director is evaluating for designation (see 40 CFR 124.52(c)) under paragraph (a)(1)(v) and is not a municipal separate storm sewer, and which is not part of a group application described under paragraph (c)(2) of this section, shall submit an NPDES application in accordance with the requirement of § 122.21 and shall provide the following information (Applicants for discharges composed entirely of storm water shall submit Form 1 and Form 2F. Applicants for discharges composed of storm water and non-storm water shall submit Form 1, Form 2C, and Form 2F. Applicants for new sources or new discharges (as defined in section 122.2 of this part) composed of storm water and non-storm water shall submit Form 1, Form 2D, and Form 2F):

(i) Except as provided in paragraphs 122.26(c)(1) (ii) and (iii), the operator of a storm water discharge associated with industrial activity subject to this section shall provide:

(A) A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) depicting the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each past or present areas used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR 262.34); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

(B) An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall and a narrative description of significant materials that are currently or in the past have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal; past and present materials management practices employed to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge.

(C) A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested for the presence of non-storm water discharges which are not covered by a NPDES permit, tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

(D) Existing information regarding the history of significant leaks or spills of toxic or hazardous pollutants at the facility;

(E) Representative quantitative data based on samples collected during representative storm events and collected in accordance with section 122.21 of this Part from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

(*1*) Any pollutant limited in an effluent guideline to which the facility is subject;

(*2*) Any pollutant listed in the facility's NPDES permit for its process wastewater (if the facility is operating under an existing NPDES permit);

(3) Oil and grease, pH, TOC, BOD_5, COD, TSS, total phosphorus, total nitrogen;

(4) Any information on the discharge required under § 122.21(g)(7) (iii) and (iv) of this Part;

(5) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

(6) The date and duration of the storm event(s) sampled, rainfall measurements or estimates of the storm event which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event.

(F) Operators of a discharge which is composed entirely of storm water are exempt from the requirements of § 122.21(g)(2), (g)(3), (g)(4), (g)(5), (g)(7)(i), (g)(7)(ii), and (g)(7)(v).

(G) Operators of new sources or new discharges (as defined in section 122.2 of this part) which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in paragraph (c)(1)(i)(E) of this paragraph instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in paragraph (c)(1)(i)(E) of this paragraph within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the NPDES permit for the discharge. Operators of a new sources or new discharges which is composed entirely of storm water are exempt from the requirements of § 122.21(k)(3)(ii), (k)(3)(iii), and (k)(5).

(ii) The operator of an existing or new storm water discharge that is associated with industrial activity solely under paragraph (b)(13)(x) of this section, is exempt from the requirements of § 122.21(g) and § 122.26(c)(1)(i) of this Part. Such operator shall provide a narrative description of:

(A) The nature of the construction activity;

(B) The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

(C) Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements; and

(D) Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements;

(E) An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

(F) The name of the receiving water.

(iii) The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility:

(A) Is not required to submit a permit application in accordance with paragraph (c)(1)(i) of this section, unless storm water runoff discharged from the facility:

(1) Contains a release of hazardous substance in excess of reporting quantities established at 40 CFR 177.3 or 40 CFR 302.4;

(2) Contains a release of oil in excess of the reporting quantity established at 40 CFR 110.3; or

(3) Contributes to a violation of a water quality standard.

(B) Notwithstanding paragraph (c)(1)(iii)(A) of this section, the Director may require on a case-by-case basis the operator of an existing or new storm water discharge from an oil or gas exploration, production, processing, or treatment operation, or transmission facility to submit a permit application in accordance with paragraph (c)(1)(i) of this section.

(iv) The Director may require additional information under § 122.21(g)(13) of this Part and may require any facility subject to paragraph (c)(1)(ii) of this section to comply with paragraph (c)(1)(i) of this section.

(2) *Group application for discharges associated with industrial activity.* In lieu of individual applications for storm water discharges associated with industrial activity, a group application may be filed by an entity representing a group of applicants that are part of the same subcategory (see 40 CFR Subchapter N) or, where such grouping is inapplicable, are sufficiently similar as to be appropriate for general permit coverage under § 122.28 of this Part. The Part 1 application (Parts 1A and 1B) shall be submitted to the Office of Water Enforcement and Permits, U.S. EPA, 401 M Street, SW., Washington, DC 20460 for approval. Once a Part 1 application is approved, group applicants are to submit Part 2 of the group application to the Office of Water Enforcement and Permits. A group application shall consist of:

(i) *Part 1A.* Part 1A of a group application shall:

(A) Identify the participants in the group application by name and location. Facilities participating in the group application shall be listed in nine subdivisions, based on the facility location relative to the nine precipitation zones indicated in Appendix E to this Part.

(B) Include a narrative description summarizing the industrial activities of participants of the group application and explaining why the participants, as a whole, are sufficiently similar to be covered by a general permit;

(C) Include a list of significant materials stored outside by participants in the group application and materials management practices employed to minimize contact by these materials with storm water runoff;

(D) Identify 10 percent of the dischargers participating in the group application with a minimum of 10 dischargers, and either a minimum of 2 dischargers from each precipitation zone indicated in Appendix E of this Part in which two or more members of the group are located, or one discharger from each precipitation zone indicated in Appendix E of this Part in which only one member of the group is located) from which quantitative data will be submitted in Part 2. If more than 1,000 facilities are identified in a group application, no more than 100 dischargers must submit quantitative data in Part 2. A description of why the facilities selected to perform sampling and analysis are representative of the group as a whole, in terms of the information provided in paragraphs (c)(2)(i)(B) and (i)(C) of this section, shall accompany this section. Different factors impacting the nature of the storm water discharges, such as processes used and material management, shall be represented, to the extent feasible, in a manner roughly equivalent to their proportion in the group.

(ii) *Part 1B.* Part 1B of the group application shall, for each participant in the group application:

(A) Provide the information described under § 122.26(c)(1)(i) (A), (B), (C) and (D) of this Part;

(B) List all constituents that are addressed in a NPDES permit issued to the facility for any non-storm water discharge; and

(C) Include a narrative description of industrial activities at the facility that are different from or that are in addition

to the activities described under paragraph (c)(2)(i)(B) of this section.

(iii) *Part 2.* Part 2 of a group application shall contain quantitative data (NPDES Form 2F) as modified by paragraph (c)(1) of this section so that when Part 1 and Part 2 of the group application are taken together, a complete NPDES application (Form 1, Form 2C and Form 2F) can be evaluated for each discharger identified in paragraph (c)(2)(i)(D) of this section.

(d) *Application requirements for large and medium municipal separate storm sewer discharges.* The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under paragraph (a)(1)(V) of this section, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under paragraph (a)(1)(v) of this section shall include:

(1) *Part 1.* Part 1 of the application shall consist of:

(i) *General Information.* The applicants' name, address, telephone number, ownership status and status as a Federal, State or local government entity.

(ii) *Legal Authority.* A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in paragraph (d)(2)(i) of this section, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria.

(iii) *Source Identification.*

(A) A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any Publicly Owned Treatment Works serving the same area as the municipal separate storm sewer system.

(B) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost-effective) extended one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

(*1*) The location of known municipal storm sewer system outfalls discharging to waters of the United States;

(*2*) An estimate of the outer perimeter and area of the drainage area associated with each major outfall and a description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agricultural and industrial uses) accompanied with estimates of population densities and projected growth for a ten year period within the drainage area. For each land use division, an etimate of a runoff coefficient shall be provided;

(*3*) The name, address, location, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge to the municipal separate storm sewer storm water associated with industrial activity;

(*4*) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

(*5*) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a NPDES permit;

(*6*) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and

(*7*) The identification of publicly owned lands.

(iv) *Discharge Characterization.*

(A) Monthly mean rain and snow fall estimates and the monthly average number of storm events.

(B) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfall sampled, sampling procedures and analytical methods used.

(C) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

(*1*) Assessed and reported in Section 305(b) reports submitted by the State, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act (CWA) goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

(*2*) Listed under section 304(1)(1)(A)(i), 304(1)(1)(A)(ii), or 304(1)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;

(*3*) Waterbodies listed in State Nonpoint Source Assessments required by Section 319(a) of the CWA that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards in which storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adds significant pollution (or contributes to a violation of water quality standards);

(*4*) Identified and classified according to eutrophic condition of publicly owned lakes listed in State reports required under Section 314(a) of the CWA and a description of those publicly owned lakes for which uses are known to be impaired, and a description of procedures, processes and methods relating to pollutants discharges in municipal systems to control sources of pollutants on such lakes and a description of methods and procedures to restore the quality of such lakes;

(*5*) Areas of concern of the Great Lakes that have been identified by the International Joint Commission;

(*6*) Estuaries of national significance that have been designated under the National Estuary Program under § 320 of the CWA;

(*7*) Other water bodies that the applicant recognizes as highly valued or sensitive waters; and

(*8*) Existing data showing pollutants in bottom sediments, fish tissue or biosurvey data.

(D) *Field Screening Analysis.* Results of a field screening analysis for illicit connections and illegal dumping for all major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description for each major outfall of a visual observation made during a dry weather period. If any flow is observed, two grab samples shall be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observation regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, total and hexavalant chromium, detergents (or surfactants) and free cyanide shall be

provided along with an estimate of the flow rate. Where the field analysis does not involve analytical method approved under 40 CFR Part 136, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test.

(E) *Characterization plan.* Information and a proposed program to meet the requirements of paragraph (d)(2)(iii) of this Section. Such description shall include:

(*1*) The identification of major outfalls that, based on information provided in the field screen analysis of paragraph (d)(1)(iv)(D) of this paragraph and other relevant information, are suspected of containing illicit discharges, for sampling under paragraph (d)(2)(iii)(A) of this section; for identified outfalls, a plan to detect and control illicit discharges and improper disposal to the storm sewer may be submitted in lieu of sampling under paragraph (d)(2)(iii)(A) of this section; and

(*2*) The location of outfalls appropriate for representative data collection under paragraph (d)(2)(iii)(B) of this section, a description of why the outfall is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls for such sampling should reflect water quality concerns (see paragraph (d)(1)(iv)(C) of this section) to the extent practicable.

(v) *Management Programs.*

(A) A description of the existing management program to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented, accompanied with an estimate of the reduction of pollutant loads. Such controls may include, but are not limited to: procedures to control pollution resulting from construction activities, floodplain management controls, wetland protection measures, best management practices for new subdivisions and emergency spill response programs. The description may address controls established under State law as well as local controls.

(B) A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented.

(2) *Part 2.* Part 2 of the application shall consist of:

(i) *Adequate Legal Authority.* A demonstration that the applicant shall operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:

(A) Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by each storm water discharge associated with industrial activity or the quantity of storm water discharged from sites of industrial activity;

(B) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

(C) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;

(D) Control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

(E) Require compliance with conditions in ordinances, permits, contracts or orders; and

(F) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

(ii) *Source Identification.* The location of any major outfall that discharges to waters of the United States that was not reported under paragraph (d)(1)(iii)(B)(*1*) of this section. For any major outfall identified under this paragraph but not identified in Part 1 of the application, the applicant shall submit appropriate information required under paragraph (d)(1)(iv)(D) of this section;

(iii) *Characterization data.* When "quantitative data" for a pollutant are required under paragraphs (d)(2)(iii)(A)(*3*), (B)(*4*) and (B)(*5*) of this section, the applicant must collect a sample of effluent in accordance with 40 CFR 122.21(g)(7) and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

(A) Dry weather and storm event sampling requirements established by the Director on the basis of the results of the screening analysis for illicit discharges and illegal dumping submitted under paragraph (d)(1)(ix) of this section. At a minimum, the Director shall require that for appropriate major outfalls:

(*1*) An estimate of the dry weather flow be provided and a 24-hour composite sample be collected during dry weather;

(*2*) Samples be collected of a storm water discharge from a representative storm event and an estimate of the flowrate during the storm event, the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event be provided; and

(*3*) For samples collected under paragraphs (d)(2)(iii)(A)(*1*) and (A)(*2*) of this section, quantitative data shall be provided for:

pH; lead
fecal coliform; copper
fecal streptococcus; chromium
volatile organic carbon (VOC); cadmium
surfactant (MBAS); silver
oil and grease; nickel
TSS; zinc
total organic carbon (TOC); cyanides
biological oxygen demand (BOD_5); total phenol
chemical oxygen demand (COD)

(B) Quantitative data from representative outfalls designate by the Director (based on information received in Part 1 of the application, the Director shall designate between five and ten outfalls as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls covered in the application, the Director shall designate all outfalls) including:

(*1*) For each outfall designated under this subparagraph, the applicant shall collect samples of a storm water discharge from a representative storm event;

(*2*) For a minimum of one outfall designated under this subparagraph, the applicant shall collect samples of storm water discharges from three representative storm events that occur at last one month apart;

(*3*) The applicant shall provide a narrative description of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

(4) For samples collected under paragraphs (d)(2)(iii)(B)(1) and (B)(2) of this section, quantitative data shall be provided for: the organic pollutants listed in Table II (except his (chlormethyl) ether, dichlorofluoromethane and trichlorofluoremethane); the pollutants listed in Table III (toxic metals, cyanide, and total phenol) of Appendix D of 40 CFR Part 122, and for the following pollutants:

total suspended solids (TSS): dissolved solids
COD: BOD_5
oil and grease: fecal coliform
fecal streptococcus: pH
total nitrogen: dissolved phosphorus
total ammonia plus organic nitrogen: total phosphorus

(5) Additional quantitative data required by the Director (the Director may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representativeness);

(C) Estimates of the annual pollutant load of the cumulative discharges from all outfalls (including outfalls that are not classified as major outfalls) represented in the permit application and the event mean concentration of the cumulative discharge from all outfalls (including outfalls that are not classified as major outfalls) represented in the permit application during a representative storm for BOD_5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including a description of the representative storm, discharge monitoring, modelling, data analysis, and calculation methods;

(D) A proposed schedule to provide estimates for each major outfall identified in either paragraph (d)(2)(ii) or (d)(1)(iii)(B)(1) of this section of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under paragraph (d)(2)(iii)(B) of this section; and

(E) A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.

(iv) *Proposed management program.* A proposed program covers the duration of the permit including a comprehensive planning process which includes public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a system-wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on a consideration of appropriate controls including:

(A) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

(1) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants in discharges from municipal separate storm sewers;

(2) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. (Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in paragraph (d)(2)(iv)(D) of this section;

(3) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems;

(4) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies;

(5) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under paragraph (d)(2)(iv)(C) of this section); and

(6) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

(B) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

(1) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system;

(2) A description of sampling requirements during storm events and during non-storm events for the following constituents: fecal coliform, fecal streptococcus, VOC, surfactants (MBAS), and residual chlorine;

(3) A description of other testing programs based on smoke testing, and testing with fluorometric dyes;

(4) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

(5) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

(6) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and

disposal of used oil and toxic materials; and

(7) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary.

(C) A description of a program to monitor pollutants in runoff from industrial facilities that discharge to the municipal storm sewer, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges.

(D) A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

(1) A description of procedures for site planning which incorporate consideration of potential water quality impacts;

(2) A description of requirements for nonstructural and structural best management practices;

(3) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

(4) A description of appropriate educational and training measures for construction site operators.

(v) *Assessment of Controls.* Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment will also identify known impacts of storm water controls on ground water.

(vi) *Fiscal Analysis.* For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the proposed programs under paragraphs (d)(2)(iii) and (d)(2)(iv) of this section. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.

(vii) Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination.

(viii) Where such requirements are not practicable to are not applicable, the Director may exclude any operator of a discharge from a municipal separate storm sewer which is designated under paragraph (a)(1)(v), (b)(4)(ii) or (b)(7)(ii) of this section from the requirements of paragraphs (d)(1)(iv)(E)(2), (d)(2)(ii), (d)(2)(iii)(B) of this section and non-applicable portions of paragraph (d)(2)(iv) of this section. The Director shall not exclude from any permit application requirements under this paragraph, the operator of a discharge from a municipal separate storm sewer that is owned or operated by, or public conveyances within, an incorporated place with a population of 100,000 or more as determined by the most recent Bureau of Census estimates.

(e) *Application deadlines.* Any operator of a point source required to obtain a permit under paragraph (a)(1) of this section that does not have an effective NPDES permit covering its storm water outfalls shall submit an application in accordance with the following deadlines:

(1) For any storm water discharge associated with industrial activity that is not part of a group application as described in paragraph (c)(2), of this section, the application shall be submitted to the Director by [*insert 12 months from date of publication of final rule*];

(2) For any group application:

(i) Part 1 of the application shall be submitted to the Director, Office of Water Enforcement and Permits by [*insert 120 days from the date of publication of final rule*];

(ii) Based on information in the Part 1 application, the Director will approve or deny the members in the group application within 60 days after receiving Part 1 of the group application.

(iii) Part 2 of the application shall be submitted to the Director, Office of Water Enforcement and Permits by [*insert 18 months from the date of publication of final rule*].

(3) For any discharge from a large municipal separate storm sewer;

(i) Part 1 of the application shall be submitted to the Director by [*insert 12 months from date of publication of final rule*];

(ii) Based on information received in the Part 1 application the Director will approve or deny a sampling plan within 90 days after receiving the Part 1 application;

(iii) Part 2 of the application shall be submitted to the Director by [*insert 24 months from date of publication of final rule*].

(4) For any discharge from a medium municipal separate storm sewer;

(i) Part 1 of the application shall be submitted to the Director by November 4, 1990.

(ii) Based on information received in the Part 1 application the Director will approve or deny a sampling plan within 90 days after receiving the Part 1 application.

(iii) Part 2 of the application shall be submitted to the Director by February 4, 1992.

(5) A permit application shall be submitted to the Director within 60 days of notice, unless permission for a later date is granted by the Director (see 40 CFR 124.52(c)), for:

(i) A storm water discharge which the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States (see paragraph (a)(1)(v) of this section);

(ii) A discharge of storm water associated with industrial activity to a municipal separate storm sewer for which the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, requires an individual permit under paragraph 122.26(a)(3)(vii)(B);

(iii) A storm water discharge from an oil or gas exploration, production, processing or treatment operation or transmission facility which is required to submit a permit application on a case-by-case basis under paragraph (c)(1)(iii)(B) of this section; or

(iv) A storm water discharge subject to paragraph (c)(1)(iv) of this section.

(f) *Petitions.* (1) Any operator of a municipal separate storm sewer system may petition the Director to require a separate NPDES permit (or a permit issued under an approved NPDES State program) for any discharge into the municipal separate storm sewer system.

(2) Any person may petition the Director to require an NPDES permit (or a permit issued under an approved NPDES State program) for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(3) The owner or operator of a municipal separate storm sewer system may petition the Director to reduce the population served by such separate system to account for storm water discharged to combined sewers as defined by 40 CFR 35.2005(b)(11) that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be

reduced proportional to the fraction, based by estimating lengths, of length of combined sewers over the sum of the lengths of combined sewers and municipal separate storm sewers where an applicant has submitted the NPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(4) The Director shall make a final determination on any petition received under this section within 90 days after receiving the petition.

6. Section 122.28(b)(2)(i)(A) is revised to read as follows:

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) The discharge(s) is a significant contributor of pollution. In making this determination, the Director may consider the following factors:

(*1*) The location of the discharge with respect to waters of the United States;

(*2*) The size of the discharge;

(*3*) The quantity and nature of the pollutants discharged to waters of the United States; and

(*4*) Other relevant factors;

* * * * *

7. Section 122.42 is amended by adding paragraph (c) to read as follows:

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25)

* * * * *

(c) *Municipal Separate Storm Sewer Systems.* The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Director under § 122.26(a)(1)(v) of this Part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:

(1) The status of implementing the components of the storm water management program that are established as permit conditions;

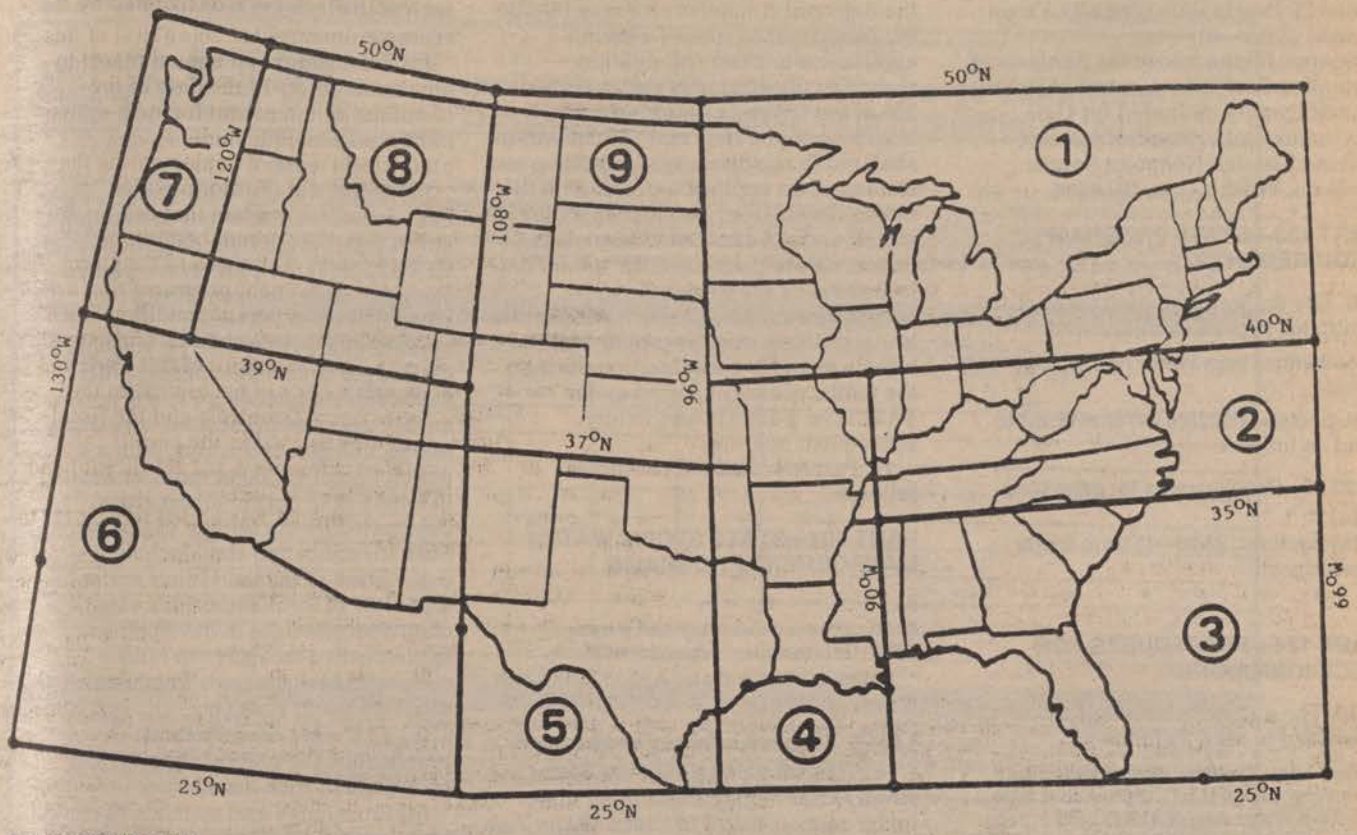
(2) Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with § 122.26(d)(2)(iii) of this Part; and

(3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under § 122.26(d)(2)(iv) and (d)(2)(v) of this Part.

7a. Appendix E is added to Part 122 to read as follows:

BILLING CODE 6560-50-M

Appendix E to Part 122—Rainfall Zones on the United States



BILLING CODE 6560-50-C

Not Shown: Alaska (Zone 7); Hawaii (Zone 7); Puerto Rico (Zone 7); Virgin Islands (Zone -3).

Source: Methodology for Analysis of Detention Basins for Control of Urban Runoff Quality, prepared for U.S. Environmental Protection Agency, Office of Water, Nonpoint Source Division, Washington, DC 1986.

PART 123—STATE PROGRAM REQUIREMENTS

8. The authority citation for Part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

9. Section 123.25(a)(9) is revised to read as follows:

§ 123.25 Requirements for permitting.

(a) * * *

(9) Section 122.26—(Storm water discharges);

* * * * *

PART 124—PROCEDURES FOR DECISIONMAKING

10. The authority citation for Part 124 is revised to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; Safe Drinking Water Act, 42 U.S.C. 300f et seq.; Clean Water Act, 33 U.S.C. 1251 et seq.; and Clean Air Act, 42 U.S.C. 1857 et seq.

11. Section 124.52 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 124.52 Permits required on a case-by-case basis.

* * * * *

(b) Whenever the Regional Administrator decides that an individual permit is required under this section, except as provided in paragraph (c) of this section, the Regional Administrator shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit under § 122.21 within 60 days of notice. The question whether the designation was proper will remain open for consideration during the public comment period under § 124.11 or § 124.118 and in any subsequent hearing.

(c) Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this section (see 40 CFR 122.26(a)(1)(v), (c)(1)(iii) and (c)(1)(iv)), the Regional Administrator may require the discharger to submit a permit application or other information regarding the discharge under section 308 of the CWA. In requiring such information, the Regional Administrator shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit under § 122.26 within 60 days of notice, unless permission for a later date is granted by the Regional Administrator. The question whether the initial designation was proper will remain open for consideration during the public comment period under § 124.11 or § 124.118 and in any subsequent hearing.

12. Part 504 is added to read as follows:

PART 504—STATE STORM WATER MANAGEMENT PROGRAMS

Sec.

504.0 Program summary and purpose.

504.3 Storm water management plans.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

§ 504.0 Program summary and purpose.

(a) This subpart establishes State storm water management programs under section 402(p) of Clean Water Act. State storm water management programs, along with the NPDES requirements for storm water discharges, are to establish comprehensive programs to regulate storm water discharges, including a framework for establishing procedures and methods to control storm water discharges.

(b) State storm water management programs are to include the development of management plans to assist continuing planning necessary to implement comprehensive programs to regulate storm water discharges to mitigate water quality impacts. Initially, State storm water management plans will provide States with a voluntary means of participating in studies of storm water discharges under Section 402(p)(5) of the CWA.

§ 504.3 Storm water management plans

EPA requests that States wishing to participate in studies of storm water discharges under Section 402(p)(5) of the CWA, prepare and submit storm water management plans which include the following plan elements or reference such plan elements contained in separate documents:

(a) Existing State programs, including appropriate Non-Point Source programs, to reduce pollutants in discharges from municipal separate storm sewers and other storm water discharges;

(b) Storm water discharges or classes of storm water discharges in addition to storm water discharges described in 40 CFR 122.26(a). At a minimum, plans should include the identification of municipal agencies which own or operate or are otherwise responsible for discharges from municipal separate storm sewers including State agencies, county agencies associated with cities, towns, villages, townships, with a population of 10,000 or more, or located in whole or in part in urban areas designated by the Bureau of Census. Such identification shall include a description of the limitations under State law of legal authorities of such municipal agencies in developing and implementing measures to reduce pollutants in discharges from municipal separate storm sewers;

(c) To the maximum extent practicable, the nature and extent of pollutants in such discharges;

(d) Procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality; and

(e) Priorities for developing a comprehensive program to reduce pollutants in storm water discharges. Priorities should be based on:

(1) The magnitude of water quality impacts associated with storm water discharges on various receiving waters relative to other discharges causing water quality impacts;

(2) The nature of the storm water discharges considering:

(i) The nature of impacts on receiving waters;

(ii) The size of and pollutants in the storm water discharges;

(iii) The nature of the pollution source;

(iv) Available measures to reduce pollutants in storm water discharges; and

(v) Other relevant factors.

Appendix

Note: The following Appendix will not appear in the Code of Federal Regulations.

BILLING CODE 6560-50-M

Please print or type in the unshaded areas only

EPA ID Number *(copy from item I of Form 1)*

Form Approved. OMB No. xxxx-xxxx
Approval expires xx-xx-xx

Form 2F NPDES

United States Environmental Protection Agency
Washington, DC 20460

Application for Permit To Discharge Stormwater Discharges Associated with Industrial Activity

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 31.6 hours per application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate, any other aspect of this collection of information, or suggestions for improving this form, including suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Outfall Location

For each outfall, list the latitude and longitude of its location to the nearest 15 seconds and the name of the receiving water.

A. Outfall Number *(list)*	B. Latitude	C. Longitude	D. Receiving Water *(name)*

II. Improvements

A. Are you now required by any Federal, State, or local authority to meet any implementation schedule for the construction, upgrading or operation of wastewater treatment equipment or practices or any other environmental programs which may affect the discharges described in this application? This includes, but is not limited to, permit conditions, administrative or enforcement orders, enforcement compliance schedule letters, stipulations, court orders, and grant or loan conditions.

1. Identification of Conditions, Agreements, Etc.	2. Affected Outfalls		3. Brief Description of Project	4. Final Compliance Date	
	number	source of discharge		a. req.	b. proj.

B. You may attach additional sheets describing any additional water pollution (or other environmental projects which may affect your discharges) you now have under way or which you plan. Indicate whether each program is now under way or planned, and indicate your actual or planned schedules for construction.

III. Site Drainage Map

Attach a site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) depicting the facility including: each of its intake and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each past or present areas used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied; each of its hazardous waste treatment, storage or disposal units (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR 262.34); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility.

Continue on Page 2

Continued from the Front

IV. Narrative Description of Pollutant Sources

A. For each outfall, provide an estimate of the area (include units) of impervious surfaces (including paved areas and building roofs) drained to the outfall, and an estimate of the total surface area drained by the outfall.

Outfall Number	Area of Impervious Surface *(provide units)*	Total Area Drained *(provide units)*	Outfall Number	Area of Impervious Surface *(provide units)*	Total Area Drained *(provide units)*

B. Provide a narrative description of significant materials that are currently or in the past have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage, or disposal; past and present materials management practices employed to minimize contact by these materials with storm water runoff; materials loading and access areas; and the location, manner, and frequency in which pesticides, herbicides, soil conditioners, and fertilizers are applied.

C. For each outfall, provide the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the schedule and type of maintenance for control and treatment measures and the ultimate disposal of any solid or fluid wastes other than by discharge.

Outfall Number	Treatment	List Codes from Table 2F-1

V. Nonstormwater Discharges

A. I certify under penalty of law that the outfall(s) covered by this application have been tested for the presence of nonstormwater discharges, and that all nonstormwater discharges from these outfall(s) are identified in either an accompanying Form 2C or Form 2E application for the outfall.

Name and Official Title *(type or print)*	Signature	Date Signed

B. Provide a description of the method used, the date of any testing, and the onsite drainage points that were directly observed during a test.

VI. Significant Leaks or Spills

Provide existing information regarding the history of significant leaks or spills of toxic or hazardous pollutants at the facility, including the approximate date and location of the spill or leak, and the type and amount of material released.

 Continue on Page 3

EPA ID Number *(copy from Item I of Form 1)*

Continued from Page 2

VII. Discharge Information

A,B,C, & D: See instructions before proceeding. Complete one set of tables for each outfall. Annotate the outfall number in the space provided. Tables VII-A, VII-B, and VII-C are included on separate sheets numbered VII-1 and VII-2.

E: Potential discharges not covered by analysis - Is any pollutant listed in Table 2F-2 a substance or a component of a substance which you currently use or manufacture as an intermediate or final product or byproduct?

☐ Yes *(list all such pollutants below)* ☐ No *(go to Section IX)*

VIII. Biological Toxicity Testing Data

Do you have any knowledge or reason to believe that any biological test for acute or chronic toxicity has been made on any of your discharges or on a receiving water in relation to your discharge within the last 3 years?

☐ Yes *(list all such pollutants below)* ☐ No *(go to Section IX)*

IX. Contract Analysis Information

Were any of the analyses reported in Item V performed by a contract laboratory or consulting firm?

☐ Yes *(list the name, address, and telephone number of, and pollutants analyzed by, each such laboratory or firm below)* ☐ No *(go to Section X)*

A. Name	B. Address	C. Area Code & Phone No.	D. Pollutants Analyzed

X. Certification

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

A. Name & Official Title *(type or print)*	B. Area Code and Phone No.
C. Signature	D. Date Signed

EPA ID Number *(copy from Item I of Form 1)*

Form Approved. OMB No. xxxx-xxxx
Approval expires xx-xx-xx

VII. Discharge Information *(Continued from page 3 of Form 2F)*

Part A - You must provide the results of at least one analysis for every pollutant in this table. Complete one table for each outfall. See instructions for additional details.

Pollutant and CAS Number *(if available)*	Maximum Values *(include units)*		Average Values *(include units)*		Number of Storm Events Sampled	Sources of Pollutants
	Grab Sample Taken During First 20 Minutes	Flow-weighted Composite	Grab Sample Taken During First 20 Minutes	Flow-weighted Composite		
Oil and Grease						
Biological Oxygen Demand (BOD5)						
Chemical Oxygen Demand (COD)						
Total Suspended Solids (TSS)						
Total Nitrogen						
Total Phosphorus						
pH	Minimum	Maximum	Minimum	Maximum		

Part B - List each pollutant that is limited in an effluent guideline which the facility is subject to or any pollutant listed in the facility's NPDES permit for its process wastewater (if the facility is operating under an existing NPDES permit). Complete one table for each outfall. See the instructions for additional details and requirements.

Pollutant and CAS Number *(if available)*	Maximum Values *(include units)*		Average Values *(include units)*		Number of Storm Events Sampled	Sources of Pollutants
	Grab Sample Taken During First 20 Minutes	Flow-weighted Composite	Grab Sample Taken During First 20 Minutes	Flow-weighted Composite		

Continued from the Front

Part C - List each pollutant shown in Tables 2F-2, 2F-3, and 2F-4 that you know or have reason to believe is present. See the instructions for additional details and requirements. Complete one table for each outfall.

Pollutant and CAS Number *(if available)*	Maximum Values *(include units)*		Average Values *(include units)*		Number of Storm Events Sampled	Sources of Pollutants
	Grab Sample Taken During First 20 Minutes	Flow-weighted Composite	Grab Sample Taken During First 20 Minutes	Flow-weighted Composite		

Part D - Provide data for the storm event(s) which resulted in the maximum values for the flow weighted composite sample.

1. Date of Storm Event	2. Duration of Storm *(in minutes)*	3. Total rainfall during storm event *(in inches)*	4. Number of hours between beginning of storm measured and end of previous measurable rain event	5. Maximum flow rate during rain event *(gallons/minute or specify units)*	6. Total flow from rain event *(gallons or specify units)*

7. Provide a description of the method of flow measurement or estimate.

BILLING CODE 6560-50-C

Instructions—Form 2F

Application for Permit to Discharge Stormwater Associated with Industrial Activity

Who Must File Form 2F

Form 2F must be completed by operators of facilities which discharge stormwater associated with industrial activity or by operators of stormwater discharges that EPA is evaluating for designation as a significant contributor of pollutants to waters of the United States, or as contributing to a violation of a water quality standard.

Operators of discharges which are composed entirely of stormwater must complete Form 2F (EPA Form 3510–2F) in conjunction with Form 1 (EPA Form 3510–1).

Operators of discharges of stormwater which are combined with process wastewater (process wastewater is water that comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, waste product, or wastewater) must complete and submit Form 2F, Form 1, and Form 2C (EPA Form 3510–2C).

Operators of discharges of stormwater which are combined with nonprocess wastewater (nonprocess wastewater includes noncontact cooling water and sanitary wastes which are not regulated by effluent guidelines or a new source performance standard, except discharges by educational, medical, or commercial chemical laboratories) must complete Form 1, Form 2F, and Form 2E (EPA Form 3510–2E).

Operators of new sources or new discharges of stormwater associated with industrial activity which will be combined with other nonstormwater new sources or new discharges must submit Form 1, Form 2F, and Form 2D (EPA Form 3510–2D).

Where to File Applications

The application forms should be sent to the EPA Regional Office which covers the State in which the facility is located. Form 2F must be used only when applying for permits in States where the NPDES permits program is administered by EPA. For facilities located in States which are approved to administer the NPDES permits program, the State environmental agency should be contacted for proper permit application forms and instructions.

Information on whether a particular program is administered by EPA or by a State agency can be obtained from your EPA Regional Office. Form 1, Table 1 of the "General Instructions" lists the addresses of EPA Regional Offices and the States within the jurisdiction of each Office.

Completeness

Your application will not be considered complete unless you answer every question on this form and on Form 1. If an item does not apply to you, enter "NA" (for not applicable) to show that you considered the question.

Public Availability of Submitted Information

You may not claim as confidential any information required by this form or Form 1, whether the information is reported on the forms or in an attachment. Section 402(j) of the Clean Water Act requires that all permit applications will be available to the public. This information will be made available to the public upon request.

Any information you submit to EPA which goes beyond that required by this form, Form 1, or Form 2C you may claim as confidential, but claims for information which are effluent data will be denied.

If you do not assert a claim of confidentiality at the time of submitting the information, EPA may make the information public without further notice to you. Claims of confidentiality will be handled in accordance with EPA's business confidentiality regulations at 40 CFR Part 2.

Definitions

All significant terms used in these instructions and in the form are defined in the glossary found in the General Instructions which accompany Form 1.

EPA ID Number

Fill in your EPA Identification Number at the top of each odd-numbered page of Form 2F. You may copy this number directly from item I of Form 1.

Item I

You may use the map you provided for item XI of Form 1 to determine the latitute and longitude of each of your outfalls and the name of the receiving water.

Item II–A

If you check "yes" to this question, complete all parts of the chart, or attach a copy of any previous submission you have made to EPA containing the same information.

Item II–B

You are not required to submit a description of future pollution control projects if you do not wish to or if none is planned.

Item III

Attach a site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) depicting the facility including:

each of its drainage and discharge structures;

the drainage area of each stormwater outfall;

paved areas and building within the drainage area of each stormwater outfall, each past or present areas used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in stormwater runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied;

each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste for less than 90 days under 40 CFR 262.34);

each well where fluids from the facility are injected underground; and

springs, and other surface water bodies which receive stormwater discharges from the facility;

Item IV–A

For each outfall, provide an estimate of the area drained by the outfall which is covered by impervious surfaces. For the purpose of this application, impervious surfaces are surfaces where stormwater runs off at rates that are significantly higher than background rates (e.g., predevelopment levels) and include paved areas, building roofs, parking lots, and roadways. Include an estimate of the total area (including all impervious and pervious areas) drained by each outfall. The site map required under item III can be used to estimate the total area drained by each outfall.

Item IV–B

Provide a narrative description of significant materials that are currently or in the past have been treated, stored, or disposed in a manner to allow exposure to stormwater; method of treatment, storage or disposal of these materials; past and present materials management practices employed to minimize contact by these materials with stormwater runoff; materials loading and access areas; and the location, manner, and frequency in which pesticides, herbicides, soil conditioners, and fertilizers are applied.

Significant materials should be identified by chemical name, form (e.g., powder, liquid, etc.), and type of container or treatment unit. Indicate any materials treated, stored, or disposed of together.

Item IV-C

For each outfall, structural controls include structures which enclose material handling or storage areas, covering materials, berms, dikes, or diversion ditches around manufacturing, production, storage or treatment units, retention ponds, etc. Nonstructural controls include practices such as spill prevention plans, employee training, visual inspections, preventive maintenance, and housekeeping measures that are used to prevent or minimize the potential for releases of pollutants.

Item V

Provide a certification that all outfalls that should contain stormwater discharges associated with industrial activity have been tested for the presence of nonstormwater discharges which are not covered by an NPDES permit. Tests for such nonstormwater discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. Part B must include a description of the method used, the date of any testing, and the onsite drainage points that were directly observed during a test. All nonstormwater discharges must be identified in a Form 2C or Form 2E which must accompany this application (see beginning of instructions under section titled "Who Must File Form 2F" for a description of when Form 2C and Form 2E must be submitted).

Item VI

Provide a description of existing information regarding the history of significant leaks or spills of toxic or hazardous pollutants at the facility. Significant spills at a facility include releases of oil or hazardous substances in excess of reportable quantities under section 311 of the Clean Water Act (see 40 CFR 110.10 and 40 CFR 117.21) or section 102 of CERCLA (see 40 CFR 302.4).

Items VII-A, B, and C

These items require you to collect and report data on the pollutants discharged for each of your outfalls. Each part of this item addresses a different set of pollutants and must be completed in accordance with the specific instructions for that part. The following general instructions apply to the entire item.

General Instructions

Part A requires you to report at least one analysis for each pollutant listed. Parts B and C require you to report analytical data in two ways. For some pollutants addressed in Parts B and C, if you know or have reason to know that the pollutant is present in your discharge, you may be required to list the pollutant and test (sample and analyze) and report the levels of the pollutants in your discharge. For all other pollutants addressed in Parts B and C, you must list the pollutant if you know or have reason to know that the pollutant is present in the discharge, and either report quantitative data for the pollutant or briefly describe the reasons the pollutant is expected to be discharged. (See specific instructions on the form and below for Parts A through C.) Base your determination that a pollutant is present in or absent from your discharge on your knowledge of your raw materials, material management practices, maintenance chemicals, history of spills and releases, intermediate and final products and byproducts, and any previous analyses known to you of your effluent or similar effluent.

A. Sampling: The collection of the samples for the reported analyses should be supervised by a person experienced in performing sampling of industrial wastewater or stormwater discharges. You may contact EPA or your State permitting authority for detailed guidance on sampling techniques and for answers to specific questions. Any specific requirements contained in the applicable analytical methods should be followed for sample containers, sample preservation, holding times, the collection of duplicate samples, etc. The time when you sample should be representative, to the extent feasible, of your treatment system operating properly with no system upsets. Samples should be collected from the center of the flow channel, where turbulence is at a maximum, at a site specified in your present permit, or at any site adequate for the collection of a representative sample.

For pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform, grab samples taken during the first 20 minutes of the discharge must be used (you are not required to analyze a flow-weighted composite for these parameters). For all other pollutants both a grab sample collected during the first 20 minutes of the discharge and a flow-weighted composite sample must be analyzed. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period of greater than 24 hours.

All samples shall be collected from a discharge resulting from the first storm event after a minimum period of 96 hours without a measurable (greater than 0.1 inch rainfall) storm event.

A grab sample shall be taken during the first twenty minutes of the discharge, and a flow-weighted composite shall be taken for the entire event or for the first three hours of the event.

Grab and composite samples are defined as follows:

Grab sample: An individual sample of at least 100 milliliters collected during the first twenty minutes of the discharge. This sample is to be analyzed separately from the composite sample.

Flow-Weighted Composite sample: A flow-weighted composite sample may be taken with a continuous sampler that proportions the amount of sample collected with the flow rate or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire event or for the first three hours of the event, with each aliquot being at least 100 milliliters and collected with a minimum period of fifteen minutes between aliquot collections. The composite must be flow proportional; either the time interval between each aliquot or the volume of each aliquot must be proportional to either the stream flow at the time of sampling or the total stream flow since the collection of the previous aliquot. Aliquots may be collected manually or automatically. For GC/MS Volatile Organic Analysis (VOA), aliquots must be combined in the laboratory immediately before analysis. Only one analysis for the composite sample is required.

The Agency is currently reviewing sampling requirements in light of recent research on testing methods. Upon completion of its review, the Agency plans to propose changes to the sampling requirements.

Data from samples taken in the past may be used, provided that:

All data requirements are met;

Sampling was done no more than three years before submission; and

All data are representative of the present discharge.

Among the factors which would cause the data to be unrepresentative are significant changes in production level, changes in raw materials, processes, or final products, and changes in stormwater treatment. When the Agency

promulgates new analytical methods in 40 CFR Part 136, EPA will provide information as to when you should use the new methods to generate data on your discharges. Of course, the Director may request additional information, including current quantitative data, if they determine it to be necessary to assess your discharges.

B. Reporting: All levels must be reported as concentration and as total mass. You may report some or all of the required data by attaching separate sheets of paper instead of filling out pages VII–1 and VII–2 if the separate sheets contain all the required information in a format which is consistent with pages VII–1 and VII–2 in spacing and in identification of pollutants and columns. Use the following abbreviations in the columns headed "Units."

Concentration	Mass
ppm = parts per million	lbs = pounds.
mg/l = milligrams per liter	ton = tons (English tons).
ppb = parts per billion	mg = milligrams.
µg/l = micrograms per liter.	g = grams.
kg = kilograms	T = tonnes (metric tons).

All reporting of values for metals must be in terms of "total recoverable metal," unless:

(1) An applicable, promulgated effluent limitation or standard specifies the limitation for the metal in dissolved, valent, or total form; or

(2) All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium); or

(3) The permitting authority has determined that in establishing case-by-case limitations it is necessary to express the limitations on the metal in dissolved, valent, or total form to carry out the provisions of the CWA. If you measure only one grab sample and one flow-weighted composite sample for a given outfall, complete only the "Maximum Values" columns and insert "1" into the "Number of Storm Events Sampled" column. The permitting authority may require you to conduct additional analyses to further characterize your discharges.

If you measure more than one value for a grab sample or a flow-weighted composite sample for a given outfall and those values are representative of your discharge, you must report them. You must describe your method of testing and data analysis. You also must determine the average of all values within the last year and report the concentration mass under the "Average Values" columns, and the total number of storm events sampled under the "Number of Storm Events Sampled" columns.

C. Analysis: You must use test methods promulgated in 40 CFR Part 136; however, if none has been promulgated for a particular pollutant, you may use any suitable method for measuring the level of the pollutant in your discharge provided that you submit a description of the method or a reference to a published method. Your description should include the sample holding time, preservation techniques, and the quality control measures which you used. If you have two or more substantially identical outfalls, you may request permission from your permitting authority to sample and analyze only one outfall and submit the results of the analysis for other substantially identical outfalls. If your request is granted by the permitting authority, on a separate sheet attached to the application form, identify which outfall you did test, and describe why the outfalls which you did not test are substantially identical to the outfall which you did test.

Part VII–A

Part VII–A must be completed by all applicants for all outfalls who must complete Form 2F.

Analyze a grab sample collected during the first twenty minutes of the discharge and flow-weighted composite samples for all pollutants in this Part, and report the results except use only grab samples for pH and oil and grease. See discussion in General Instructions to Item VII for definitions of grab sample collected during the first twenty minutes of discharge and flow-weighted composite sample. The "Average Values" column is not compulsory but should be filled out if data are available.

Part VII–B

List all pollutants that are limited in an effluent guideline which the facility is subject to (see 40 CFR Subchapter N to determine which pollutants are limited in effluent guidelines) or any pollutant listed in the facility's NPDES permit for its process wastewater (if the facility is operating under an existing NPDES permit). Complete one table for each outfall. See discussion in General instructions to item VII for definitions of grab sample collected during the first twenty minutes of discharge and flow-weighted composite sample. The "Average Values" column is not compulsory but should be filled out if data are available.

Analyze a grab sample collected during the first twenty minutes of the discharge and flow-weighted composite samples for all pollutants in this Part, and report the results, except as provided in the General Instructions.

Part VII–C

Part VII–C must be completed by all applicants for all outfalls which discharge stormwater associated with industrial activity, or that EPA is evaluating for designation as a significant contributor of pollutants to waters of the United States, or as contributing to a violation of a water quality standard. Use both a grab sample and a composite sample for all pollutants you analyze for in this part except use grab samples for residual chlorine and fecal coliform. The "Average Values" column is not compulsory but should be filled out if data are available. Part C requires you to address the pollutants in Table 2F–2, 2F–3, and 2F–4 for each outfall. Pollutants in each of these Tables are addressed differently.

Table 2F–2: For each outfall, list all pollutants in Table 2F–2 that you know or have reason to believe are discharged (except pollutants previously listed in Part VII–B). If a pollutant is limited in an effluent guideline limitation which the facility is subject to (e.g., use of TSS as an indicator to control the discharge of iron and aluminum), the pollutant should be listed in Part VII–B. If a pollutant in Table 2F–2 is indirectly limited by an effluent guideline limitation through an indicator, you must analyze for it and report data in Part VII–C. For other pollutants listed in Table 2F–2 (those not limited directly or indirectly by an effluent limitation guideline), that you know or have reason to believe are discharges, you must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

Table 2F–3: For each outfall, list all pollutants in Table 2F–3 that you know or have reason to believe are discharged. For every pollutant in Table 2F–3 expected to be discharged in concentrations of 10 ppb or greater, you must submit quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, you must submit quantitative data if any of these four pollutants is expected to be discharged in concentrations of 100 ppb or greater. For every pollutant expected to be discharged in concentrations less than 10 ppb (or 100 ppb for the four pollutants listed above), then you must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

Small Business Exemption—If you are a "small business," you are exempt from

the reporting requirements for the organic toxic pollutants listed in Table 2F-3. There are two ways in which you can qualify as a "small business". If your facility is a coal mine, and if your probable total annual production is less than 100,000 tons per year, you may submit past production data or estimated future production (such as a schedule of estimated total production under 30 CFR 795.14(c)) instead of conducting analyses for the organic toxic pollutants. If your facility is not a coal mine, and if your gross total annual sales for the most recent three years average less than $100,000 per year (in second quarter 1980 dollars), you may submit sales data for those years instead of conducting analyses for the organic toxic pollutants. The production or sales data must be for the facility which is the source of the discharge. The data should not be limited to production or sales for the process or processes which contribute to the discharge, unless those are the only processes at your facility. For sales data, in situations involving intracorporate transfer of goods and services, the transfer price per unit should approximate market prices for those goods and services as closely as possible. Sales figures for years after 1980 should be indexed to the second quarter of 1980 by using the gross national product price deflator (second quarter of 1980=100). This index is available in National Income and Product Accounts of the United States (Department of Commerce, Bureau of Economic Analysis).

Table 2F-4: For each outfall, list any pollutant in Table 2F-4 that you know or believe to be present in the discharge and explain why you believe it to be present. No analysis is required, but if you have analytical data, you must report them. *NOte:* Under 40 CFR 117.12(a)(2), certain discharges of hazardous substances (listed at 40 CFR 177.21 or 40 CFR 302.4) may be exempted from the requirements of section 311 of CWA, which establishes reporting requirements, civil penalties, and liability for cleanup costs for spills of oil and hazardous substances. A discharge of a particular substance may be exempted if the origin, source, and amount of the discharged substances are identified in the NPDES permit application or in the permit, if the permit contains a requirement for treatment of the discharge, and if the treatment is in place. To apply for an exclusion of the discharge of any hazardous substance from the requirements of section 311, attach additional sheets of paper to your form, setting forth the following information:

1. The substance and the amount of each substance which may be discharged.
2. The origin and source of the discharge of the substance.
3. The treatment which is to be provided for the discharge by:

a. An onsite treatment system separate from any treatment system treating your normal discharge;

b. A treatment system designed to treat your normal discharge and which is additionally capable of treating the amount of the substance identified under paragraph 1 above; or

c. Any combination of the above.

See 40 CFR 117.12 (a)(2) and (c), published on August 29, 1979, in 44 FR 50766, or contact your Regional Office (Table 1 on Form 1, Instructions), for further information on exclusions from section 311.

Part VII-D

If sampling is conducted during more than one storm event, you only need to report the information requested in Part VII-D for the storm event(s) which resulted in any maximum pollutant concentration reported in Part VII-A, VII-B, or VII-C.

Provide flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, the method of flow measurement, or estimation. Provide the data and duration of the storm event(s) sampled, rainfall measurements, or estimates of the storm event which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event.

Part VII-E

List any toxic pollutant listed in Table 2F-2, 2F-3, or 2F-4 which you currently use or manufacture as an intermediate or final product or byproduct. In addition, if you know or have reason to believe that 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) is discharged or if you use or manufacture 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorphenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); then list TCDD. The Director may waive or modify the requirement if you demonstrate that it would be unduly burdensome to identify each toxic pollutant and the Director has adequate information to issue your permit. You may not claim this information as confidential; however, you do not have to distinguish between use or production of the pollutants or list the amounts.

Item VIII

Self explanatory. The permitting authority may ask you to provide additional details after your application is received.

Item X

The Clean Water Act provides for severe penalties for submitting false information on this application form.

Section 309(c)(4) of the Clean Water Act provides that "Any person who knowingly makes any false material statement, representation, or certification in any application, . . . shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 2 years, or by both. If a conviction of such person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both." 40 CFR Part 122.22 requires the certification to be signed as follows:

(A) For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Note: EPA does not require specific assignments or delegation of authority to responsible corporate officers identified in 122.22(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate position under 122.22(a)(1)(ii) rather than to specific individuals.

(B) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(C) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

TABLE 2F-1.—CODES FOR TREATMENT UNITS

Physical Treatment Processes

1-A—Ammonia Stripping
1-B—Dialysis
1-C—Diatomaceous Earth Filtration
1-D—Distillation
1-E—Electrodialysis
1-F—Evaporation
1-G—Flocculation
1-H—Flotation
1-I—Foam Fractionation
1-J—Freezing
1-K—Gas-Phase Separation
1-L—Grinding (Comminutors)
1-M—Grit Removal
1-N—Microstraining
1-O—Mixing
1-P—Moving Bed Filters
1-Q—Multimedia Filtration
1-R—Rapid Sand Filtration
1-S—Reverse Osmosis (Hyperfiltration)
1-T—Screening
1-U—Sedimentation (Setting)
1-V—Slow Sand Filtration
1-W—Solvent Extraction
1-X—Sorption

Chemical Treatment Processes

2-A—Carbon Adsorption
2-B—Chemical Oxidation
2-C—Chemical Precipitation
2-D—Coagulation
2-E—Dechlorination
2-F—Disinfection (Chlorine)
2-G—Disinfection (Ozone)
2-H—Disinfection (Other)
2-I—Electrochemical Treatment
2-J—Ion Exchange
2-K—Neutralization
2-L—Reduction

Biological Treatment Processes

3-A—Activated Sludge
3-B—Aerated Lagoons
3-C—Anaerobic Treatment
3-D—Nitrification-Denitrification
3-E—Pre-Aeration
3-F—Spray Irrigation/Land Application
3-G—Stabilization Ponds
3-H—Trickling Filtration

Other Processes

4-A—Discharge to Surface Water
4-B—Ocean Discharge Through Outfall
4-C—Reuse/Recycle of Treated Effluent
4-D—Underground Injection

Sludge Treatment and Disposal Processes

5-A—Aerobic Digestion
5-B—Anaerobic Digestion
5-C—Belt Filtration
5-D—Centrifugation
5-E—Chemical Conditioning

TABLE 2F-1.—CODES FOR TREATMENT UNITS—Continued

5-F—Chlorine Treatment
5-G—Composting
5-H—Drying Beds
5-I—Elutriation
5-J—Flotation Thickening
5-K—Freezing
5-L—Gravity Thickening
5-M—Heat Drying
5-N—Heat Treatment
5-O—Incineration
5-P—Land Application
5-Q—Landfill
5-R—Pressure Filtration
5-S—Pyrolysis
5-T—Sludge Lagoons
5-U—Vacuum Filtration
5-V—Vibration
5-W—Wet Oxidation

TABLE 2F-2.—CONVENTIONAL AND NON-CONVENTIONAL POLLUTANTS REQUIRED TO BE TESTED BY EXISTING DISCHARGER IF EXPECTED TO BE PRESENT

Bromide
Chlorine, Total Residual
Color
Fecal Coliform
Fluoride
Nitrate-Nitrite
Nitrogen, Total Organic
Oil and Grease
Phosphorus, Total Radioactivity
Sulfate
Sulfide
Sulfite
Surfactants
Aluminum, Total
Barium, Total
Boron, Total
Cobalt, Total
Iron, Total
Magnesium, Total
Molybdenum, Total
Magnesium, Total
Tin, Total
Titanium, Total

TABLE 2F-3—TOXIC POLLUTANTS REQUIRED TO BE IDENTIFIED BY APPLICANT IF EXPECTED TO BE PRESENT

Toxic Pollutants and Total Phenol

Antimony, Total
Arsenic, Total
Beryllium, Total
Cadmium, Total
Chromium, Total
Copper, Total
Lead, Total
Mercury, Total
Nickel, Total
Selenium, Total
Silver, Total
Thallium, Total
Zinc, Total
Cyanide, Total
Phenols, Total

GC/MS Fraction Volatiles Compounds

Acrolein
Acrylonitrile
Benzene
Bis (Chloromethyl) Ether
Bromoform
Carbon Tetrachloride

TABLE 2F-3—TOXIC POLLUTANTS REQUIRED TO BE IDENTIFIED BY APPLICANT IF EXPECTED TO BE PRESENT—Continued

Chlorobenzene
Chlorodibromomethane
Chloroethane
2-Chloroethylvinyl Ether
Chloroform
Dichlorobromomethane
Dichlorodifluoromethane
1,1-Dichloroethane
1,2-Dichloroethane
1,1-Dichloroethylene
1,2-Dichloropropane
1,3-Dichloropropylene
Ethylbenzene
Methyl Bromide
Methyl Chloride
Methylene Chloride
1,1,2,2-Tetrachloroethane
Tetrachloroethylene
Toluene
1,2-Trans-Dichloroethylene
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethylene
Trichlorofluoromethane
Vinyl Chloride

Acid Compounds

2-Chlorophenol
2,4-Dichlorophenol
2,4-Dimethylphenol
4,6-Dinitro-O-Cresol
2,4-Dinitrophenol
2-Nitrophenol
4-Nitrophenol
p-Chloro-M-Cresol
Pentachlorophenol
Phenol
2,4,6-Trichlorophenol

Base/Neutral

Acenaphthene
Acenaphthylene
Anthracene
Benzidine
Benzo(a)anthracene
Benzo(a)pyrene
3,4-Benzofluoranthene
Benzo(ghi)perylene
Benzo(k)fluoranthene
Bis(2-chloroethoxy)methane
Bis(2-chloroethyl)ether
Bis(2-chloroisopropyl)ether
Bis(2-ethylyhexyl)phthalate
4-Bromophenyl Phenyl Ether
Butylbenzyl Phthalate
2-Chloronaphthalene
4-Chlorophenyl Phenyl Ether
Chrysene
Dibenzo(a,h)anthracene
1,2-Dichlorobenzene
1,3-Dichlorobenzene
1,4-Dichlorobenzene
3,3'-Dichlorobenzidine
Diethyl Phthalate
Dimethyl Phthalate
Di-N-Butyl Phthalate
2,4-Dinitrotoluene
2,6-Dinitrotoluene
Di-N-Octylphthalate
1,2-Diphenylhydrazine (as Azobenzene)
Fluoranthene
Fluorene
Hexachlorobenzene
Hexachlorobutadiene
Hexachloroethane
Indeno(1,2,3-cd)pyrene
Isophorone
Naphthalene
Nitrobenzene

TABLE 2F-3—TOXIC POLLUTANTS REQUIRED TO BE IDENTIFIED BY APPLICANT IF EXPECTED TO BE PRESENT—Continued

N-Nitrosodimethylamine
N-Nitrosodi-N-Propylamine
N-Nitrosodiphenylamine
Phenanthrene
Pyrene
1,2,4-Trichlorobenzene

Pesticides

Aldrin
Alpha-BHC
Beta-BHC
Gamma-BHC
Delta-BHC
Chlordane
4,4'-DDT
4,4'-DDE
4,4'-DDD
Dieldrin
Alpha-Endosulfan
Beta-Endosulfan
Endosulfan Sulfate
Endrin
Endrin Aldehyde
Heptachlor
Heptachlor Epoxide
PCB-1242
PCB-1254
PCB-1221
PCB-1232
PCB-1248
PCB-1260
PCB-1016
Toxaphene

Ioxic Pollutant

Asbestos

TABLE 2F-4—HAZARDOUS SUBSTANCES REQUIRED TO BE IDENTIFIED BY APPLICANT IF EXPECTED TO BE PRESENT

Hazardous Substances

Acetaldehyde
Allyl alcohol
Allyl chloride
Amyl acetate
Aniline
Benzonitrile
Benzyl chloride
Butyl acetate
Butylamine
Carbaryl
Carbofuran
Carbon disulfide
Chlorpyrifos
Coumaphos
Cresol
Crotonaldehyde
Cylcohexane
2,4-D (2,4-Dichlorophenoxyacetic acid)
Diazinon
Dicamba
Dichlobenil
Dichlone
2,2-Dichloropropionic acid
Dichlorvos
Diethyl amine
Dimethyl amine
Dinitrobenzene
Diquat
Disulfoton
Diuron
Epichlorohydrin
Ethion
Ethylene diamine
Ethylene dibromide
Formaldehyde
Furfural
Guthion
Isoprene
Isopropanolamine
Kelthane

TABLE 2F-4—HAZARDOUS SUBSTANCES REQUIRED TO BE IDENTIFIED BY APPLICANT IF EXPECTED TO BE PRESENT—Continued

Kepone
Malathion
Mercaptodimethur
Methoxychlor
Methyl mercaptan
Methyl methacrylate
Methyl parathion
Mevinphos
Mexacarbate
Monoethyl amine
Monomethyl amine
Naled
Naphthenic acid
Nitrotoluene
Parathion
Phenolsulfonate
Phosgene
Propargite
Propylene oxide
Pyrethrins
Quinoline
Resorcinol
Stronthium
Strychnine
Styrene
2,4,5-T (2,4,5-Trichlorophenoxyacetic acid)
TDE (Tetrachlorodiphenyl ethane)
2,4,5-TP [2-(2,4,5-Trichlorophenoxy) propanoic acid]
Trichlorfan
Triethylamine
Trimethylamine
Uranium
Vanadium
Vinyl acetate
Xylene
Xylenol
Zirconium

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federal register

Wednesday
December 7, 1988

Part IV

Department of Labor

Employees' Compensation Appeals Board

20 CFR Part 501
Rules of Procedure; Final Rule

Part IV

Department of Labor

Employee Compensation Appeals Board

20 CFR Part 501

Rules of Procedure; Final Rule

DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

20 CFR Part 501

Rules of Procedure

AGENCY: Department of Labor.

ACTION: Final rule.

SUMMARY: This final rule amends two sections of the Rules of Procedure of the Employees' Compensation Appeals Board [hereinafter Board] as set forth in Part 501 of 20 CFR. The amendments clarify the rules for computing the time for filing a notice of appeal or other document in connection with proceedings before the Board. In addition, the amendments provide for the first time that a notice of appeal will be considered as timely filed if the evidence substantiates that the notice was mailed on the due date. The amendments also explicitly provide that a party may, by motion, request an extension of the time limitations for filing any document other than a notice of appeal or a petition for reconsideration.

EFFECTIVE DATE: These final regulations shall become effective January 6, 1989.

FOR FURTHER INFORMATION CONTACT: Michael E. Groom, Senior Board Attorney, Employees' Compensation Appeals Board, U.S. Department of Labor, Washington, DC 20210, (202) 472–5611.

SUPPLEMENTARY INFORMATION: This rule makes two minor changes to the Board's Rules of Procedure. The first amends 20 CFR 501.3(d)(3) to permit the use of the date of mailing, rather than the date of receipt by the Board, for the purpose of determining the timeliness of a notice of appeal. The second amends 20 CFR 501.10 to clarify the proper method for computing the time for filing any notice of appeal or other document in connection with proceeding before the Board. In addition, the second amendment provides that any party may by motion request an extension of the time for filing any paper other than a notice of appeal or a petition for reconsideration. These changes in the Board's Rules of Procedure will facilitate the efficient operation of the appeals process and will make the appeals and process more understandable to appellants.

Publication in Final

Inasmuch as the revised regulations contained herein consist of rules of practice and procedure, the relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and opportunity for public comment are inapplicable.

Classification-Executive Order 12291

The Department has determined that these revisions are procedural in character and, therefore, that this rule is not a major rule under Executive Order 12291, because it is not likely to result in: (1) An annual effect on 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 ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. No regulatory impact analysis is therefore required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, do not apply to these rules because they are, as discussed above, not subject to the notice and comment procedures of the Administrative Procedure Act. See 5 U.S.C. 603(a).

Paperwork Reduction Act

This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not contain a collection of information requirement.

List of Subjects in 20 CFR Part 501

Rules of procedure.

Accordingly, 20 CFR Part 501 is amended as set forth below:

PART 501—[AMENDED]

1. The authority citation for 20 CFR Part 501 continues to read as follows:

Authority: Sec. 32, 39 Stat. 749, 5 U.S.C. 8145; sec. 3, Reorganization Plan No. 2 of 1946, 60 Stat. 1095; 3 CFR 1943–48 Comp., p. 1064; sec. 2, Reorganization Plan No. 19 of 1950, 64 Stat. 1272; 3 CFR 1949–53 Comp., p. 1010.

2. By revising § 501.3(d)(3) to read as follows:

§ 501.3 Application for review.

* * * * *

(d) *Time for filing.* * * *

(3) *Date of filing*—(i) *Date or receipt.* Except as otherwise provided in this section, a notice of appeal is considered to have been filed only as of the date it is received in the office of the clerk of the Board.

(ii) *Date of mailing.* If the notice is sent by mail and the fixing of the date of delivery as the date of filing would render the appeal untimely, it will be considered to have been filed as of the date of mailing. The date appearing on the postmark (when available and legible) shall be prima facie evidence of the date of mailing. If there is no postmark or it is not legible, other evidence, such as, but not limited to, certified mail receipts, certificate of service and affidavits, may be used to establish the date of mailing.

* * * * *

3. By revising the section heading and adding paragraph (d) to § 501.10 to read as follows:

§ 501.10 Number of copies of pleadings and related documents; service; computation of time.

* * * * *

(d) *Computation of Time.* (1) In computing any period of time prescribed or allowed by these rules or by direction of the Board, the first day counted shall be the day after the event from which the time period begins to run, and the last day for filing shall be included in the computation. If the last day for filing falls on a Saturday, Sunday, or Federal holiday, the first working day thereafter shall be the last day for timely filing. For purposes of computing the time for filing a notice of appeal or a petition for reconsideration, the event which commences the running of the time period shall be construed as occurring on the date the relevant decision is issued, and not the date the decision is actually received.

(2) Whenever a paper is served on the Board by mail, paragraph (d)(1) of this section will be deemed complied with if the envelope containing the paper is postmarked within the time period allowed, computed as in paragraph (d)(1) of this section. If there is no postmark, or it is not legible, other evidence, such as, but not limited to, certified mail receipts, certificate of service and affidavits, may be used to establish the date of mailing.

(3) A waiver or an extension of the time limitations for filing a paper, other than a notice of appeal or a petition for reconsideration, may be requested by motion.

Signed at Washington, DC this 1st day of December 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88–28063 Filed 12–6–88; 8:45 am]

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federal register

Wednesday
December 7, 1988

Part V

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; California—South Coast Air Basin; Ozone and Carbon Monoxide Plans; Advance Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3487-1]

Approval and Promulgation of Implementation Plans; California—South Coast Air Basin; Ozone and Carbon Monoxide Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: EPA today solicits comment on how it should fulfill its legal obligation to create a federal implementation plan (FIP) under the Clean Air Act to produce attainment of the national ambient air quality standards (NAAQS) for ozone and carbon monoxide in the South Coast Air Basin (Los Angeles area) of California. This notice describes in particular the choices that EPA faces in determining the date by which the FIP must bring about attainment, the statutory interpretations the Agency might make to support the different attainment date options, and the social and economic consequences of these alternatives. As it prepares a notice of proposed rulemaking to create the FIP for the South Coast, EPA intends to consider the information it receives from the public in response to today's notice.

DATE: Comments may be submitted to EPA at the address below on or before February 6, 1989.

ADDRESSES: Comments on this proposal should be sent to: Regional Administrator, Attention: Air Management Division, State Liaison Section (A-2-2), U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Wallace D. Woo, Chief, State Liaison Section, Air Management Division, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105, Telephone: (415) 974-7634, FTS: 454-7634.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

A. Purpose of This Notice

In the course of administering the Clean Air Act, EPA often has been called upon to interpret the law where Congress has left a gap that must be filled. But few of EPA's prior determinations have been so difficult, or threatened such upheaval, as the judgment we must now make about the ozone and carbon monoxide problems in the South Coast Basin that surrounds Los Angeles.

Ozone is a pollutant with serious health effects that, as we are increasingly becoming aware, may cause permanent long-term damage if breathed at certain concentrations. The effects are unmistakable at levels commonly encountered in the Los Angeles area, which has the worst ozone problem in the United States, suffering from both the highest levels and the most frequent violations of the national ozone standard.

CO reduces the amount of oxygen delivered to all tissues of the body, and, at certain levels, poses a threat to human health. The Basin frequently violates the federal air quality standards for CO.

EPA wants to—and must—do something constructive to remedy this unacceptable public health threat. But, in its present form, the law intended to address the problem cannot deal with it effectively. This is because the last statutory deadline for a plan to meet the standard—December 31, 1987—has now passed, and Congress has given EPA no instructions as to what to do under these circumstances.

EPA has acknowledged a duty under the Clean Air Act to develop a federal implementation plan (FIP) to help the South Coast Basin attain the primary national ambient air quality (NAAQS)

standard for ozone and carbon monoxide (CO).[1] But the Act does not specify the date by which such a plan must project attainment. Since the deadline has passed, and Congress has not extended it, must an EPA plan require immediate attainment? Or should it call for attainment within a period (three to five years) analogous to the relevant previous rounds of planning required by the statute (specifically, section 110 (a) and (e), and the second round of planning for areas that received attainment date extensions from 1982 to 1987 under Section 172(a)(2))? Attainment of the ozone NAAQS appears to require, in the case of the South Coast Basin, extreme restrictions on the use of fossil fuels and the reactive hydrocarbons that are now essential components of many industrial, commercial, and consumer products and activities. It is for this reason that an immediate or a near-term attainment FIP for the South Coast, if determined to be statutorily required, would raise serious questions of enforceability and potential conflicts with other statutes. As a practical matter, immediate attainment is impossible and a five-year plan would impose requirements so draconian as to remake life in the South Coast Basin.

The South Coast authorities estimate that an 80 to 90 percent reduction in volatile organic compound ("VOC") emissions is necessary to attain the ozone standard. Thus a plan that provides for attainment in the South Coast immediately or even within five years would have to prohibit most traffic, shut down major business activity, curtail the use of important consumer goods, and dramatically restrict all aspects of social and economic life. Implementation and enforcement of such drastic measures may well be impossible, and could prevent satisfaction of the basic necessities of life—including food, shelter, and medical services. Such a plan would effectively usurp many state and local government functions and would radically restrict individual opportunity. Indeed, an immediate or a near-term attainment FIP for ozone would destroy the economy of the South Coast, so that most of the population would be forced to resettle elsewhere. Similar drastic consequences would flow from a short-term plan to attain the CO standard.

Given these consequences of short-term plans, should EPA instead allow a longer term for attainment—one that supports local efforts in making progress over a period such as the twenty years provided for in the plan under consideration by the South Coast Air Quality Management District (SCAQMD)? Such a course appeals to common sense, but is without precedent in the Act.

A long-term FIP might appear to offer a more realistic (though still exceedingly difficult) path to attainment, and would complement ongoing state and local efforts to develop a SIP. But it also raises significant issues. Such a FIP would require EPA to make difficult legislative-type decisions about the projected pace and direction of technological and life-style change, over a long period of time. A long-term plan would have more gradual and less dislocating impacts than a short-term FIP, but would still have profound implications for much of the local economy, for some national and foreign industries, and for the entire way of life in the South Coast Basin. Moreover, in either circumstance, EPA arguably must to some extent exercise legislative-type powers that, while perhaps permitted by the courts (*see Chevron, U.S.A., Inc.* v. *NRDC*. 467 U.S. 837 (1984)), are more appropriately exercised by Congress. Nonetheless, in the absence of legislative direction, EPA believes it may need to resolve several fundamental issues of legislative scope to comply with its legal obligation to develop a FIP for the South Coast.

The Agency believes that, in fulfilling this obligation, it should seek to act consistently with at least the key principles underlying the statute, while minimizing the extent to which EPA performs legislative-type decisionmaking. As discussed in detail below, this is a very difficult task. EPA officials have repeatedly urged the 100th Congress to come to grips with this issue and to amend and extend the Clean Air Act. Their failure to do so leaves EPA with no course other than to press on and try to discern, as best the Agency can, what the prior enacting Congress would have intended us to do.

Because the issues before us are of such moment and complexity, EPA wishes to explore them in a detailed and public fashion. To that end we are publishing today EPA's preliminary view of the problem it confronts, the approaches it might choose to solve that problem, and the consequences that are likely to follow from that choice.

B. Outline of Notice

The Notice begins by setting out the legislative and regulatory history of the Clean Air Act and its Amendments with respect to the control of ozone and CO, both nationally and in the South Coast Basin. This history recounts EPA's prior futile attempt to impose FIPs on the South Coast and other areas in the 1970's. It describes EPA's recent proposal on requirements for state plans in areas that, by the end of 1987, have not attained the air quality standards for these pollutants. The Notice then proceeds to identify the perplexing technical, legal, and policy questions EPA confronts in constructing a practicable and effective FIP for the South Coast. It describes the severity of pollution problems in the South Coast—with respect to ozone, plainly the worst in the Nation, and with respect to CO, one of the worst. Although air quality has improved as a result of the efforts of local governmental agencies, the ozone and CO problems have proved intractable due to the environmental consequences of economic and population growth in a geographically enclosed region. Local authorities in the South Coast have labored for years to put together an ambitious draft pollution abatement plan that is intended to provide for attainment of the standard for CO in ten years, and for attainment of the standard for ozone in twenty years. The Notice outlines the draft South Coast plan, expected to be submitted to EPA in the spring of 1989.

Next, the Notice considers the statutory provisions that define EPA's duty to promulgate a FIP. It sets forth the applicable principles of statutory interpretation that govern our reading of these provisions and their legislative history. Included among the judicial maxims that guide EPA's interpretation are: (1) Where Congressional intent is unclear, EPA must construe the statute in accordance with its terms, history, and purposes, and may reach reasonable accommodations among conflicting interests; (2) EPA should construe the statute so as to avoid absurd results and impossibility; and (3) EPA should construe the statute to avoid conflicts with other statutes.

The Notice proceeds to apply these principles in discussing three different interpretations of the post-1987 deadline for a FIP to show attainment. The alternative interpretations of the FIP deadline are: (1) Immediate attainment; (2) attainment within five years; (3) attainment over a long term, but as expeditiously as possible without causing severe economic and social disruption. The Notice describes the legal and equitable arguments for and against each alternative, and outlines the type of FIP each deadline would require.

[1] *Coalition for Clean Air* v. *EPA*, CV No. 88-4414-H. (C.D. Cal.) In an Order dated September 19, 1988, the Court affirmed that EPA has such a duty.

The Notice recognizes that each of these alternative interpretations has significant strengths and weaknesses, and that none of them presents an easy resolution of the vexing legal and environmental problems that beset the South Coast. At this point, it appears difficult to project attainment of the standards in the South Coast Basin, even under a plan stretching over twenty years, and containing measures that require some serious economic and social dislocation.

In filling the gap in the current statute, EPA must attempt to reconcile conflicting Congressional values embodied in the Clean Air Act, and each of the interpretations advanced fulfills different of these values to varying degrees. The immediate and five-year FIP interpretations—while satisfying an arguable Congressional desire for short-term attainment dates—would impose health control measures that would disrupt daily life in the South Coast beyond anything Congress might have envisioned, or that would be impossible to enforce, even with gargantuan efforts.

The longer-term FIP approach, while mitigating economic disruption by offering the possibility of more realistic and workable requirements, represents a departure from EPA's prior interpretations of the Act, and arguably puts EPA in shoes that only Congress should fill. While any significant extension of the attainment date beyond 1987 would necessarily reflect some legislative-type gap-filling by EPA, a longer-term plan might impose upon the Agency the responsibility for making especially difficult legislative choices about the direction and pace of technological, social, and economic change in the South Coast.

EPA solicits comment on how it should interpret the Clean Air Act to provide an appropriate attainment date for a FIP under the circumstances presented here. We seek comments on the legal interpretations we present, on whether EPA should explore any alternatives that it has not considered, on what EPA should conclude to be the most appropriate FIP attainment date under the current Act, and on what form the FIP should take.

II. Statutory and Regulatory Background

This section discusses the historical development of the Clean Air Act and how the South Coast has attempted to comply with its requirements. Included is a review of EPA's development of several short-term attainment FIPs in response to the Act and litigation, and the subsequent failure of these plans because of political, judicial and public opposition.

The federal government first became involved in the regulation of air pollution in 1955 with the passage of the Air Pollution Control Act, Pub. L. No. 84–159, 69 Stat. 322 (1955). This statute, as expanded in 1963 in the Clean Air Act, Pub. L. No. 88–206, 77 Stat. 392 (1963), provided technical and financial assistance to encourage the States to define and address the problem of air pollution. When the States failed to respond adequately to this encouragement, the federal government increased its role, primarily by the passage of the 1970 Clean Air Act.

A. The 1970 Clean Air Act

In 1970, Congress amended the Clean Air Act to establish a joint State and Federal program to control air pollution. New sections 109 and 110 of the statute directed EPA to establish in 1971 NAAQS for such pollutants as photochemical oxidants (currently measured as ozone and therefore referred to here as ozone) and CO, and these sections called on States to submit by early 1972 "State Implementation Plans" (SIPs), providing for attainment of those standards within nine months of promulgation of the NAAQS.

Section 110(a)(2) of the 1970 statute specifies the requirements for these initial SIPs. It directs EPA to approve a SIP within four months after its submission if, among other things, it "provides for the attainment" of the standard "as expeditiously as practicable but [subject to subsection (e)] in no case later than 3 years from the date of approval of such plan * * *." The law (section 110(a)(2)(H) also directs each State to revise its SIP whenever the Administrator finds that it is "substantially inadequate" to achieve the NAAQS or otherwise meet the requirements of the Act.

Section 110(e) permits a two-year extension of the three-year atainment period if the technology to attain within three years is not available and the State has applied "reasonably available alternative means" of attaining the standard in the interim. In the event a State fails to submit an approvable SIP or fails to submit a plan to promulgate its own implementation measures, section 110(c) directs EPA to make up this failure, by promulgating a FIP. Finally, under section 110(a)(3), a State may revise its plan at any time, but EPA may approve the change only if the SIP continues to conform to the requirements of the Act.

B. Implementation of the Act in the 1970's

1. Implementation of the Act Nationally: 1970–1977

In August 1971, EPA recognized that many States would find it extremely difficult if not impossible to attain primary standards [2] by 1975, that is, roughly within three years of the time their SIPs would be approved.[3] Accordingly, the Agency bowed to reality and granted blanket two-year extensions to all control regions that, even given the application of reasonably available technology, could not attain primary air quality standards by 1975. EPA also extended (or, as we shall see, tried to extend) another statutory deadline. Section 110(a)(1) required States to submit, by January 30, 1972, the transportation control portions of their plans for controlling ozone and CO. EPA, following the statute, required transportation control plans for all areas in which stationary source controls and federal emissions standards for new cars would not be sufficient to attain compliance by May 31, 1975. EPA proposed to move the deadline for submitting these plans from January 30, 1972 to February 1973.

EPA's efforts to read the law in the light of the real world problems of implementing it, however, were stymied in 1973, when the United States Court of Appeals for the District of Columbia Circuit held illegal EPA's grant of the one-year extension for States to submit the transportation control portions of SIPs. *See Natural Resource Defense Council* (*NRDC*) v. *EPA*, 475 F.2d 968 970–71 (D.C. Cir. 1973). The Court also ordered EPA to rescind its blanket two-year extension for NAAQS attainment. Furthermore it held that the Agency could allow additional extensions only if the requesting States had demonstrated under section 110(e) that, even given the application of reasonably available alternative technologies, they could not achieve air quality standards by 1975. *Id.* at 971. Thus, States were still required to produce SIPs showing attainment by 1975 in order to obtain an extension of the deadline to 1977. Finally the Court ordered EPA to

[2] Section 109(b)(1), 42 U.S.C. 7609(b)(1) defines the primary standards as "ambient air quality standards the attainment and maintenance of which, in the judgment of the Administrator, based upon such [air quality] criteria and allowing an adequate margin of safety, are required to protect the public health."

[3] EPA arrived at the year 1975 by adding together: nine months (after the 1971 NAAQS promulgation) in which the SIPs were to be submitted to EPA, four months for EPA to act on the SIPs, and three years from the date of approval in which to attain.

promulgate the necessary plans under section 110(c) by September 1975. The decision in *NRDC* gave EPA a broad mandate to develop transportation control programs to attain the standards by 1977.

The obstacles to the States' attainment of air pollution control deadlines soon grew even greater. Under an agreement with NRDC, in April, 1973, EPA issued ambitious guidelines regulating a broad range of non-point or "indirect" pollution sources—including not only shopping centers and highways, for example, but also residential and commercial developments. These guidelines had the attention of NRDC and ultimately the courts, which, under the language of the law, directed EPA to promulgate them. Few States followed them, however. Technical problems, political opposition, and legal difficulties compelled the Agency to narrow the scope of these guidelines and to propose its own indirect source review (ISR) program.

EPA's attempt in its own ISR program to interpret the law to make it more practicable, however, faltered once again. EPA lacked the resources necessary to implement and to enforce its ISR program. The final regulations EPA published in 1974, therefore, failed to offer the technical support necessary for carrying them out. Because it operated under short-term deadlines, the ISR Program, moreover, had to apply fairly severe remedies—and it could not wait for better ones to be developed. And so, bearing questionable environmental results, confronted by various legal challenges, and troubled by technical infeasibility, the ISR Program, for all its lofty ambitions, became the victim of the same problems that doomed the earlier ISR guidelines. Perhaps recognizing this problem, Congress, in section 110(a)(5) of the 1977 Amendments to the Clean Air Act, prohibited EPA from conducting ISR (except for federally funded projects) and allowed the states to rescind previously published proposals.

This was not the last obstacle to EPA's efforts to improve air quality. EPA's transportation control program proved no more edifying than its attempt at enforcing ISR guidelines.

In light of the *NRDC* holding, states would not be eligible even for two-year extensions under section 110(e) until they submitted plans showing attainment by 1975. States therefore submitted such plans—whether or not for *pro forma* reasons—in which they endorsed costly and possibly unworkable measures that would, colorably, attain air quality standards by the 1975 deadline. (The states might have considered that these measures, or many of them, might be rendered superfluous in any case by 1977, when the fleet of emission-controlled cars began to take over the highways and cause lower levels of ozone and CO.) Accordingly, states may have begun to write SIPs that they knew to be partly fictional in order to obtain the extensions they required to make realistic progress toward air pollution goals.

When several states, rather than submitting SIPs they knew to be unworkable, balked at submitting plans showing attainment by 1975, EPA was forced to promulgate its own transportation controls programs for them. Thus, in 1973, EPA proposed control strategies containing a combination of far-reaching measures, including parking restrictions, mandatory bus and carpool lanes, and expansion of mass transit. Some of these provisions, however, ran into insurmountable political opposition. In early 1974, for example, Congress passed a provision, ultimately codified in the Energy Supply and Environmental Coordination Act of 1974, prohibiting EPA from imposing surcharges on fees for parking cars.

By 1977, EPA found itself in a double bind. On the one side, the courts, as in *NRDC*, held EPA firmly to the deadlines that were explicitly stated or implied in the Clean Air Act. If the states did not submit plans to attain air quality standards by those dates, EPA would be required to prepare plans, programs, or guidelines to make up for this failure. Hence, EPA's efforts at ISR review, transportation control programs, and the like.

On the other side, in a series of cases challenging EPA's legal and constitutional authority to adopt various transportation controls and other measures, the courts found that EPA had overstepped its statutory and constitutional authority in telling states what to do to clean up their air.

For example, in *Brown v. EPA*, 521 F.2d 827 (9th Cir. 1977), vacated on mootness grounds in *EPA v. Brown*, 431 U.S. 99 (1977), the 1973 California transportation control plan was challenged.There, the United States Court of Appeals for the Ninth Circuit ruled that the Clean Air Act "permits sanctions against a State that pollutes the air, but not against a State that chooses not to govern pollutants as the Administrator directs." *Id.* at 839. The court ruled, in effect, that the Agency could direct States to improve air quality or to stop pollution within their boundaries, but EPA could not require States to pass legislation that affected the polluting behavior of individual citizens.

The plaintiffs in *Brown*, moreover, challenged the constitutionality of EPA's transportation control regulations on Tenth Amendment and Commerce Clause grounds. *Id.* at 837–842. Although the court expressed serious misgivings about whether the regulations would pass ocnstitutional muster, it chose to rest its opinion solely on statutory grounds. *Id.* at 840. *See also District of Columbia* v. *Train*, 521 F.2d 971 (D.C. Cir. 1975) *vacated* 431 U.S. 99 (1977) (Act did not support Administrator's regulations, which required states to enact statutes).[4] Other hastily prepared FIPs that included transportation controls were challenged and overturned for lack of adequate technical support. *See, e.g., Texas* v. *EPA*, 499 F.2d 289 (5th Cir. 1974) *cert. denied* 427 U.S. 905 (1976) (Texas FIP); *South Terminal Corp.* v. *EPA*, 504 F.2d 646 (1st Cir. 1974) (Boston FIP). Lacking judicial and political support, generating nothing but public outrage, and draining resources, EPA's FIP efforts eventually failed.

2. Implementation of the Act in California: 1970–1977

California submitted its SIP for ozone and CO to EPA in February 1972. In May of the same year, EPA Administrator William Ruckelshaus disapproved the plan because it failed to show attainment by the deadline stated in the Act 1975. When EPA failed to promulgate a FIP under section 110(c) within six months of its disapproval of the SIPs for Los Angeles, a Los Angeles-based public interest group brought suit. In *City of Riverside* v. *Ruckelshaus*, 4 E.R.C. 1728 (C.D. Cal. 1972), the U.S. District Court for the Central District of California ordered EPA to produce by January 15, 1973 a plan adequate to bring Los Angeles—an area plagued with the worst air pollution in the country—into attainment by 1975 (three years from adoption of the plan) or 1977 (if the governor requested a two-year extension).

[4] With respect to the state inspection and maintenance regulation, *Brown*, along with other cases from the Fourth and District of Columbia Circuits, was granted *certiorari* by the Supreme Court. When EPA admitted that it lacked authority under the act to force states to enforce EPA-promulgated transportation control programs, the Court declined to rule on the program, as its ruling would amount to an advisory opinion, and remanded the cases for consideration of mootness and ripeness. *EPA* v. *Brown* 431 U.S. 104 (1977). *See also Brown* v. *EPA*, 566 F.2d 665 (9th Cir. 1977) (holding EPA's inspection and maintenance program for California invalid).

Ruckelshaus obeyed the order by proposing a plan that included, among other traffic control measures, a provision that would have required reducing gasoline supplies by 82 percent by the summer of 1977. 38 FR 2194 (1973). As Ruckelshaus explained to the citizens of Los Angeles, "Faced with the choice between my freedom and your mobility, my freedom wins." R. Shep Melnick, *Regulation and the Courts: The Case of the Clean Air Act, at 331–22 (1983).* With the intention of drawing wide public and Congressional attention to the dilemma presented EPA by the Clean Air Act, EPA held public hearings in 1972. The plan was decried by all concerned.

On July 2, 1973, the Administrator proposed a revised plan that set forth three options. Under the first option, literal compliance with the Act would be achieved through 100% gasoline rationing. Nothing else would do to meet the letter of the law. Under the second, gasoline consumption would be limited to 1972–3 levels and other transportation control measures would be introduced. Finally, under the third option, only existing control measures would be implemented. Again, the plans were assailed as unduly restrictive and unworkable.

On October 12, 1973, the Administrator announced a third attempt at formulating a plan for the Los Angeles area. 38 FR 31232. This third plan included several specific and drastic transportation control measures. It required the use of specified freeway lanes and surface streets exclusively by buses and carpools. In addition, by imposing a surcharge on commercial parking rates, it called for a radical change in the Basin's parking rate structure. It also imposed initial annual surcharges on free parking spaces provided by businesses to their customers.

The plan went further. Employers were to impose a charge on employee parking spaces; they also were to provide employees with various other incentives to use carpools and mass transit systems. Portions of the funds collected were to be used to support mass transit facilities. The final plan also included a provision stipulating that literal compliance with the Clean Air Act would require a further reduction of vehicle miles traveled, and that gasoline limitations would be necessary. Commenting on the plan, the Administrator asserted: "The EPA does not believe that massive gasoline rationing is either socially acceptable or enforceable, and will work toward alleviating the necessity for such drastic control in 1977." *See* Chernow, Implementing the Clean Air Act in Los Angeles; the Duty to Achieve the Impossible, 4 *Ecol. L.Q.* 537, 553 (1975). (*citing* 38 FR 31232, 31237 (1973)).

These transportation control measures pleased the public no more than their predecessors. Soon after promulgation of the plan, plaintiffs filed many suits to enjoin the plan's enforcement, and the Administrator deferred the effective date of its more extreme provisions. 38 FR 34124 (1973). Eventually, EPA's authority to promulgate gas rationing regulations was upheld, *see City of Santa Rosa v. EPA,* 534 F.2d 150, 154 (9th Cir. 1976).

Public outrage at the Ruckelshaus plan ultimately led to its withdrawal in 1976. In explaining his rationale for withdrawal of the plan, Acting Administrator John Quarles stated: "I realize that this revocation will render the affected SIP defective as a legal matter, since such SIPs will no longer contain regulations which provide for NAAQS attainment. I am convinced, however, that whatever benefits may be gained from keeping a technically legal SIP on the books by retaining the gasoline rationing regulations are outweighed by the seriously disruptive social and economic consequences of such regulations." *See* 41 FR 45565 (Oct. 15, 1976). The withdrawal went unchallenged.

C. The Clean Air Act Amendments of 1977

Congress in 1977 amended the Clean Air Act in response to persistent nonattainment of the NAAQS for ozone and CO and in reaction to the failed FIP and SIP efforts of the early 1970's. The House of Representatives Report on a bill to amend the Act (H.R. 6161) reviewed the history of the EPA Administrator's inability to use section 110(c)(1) promulgations to achieve the statutory objectives. H. Rep. No. 6161, 95–294, 95th Cong., 1st Sess., *reprinted in* 4 Legislative History of the Clean Air Act Amendments of 1977, at 2748–55 (1978). The Report noted that "this is a delicate area of Federal-State relations. Clearly, a careful balance is required as a matter of wise legislative policy, if not as a matter of constitutional requirement." *Id.* at 2755.

The Committee Report therefore concluded that the wisest course was to adopt "an approach that is intended to involve the least possible intrusion into State affairs consistent with the primary task of protecting public health." *Id.* at 4 *Legislative History* 2755. Noting that, "as a practical matter, State and local governments are in a better position than EPA to resolve those pollution problems, which involve millions of motor vehicles, through inspection and maintenance programs and similar measures," the Report stressed the need to induce States voluntarily to adopt and implement their own transportation control programs. *Id.*

Similarly, the Committee Report on the Senate bill (S. 252) stated that the transportation control aspects of the bill had been designed to take into account that "[t]he Federal Government does not have and will not have the resources to do an effective job of running the air pollution control programs of the State." S. Rep. No. 95–127, 95th Cong., 1st Sess. 10 (1977), *reprinted in* 3 *Legislative History* at 1384–85. The Senate committee noted that "transportation planning", in particular, "is a local political process" and that any amendments to the Act should create incentives for local planning and remedy the "lack of local involvement in the process". *Id.* at 3 *Legislative History,* 1412.

Conceding that the plans had "imposed vast economic and social costs for relatively small improvement in the quality of the environment," Clean Air Act Amendments of 1977, H. Rep. 95–294, pp. 228–29, S. Rep. 95–127 (GPO, 1977, p. 14), Congress extended the Act's deadlines and created a new Part D, a planning process to get the States to revise the SIPs for areas that were exceeding the standards.

The new Section 107(d) required EPA, by roughly March 1978, to identify those areas that in August 1977 were still experiencing NAAQS violations. The States were then required by January 1, 1979, to adopt and submit such revisions to the SIPs for these "nonattainment" areas that would meet the requirements of Part D and the new section 110(a)(2)(I). Section 129(c).

Under Part D, each revision was to provide for attainment of the relevant primary NAAQS as expeditiously as practicable, but in general no later than December 31, 1982. Section 172(a)(1), 42 U.S.C. 7502(a)(1). A revision could provide for attainment of the primary standards for ozone and CO as late as December 31, 1987, if the State demonstrated that attainment by the 1982 deadline was not possible, despite the implementation of all reasonably available control measures (RACM). Section 172(a)(2).

In any event, each revision due in 1979 was to provide for the implementation of RACM and for "reasonable further progress" (RFP)—defined as annual incremental reductions in emissions sufficient in EPA's judgment to provide for

attainment by the applicable deadline, including such reduction as may be obtained through the adoption of "reasonably available control technology" (RACT). Sections 172(6)(3), 171(1).

Each revision also was to have, among other things, a permit program for the preconstruction review of major new sources of the relevant pollutants. Section 172(b)(6). As outlined by section 173 of the Act, the permit program would allow construction even before attainment occurs, upon a determination that (1) the source would have state-of-the-art controls; (2) its emissions would be offset by greater than one-for-one reductions elsewhere, or would be accounted for in an approved demonstration of attainment by the applicable date for the area in which the source was locating; (3) the applicant's other sources in the state were in compliance with the SIP; and (4) the state was carrying out the SIP.

With respect to the areas with 1987 deadlines (*i.e.*, "extension" areas), each revision due in 1979 had to identify any measures beyond RACM that would be necessary to assure timely attainment, and it had to continue commitments to adopt a motor vehicle inspection and maintenance program. In addition, each state with an "extension" area was to submit a supplemental revision before July 1, 1982, containing those additional measures necessary to assure attainment in those areas by the end of 1987. Section 129(c).

As part of the 1977 Amendments, section 110(a)(2)(I) required a construction ban that would operate against major new sources and major modifications of existing sources of the relevant pollutants in each nonattainment area after June 30, 1979, "* * * unless, as of the time of application of a permit for such construction * * *, such pain meets the requirements of Part D * * *."

As further incentive for timely submission of Part D SIP revisions, Congress added sections 176(a) and 316(b). Section 176(a) bars the Department of Transportation from funding certain highway projects, and EPA from making air program grants in an ozone or CO nonattainment area, upon a determination by EPA that the State has failed to make "reasonable" efforts to submit SIP revisions for the area that meet Part D requirements. Section 316(b) authorizes EPA to withhold certain grants for sewage treatment construction where an area has failed, among other things, to submit an adequate Part D SIP for the area.[5]

D. History of Regulatory Development Under Part D

1. Implementation of Part D Nationally: 1978–1985

The EPA began its administration of Part D with the promulgation in 1978 of attainment status designations under section 107(d). *See, e.g.*, 43 FR 8962 (March 3, 1978); 43 FR 40502 (September 12, 1978). Then, on April 4, 1979, EPA published a notice describing in detail the prerequisites to EPA approval of the SIP revisions that Part D required the states to submit in 1979 for areas that were designated nonattainment (44 FR 20372).

On July 2, 1979, EPA issued an interpretive rule establishing that the construction ban in section 110(a)(2)(I) would begin to operate immediately in any designated nonattainment area that was not yet covered by an approved Part D SIP (44 FR 38471 [now codified at 40 CFR 52.24(a) (1987)]. At the time, EPA had yet to approve a Part D SIP for any ozone or CO nonattainment area, so the ban came into effect in all of them. Gradually, the states submitted for most of these areas the first round of Part D SIP revisions that were due at the beginning of 1979, and EPA approved or conditionally approved these revisions. Thus, by the end of 1982, most ozone and CO nonattainment areas were free of the ban.

With respect to areas, like the South Coast, that had received an extension of the attainment date for CO or ozone to the end of 1987, EPA issued a new policy describing the criteria it would use to judge the supplemental SIP revisions that were due for such extension areas in mid-1982. 46 FR 7182 (January 22, 1981). The Agency received 1982 SIP revisions from all extension areas and approved many of them as adequate to produce attainment by the end of 1987. *See, e.g.*, 48 FR 51472 (November 9, 1983) (New Jersey, ozone); 50 FR 25073 (June 17, 1985) (New York City, ozone and CO). EPA also disapproved the SIPs for some extension areas and imposed the construction ban under section 110(a)(2)(I). *See, e.g.*, 50 FR 8616 (March 4, 1985) (Albuquerque, CO).

2. Implementation of Part D in the South Coast: 1978–1984

In the initial round of section 107 nonattainment designations in 1978, EPA found the South Coast in nonattainment for both CO and ozone. Several years after EPA's July 2, 1979 imposition of the section 110(a)(2)(I) construction moratorium, California submitted and EPA approved the 1979 Part D SIP for the area. As a result of that approval, on November 25, 1983, the Agency lifted the construction ban that it had imposed in July 1979. (48 FR 53114).

As part of the initial round of Part D SIP planning, the State of California requested that EPA approve an extension of the statutory attainment date to December 31, 1987 for CO and ozone for the South Coast. EPA approved the request. The State then submitted 1982 updates for the ozone and CO SIPs for the South Coast. Although these SIP revisions included control measures that would produce expeditious progress toward attainment of the applicable standards, the State conceded that the revisions did not demonstrate that the area would attain the standard by the statutory date of December 31, 1987. As a result EPA proposed to disapprove the plan on February 3, 1983. 48 FR 5074.

In final rulemaking published July 30, 1984 (49 FR 30300), however, EPA approved the emission control measures in the CO and ozone extension SIPs, on the ground that they strengthened the SIP. In addition, in that same rulemaking, EPA held open the question of whether the attainment and reasonable further progress (RFP) demonstrations in the South Coast SIP submittals met the requirements of Part D. In September 1984, a citizen named Mark Abramowitz filed a petition in the United States Court of Appeals for the Ninth Circuit, seeking review of EPA's July 30, 1984 decision. *See Abramowitz v. EPA*, 832 F.2d 1071 (9th Cir. 1987).

3. The Reasonable Extra Efforts Program: 1984–1987

Beginning approximately in 1984, EPA began to explore how it might address the likelihood that many extension areas, as well as some non-extension areas that had already received SIP calls,[6] would not attain the ozone and

[5] Congress also added two other funding sanctions for failure to implement a SIP. First, it extended the discretionary withholding of sewage treatment grants under section 316 to such failures. Second, it provided in section 176(b) for a withholding of air grants for any area in which the State is not implementing an applicable SIP. Beyond those funding sanctions, the requirement in section 173(4) operates, in effect, as a ban on the construction of major new sources in the event that a State is not "carrying out" its SIP. This means that, even when the SIP for a designated nonattainment area has been approved and is adequate, the area may become subject to a construction ban if it fails to carry out the SIP.

[6] Under section 110(a)(2)(H), 42 U.S.C. 7610(a)(2)(H), EPA may call for a SIP revision

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CO standards in the near term with their existing SIPs and pending SIP revisions. In particular, EPA began to consider withholding disapprovals of the pending plan revisions and deferring sanctions where, though the states had failed to demonstrate attainment of the standards by the end of 1987 (or even shortly thereafter), they had submitted commitments to adopt all control measures that became reasonably available. EPA solicited comment on whether such an approach, as applied to the South Coast Air Basin and three other California (extension) areas, would be consistent with the Act. *See* 51 FR 34428 (September 26, 1986) (soliciting comment on the "Reasonable Extra Efforts Program" ("REEP") for four areas in California).

After reviewing the language and legislative history of the relevant provisions of the Act,[7] EPA concluded that the REEP approach, as well as a similar approach called the "Sustained Progress Program" ("SPP"), would be inconsistent with the Act—both for extension areas that had not yet received approval of their Part D SIPs and for areas that, though receiving such approvals, needed to revise their SIPs in response to notices of SIP deficiency under section 110(a)(2)(H). 52 FR 26404, 26.407 (July 14, 1987) (General Preamble). With regard to applying REEP and SPP to areas without approved Part D SIP's, EPA stated:

> On its face Part D * * * contemplates an entirely different planning process [from REEP], under which such an areas [sic] must develop within a set period a full plan to produce attainment by a fixed near-term deadline.
>
> * * * * *
>
> The only argument supporting REEP in the face of this statutory language is the one sketched by EPA in its REEP proposal and by industry in its comments, namely, that some extension areas could produce attainment by the end of 1987 only by the application of measures that would tear the economic and social fabric of the areas and that the 95th Congress could not really have intended the areas to put such draconian measures into enforceable form and actually begin to implement them.
>
> The argument, however, misses the point * * *. In fact, the legislative history shows that the Congress set up the Part D system in order to force communities and industry to do their utmost to bring about attainment as rapidly as possible and expected that a future Congress would change the course it had set, if necessary, to avoid any unacceptable consequences.
>
> In sum, REEP and SPP would frustrate the purposes of Part D by abandoning upfront, complete planning for attainment by a near-term fixed deadline in favor of iterative planning for progress alone.

(52 FR 26404, 26408 col. 3 (July 14, 1987)).

Based on this conclusion, EPA proposed to disapprove several pending ozone and CO SIPs for extension areas that did not contain persuasive demonstrations of attainment within such a short-term period, and to impose the construction moratorium in those areas. *See, e.g.*, 52 FR 26431 (July 14, 1987) (reproposal to disapprove California ozone and CO SIPs for the South Coast and Fresno; reproposal to disapprove California ozone SIPs for Ventura and Sacramento).

On November 3, 1987, the Ninth Circuit issued its opinion in *Abramowitz* v. *EPA*, the challenge to EPA's 1984 decision to approve control measures in the 1982 South Coast SIP and to defer action on the plan as a whole. The court found that EPA had exceeded its authority by approving the South Coast control measures without finding whether California had submitted an adequate demonstration of attainment by December 31, 1987, and the Court ordered EPA to take final action to disapprove the relevant SIP provisions forthwith. 832 F.2d 1071, 1079 (9th Cir. 1987). Pursuant to the court order, EPA took final action to disapprove those SIPs and to lay the groundwork for imposing the construction ban under section 110(a)(2)(I). 53 FR 1760 (January 22, 1988). The ban did not take effect until August 31, 1988, due to the sanctions freeze imposed by the Mitchell-Conte Amendment to the 1987 Continuing Resolution (Pub. L. 100–202).[8]

4. Formulation of Post-1987 Policy

On November 24, 1987, EPA issued a proposed policy on how, after passage of the December 31, 1987 statutory attainment date, states should correct their remaining ozone and CO nonattainment problems. 52 FR 45044. The proposal reflected EPA's view at that time of how to apply Part D to state plans after the statutory dates have passed. The Agency received over 2,000 comments on the proposal, and is still analyzing how those comments should affect EPA's final decisions on post-1987 ozone/CO policy. The Agency has not yet reached any conclusions on issues raised by the commenters. A summary of relevant sections of the proposed policy is provided below.

On its face, Part D (section 172(a)) calls for plans that "provide for attainment" of the standard by the stated date (December 31, 1982, or December 31, 1987). Because plans developed after 1987 cannot provide for attainment by either of these dates, under the strictest reading of Part D, a state (or EPA) could never develop a plan that meets Part D requirements, and hence could not actually satisfy the applicable requirements. But EPA stated its belief that Congress would have intended EPA in such circumstances to select, in place of the elapsed dates, a subsequent date consistent with the general principles of the Act and Part D. *See Chevron, U.S.A.* v. *NRDC*, 467 U.S. 837 (1984).

Although it is not clear what subsequent date Congress would have intended in these circumstances, EPA's post-1987 proposed policy referred to the history of the Act's planning requirements and suggested that Congress would have provided EPA (and these areas) an additional period analogous to the three- and five-year periods set forth in section 110(a)(2)(A) and section 110(e), respectively. 52 FR 45065. The Agency reasoned that, when Congress in 1977 directed EPA to initiate a new round of planning for areas that had failed earlier to produce adequate plans meeting the section 110 requirements, it created new planning periods comparable to the section 110 periods (three-to-five years from EPA's approval of the State plan), rather than shortening those periods and thereby demanding plans for immediate attainment. Section 172(a)(1) required the SIPs for nonextension areas to provide for attainment by the end of 1982, four years from the date these submittals were due (January 1, 1979) (*see* section 129(c)).

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whenever the Administrator finds that the plan is "substantially inadequate" to achieve the NAAQS or in other respects fails to comply with the 1977 Clean Air Act Amendments.

[7] This analysis appears in a memorandum of EPA's General Counsel dated November 25, 1986. The evaluation in this memorandum is reflected in the General Preamble discussed in the text below.

[8] The Mitchell-Conte Amendment to the Budget Reconciliation Act of 1987 (Pub. L. 100–202) (December 22, 1987), provided in relevant part:

> No restriction or prohibition on construction, permitting or funding under sections 110(a)(2)(I), 173(4), 176(a), 176(b), or 316 of the Clean Air Act shall be imposed or take effect during the period prior to August 31, 1988 by reason of (1) the failure of any nonattainment area to attain the national primary ambient air quality standard under the Clean Air Act for photochemical oxidants (ozone) or carbon monoxide (or both) by December 31, 1987, (2) the failure of any State to adopt and submit to the Administrator of the Environmental Protection Agency an implementation plan that meets the requirements of part D title I of such Act and provides for attainment of such standards by December 31, 1987, (3) the failure of any State or designated local government to implement the applicable implementation plan, or (4) any combination of the foregoing.

EPA stated in the policy proposal that, to be sure, Congress had provided a much longer attainment period for extension areas—from January 1, 1979 to December 31, 1987, approximately nine years from the date the initial Part D SIPs were due. But the Agency then noted that Congress had set up two planning periods for these areas—one to apply all "reasonably available" measures and a second to supplement those measures. Since one might assume that most reasonably available measures should already have been implemented in areas such as the South Coast by now, EPA stated that post-1987 planning for the area might be viewed as comparable to the second Part D planning period. That period spanned from the July 1982 submittal date (*see* section 129(c)) to the end of 1987, a period roughly consistent with the three- and five-year periods in section 110.

Based on analogy to sections 110 (a) and (e) and the second Part D planning period of three to five years, the November 1987 policy proposed that EPA apply the relevant construction moratorium (or leave it in place) in all areas whose new plans do not contain a persuasive showing of attainment within three to five years after EPA action on the plan. Other sanctions would not follow if the plan indicated reasonable efforts. These reasonable efforts would be reflected in a rate of progress that would bring (at least presumptively) an average annual emission reduction of at least 3% of the base year inventory for the area, not including the reduction from certain baseline control measures.

The post-1987 proposed policy focused on how states should develop SIPs now that the December 31, 1987 statutory attainment date has passed. The proposal addressed FIPs only tangentially, and did not contain a detailed evaluation of the statute's FIP provisions. Nor did it describe how EPA might construct a post-1987 FIP for the South Coast Basin.

E. Recent and Current FIP Litigation

As the December 31, 1987 attainment date approached, citizens groups began to seek court action to compel EPA to promulgate FIPs for areas still lacking approved Part D ozone and CO SIPs. The first such case was a suit by the Arizona Center for Law in the Public Interest (ACLPI) to compel the Agency to impose highway funding sanctions and promulgate CO FIPs for Phoenix and Tucson, two areas whose 1982 Part D CO SIPs had not received EPA approval. In August 1987 the United States District Court for Arizona held that, although EPA was not under a nondiscretionary duty to impose the highway funding sanctions, its 1986 disapproval of the CO SIPs for those areas had triggered a duty for the Agency to create FIPs. *McCarthy* v. *Thomas*, slip op. (D. Ariz. 1987). The court then set a schedule for EPA to produce the FIPs or approve corrective SIPs for the two areas.

EPA proposed to promulgate a CO FIP for the Phoenix area on May 16, 1988. 53 FR 17378. The proposed FIP would have consisted of two measures that, together with the previously submitted SIP, would produce attainment of the CO standard within three years of FIP promulgation. Thus, the proposal would have applied EPA's views on post-1987 SIP attainment to the FIP for Phoenix. EPA stated that, while the two measures in the proposed FIP could not be said to be clearly practicable to implement, their implementation *might* be practicable and hence the Agency could not find grounds to support a two-year extension of the attainment date under section 110(e).

Subsequent to the FIP proposal, Arizona supplemented its SIP with new state-adopted measures sufficient in EPA's view to remove the need for a FIP for the Phoenix area. Because the SIP as supplemented would produce attainment within three years of SIP approval, EPA approved it. 53 FR 30220 (August 10, 1988). The notice stated, however:

> Certain important qualifications apply to this analysis. First, EPA is here dealing with a situation in which attainment within 3 years is a practicable possibility given the size of the nonattainment problem and the measures that the state has submitted. EPA currently has rulemaking and policy proposals outstanding which raise the question of whether EPA must disapprove a SIP and thereby trigger a construction ban, even where a state has failed to submit measures that would provide for attainment with 3 to 5 years *and* where attainment by means of any measures would be impossible as a practical matter. See 52 FR 26404 (July 14, 1987) and 52 FR 45044 (November 24, 1987). Thus EPA has yet to decide in final form what the role of impossibility is under the Act for the purpose of approval or disapproval of SIPs.
>
> Second, EPA is not deciding in this notice of final action what its obligations under section 110(c) to promulgate a federal implemention plan are. Again, the role of the doctrine of impossibility is uncertain. Further, it is uncertain in any event that EPA must promulgate a FIP that provides for attainment by a near term fixed date. EPA currently is exploring these issues in connection with the ozone and CO SIPs for certain areas in California including the South Coast Air Quality Management District. EPA does not intend by means of the discussion and analysis in this notice to express a final view on these issues.

Id. at 30,227, n.1. Thus, the Arizona rulemaking did not purport to address what section 110(c) requires in relation to an area facing such severe nonattainment that attainment within three to five years would destroy its socioeconomic fabric.

In early 1988, the Coalition for Clean Air and Sierra Club filed a complaint in the U.S. District Court in California to compel EPA to promulgate a FIP for ozone and CO in the South Coast Air Basin. Following some initial procedural filings, the court transferred the case from the Northern District (San Francisco) to the Central District (Los Angeles). Just before that transfer took effect, EPA had filed a response to the plaintiffs' motion on the issue of whether EPA has a duty to promulgate a FIP. EPA's response acknowledged such a duty, which was affirmed by the court in an order dated September 19, 1988. Today's Advance Notice of Proposed Rulemaking reflects EPA's initial efforts to describe and solicit comment on how the Agency can and should fulfill its obligation.

The Agency is involved in similar litigation relating to ozone in other cities. A citizens group, Citizens to Preserve the Ojai, filed suit in the U.S. District Court for the Central District of California to compel EPA to disapprove the 1982 Ventura County ozone SIP and write an ozone FIP for that area. EPA published its disapproval of that SIP on October 5, 1988. 53 FR 39087. The Sierra Club and the Environmental Council of Sacramento have filed suit in the U.S. District Court for the Eastern District of California to compel EPA to disapprove the 1982 Sacramento ozone SIP and promulgate a FIP. Finally, the State of Wisconsin has filed suit in the U.S. District Court for the Eastern District of Wisconsin to compel EPA to disapprove the 1982 Illinois and Indiana ozone SIPs for the Chicago area and to create a FIP. EPA published its disapproval of those SIPs on October 17, 1988 (53 FR 40415) and November 18, 1988 (53 FR 46608). None of those three courts has ruled on the FIP issues.

III. The South Coast Basin: Current Problems and Planning

The South Coast Air Basin (Basin) consists of Orange County, and portions of Los Angeles, San Bernardino, and Riverside Counties. The Basin is bounded on the north by the San Gabriel Mountains, on the northeast by the San Bernardino Mountains, and on the east by the San Jacinto Mountains Lying off the semi-permanent high pressure zone of the eastern Pacif

Ocean, the region's climate is mild, tempered by cool sea breezes.

A. Scope of Problem

Attainment of the NAAQS for ozone and CO is uniquely difficult for the Basin. Despite unprecedented air pollution control accomplishments by one of the largest and most ambitious local air pollution control programs in the country, the Basin retains its position as the nation's worst ozone nonattainment area and is at or near the top rank of the worst CO nonattainment areas.

1. Pollutants

The two pollutants of concern in the context of this Notice are ozone and CO. Problems also arise with respect to oxides of nitrogen (NO_x) and other pollutants.

a. *Ozone.* Ozone is a secondary pollutant, formed primarily as a result of the photochemical reactions between hydrocarbons (HC) and nitrogen dioxide (NO_2) in sunlight. Ozone severely irritates the mucous membranes of one's nose and throat, impairs normal functioning of the lungs, and reduces one's ability to perform physical exercise. Individuals with health respiratory systems, observed while exercising under closely monitored acute (1–2 hours) exposure conditions, suffered health effects and reduced physical capacities in response to even relatively low concentrations of ozone. When ozone levels go higher, chest pains, coughing, wheezing, pulmonary and nasal congestion, labored breathing, sore throat, nausea, and other dysfunctions begin to occur.

Emissions that react to form ozone come from hundreds of sources, including major stationary sources such as refineries, power generating stations, auto assembly plants; and small stationary sources like dry cleaners, corner gas stations, bakeries, and auto body paint shops. Important sources of ozone precursor emissions include motor vehicles, the burning of fossil fuels generally, and consumer and industrial products such as paints and cleaning solvents.

Air quality monitoring data show that of all areas in the country, the Basin has the highest peak ozone concentrations, and experiences the greatest number of days with ozone above the ozone NAAQS. To compare and characterize peak ozone levels, EPA uses an "air quality design value," which is the fourth highest monitored value recorded at a single air quality monitoring station in the area over the past three years. The 1985–1987 design value for the basin is 0.35 parts per million (ppm). This value is nearly three times the NAAQS for ozone (0.12 ppm daily maximum one-hour average); the next highest design value for the same period in another area is Houston's 0.20 ppm, or only 60 percent of the Basin's design value. The estimated annual exceedance of the ozone standard in the Basin for the same period was 143 days per year. No other area in the nation exceeded the ozone standard for more than an average of 35 days per year during that period.

b. *Carbon Monoxide.* CO is a colorless, odorless, and poisonous gas produced by the incomplete burning of carbons in fuels. As much as 95 percent of the CO in the Basin comes from mobile sources, principally motor vehicles.

CO binds chemically to hemoglobin, the substance in the blood that carries oxygen to the cells, and thus reduces the amount of oxygen available to the body tissues. CO weakens heart contractions, reducing the amount of blood pumped, and thus the amount of oxygen available to the muscles and organs. Such oxygen depletion impairs the functioning even of healthy individuals, and can be life threatening to those with heart disease. Exposure to relatively low concentrations of CO can disrupt mental functions, reduce alertness, and impair vision.

The Basin consistently violates the health-based federal air quality standards for CO. As a benchmark for comparison, EPA uses the second highest monitored CO value occurring over an eight-hour period during a year. The Basin's second high peak hour concentrations are approximately twice that of the 9 ppm/8-hour CO NAAQS. During 1986, the Basin exceeded this standard on 49 days.

c. *Other Pollutants.* The Basin is the only area of the country that violates the NO_2 NAAQS. Due in large part to the formation of fine particulate from secondary aerosols, the Basin also has recorded the highest annual average fine particulate matter (PM–10) levels of any major urban area. Reductions in the principal ozone precursors, volatile organic compounds (VOCs) and oxides of nitrogen (NO_x), are essential to the attainment of the NAAQS for NO_2 and PM–10. Nitrogen oxides can irritate the lungs, cause bronchitis and pneumonia, lower resistance to respiratory infections such as influenza, and cause pulmonary edema. Particulate matter can irritate or damage the respiratory system, cause acute respiratory illnesses, and increase the number and severity of chronic respiratory diseases.

2. Severity of the South Coast Attainment Shortfall

The emissions reductions required to bring the Basin into attainment of the ozone NAAQS exceed those needed for other nonattainment areas. The South Coast Air Quality Management District (SCAQMD) and the Southern California Association of Governments (SCAG) are now capping a four-year effort to develop a new South Coast Air Quality Management Plan (AQMP). This plan strives for attainment of the ozone NAAQS in approximately 20 years (by 2007) and attainment of the CO NAAQS in approximately 10 years by (1997). The proposed AQMP estimates that attainment of the ozone NAAQS will require an 80 to 90 percent reduction in VOC emissions along with reductions in NOx emissions.

The SCAQMD already strongly controls most of the industrial and commercial activities which have been identified for regulation across the country. The massive emission reductions that are necessary to close the remaining attainment shortfall must, therefore, come mostly from previously unregulated sources. These include small industrial, commercial or domestic source categories and mobile source categoies not yet subject to emissions control requirements. Further reductions will also require the application of unprecedented control limits on already regulated existing sources, and the widespread substitution of clean fuels in all source categories.

Three additional factors make the task of achieving the NAAQS in the Basin even more formidable. First, the South Coast is the country's largest and most diverse industrial area, dominated by small companies—pollution sources that are particularly difficult to inventory and regulate. Over the next 20 years, the South Coast's enormous projected growth will make it one of the most populated areas in the United States. Currently, one in 18 persons in the U.S. live in the six-county region covered by SCAG. This region includes Ventura and Imperial Counties, as well as the four South Coast Air District counties. By the year 2010, one in every 15 persons in the U.S. will live in this area, as the population increases to 18,300,000. By the year 2010, population is projected to increase by 37 percent, employment by 47 percent, vehicle miles traveled by 68 percent and vehicle trips by 72 percent.

Second, because of the widely scattered physical locations of jobs, services, entertainment, and housing, and the lack of developed or accepted

mass transit alternatives, residents of the South Coast are intensely dependent upon private motor vehicles trips for commuting to work and for access to essential services and entertainment. SCAG's recent Regional Mobility Plan (February 1988) predicts that today's level of traffic congestion will progress to gridlock by 2010 and that "there may not be enough money, land, or time to simply build our way out of the coming congestion" (p. 1). SCAG calculates that, absent significant changes in driving patterns, the average systemwide speed will drop from 35 miles per hour (MPH) to 19 MPH during that period, with average morning rush hour speeds dropping from 31 MPH to 11 MPH. This congestion will dramatically increase per-vehicle emissions of CO and VOC, since tailpipe emissions of these pollutants are higher at low speeds and, like running loss VOC emissions,[9] increase with time on the road.

Third, the peculiar meteorology and topography of the South Coast make the area especially susceptible to the formation and persistence of high concentrations of ozone in the spring, summer, and fall months. The coincidence of protracted meteorological inversions, light onshore breezes, and high mountains to the east combine to trap air pollutants within the Basin and inhibit normal dispersion for periods of up to several days. Sunlight, a necessary factor in the photochemical reactions that produce ozone, is plentiful year-round; the Basin experiences more days of sunlight than any other major urban area except Phoenix. The Basin has an additional geographical handicap to attainment: high levels of ozone and ozone precursors are transported into the Basin from the urban areas to the north and, potentially, from the outer continental shelf petroleum development activities to the north and west.

3. Proposed South Coast Air Quality Management Plan

The SCAQMD and SCAG publicly issued their proposed AQMP in September 1988. A series of public meetings was convened in July, and will continue until the SCAQMD Board and the SCAG Executive Committee adopt the Plan. Once the plan is adopted locally, it must be approved by the California Air Resources Board (CARB) before submission to the EPA and a SIP revision. The plan addresses all four nonattainment pollutants: ozone, CO, NO_2, and PM–10.

Although the modeling analyses submitted with the draft plan are still being revised, results from preliminary analyses indicate that VOC emission reductions of 80 to 90 percent would be required to achieve the ozone NAAQS.

The SCAQMD estimates that mobile sources account for approximately 50% of the Basin's VOC emissions; industrial and manufacturing account for another 25%; and commercial, residential, and agricultural activities account for the remaining 25%.

a. *Outline of South Coast AQMP.* The draft plan outlines the proposed development and implementation of more stringent controls on currently regulated sources; new stationary-source, area-source, transportation, land use, and energy measures; and additional mobile-source controls. It identifies schedules for adoption and implementation of the controls by numerous local, state, and federal agencies, and it presumes new enabling legislation.

Appendices to the plan discuss near-term control measures, including 69 specific controls on stationary and area source controls; 19 controls on motor vehicles; 22 controls on transportation, land use and energy; and 13 controls on other mobile sources (such as aircraft, pleasure boats, off-road motorcycles).

The draft plan calls for a three-tiered approach to emission reductions from stationary, area, and mobile sources. This approach is based upon estimates of the availability of technology and necessary lead time for the adoption and implementation of new control measures.

Tier I controls cover emissions for which the control technology is assumed available today and for which the necessary control measures can be adopted within the next five years. The plan specifies an adoption schedule and an implementing agency for each control measure. Tier I measures include: a revised, very stringent new source review rule applicable to almost every new or modified source; major NO_x retrofit controls on refineries, utilities, and industrial boilers and turbines; substitute solvents and coatings and further emissions controls for most industrial VOC sources; installation of Best Available Retrofit Control Technology; transit improvements; freeway capacity enhancements; stricter NO_x standards for light-duty vehicles, heavy-duty diesel trucks, and buses; bus electrification or clean fuel retrofit; truck delivery restrictions; out-of-Basin transport of biodegradable solid waste; emission standards on new pleasure boat engines; and control of emission from such sources as aerosol spray deodorants, marine vessels, livestock waste, and residential gas water heaters.

Tier II controls require significant advancement of technology and vigorous regulatory intervention. Research, development, and implementation are scheduled by 2003. The measures include: converting 40 percent of on-road passenger vehicles and 50 percent of off-road vehicles to clean fuels (*e.g.*, neat methanol, fuel cells, or electric power); converting 70 percent of freight vehicles to methanol; converting all diesel transit buses to methanol, liquid petroleum gas (LPG), compressed natural gas (CNG) or electricity; maintaining vehicle miles traveled and the number of vehicle trips at current levels through growth management and increased ridesharing; restrictions on driving, licensing, and vehicle registration, if necessary; and reducing 50 percent of the remaining VOC emissions from mobile sources, solvents and coatings, and consumer products.

Tier III programs are designed to bring about major technological breakthroughs to further reduce emissions of VOCs and NO_x. Research, development, and commercialization are scheduled to be completed by 2007. The proposed strategies anticipate almost complete elimination of VOC from solvents and coatings, and a total on-road automobile fleet conversion to electricity. As a contingency, the plan discusses the removal of high-polluting industry from the Basin. Tier III also relies on the replacement of industrial and commercial combustion units with electric power generated outside the Basin.

The SCAQMD Board is funding a multi-million dollar research and development program to advance the creation and application of technologies needed for the Tier II and Tier III control programs.

The plan also identifies the need for state and/or federal agencies to lower emissions standards on new jet aircraft engines; to control fugitive emissions from marine vessel tanks and from outer continental shelf exploration, development, and production; and to limit emissions from pesticide application.

[9] So-called "running losses" are emissions of VOC released from points other than the tailpipe or crankcase, while an engine is running. They are distinguished from evaporative emissions, which are those VOC losses that occur when the engine is turned off. Running losses are nearly all due to evaporation (and in extreme cases, boiling) of fuel from the fuel tank. This is especially apt to occur with high volatility fuels, at high ambient temperatures, and under driving conditions conducive to high fuel tank temperatures.

b. *Recent Legislation in California.* Recent major legislative enactments in California have reinforced the SCAQMD's and ARB's powers to achieve significant progress in the air quality of the Basin.

In the fall of 1987, through the passage of Senate Bill (SB) 151 (Presley) the California State Legislature gave strengthened authority to the SCAQMD for control of mobile source emissions. SB 151 imposes a state-mandated local program requiring that SCAQMD's rules and regulations provide for indirect source controls and transportation control measures. The Bill also permits the SCAQMD Board to adopt regulations specifying the composition of motor vehicle fuel for sale in the Basin. In addition, it gives the SCAQMD the authority to prohibit or restrict the operation of heavy-duty vehicles on freeways and high volume highways during peak commuter travel periods.[10]

On September 30, 1988, the Governor of California signed Assembly Bill (AB) 2595 (Sher), "The California Clean Air Act of 1988." AB 2595 further strengthens the authority of local air pollution control districts, such as the SCAQMD, to enact transportation control measures (TCMs) and regulate indirect sources. It requires these districts, with the cooperation of the Councils of Governments, to prepare comprehensive plan revisions to attain the federal and state ambient air quality standards. The Act establishes different requirements for three classes of areas, depending upon the scope of the nonattainment problem, but all areas are required to achieve at least a five percent reduction in emissions per year. The most severe nonattainment areas (those unable to attain by 1997) must include in their plan: (1) Permitting programs to achieve no net increase in permitted emissions; (2) TCMs to achieve an average commute ridership of 1.5 after 1999, and no net increase in vehicle emissions after 1997; (3) measures to achieve the use of a significant number of low-emission motor vehicles by fleet operators; (4) measures to reduce average per capita ambient exposure to levels above the standards by 25% by 1994; and by 50% in the year 2000. Finally, AB 2595 requires the ARB to adopt, by the end of 1992, consumer product VOC emissions regulations reflecting the maximum technologically feasible control. It also requires the ARB to take, by the beginning of 1992, all "necessary, cost-effective and technologically feasible" actions to achieve a 55 percent reduction in VOCs, a 15 percent reduction in NO_x and the maximum feasible reductions in CO from vehicular and mobile sources by 2000.

c. *Current Schedule for Adoption of South Coast AQMP.* The current schedule for adoption of the proposed South Coast AQMP calls for local adoption hearings by SCAG and the SCAQMD in December 1988, and for adoption by ARB in the spring of 1989. If ARB adopts the plan, ARB would submit it to EPA for approval as a SIP revision soon afterward. The AQMP includes detailed schedules for later adoption by the various responsible jurisdictions of individual measures in the plan.

If this draft plan is submitted to EPA as a SIP revision, it would precede by at least two years the national submittal deadline for post-1987 SIPs suggested by EPA's post-1987 ozone/CO policy proposal. That proposal would require a plan to contain state and local control measures that provide an annual reduction in emissions of at least three percent per year beyond a baseline of measures previously required or promulgated by EPA. The South Coast SIP would appear to be more stringent than this minimum "reasonable efforts" progress requirement in the proposed policy, provided the SCAQMD and the relevant governments supplement the plan framework with regulations sufficient to produce the projected emissions reductions.

EPA's preliminary review of the South Coast plan suggests that such a plan as the South Coast has developed, if adopted and implemented on schedule, would provide for: (1) The near-term application of currently available technologies; (2) an ambitious commitment to the development and widespread application of future technologies; (3) an aggressive program for the implementation of transportation control measures; and (4) useful proposals for new source review and indirect source review.

On the other hand, optimism over this plan must be tempered by realism. The plan provides for marginal attainment throughout the Basin, even though it evinces a readiness to adopt harsh measures. At this point, moreover, the South Coast plan must still be regarded as a blueprint for attainment. Much remains to be done before it will embody enforceable measures, and before its hoped-for emissions reductions can be counted upon. Moreover, because the plan is so ambitious—it mandates sweeping changes in established industries—its impact on social and economic life in the Basin will be profound, and may stand in the way of its thorough implementation.

IV. What Attainment Deadline Governs Post-1987 FIPs?

EPA's current dilemma arises from the Clean Air Act's failure to be explicit about the deadline by which a federal implementation plan for the South Coast—or for any area still subject to Part D of the Act—must show attainment of the ozone standard mow that the Decemberr 31, 1987 attainment date in Part D has passed.[11] To address the problem, we must first review the applicable principles of statutory construction.

A. Principles of Statutory Interpretation

The Supreme Court recently outlined these principles in *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984). The first question to ask is whether Congress:

> has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.

Id. at 843. If there is no statutory language that directly speaks to the issue, then we must look beyond the immediate language to the statute as a whole, and to the legislative history. Should we find expressed a specific Congressional intention, our search is at an end. If, however, Congress has not directly addressed the precise question at issue—"if the statute is silent or ambiguous with respect to the specific issue"—then we must proceed to construe the statute in accordance with

[10] The SCAQMD has taken the following steps to exercise this newly acquired authority:

a. In January 1988, the SCAQMD approved a $30.6 million clean fuels demonstration program that will test cleaner burning fuels for both stationary and mobile sources. The SCAQMD has already approved $6 million in 1988 for such projects as a fuel cells demonstration project, electrification of curing and drying plants, methanol projects for commercial boilers, new treatments for municipal solid wastes, alternative fuels for mobile sources (electrification, compressed LNG/LPG, methanol), and conversions and retrofits for buses to methanol. The program is a demonstration of the SCAQMD's commitment to a shift from petroleum-based fuels to methanol as a long-term strategy.

b. Regulation XV, a trip-reduction/indirect-source rule, was adopted by the SCAQMD Board in December 1987. This regulation requires all employers in the South Coast Basin who employ over 100 persons at any worksite to promote employee participation in ridesharing programs. The intent of Regulation XV is to reduce emissions from vehicles used for commuting between home and the worksite.

[11] The impetus for this discussion is the FIP obligation EPA faces in the South Coast, an area that does not yet have an EPA-approved Part D SIP. Most of the principles EPA describes however, logically apply also to areas with approved Part D SIPS that failed to produce attainment by the end of 1987.

its language, history, and purposes. Id. at 843–845, to 865.

When the plain meaning of the language of a statute is sufficient to determine the purpose of legislation, courts generally follow it. *See United States* v. *American Trucking Association*, 310 U.S. 534, 543 (1940). But courts also have been willing to look beyond the plain language of the statute to divine Congressional intent.

> When that meaning has led to absurd or futile results, * * * this Court has looked beyond the words to the purpose of the Act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one "plainly at variance with the policy of the legislation as a whole," this Court has followed that purpose rather than the literal words.

Id. at 543 (footnote omitted). *See also TVA* v. *Hill*, 437 U.S. 153, 184 n. 29 (1978). Conversely, when the legislative history, combined with the plain language, supports seemingly harsh or absurd results, courts are unwilling to reconstrue statutes. *Griffin* v. *Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1978) (citing *Crooks* v. *Harrelson*, 282 U.S. 55, 60 (1930)). *See also Commissioner of Internal Revenue* v. *Asphalt Products Co., Inc.*, 107 S. Ct. 2275, 2278 (1987).

Beyond that, several courts have examined EPA's failure to perform a statutory duty, such as issuing regulations or guidelines within a statutory period, in light of the Agency's argument that compliance with the deadline was infeasible or impossible. See, e.g., *NRDC* v. *Train*, 510 F.2d 692, 712–13 (D.C. Cir. 1975); *Sierra Club* v. *Thomas*, 658 F. Supp. 165, 170–173 (N.D. Cal. 1987); *Sierra Club* v. *Ruckelshaus*, 602 F. Supp. 892, 898–99 (N.D. Cal. 1984). When the agency can establish impossibility by demonstrating manpower, methodological or budgetary constraints, courts will not force the Agency "to do an impossibility." *Sierra Club*, 602 F. Supp. at 899 (citing *Maggio* v. *Zeitz*, 333 U.S. 56 (1948)).

Along the same lines, courts also disfavor statutory constructions that infer broad agency powers to effect radical economic and social change. In determining not to interpret section 112 of the Clean Air Act to require EPA to set a zero-emissions standard for hazardous air pollutants, the United States Court of Appeals for the District of Columbia Circuit, *NRDC* v. *EPA*, 824 F.2d 1146, 1154 (D.C. Cir. 1987 *en banc*), stated:

> The EPA has determined that a zero-emissions standard for non-threshold pollutants would result in the elimination of such activities as the "generation of electricity from either coal-burning or nuclear energy; the manufacturing of steel; the mining, smelting or refining of virtually any mineral * * *; the manufacture of synthetic organic chemicals; and the refining, storage, or dispensing of any petroleum product." *It is simply not possible that Congress intended such havoc in the American economy and not a single representative or senator mentioned that fact.*

(citations omitted) (emphasis added). *Cf. Industrial Union Dept.* v. *American Petroleum Institute*, 448 U.S. 607, 645 (1980) ("In the absence of a clear mandate in the Act, it is unreasonable to assume that Congress intended to give the Secretary [this] unprecedented power over American industry.")

Finally, when two statutory provisions conflict, the maximum possible effect should be given the provisions. As the Court of Appeals for the District of Columbia Circuit stated in *Citizens to Save Spencer County* v. *EPA*, 600 F.2d 844, 871 (D.C. Cir. 1979) (footnotes omitted) (emphasis in orginal):

> * * * If the inconsistent provisions point generally in a common direction * * * it is the task of an agency with the requisite authority to pursue a middle course that vitiates neither provision but implements to the fullest extent possible the directives of each, and it is the task of a reviewing court to ensure that the agency has effected an appropriate harmonization of the conflicting provisions while remaining within the bounds of that agency's statutory authority.

Furthermore, it is appropriate for the agency to look to the underlying goals and purposes of the legislature in enacting the statute, "while avoiding unnecessary hardship or surprise to affected parties and remaining within the general statutory bounds prescribed." *Id.* (footnotes omitted).

B. The Starting Point: The Search for a Specific Congressional Intent

As stated earlier, the first step in our analysis is to see whether the statutory language or the legislative history reveals a specific congressional intent as to what attainment date applies to a post-1987 FIP for an area like the South Coast. The leading statutory provision is section 110(c)(1). It defines not only the conditions that trigger EPA's duty to promulgate a FIP, but also the elements a FIP must include. It goes only so far as to indicate, however, that a FIP must satisfy "the requirements of this section," that is, section 110. First, EPA must promulgate a FIP for a state when a state fails to submit a SIP that "meets the requirements of [section 110]." Moreover, the only escape from this obligation is if, prior to promulgation, the "state has adopted and submitted a plan (or revision) which the Administrator determines to be in accordance with the requirements of this section." Section 110(d) corroborates this general guidance: it states that an "applicable implementation plan" is one "which has been approved under subsection [110](a) or promulgated under subsection (c) and which implements the requirements of this section." Thus, it appears that Congress intended a FIP to be a complete substitute for an approvable SIP, or to form, together with a SIP that is not fully adequate by itself, a plan that is fully approvable under section 110.

Section 110, in turn, impliedly incorporates for nonattainment areas the requirements of Part D. It does so by its reference in section 110(a)(2)(A) to the construction ban in section 110(a)(2)(I) and by that section's reference to Part D. *See also* section 172(b)(1), 42 U.S.C. 7502(b)(1) (express recognition that the plan for a nonattainment area might be promulgated by EPA). Thus it appears that Congress intended an FIP for a nonattainment area to comply with the requirements of Part D.

But when it comes to determining the appropriate date for a SIP or a FIP to show attainment, the last date specified in either section 110 or Part D is December 31, 1987. If the parenthetical reference in section 172(b)(1) to a plan "promulgated by the Administrator" incorporates the dates in section 172(a), and if EPA had been compelled to create a Part D FIP for a nonattainment area in, say, 1983, then EPA would have been required to issue an FIP providing for attainment by the end of 1987. This date is now past, however, and it is impossible for areas without Part D SIP approval to meet it. Moreover, the statute contains no explicit instructions as to what attainment date applies to FIPs adopted after 1987. Thus, the language itself does not reveal a specific congressional intent as to what the attainment date for post-1987 FIPs should be. We must therefore look to the legislative history to discover whether Congress had such an intent.

The history contains very little direct discussion of the attainment date requirements for FIPs. Senator Muskie, one of the sponsors of the 1977 Clean Air Act Amendments, spoke of FIP deadlines, but failed to make clear in his remarks whether FIPs were intended to adhere to the December 1987 final date. Senator Muskie stated:

> [1982 Extension SIPs] must provide for attainment as expeditiously as practicable, but not later than the firm deadline of December 31, 1987. Where States do not submit adequate plans, the Administrator

must promulgate his own plan insuring attainment by *firm deadlines*.

123 Cong. Rec. 26,847 col. 1 (August 9, 1977) (statement of Sen. Muskie), *reprinted in* 3 Leg. Hist. 355. (emphasis added). The Senator further remarked that "the Administrator will be required to promulgate plan revisions insuring NAAQS attainment by the *appropriate deadlines* where a State's plan is inadequate." 123 Cong. Rec. 26,847 col. 2 (August 4, 1977) (Statement of Sen. Muskie), *reprinted in* 3 Leg. Hist. 356. Senator Muskie's omission of any reference to the date by which an FIP must assure attainment, coupled with his identification of the date by which an SIP must assure attainment, means that it is simply unclear whether he intended the FIP attainment schedule to track, or to vary from, the SIP attainment schedule. Further, there is absolutely no discussion of what constitutes a "firm" or "appropriate" SIP or FIP deadline after 1987. Thus we must look elsewhere in the history to divine whether Congress had a specific intent with respect to post-1987 FIP deadlines.

The history reveals that Congress intended 1987 to be a firm deadline, and that Congress believed it would provide legislative relief if that date proved impossible for some areas to meet.

First, there is evidence that Congress anticipated that it would be impossible for some areas of the country to attain the standards by 1982, and, for some, even by 1987. Senator Domenici stated:

> Now I understand that we may very well find ourselves at a point in time where these particular standards and dates set for them cannot be met.

Transcript, Mark-Up, Clean Air Act Amendments at 13 (May 4, 1977). *See also* Floor Statement of Rep. Maguire (stating that "many of [our major cities]—perhaps 26 of those cities—will not [attain the primary air standards] even by the year 2000"), 123 *Cong. Rec.* 16,208 col. 1 (May 24, 1977), *reprinted in* 4. Leg. Hist. 3066. Furthermore, a number of members noted the need to keep fixed deadlines, even as "somewhat of a legal myth" because they "provide a basis for attaining maximum progress towards clean air." Transcript, Mark-Up, Clean Air Act Amendments, at 13 (May 4, 1977) (statement by Sen. Domenici). Finally, several legislators anticipated the need to provide legislative relief from the 1982, and from even the 1987, deadlines. For example, Sen. Stafford stated that:

> It should be noted that these [1982 and 1987] deadlines will not require adoption of "draconian" control measures. The bill provides that those areas with the most intractable oxidant problems commit themselves in 1979 plan revisions only to reasonable measures to meet the 1987 deadlines. A second round of planning must be completed by 1982, providing plenty of time for legislative relief, should the 1987 date prove unattainable for a handful of areas.

123 Cong. Rec. 18,038 col. 3 (June 8, 1977) (statement of Sen. Stafford), *reprinted in* 3 Leg. Hist. 771.

It is apparent from these passages that Congress understood that some areas would find attainment by the end of 1987 impossible, and that Congress, arguably, did not intend to force the development of plans that would result in attainment in those areas by the end of 1987.[12] Nevertheless, Congress also wanted to force as much air quality improvement as possible. As a result, it adopted a strategy of (1) commanding the creation of legal structures that, through tight deadlines and the threat of enforcement, would pressure polluters and local governments to do their utmost, and (2) expressly recognizing that a subsequent Congress might provide relief. Indeed, all explicit references in the legislative history to the prospect of relief from the 1987 deadlines are to relief provided by *Congress*.

Here, however, 1987 has come and gone, and Congress has provided no such relief. While the history reveals an intent that only Congress provide relief from the 1987 attainment date, it reveals absolutely no specific intent as to what should happen if Congress failed to provide such relief (or new direction) by the time EPA was faced with having to create a post-1987 FIP.

Since neither the language nor the legislative history reveals a specific intent as to post-1987 FIP attainment dates in these circumstances, the statute contains a gap that, under *Chevron*, the Agency may fill by reaching a reasonable accommodation with other aspects of the Act's language, history, purposes, and structure.[13]

[12] A further indication that Congress may have intended the requirement for attainment by 1987 to be more in the nature of an incentive (or threat) to induce the greatest effort possible may be inferred from the fact that the legislative history includes almost no discussion of what types of measures the 1982 extension SIPs were to include to assure attainment by 1987. For example, the Senate Report included a lengthy discussion of the types of measures to be included in the 1979 SIPs, but stated only that the 1982 extension SIPs must "contain [] the enforceable measures needed to achieve the standard by 1987." S. Rep. No. 95-127, 95th Cong., 1st Sess. at 39 (1977), *reprinted in* 3 Leg. Hist. at 1413.

[13] Here, this task is not an easy one, since, as the Court noted in *Chevron*, "the Clean Air Act Amendments of 1977 are a lengthy, detailed, technical, complex and comprehensive response to a major social issue." 467 U.S. at 850. As the Supreme Court has recognized, the statute represents Congress' effort to a reconcile competing interests. *Id.* at 863.

C. EPA's Chevron Analysis: Description of the Act's Basic Themes

Some portions of the Act's language are useful to our analysis under *Chevron* of how best to fill the attainment date gap in the statute. For example, the requirement that plans "provide for attainment" (sections 172 (a) and (c) and 110(a)(2)(A)) makes it clear that a post-1987 FIP must have some fixed attainment date. The Agency concluded as much when it rejected the REEP concept in the July 14, 1987 **Federal Register**.

Other language suggests that the post-1987 FIP attainment date should not be so stringent as to end all significant economic activity in an area. For example, section 110(a)(2) of the Act appears to contemplate that pollution controls would be consistent with significant continuing economic activity. Section 110(a)(2) calls for "emission *limitations*" and "transportation controls" (section 110(a)(2)(B)); "*regulation* of the modification, construction, and operation of any stationary source" (section 110(a)(2)(D)); "requirements for installation of equipment by owners or operators of stationary sources to monitor emissions from such sources" (section 110(a)(2)(F)); and "periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards" (section 110(a)(2)(G)) (emphasis added). Moreover, sections 172(b)(6) and 173 contain requirements for allowing new sources to construct in nonattainment areas. These requirements by their terms contemplate ongoing socio-economic activity consistent with reasonable and acceptable programs to meet the goals of the law.

Finally, the residual requirement that all plans provide for attainment "as expeditiously as practicable" (sections 172(a) and 110(a)(2)(A)), if read in isolation, suggests that if the Act contains no uniform nationwide attainment date EPA might consider choosing a FIP attainment date suitable to the practicalities of attainment in each particular area—even if for some areas that date were to extend far into the future.

The Act's structure and the history of how Congress has addressed similar in the past suggest that fairly short attainment periods would be most consistent with the goals of the statute. First, the structure of Section 110 and Part D is biased toward creation of

plans to attain within relatively short periods of three to ten years. On the previous occasion when Congress was able to address the problem, it did not require immediate attainment, or even shorten subsequent planning periods. Instead, in 1977, when Congress ordered a new round of planning for areas that had failed to meet section 110 deadlines, it extended planning deadlines for periods comparable to previous section 110 periods. Moreover, the structure of the Act's planning provisions and the history reveal that Congress was interested more in ensuring the creation of *plans* for attainment by dates in the future than with forcing immediate shutdowns and curtailments of driving.

The legislative history "plainly identifies the policy concerns that motivated" enactment of the statute. 467 U.S. at 863. Congress, in its consideration of the Clean Air Act Amendments of 1977, struggled to reconcile the goal of clean air with that of continued economic development.[14] Congress sought to improve air quality, and to impose tough measures to do so, but also tried to minimize economic disruption, and foresaw that the target dates it set might prove too difficult for all to meet.

Several Congressmen indicated that they envisioned that tough measures would be required to implement the 1977 Amendments. Rep. Rogers emphasized that the legislation "retains and even strengthens the technology forcing and technology encouraging goals of the 1970 Act." 123 Cong. Rec. 27,070 col. 1 (August 4, 1977) (statement of Rep. Rogers), *reprinted in* 3 Leg. Hist. at 319. Senator Muskie stated that the requirement to impose reasonably available control technology may result in "some dislocation and disruption * * * during the beginning stages of [the] control program * * *." 123 *Cong. Rec.* 18,019 col. 3 (June 8, 1977) (statement of Sen. Muskie), *reprinted in* 3 Leg. Hist. 720.

But during a colloquy in the Senate on a provision to exempt from highway and air planning funding sanctions those areas making reasonable efforts, three Senators suggested that some states might avoid such dislocation and disruption by planning for attainment in the long term. Senator Stevens questioned Senator Gravel about an area such as Fairbanks, Alaska, which has a naturally-caused problem with CO that is aggravated by ice and fog and CO emissions from cars. Senator Gravel reassured Senator Stevens that even if the problem could not be solved "by the year 2000, we still will not get hurt."

Mr. Stevens: This means that the State of Alaska will not lose those funds if we cannot solve the ice-fog problem?

Mr. Gravel: If that happens, I will come to the floor of the Senate and slash my wrists * * *.

Senator Muskie stated that it was "reasonable" to retain "some sanctions for those jurisdictions which make no effort * * * to put together implementation plans * * *." 123 Cong. Rec. 18476 col. 3 (June 10, 1977) (statements of Sens. Gravel, Stevens, Muskie), *reprinted in* 3 Leg. Hist. 1063. (Such sanctions subsequently were enacted in section 176(a)). Thus, rather than focusing on the point that Alaska's failure to solve the ice-fog problem by the Part D deadlines would result in a FIP to do just that, the Senators indicated that, to the contrary, the state could do only what was reasonable, implicitly with *no* FIP consequences.

The history reveals other indications that Congress did not intend EPA to impose harsh measures on localities. As Senator Randolph stated:

While the general objective of the Clean Air Act is the continued reduction of pollution, this bill recognizes that industrial and commercial activity cannot and should not be stopped to achieve this purpose.

123 Cong. Rec. 26852 (August 4, 1988) (statement of Sen. Randolph), *reprinted in* 3 Leg. Hist. 369. Indeed, in 1974 and in the 1977 Clean Air Act amendments, Congress removed EPA's authority to impose parking surcharges and indirect source review, since they viewed these powers as too harsh and intrusive. The Senate Report explained some of these changes in these terms:

To avoid placing unreasonable burdens on transportation control mechanisms, this section amends existing law in several basic respects:

(1) it prevents EPA from requiring any measures that would have serious and adverse economic or social impact * * *

S. Rep. 95–127, 95th Cong., 1st Sess. 38 (1977), *reprinted in* 3 Leg. Hist. 1412.

Similarly, the 1977 House Report stated:

[T]he Committee is especially cognizant of the potentially sweeping consequences and potentially socially and economically disruptive impacts which may result from efforts to reduce automobile pollution through mandated reductions on new parking facilities. This risk of such adverse effects can be minimized only if the program is designed, implemented and enforced by State and local governments. H.R. Rep. 95–294, 95th Cong., 1st Sess. 222 (1977), *reprinted in* 4 Leg. Hist. 2689.

Congress also emphasized that one of the purposes of the 1977 Clean Air Act amendments was to strengthen the State and local role in improving air quality, and correspondingly, to reduce that of the Federal government. In particular, Congress emphasized that transportation control measures ("TCMs")—which Congress recognized would be essential for nonattainment areas—must be directed by state and local government. Speaking about the Conference bill in general, Sen. Muskie stated that, in comparison to EPA's power under the 1970 Clean Air Act Amendments:

The Administrator [of EPA] will be more reliant on local and State capabilities to create the institutional and infrastructural changes necessary to achieve clean air * * *. We have learned that there is little political support for inartfully conceived national measures which require people to change their way of living. We have learned that where change can be made it must be made with the full understanding and support of the people who are affected by the change.

123 Cong. Rec. 26841 col. 3 to 26842 col. 1 (August 4, 1977) (statement of Sen. Muskie), *reprinted in* 3 Leg. Hist. 341. Senator Muskie, speaking more specifically of TCMs, also observed that:

* * * State and local governments are in a better position than EPA to attack those problems, which involve millions of motor vehicles, through inspection and maintenance programs and similar measures.

In addition, the scheme contemplated by the act is a reasonable approach to this problem, one that is designed to involve the least possible intrusion into State affairs consistent with the task that is necessary.

123 Cong. Rec. 18020 col. 1 (June 8, 1977) (statement of Sen. Muskie) *reprinted in* 3 Leg. Hist. 721. Thus, two clear strands of legislative purpose are Congress' desire to avoid imposition of draconian measures and to intrude as little as possible upon State and local initiatives.

From this review of the Act's language, structure, history, and purposes, we can identify several themes, not all of which are consistent with one another. We see a desire for fixed deadlines limited to a decade or less, yet not so short as to cause the cessation of economic activity and

[14] Representative Waxman stated:

We have struck a proper balance between environmental controls and economic growth in the dirty air areas of America. . . . There is no other single issue which more clearly poses the conflict between pollution control and new jobs. We have determined that neither need be compromised.

123 *Cong. Rec.* 27076, col. 1 (August 4, 1977) (Statement of Rep. Waxman), *reprinted in* 3 Leg. Hist. 336. Senator Randolph agreed that the revised Act "recognizes that industrial and commercial activity cannot be and should not be stopped to [reduce pollution]." 123 Cong. Rec. 26852 col. 2 (August 4, 1977) (statement of Sen. Randolph), *reprinted in* 3 Leg. Hist. 369 (this reprinting erroneously attributes this statement to Sen. Stevens).

growth in any area. We see a desire to attain the standards through practicable means,, but an acceptance (perhaps even desire) for a certain amount of technology forcing. Finally, the Alaska colloquy reveals little recognition that in severe nonattainment areas EPA would actually impose draconian measures.

A review of these themes yields three possible answers to the FIP deadline question, each of which offers a different means of reconciling "manifestly competing interests." 467 U.S. at 865–66. These alternative solutions are: (1) Immediate attainment; (2) attainment within five years; (3) attainment in a longer term, but as expeditiously as practicable without causing severe economic and social disruption. In the next section, we will discuss each of these alternatives in turn, summarizing the legal and equitable arguments for and against each. In doing so, we will also describe the type of FIP each of the interpretations would impose.

Selecting an interpretation that would prescribe a post-1987 attainment deadline for the South Coast has profound implications. The South Coast authorities estimate that an 80–90 per cent reduction in VOC emissions is necessary to attain the ozone standard. Consequently, any FIP for the area would need to eliminate or severely limit practically every human activity that produces VOC emissions. Since a significant portion of the Basin's ozone problem, and almost all of its CO problem, is due to mobile sources, a plan aimed at attaining these standards in five years would have to ban the sale or use of fossil fuels for cars and trucks, airplanes, boats, and trains. To achieve the necessary emission reductions, and still allow the minimum essential vehicles—*e.g.*, police cars, emergency response vehicles, and delivery trucks of food and medical supplies—a short-term FIP would have to prohibit entirely the use of all non-essential pollutant-emitting vehicles, since even vehicles burning relatively clean fuels, such as methanol, could still cause continued nonattainment.

Thus, under a short-term attainment FIP, people would be forbidden to operate any private vehicle that was not "emission-free"; only vehicles such as bicycles or electric cars would be permitted. The development, on a mass scale, of clean vehicles for private use, or of mass transit alternatives that do not burn gasoline or diesel fuel, could not take place within five years. Nor would there be any realistic opportunity to establish clean transportation substitutes for aircraft, locomotives, marine vessels, and heavy-duty diesel trucks. If a short-term FIP were enforced, it would be impossible for most people to commute to work, and for most forms of commerce to continue.

As noted above, industrial and manufacturing facilities contribute about one quarter of the Basin's VOC emissions; consumer products and related services account for another quarter. A short-term FIP would necessarily prohibit almost all VOC emissions from manufacturing activities, and ban all products with VOC emissions—for example paints, waxes, pesticides, auto antifreeze, cleaning products, lubricants, and suntan lotions. The ban would extend to the manufacture, sale, and use of any reactive hydrocarbon-based solvent, coating or solution.

A short-term FIP would also prohibit refining, storage, transportation and combustion of fossil fuel. Southern California is the largest petroleum refining and distribution area on the West Coast. Federally required shutdowns of the petroleum refining and trans-shipping operations in the South Coast would have severe effects not only in the Basin, but in other areas as well.

Other major industries in the Basin—for example, auto asembly plants, furniture manufacturing plants, printing plants, aerospace plants, semi-conductor plants and electronics plants—would be forced to discontinue or drastically curtail operations.

A more detailed description of the elements and probable effects of a five-year FIP is contained in Appendix A. But it is evident that a short-term FIP would have catastrophic consequences. Only a FIP that forced emission reductions gradually over a fairly long period could temper those consequences by allowing economic and societal adjustments.

D. Analysis of Three Ways to Fill the Statute's Gap

1. Interpretation 1: Immediate Attainment

This interpretation is premised on the fact that the last deadline specified in the statute is now past, and nothing in the statute provides explicit authority for EPA to extend it. Since it is impossible for EPA, as well as any state, to fashion a plan that would produce attainment by this deadline, arguably EPA must do the next best thing, and prepare a plan demonstrating immediate attainment (e.g., within 30 days of publication of the FIP in **Federal Register**).

In the past, in a similar situation involving the Federal Water Pollution Control Act (FWPCA), EPA concluded that immediate compliance with lapsed deadlines is required. The FWPCA authorized EPA to issue permits requiring dischargers to achieve effluent limits based on the "best practicable control technology currently available" (BPT) by July 1, 1977. But EPA was unable to issue implementing guidelines or permits in time. Thus, in spite of good faith efforts, some companies found it impossible to meet this deadline, and petitioned in court for EPA to grant extensions. Upon examination of the legislative history, the United States Court of Appeals for the Third Circuit found that the deadline "was intended by Congress to be a rigid guidepost" and "an inflexible target." *Bethlehem Steel Corp.* v. *Train*, 544 F.2d 657, 661 (3rd Cir. 1976) [citing portions of legislative history]. Thus the court concluded that Congress did not authorize EPA to deviate from the deadlines. The court stated that:

> *Union Electric Company* v. *EPA*, [427 U.S. 246 (1976)], appears to indicate that the Supreme Court is willing to construe environmental statutes in a manner that may impose major burdens on polluters, and if the plain language of the applicable legislation so indicates, relief from such hardships must flow from Congress.

Indeed, in 1976, on the previous occasion that EPA was required to prepare a FIP for Los Angeles, EPA and the Ninth Circuit regarded the statutory deadline then applicable—May 1977—as absolute. The court upheld gas rationing regulations in a FIP aimed at meeting the deadline prescribed in the statute, observing that the Clean Air Act has permitted postponement of the initial 1975 attainment deadline until 1977, if there was no reasonably available alternative. But the court noted that:

> There is no comparable language contained in the requirements for development of the alternative plan after the extension has been granted. Thus, while Congress indicated its desire to take social and economic factors into consideration when granting extensions, the lack of comparable language elsewhere indicates that those factors would not affect the implementation of the only plan available to meet the standards. *South Terminal Corp.* v. *EPA*, 504 F.2d 646, 675–76 (1st Cir. 1974).

City of Santa Rosa v. *EPA*, 534 F.2d at 150, 154. The court expressed its concern with the effects of its ruling, but concluded that only Congress could come to the rescue:

> The situation in which petitioners find themselves is not an enviable one. Absent Congressional action, their constituents face substantial economic loss and social

disruption as the result of gasoline reductions. We sympathize but we have no authority to alter the regulation. The relief which petitoners seek is in the hands of Congress, not the Courts.

Id. at 155. *See also Public Citizen* v. *Young*, 831 F.2d. 1108 (D.C. Cir. 1987).[15]

The argument in support of Interpretation 1—requiring immediate attainment of the ozone and carbon monoxide standards—is that Congress set firm, fixed statutory deadlines for SIPs and FIPs, and that, as the Court found in the *Santa Rosa* and FWPCA cases, Congress intended to be the sole dispenser of relief from these deadlines.

On the other side of the ledger, calling for immediate attainment is inconsistent with past Congressional reaction when deadlines under the Clean Air Act were missed. As stated earlier, Congress' reaction in 1977 to the failures of 1970–77 was to create new planning periods, not to demand immediate attainment.

Furthermore, the situation we confront here is different from what the Ninth Circuit encountered in 1976 when it decided the *Santa Rosa* case and the Third Circuit encountered in *Bethlehem Steel*. First, unlike those cases, the statutory deadline has passed. And second, we are not writing on a blank slate. We now know that when Congress *did* consider the problem of the statutory deadlines in 1977, it did *not* require immediate attainment.

Another argument against requiring immediate attainment is that it is inconsistent with a key element in the legislative history—the statements evincing a concern with avoiding serious economic disruption.[16] Indeed, when Congress discussed the amount of economic hardship it expected to result from the Act, it appears that it did not want to impose harsh measures on those areas making reasonable efforts to improve air quality. For instance, Senators Muskie, Stevens, and Gravel, in their colloquy concerning Fairbanks, Alaska, took the position that, as long as an area made reasonable efforts, even if it could not attain "by the year 2000", a construction ban would be imposed, but otherwise, that area "will not get hurt". 123 Cong. Rec. 18,476. (June 10, 1977) (statements of Sens. Gravel, Stevens, Muskie), *reprinted in* 3 Leg. Hist. 1063. But, as explained below, the requirement of immediate attainment would, if enforced, to a cataclysmic event for Los Angeles, and far harsher than anything Muskie and the Alaska Senators seem to have anticipated or desired for any area under Part D.

One could find further arguments against the immediate attainment option by analogizing to the judicial doctrines avoiding absurd results, impossibilities, and conflicts between statutory provisions. As set forth earlier, even where the meaning of a statute is plain (and here, as shown above, it is not), if applying that meaning would lead to "absurd or futile results", a court may look "beyond the words to the purpose of the Act", and follow that purpose rather than the literal words, unless the legislative history shows that Congress intended such results. *United States v. American Trucking Association*, 310 U.S. at 543. *See also TVA v. Hill*, 437 U.S. at 184 n. 29. Similarly, the courts seek to avoid an interpretation that will result in a practical impossibility. *NRDC* v. *EPA*, 824 F.2d at 1154. Here, where Congress does not appear to have provided plainly and intentionally that FIPs produce immediate attainment, the case is even stronger for trying to avoid this outcome, and reaching a more reasonable accommodation among the conflicting statutory purposes. A FIP whose goal was instant attainment would have to prohibit immediately operation in the Basin of nearly every fossil-fueled vehicle, prohibit almost all industrial and commercial VOC emissions, curtail drastically most agricultural activities producing VOC emissions, and ban many consumer products containing reactive solvents. Such a plan would shut down major business activity, halt traffic, and dramatically restrict all aspects of social and economic life. Implementing and enforcing such drastic measures may well be impossible, and could prevent satisfaction of the basic necessities of life—including food, shelter, and medical services.

Enforcement of the FIP measures would begin upon the effective date of the FIP promulgation, usually 30 days following publication of the rule in the **Federal Register.** The disruptive consequences and enforcement difficulties of immediate FIP prohibitions would be more extreme than FIP measures that could be phased in over a number of years. There would be no opportunity to transform or relocate industrial and commercial operations, or to identify and develop any alternatives to the existing transportation systems. Even the development of effective emergency systems to provide necessary services and commodities to Basin residents might be preempted by a FIP that required instant attainment. Consequently, the residents of the area would face the destruction of daily life as they know it, and the likely prospect of mass evacuation.[17]

Another difficulty with a plan calling for immediate attainment is that it may conflict with other statutory requirements concerning enforcement. A literal interpretation of section 110(c)(1) would require, through section 110(a)(2)(D), that the FIP include "a program to provide for the enforcement of emissions limitations * * * as necessary to assure that [the NAAQS] are achieved and maintained." In addition, section 172(c), which applies to extension areas, like the South Coast, would require an SIP submitted in 1982 to "contain enforceable measures to assure attainment" by the end of 1987. By extrapolation, the requirements of section 172(c) could also be read to apply to a FIP promulgated after 1987. One of the requirements of section 110(a), applicable to SIPs, is that a plan must provide:

> Necessary assurances that the State will have adequate personnel, funding, and

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[15] In holding that the FDA lacks the authority to grant, with respect to carcinogenic dyes, a *de minimis* exception to the Delaney Clause of the Color Additives Amendments, the D.C. Circuit held:

> We believe that * * * Congress intended that if this rule produced unexpected or undesirable consequences, the agency should come to it for relief. That moment may well have arrived, but we cannot provide the desired escape.

Public Citizen v. *Young*, 831 F.2d at 1122.

[16] For example, Senator Muskie pointed out that:

> The advantage of the two-tiered approach, with a possible 10-year extension for attainment, is to provide a longer time frame to plan for and phase in necessary controls so as to minimize disruption.

123 *Cong. Rec.* 26,847 Col. 2 (August 4, 1977) (statement of Sen. Muskie), *reprinted in* 3 Leg. Hist. 356. Senator Stafford noted that "existing dates for attainment are extended to avoid economic or social hardships." 123 Cong. Rec. 18,038 col. 2 (June 8, 1977) (statement of Sen. Stafford), *reprinted in* 3 Leg. Hist. 770.

[17] For similar reasons, EPA recently rejected immediate attainment as a criterion for measuring the SIP for carbon monoxide in Maricopa County, Arizona. In its final notice, EPA stated that the Act does not require SIPs to provide for attainment more quickly than the general formulation in section 172(a)(2) ("as expeditiously as practicable"), provided that the three-to-five-years criterion that the Agency was applying at the time was satisfied.

53 FR 30,233 (August 10, 1988). EPA stated:

> If EPA were to adopt [the] position that post-1987 planning should provide for attainment at the soonest time, many post-1987 non-attainment areas would have to resort to draconian measures with drastic social and economic impacts—such as plant closings, gasoline rationing and mandatory no-drive restrictions—simply because such measures are physically available to bring about attainment. EPA does not believe that Congress, if it had addressed the post-1987 non-attainment situation now being faced, would have required such a result, even after passage of the Part D dates. EPA believes that Congress would instead have regarded the "as expeditiously as practicable" requirement to be still in place, albeit bounded in situations, such as that of Maricopa County, by fixed attainment deadlines.

Id. at 30,233. *See also American Lung Association* v. *Kean*, 18 Envt. L. Rptr. 20317 (D. N.J. 1987).

authority to carry out such implementation plan.

Section 110(a)(2)(F)(i), 42 U.S.C. 7410(a)(2)(F)(i); 172(b)(7), 42 U.S.C. 7502(b)(7). When EPA prepares an FIP, arguably it also must comply with this section, and demonstrate that it, rather than the state, possesses means adequate to carry out the plan.

But enforcing a federal plan calling for immediate attainment would be highly problematic. Implementation of such a plan would call for massive and intrusive enforcement efforts—to halt traffic, shut down businesses and schools, and restrict gasoline—and could well require resources beyond those available to EPA. Although the federal government as a whole might be able to call on the National Guard, state and local police, FBI, and contractors, these enforcement efforts may require resources beyond what the federal government can muster, given its other responsibilities. Thus, although it may be possible to draft on paper a plan requiring immediate attainment, EPA may not be able to comply with section 110(a)(2)(F)(i)'s mandate that EPA provide assurances that it can carry out such a plan. Arguably, EPA should avoid construing the FIP deadline term of the statute in a way that brings it into conflict with these enforceability requirements. *Citizens to Save Spencer County v. EPA*, 600 F.2d at 844.

EPA's experience in Los Angeles in the 1970's when it attempted to impose an FIP containing gasoline rationing and other drastic control measures, dramatically illustrates the folly of enacting regulations that are virtually unenforceable. (See section II. D. 2, *infra*).

2. Interpretation 2: Attainment in Three to Five Years

In EPA's November 24, 1987, ozone policy proposal, the Agency proposed an option other than immediate attainment. The Agency proposed the view that Congress intended EPA, in formulating FIPs for areas without approved Part D plans, to provide, not necessarily for immediate attainment, but instead for attainment as expeditiously as practicable within three to five years. As noted above, section 110(c) specifies that an FIP must meet the requirements of section 110. That section, in turn, contains the fundamental requirement that SIPs provide for attainment as expeditiously as practicable, but within three to five years after approval. *See* section 110(a)(2)(A) and (E), 42 U.S.C. 7410(a)(2)(A) and (E). Section 110 also implicitly contains the 1987 attainment deadline in Part D, but that deadline is arguably now a nullity by virtue of its passage, and the only remaining guidance in section 110 is the three to five year boundary. Since Congress intended that boundary to govern original SIPs and arguably also SIP revisions in response to findings of inadequacy under section 110(a)(2)(H), it arguably would have wanted the same boundary to govern post-1987 SIPs, absent operative language to the contrary. Indeed, the basic pattern of Congressional behavior has been to allow attainment date extensions on the order of five years.

As noted above, when Congress enacted the 1977 Clean Air Act Amendments, it allowed in Part D two additional planning periods for extension areas—the first period, about four years, to apply all "reasonable available" measures, and the second, roughly three to five years, to supplement those measures. Since enough time has elapsed for the South Coast already to have adopted all "reasonable available" measures, an analogy to the second Part D planning period appears most appropriate to the current situation. Following this reasoning, Congress arguably would have intended post-1987 FIPs to attain in three to five years.[18]

The strengths of this approach are that: (1) It is grounded in the language of the statute and in a close analogy to the periods specified in both section 110(a) and Part D; (2) as we have noted above, it adopts an approach somewhat akin to the approach Congress took in 1977 when attainment deadlines were missed; and (3) it conforms to the elements of the legislative history indicating Congress intended firm, near-term planning deadlines that forced some changes in technology and lifestyle.

If these factors were sufficient to amount to a "clear" Congressional intent that EPA create new three to five year planning periods, that would be the end of the matter. *Chevron*, 467 U.S. at 843. The Agency doubts, however, that that is the case. The statute is ambiguous, and the evidence in the legislative history is, at best, conflicting. If EPA adopted this Interpretation, rather than Interpretation 1, it would be assuming authority to extend the 1987 statutory deadline. As we noted above, Congress in the 1977 Amendments appeared to anticipate the need to provide relief from some of the later deadlines in the Act—and to reserve to itself the power to dispense such relief. But the legislative history also shows that Congress thought it would confront this issue *before* the deadlines had passed—not after. For example Senator Dominici stated, after describing the two-stage procedure in Part D (which calls for submission of a plan in 1979, followed by a subsequent submission, if necessary, in 1982):

> I clearly understand that the result of the five-year part [1982 plan to attain in 1987] may bring back issues to us in terms of attainment. But I believe this will give the opportunity for growth, yet assure that we are pushing with a maximum clean-up during that interim, *and previous to the expiration of the five years, only Congress could make some judgment as to the next goal.*

Transcript, Mark-Up, Clean Air Act Amendments at 15 (May 3, 1977), (emphasis added).

In addition, there is some evidence, as discussed above in connection with immediate attainment, that Congress did not anticipate and therefore did not intend to stimulate plans that would have catastrophic consequences if put into effect. As explained above and in Appendix A to this notice, a three-to-five-year FIP for the South Coast would be nearly as draconian as an immediate FIP, given the extent of the pollution problem.

Thus, one can raise two quite different objections to the five-year FIP interpretation. The first objection is based on the elements in the legislative history indicating Congress' intent to be the sole authority for extension of deadlines. This objection argues in favor of the immediate attainment interpretation, since it is premised on a lack of EPA power to extend the deadline beyond the immediate attainment. The second objection, on the other hand, reads the relevant case law and history to confer upon EPA some power to adopt a new attainment date, but holds that the consequences of promulgating a five-year FIP are—as they were for immediate attainment—so harsh that Congress could not have intended them.

As we noted in our discussion of an immediate attainment FIP, even where statutory language is plain, courts avoid constructions that lead to absurd or radically unreasonable results. There is even more reason to steer clear of such intolerable consequences when, as here, the statute itself does not command them and where a major theme of the legislative history is minimization of economic and social disruption.

In terms of its destructive force on the economy of the South Coast, there is little to distinguish a five-year FIP from

[18] EPA can only venture its best judgment as to what Congress would have us do now. Setting and changing deadlines in the Act is a function reserved for Congress.

one requiring immediate attainment. Such a plan must include restrictions and prohibitions that effectively prevent from operating within the Basin, in the fifth year, almost all fossil fuel-powered vehicles; eliminate almost all aircraft and marine vessels from the Basin; prohibit almost every industrial source from emitting any VOCs; dramatically reduce VOC emissions from commercial and residential solvents and fuel combustion; and substantially limit agricultural VOC emissions.[19] A five-year FIP would impose requirements so draconian as to remake life in the South Coast Basin. Under a five-year FIP, the population would effectively face a choice of resettling elsewhere, or living in almost complete dependence on the governing authorities for life's basic necessities.

Moreover, as was the case for a FIP requiring immediate attainment, there would be serious questions of enforceability and potential conflicts with other statutes. A five-year FIP, if enforced, would prohibit such essential elements of daily life as transportation to work, school, ambulance service, and mail delivery. It inevitably would interfere with rights protected by other statutes.

One might content that the creation of a FIP that, when fully implemented, would produce absurd results, might not in itself be considered an absurd result. This is so, the argument would go, because Congress could always look at the FIP EPA has prepared, and "veto" it with new legislation before the FIP actually takes effect. But even if this is the case, one cannot discern in the legislative history a "clear" Congressional intent that EPA go through the exercise of creating a five-year plan after 1987. Without clear instructions from Congress, and based on EPA's experience in developing a FIP for Los Angeles in the 1970s, arguably EPA should not develop a plan that would impose dire consequences upon a major center of economic and social activity. Such an effort would likely be futile and might also seriously undermine the local effort to adopt its own plan.

3. Interpretation 3: Longer-Term Attainment FIP

To adopt an interpretation that leads to the harsh results discussed above, one must conclude that Congress intended to require quick attainment, no matter what the cost or the consequences. But, one might argue, this vision of the Clean Air Act reads out important elements of the statute, and its legislative history. One could also argue that, in the circumstances presented here, Congress would permit the Administrator to decide upon the earliest attainment date that would avoid such results, avoid a conflict within the statute, and carry out the technology- and lifestyle-change forcing goals of the law.

EPA might consider interpreting the statute to require attainment "as expeditiously as practicable",[20] and by a fixed date. Moreover, other terms of the statute offer some implicit support for a longer-term attainment date, since, as noted above, section 110(a)(2) and Part D criteria assume significant ongoing economic activity.

The legislative history, as we have seen, also reflects deep concern with the need to balance progress towards clean air with avoidance of severe economic disruption. It is therefore unlikely that this Congress would have intended EPA to engage in a FIP process that would overwhelmingly intrude upon and transform a local area.

The principal appeal of the longer-term FIP approach is that it provides the best means of reconciling the twin but conflicting policies embodied in the statute—that is, it would allow EPA to develop a plan that provides for progress in air quality, but does not defeat itself with unworkable or preposterously severe requirements. This interpretation would require attainment at the earliest date possible, but without the severe disruption that a shorter-term plan would produce. An outline of what a longer term FIP would include appears in Appendix A.

Although the case before us is without direct precedent, we find support for this third approach in court decisions in analogous situations. Where statutes contain conflicting provisions, or conflicting statutory purposes, courts have held that EPA must harmonize these provisions as best it can, by giving effect to as much of the purposes of the conflicting provisions as possible. *See Citizens to Save Spencer County v. EPA*, 600 F.2d 844 (D.C. Cir. 1979); *NRDC v. Train*, 510 F.2d 692, 712 (D.C. Cir. 1974) (allowing extensions of statutory deadlines for EPA issuance of regulations when EPA demonstrated impossibility; setting new deadlines by reference to the purpose of the statutory provisions).

As explained above, the requirement that a FIP "provide for attainment as expeditiously as possible" and by a near-term date (section 110(a)(2)(A)) may conflict head-on with the requirements in sections 110(a)(2)(D) and 110(a)(2)(F) that such a plan be enforceable. Here, as in *Chevron*, this third interpretation could represent "a reasonable accommodation of manifestly competing interests * * *." 467 U.S. at 865–866.

Another important aspect of a longer-term FIP is that it might help vindicate Congress' interest in reinforcing state and local responsibility for air quality. A longer-term FIP could complement, rather than ignore or undermine, ongoing state and local efforts to develop a SIP.

Consideration of the long-term FIP interpretation raises important questions about how SIPs should be treated in similar circumstances: where the Act's firm deadline is past; Congress has failed to provide the relief it expected to provide; and short-term attainment is impossible. Even if one decided that Interpretations 1 or 2 would be most appropriate for determining post-1987 deadlines for SIPs, one might still argue that longer deadlines are permissible for FIPs. Where SIPs are concerned, the legislative history shows that Congress explicitly contemplated that, at least prior to 1987, short term deadlines would apply. The history arguably reveals a Congressional understanding that, if these deadlines proved too harsh to meet, the major consequence would be the imposition of a construction ban, a result that Congress addressed and did not find absurd. But the statute does not provide that the construction ban can be imposed as an alternative to writing the required FIP, and the legislative history demonstrates that the promulgation of a short-term FIP for an area like the South Coast—either before or after 1987—received no attention when Congress amended the law in 1977.

But one might also conclude that the better approach is one that treats SIPs and FIPs equally. That is, if impossibility, absurd results, and the failure of Part D to operate as anticipated, suggest that it would be an *unreasonable* accommodation of the Act's purposes for EPA to prepare a near-term FIP, a state, too, should be relieved of the burden of preparing and enforcing a near-term SIP.

In EPA's proposed ozone strategy, the Agency suggested a rationale for requiring SIPs to demonstrate attainment within three to five years. 52 FR 45050 (November 24, 1987). A variant of that suggestion would be to apply the three-to-five year date as a general rule,

[19] A description of the types of measures that a five-year FIP would include appears in Appendix A to this Notice.

[20] This formulation corresponds to the goals set forth in sections 110 and 172 of the Act.

but to exempt states from that requirement where they can make the same kind of showing that Interpretation 3 argues would relieve EPA of its duty to prepare a short-term FIP. Under this approach, in circumstances where either SIP or FIP attainment within a three- to five-year period would be impossible or lead to absurd results, EPA would rely on the statutory requirement that attainment occur "as expeditiously as practicable" to derive a fixed attainment date and to identify reasonable further progress. Sections 110(a)(2)(a) and 172(a)(1). A final ozone policy would identify what reasonable further progress would mean under these circumstances. A state that made the proper showings of impossibility or absurd results, and submitted a SIP that met all the elements of the ozone policy, could then obtain EPA's full approval for its SIP, even if the attainment date extended beyond five years.[21] Even if EPA were unable to fully approve such a state plan, it is not clear that the courts would demand that EPA impose a FIP in such circumstances. If EPA reasonably concluded that the SIP measures were as stringent as any plan EPA could justifiably issue, there would no point in having EPA issue a FIP, since the FIP would merely duplicate the SIP.

The main objection to the longer-term FIP approach is that, like Interpretation 2, it makes EPA, instead of Congress, the dispenser of relief from statutory deadlines. Arguably, under the Clean Air Act only Congress is authorized to make this kind of choice.[22]

Conclusion

EPA here finds itself confronted by a most painful dilemma—one that clearly needs a Congressional solution. Absent action by Congress, however, EPA must do its best to achieve a result most consistent with the language, history, and purposes of the Clean Air Act.

If EPA interprets the Act to permit a FIP attainment deadline significantly beyond 1987, it may stretch the boundaries of the statute in an unprecedented way, and arguably assume legislative-type authority to direct the pace of technological, economic, and environmental change in the South Coast. The scope of any plan attempting to address the pollution problem in the South Coast must be equal to the enormity of that problem. Should EPA determine to prepare a long-term FIP for the South Coast, it would no doubt encounter great practical difficulties in developing and implementing such a massive plan.

But EPA would also face serious legal and practical problems if it undertook a plan requiring immediate and short-term attainment. The immediate and short-term FIP interpretations are arguably more in keeping with the original lapsed deadline, and with Congress' expressions of intent to be the provider of relief if deadlines proved too harsh. But these interpretations, if imposed here, would wreak a level of economic and social disruption that is likely beyond anything Congress would have imagined would be imposed without some mitigation.

Thus, there appears to be no easy solution to the problem before us. EPA solicits comments on the questions raised in this Notice, and on the approaches EPA might take to preparing a FIP for the South Coast.[23]

Dated: November 28, 1988.

Lee M. Thomas,

Administrator.

Appendix A—Description of Five-Year and Longer-Term FIPs

This Appendix first explores likely components of a five-year FIP. It then describes possible elements of a longer-term FIP. The discussion of the five-year FIP focuses on drastic prohibitions that would be required on transportation, industrial processes, and consumer products, as well as out-of-Basin effects of refinery shutdowns, and other secondary effects throughout the country. The discussion of the long-term FIP considers several approaches to promulgating and implementing a longer-term FIP, perhaps in combination with the current South Coast planning process. EPA solicits comments on these possible approaches.

A. Five-Year Federal Implementation Plan

SCAQMD and SCAG estimate that the South Coast must reduce VOC emissions by 80 to 90 percent to attain the ozone standard. A five-year attainment plan for the South Coast, however, leaves little room for choice among measures, insufficient lead time for the development of the necessary technologies, and hence no opportunity to minimize the most severe social and economic impacts.

1. Likely Measures

To achieve the extraordinary emissions reductions necessary for attainment in the Basin within five years, any plan for the area must wrest substantial reductions from every controllable source of emissions. Such a plan must include restrictions and prohibitions that effectively prevent from operating within the Basin, in the fifth year, almost all reactive hydrocarbon-based fuel-powered vehicles; eliminate almost all aircraft and marine vessels from the Basin; prohibit almost every industrial source from emitting any VOCs; dramatically reduce VOC emissions from commercial and residential solvents and fuel combustion; and substantially limit agricultural VOC emissions.

Assuming that attainment of the ozone standard requires an 80 to 90 percent reduction in VOC emissions, and using the draft SIP's 1985 base year emissions inventory, the following list of possible federal prohibitions gives a partial example of a FIP that could bring the area into attainment of the ozone standard. The fuel limitations applying in the ozone FIP to the mobile source category should also reduce total CO emissions to a level where attainment of the CO NAAQS throughout the Basin would be achieved. The list set out below represents one possible combination of control measures with sufficient cumulative emissions reductions to attain the ozone and CO NAAQS. Such a potential FIP would achieve the required emissions level by applying, in general, an across-the-board reduction to all controllable source categories.

Full implementation of the FIP might be suspended until the fifth year unless EPA determines that: (1) Inadequate progress is occuring under the SIP, or (2) earlier implementation of particular FIP measures is necessary, as a practical matter, in order to ensure that all needed emissions reductions are achieved by the end of the fifth year.

The FIP would apply within the Counties of Orange, Los Angeles, San Bernardino, and Riverside (alternatively, only within the nonattainment portion of the counties) and within coastal waters extending 3 miles from the onshore county boundaries. The entire Basin must demonstrate attainment at the end of the the fifth year.

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[21] Under this rationale, an attainment deadline of three-five years would be derived from the text of section 110(a)(2)(A) and by analogy from Part D; EPA would, however, read the Act as implicitly authorizing a long-term deadline where compliance with that statutory deadline would be impossible or would produce absurd results. There is, however, another possible rationale for a long-term attainment deadline in this circumstance. EPA could conclude that the Clean Air Act contains no uniform, nationwide deadline applicable now to the South Coast and to the other areas that failed to attain the ozone or CO NAAQS by December 31, 1987. EPA would reason that the attainment deadlines in Part D (1982 or 1987 for an area with extreme nonattainment) applied only to the SIP revisions for which Congress also specified the submittal deadlines (respectively, 1979 and 1982); that Part D does not authorize EPA to set a nationwide attainment deadline after 1987; and that section 110's deadline of three-five years applies not to a plan revision developed after a SIP call or disapproval, but only to the initial SIP following NAAQS promulgation (or NAAQS revision). Under this rationale, a long-term deadline in the South Coast would satisfy the residual mandates, in sections 110 and 172, that attainment occur by a fixed date that is set, given local circumstances, so as to provide for such attainment "as expeditiously as practicable."

[22] Under the rationale for Interpretation 3 set forth in fn. 21, however, EPA would make this legislative choice for the South Coast under its express authority to require or prepare plan revisions that provide for attainment as expeditiously as practicable. The FIP would not override any nationwide deadline since, under this rationale, those deadlines specified in the Act have expired or are inapplicable in this circumstance.

[23] EPA has included at the end of today's notice Appendix A, describing different FIP approaches, and Appendix B, a Technical Appendix describing other issues that the Agency must face in creating a FIP for the South Coast. The Agency solicits comment on these Appendices as well.

The overhwhelming impacts of a five-year plan might be somewhat lessened by phasing in implementation over the five-year period. For example, a phased five-year approach could progressively eliminate motor vehicle use of reactive hydrocarbon-based fuels in the Basin, such as at a rate of 20 percent per year. A modest degree of prohibition on products, activities, and fuels might stimulate public awareness of, and committment to, less polluting options. Measures such as a prohibition on multiple car registration, a requirement for no drive days, and mandatory ridesharing at a more stringent level than currently required by the SCAQMD might foster some incremental adjustments in vehicle dependency, by stimulating the development of additional commute alternatives, the elimination of unnecessary vehicle use, and the relocation of jobs and housing. However, EPA does not expect that such adjustments could allow the great majority of residents of the Basin to cope with the ultimate fifth-year prohibition on essentially every form of private vehicle use, combined with the effective elimination of most industrial and commercial opportunities for employment in the Basin.

• *Fuel restriction for motor vehicles:* The FIP would prevent the sale or use of any reactive hydrocarbon-based fuel in all classes of on-road motor vehicles, with the exception of certain vehicles and specified vehicle uses determined to be essential to the public interest. Depending on the emissions still remaining from the motor vehicle category as a result of allowing this exemption, the FIP might need to require exclusive use in the exempted vehicles of such low-emitting fuels as methanol, propane, compressed natural gas, or liquified natural gas in lieu of high-emitting fuels such as gasoline or diesel fuel. Since substantial emissions occur from motor vehicle traffic into the South Coast, the FIP restriction would need to prohibit this traffic from entering the area.

• *Fuel restriction for other mobile sources:* All other mobile sources (such as farm and non-farm equipment; boats and vessels; commercial and civic aircraft; and railroads) would be prohibited from using any fossil fuel, unless the source fell into an exempt category, because it was vital to the public interest.

• *Fuel restriction:* The FIP would prevent the manufacture, transport, storage, sale, use, and disposal of any reactive hydrocarbon based fuel within the basin, unless exempted as essential to the public interest. The restriction would effectively prohibit refining, storage, and transportation of liquid and gaseous fossil fuels, and combustion of solid, liquid, and gaseous fossil fuels and resource recovery derived fuels.

• *Industrial and Commercial Solvent and Lubricant restriction:* the FIP would prevent the manufacture, transport, storage, sale, use, and disposal of any reactive hydrocarbon based solvent, lubricant degreaser, surface coating, ink, adhesive, fountain solution, thinner, retarder, filler, surfactant, and resin. (Again, a partial exemption for uses in the public interest might be allowed.)

• *Restriction on VOC emissions from manufacturing:* The FIP would prohibit almost all VOC emissions from manufacturing activities, unless EPA determined that attainment could be achieved through a less stringent requirement. The FIP restrictions probably would need to be sufficient to reduce total VOC emissions from all manufacturing facilities by as much as 90 percent from current SIP levels. Affected industries would include not only manufacturers of chemicals, pharmaceuticals, cosmetics, and rubber products, but also most small users of VOC-emitting raw materials.

• *Restriction on consumer product solvents and aerosol propellants:* The FIP would either prohibit all products with any VOC emissions or establish VOC limitations to achieve at least a 90 percent reduction from the level of existing VOC emissions. Consumer products affected by this prohibition would include: paints and related products; health and beauty products; automotive polishes and lubricants; cleaners and waxes; and household and garden pesticides.

• *Restriction on pesticides and herbicides:* The FIP would establish VOC limitations to achieve at least a 90 percent reduction from the level of existing VOC emissions.

Unfortunately, the full range of measures in the South Coast plan are clearly not available in a five-year plan because of the time needed to develop or implement many of those measures. In order to accomplish attainment within five years, any control plan would drastically alter the life of everyone in the Basin. Indeed, a five year attainment plan would eliminate practically any possibility of economic survival for most residents within the Basin, either because of the disappearance of jobs from the Basin or the inaccessibility of jobs to workers living within the Basin.

Typical, everyday life in the Basin generally consists of homelife, including recreational activities, time at work, and time traveling. Every aspect of a person's life would be changed dramatically by a five year plan. The following discussion will allow the reader to more clearly envision the sort of changes that will be necessary.

a. *Transportation.* As described previously, a significant portion of the basin's ozone problem, and essentially all of its CO problem, are due to mobile sources. Under a five-year plan, emissions from almost all vehicles must be eliminated by the fifth year in order to achieve the needed reductions from this emissions category. EPA believes that it is necessary and appropriate to exempt from these restrictions, at least partially, certain classes of vehicles, such as mass transit buses, trains, and vans; police cars; emergency response vehicles; fire engines; garbage collection trucks; and delivery trucks of food and medical supplies.

Any exemption for these vehicles, however, places an even greater reduction burden on other sources of vehicular emissions. The only way to realize such a reduction would be to prohibit entirely the use of all non-essential pollutant-emitting vehicles, since even vehicles burning relatively clean fuels, such as methanol, propane, compressed natural gas, or liquid natural gas, could cumulatively emit enough emissions of hydrocarbons, nitrogen oxides, and carbon monoxide to cause continued nonattainment.

A plan that eliminated from the area every privately-owned vehicle except those that are completely clean (i.e., electrified vehicles) would deny access to employment to all but those capable of working at home or commuting to work by mass transit, vanpool, electric vehicle, bicycle, or foot. Since the average home-to-work commute in the Basin is more than 20 miles round trip, it is reasonable to assume that only a small fraction of the current work force would have the ability (either for physical reasons or from critical time constraints) to commute by bicycle or foot. Furthermore, the opportunities to telecommute are not expected to increase dramatically within five years, though they may develop significantly over the next 20 years. All of those jobs heavily dependent upon the use of cars or trucks (including many of the services and trades) would be impossible to pursue, assuming that the FIP were unable to exempt or partially exempt these vehicles from the fuel restriction.

If the non-commute transportation modes of the residents of the South Coast were effectively limited by the FIP to mass transit, vanpool, bicycles, and foot, this severe restriction on mobility would drastically circumscribe most opportunities for shopping; health care; social, service and recreational activity; and general education and vocational training. Thus, the severely restricted transportation options of the five-year FIP would profoundly and comprehensively diminish the quality of life in the area. This restriction on the public's non-commute activities would contribute still further to the general economic decline of the area by its extreme impacts on service, recreational, and commercial enterprises.

If a five-year attainment FIP were promulgated, greatly expanded mass transit systems could not be reasonably anticipated, since the general economic decline of the area would, if anything, require cutbacks in public subsidies for transit operation and expansion. Expanded service would be particularly unlikely if the plan needed to prevent mass transit vehicles from burning high-emitting gasoline or diesel fuel. Even if these factors were absent, it is clear that significant expansions to urban mass transit systems require lead time for implementation beyond the five-year time frame.

Under any ozone attainment plan in the South Coast, electric vehicles ultimately may be the only feasible motorized alternative to a total dependence on mass transit. There is no evidence, however, that more than a small portion of public, private, or commercial transportation needs could be met by electric vehicles within a five-year time frame. This is due to the enormous costs of fleet conversion; the need to improve and perfect technologies; the lengthy construction period for developing electrified mass transit; the time requirements of vehicle manufacturers to redesign, retool, and produce significant numbers of electric vehicles; and the period required for the electric utilities to construct or purchase adequate electric power

generation and distribution systems to meet the radically increased demands for electricity.

A five-year plan would offer no realistic opportunity for clean transportation alternatives to aircraft, locomotives, marine vessels, and heavy duty diesel trucks. Since significant emissions reductions appear to be necessary from these transportation categories, elimination of most commerce is likely to result. For example, it is unlikely that the many industries dependent upon these transportation sources would be able to continue operation in the Basin.

The five-year FIP would have national and possibly global implications if it did eliminate these current means of transportation, since the Basin includes the most active commercial port area on the West Coast. In addition, air, truck, and rail transport into and through the Basin plays a critical role for industry, commerce, and communication in the Western United States.

b. *Industry.* Approximately a quarter of the Basin's VOC emissions comes from industrial and manufacturing facilities. Industrial sources of ozone precursors and CO include both manufacturing facilities that use solvents in their processes and other facilities, such as fossil-fuel fired boilers, turbines, internal combustion engines, and furnaces that emit ozone precursors and CO directly as a result of the combustion process, manufacturing, fabrication, or assembly. In a five-year time frame there is no viable technological or economic opportunity to eliminate emissions from many if not all of these facilities without effectively requiring shutdown. The draft South Coast plan contemplates the eventual elimination of combustion sources and an almost total replacement of solvent emissions. It envisions this change as taking place over 20 years through a process of forced technological advances (most prominently, in the area of solvent composition and use), expanded energy conservation projects, and almost total electrification of the area, with all generating capacity located outside of the basin.

In order to obtain the needed reductions from industry, a five-year plan must not only secure an 80 to 90 percent reduction in VOC emissions from existing industry, it must also prohibit economic growth of any kind. Remaining sources that are not currently operating at full capacity would be prohibited from increasing production, because, to do so, they would generate more emissions.

It would also be necessary to ban the use of reactive solvents in coatings, degreasing, and other uses or, at the least, apply restrictions that would achieve an additional 90% reduction in VOC emissions from industrial activities. The largest contributor to point source VOC emissions are of surface coating operations whose emissions come from the evaporation of the solvent contained in the coatings. In a five-year time frame it will not be possible for technology to totally replace solvent-based coatings; thus, it will be necessary to ban the use of coatings which cannot be changed. Major industries in the basin such as paint manufacturers, paint contractors, auto assembly plants, wood furniture manufacturers, can and coil coaters, paper coaters, printers, aerospace, and semiconductor and electronics will be forced to discontinue or drastically curtail operations, with the inevitable result of massive unemployment and the ripple effects of unemployment on the area's economy.

c. *Out-Basin Impacts of Refinery/Marine Terminal Shutdowns in the Basin.* Southern California is the largest petroleum refining and distribution area on the West Coast. Some of the refined petroleum products now produced in the Basin or produced elsewhere but imported into the Basin through Los Angeles harbor are subsequently exported to markets outside the Basin. Thus, federally required shutdowns of petroleum refining and trans shipping operations in the South Coast Air Basin would have severe effects not only in the Basin, but in other areas as well.

Virtually all of the gasoline, diesel fuel, jet fuel, and heating oil used in Yuma, Arizona; Las Vegas, Nevada; and the Imperial Valley of California is shipped from the Basin via the Southern Pacific Pipeline and the Calnev Pipeline. There are no refineries outside the Basin which can supply these landlocked markets via existing pipelines. A shutdown in the Basin would therefore require that new pipelines be built or that petroleum products be shipped by tank truck on public highways or by rail car, resulting in much higher transportation costs. Even if refineries in other areas could increase production to satisfy these markets (which fortunately are relatively small), prices to consumers would increase substantially.

A portion of the petroleum products used in San Diego, California, also are delivered via pipeline from producers and/or marine importers located in the basin. San Diego presently receives shipments via vessels as well, and these would presumably be increased at some cost for facility expansion.

A very serious situation would also develop in Phoenix and Tucson, Arizona and outlying areas that receive deliveries by tank truck from these cities. About two-thirds of the refined products used in or distributed from these two large and rapidly growing urban areas come from the South Coast Air Basin via pipeline. The remainder now comes via pipeline from El Paso, Texas but the capacity of this pipeline is too limited to supply the full demand. The four refiners with access to this pipeline (located in El Paso and Odessa, Texas and Artesia, New Mexico) may also lack sufficient processing capacity and/or crude oil supply to compensate for loss of product from Basin sources, even if transporting the additional volume to Phoenix and Tucson were not a problem.

Finally, a number of military air bases in California and Arizona rely on Basin sources for their supplies of jet fuel. Costs would increase and reliability of supply decrease if jet fuel had to be transported by tank truck from other refineries or ports.

d. *Consumer sources.* Almost a quarter of the VOC emissions in the Basin comes from the direct consumer use of certain products and related services. Products affected by a prohibition would include paints, primers, varnishes, lubricants and silicones, hair sprays, car polishes and waxes, room deodorants and disinfectants, moth control products, personal deodorants, auto antifreezes, brake cleaners, engine starting fluids, all purpose cleaners, floor waxes, insect repellants, starch and fabric finish, rug and upholstery cleaners, aftershaves, animal insecticides, shaving lathers, perfumes, spot removers, adhesives, insect sprays, caulking and sealing compounds, window cleaners, herbicides and fungicides, suntan lotions, and many other items.

Many of these products are also used by small businesses which provide consumer services, such as drycleaners, painting contractors, automotive and small engine repair shops, printers, barber and beauty shops, bakeries, exterminators, and home and office cleaning services.

In order to achieve the needed reductions from this category, a five-year FIP would have to impose nearly a total ban on the use of these products and related services. While a five-year time frame may be adequate to develop and market some technological alternatives, there would certainly be many products to which the public has become accustomed that would disappear with such a ban. The repercussions from this action would be far-ranging, affecting the consumer and the industries involved. It is unknown at this time whether alternative products can be found in the amount of time available.

A major exemption from this category would be hospitals, health care centers, nursing homes, schools, child day care centers and other facilities where high levels of cleanliness are required to protect the public health. Again, these exempted emissions would need to be offset by tighter restrictions on the remaining sources.

e. *"Multiplier Effect".* As the above consequences are encountered over five years, there will be "multiplier" effects. As industries, auto dealerships, service stations, and other enterprises close and are forced to lay off thousands of people, the companies and employees will try to relocate outside the Basin. The relocation costs will be enormous. The tax base of the Basin's jurisdictions will be depleted, so that those jurisdictions will be hard pressed to provide necessary services (police protection, water and sewer treatment, primary and secondary education, health and welfare benefits, etc.). Since the Basin will become an economically undesirable place in which to live, housing prices will drop dramatically, and most persons forced to leave the Basin will be unable to sell their houses or business, so they will suffer tremendous financial losses. The lending institutions will be unable to resell those properties after the borrowers default on their mortgages, so many of them will also be forced out of business. If these institutions or their depositors are rescued by Federal insurance agencies, the cost of doing so will be felt throughout the nation.

Recreational activities for those remaining Basin residents would be severely limited. Sporting events would be affected by the lack of transportation alternatives. Amusement parks, movie theaters, shopping malls, restaurants, and many other entertainment sources would be forced to close because patrons would be unable to drive to them as in the past. Many other weekend activities

would be eliminated as a result of prohibitions against private vehicle use.

National companies with offices or plants in the Basin may be economically affected so severely that they may go out of business altogether. This would cause a dramatic drain on the national economy from higher unemployment, higher prices, product shortages, and higher taxes to offset lost revenues.

Many other ripple effects may result which cannot be anticipated at this time. However, the above discussion provides a suggestion of the magnitude of impact a five-year FIP would have on the South Coast and the entire country.

B. Possible Approaches to Longer-Term FIP

In the body of this notice, EPA described the draft Air Quality Management Plan (AQMP) that the South Coast Air Quality Management District is developing. This plan contemplates attainment within roughly ten years for CO and twenty years for ozone. The following discussion describes the relative roles that the South Coast and EPA are capable of playing in producing an adequate plan, and how EPA might coordinate its FIP effort with the current South Coast planning process. EPA discusses three approaches it might take to meet its FIP obligation without undermining the state and local planning effort, but in fact building on those efforts. EPA specifically requests comments on all aspects of these options as well as identification of and comments on any other FIP options that EPA should consider.

Option 1: The "Reasonable Progress Backstop" Approach

This approach assumes that EPA's analysis of the South Coast plan as finally submitted as a SIP revision allows the Agency to conclude that the 1997 and 2007 deadlines in the proposed South Coast plan satisfy the "reasonable efforts" requirements of the Clean Air Act. It assumes further that the South Coast AQMP includes a schedule by which the State would submit various measures in legally binding form after the date by which EPA must promulgate its FIP. In that event, EPA could promulgate "backstop" FIP control measures which would be triggered automatically upon EPA's determination of a failure to achieve the progress in emission reductions that the AQMP schedule prescribed. The FIP backstop measures would consist of a predetermined sequence of control measures (possibly adjusted from time to time based on development of new control technologies) that could be implemented to eliminate any shortfall in the emission reductions required in the SIP. It is impossible to predict a complete list of measures that may be considered appropriate at that time, but the list would include at least the kinds of prohibitions and limitations discussed in the previous description of five-year FIP options (e.g., limitations on industrial and commercial activities, fuel sales or usage restrictions). The FIP backstop control measures would be implemented only to the extent necessary to eliminate any shortfall in targeted SIP emission reductions, and would be rescinded if the state and local agencies adopted mitigating control measures of their own.

If EPA decides to promulgate FIP further progress targets that are different from those included in the SIP, this could alter the size of the shortfall to be mitigated by the backstop measures. For instance, EPA might use the targets set in its own post-1987 ozone and CO policy proposal. The proposed policy, which may be revised before final issuance, would require a three percent annual emissions reduction in actual emissions from a fixed baseyear emissions inventory, exclusive of reductions attributable to Federally implemented control measures and certain other "baseline" measures (see 52 FR 45066 and 45091). Alternatively, EPA could select a non-linear schedule extending from the emissions baseline to the allowable emissions level for the Basin, and reflecting EPA's estimation of expeditious progress based upon an ambitious schedule of developing and applying new technologies.

EPA's proposed post-1987 policy allows compliance with the three percent minimum reduction through demonstrations every three years that a nine percent reduction has been achieved (for the first five years, the proposed policy would allow a showing that a fifteen percent reduction has been met). The proposed South Coast plan shows future emissions levels only at the years 2000 and 2010, with interim year emissions levels identifiable only through extrapolation. EPA invites public comment on whether, under this approach, emissions levels should be promulgated, tracked, and enforced on an annual basis, or whether the FIP might prescribe emissions levels on a less frequent basis (such as biennially or triennially).

Under the various versions of this approach, the FIP could promulgate specific basinwide emissions levels for interim years leading to eventual attainment. The emissions levels could be expressed as basinwide emissions in tons per day representative of typical summer weekday conditions for ozone and representative of typical winter weekday conditions for CO. In the case of ozone, the basinwide emissions could be prescribed for NO_x as well as volatile organic compounds (VOC), if EPA concludes that reductions in emissions of NO_x (a precursor to ozone, along with VOC) are necessary or cost-effective to prescribe.

This approach requires that EPA keep close watch on the progress the South Coast achieves as it implements the SIP. The FIP might include a special provision requiring from the State timely annual reports on progress in achieving emissions reductions from individual control measures. The FIP might also require the State to track basin-wide emissions increases and decreases in accordance with detailed EPA instructions and then calculate actual emissions for the basin. EPA may also need to impose some specific record keeping and reporting requirements for sources, transportation agencies, and other jurisdictions to assist in monitoring activity levels. With or without these requirements for data collection, EPA would remain responsible for determining the emissions levels in the basin and whether, and to what extent, surplus emissions exist.

Option 2: "SIP Backstop" Approach

The "SIP Backstop" option is similar to Option 1 but uses, as a measure for progress, the State and local adoption schedule and implementation of control measures, rather than the annual emissions ceiling in the SIP. Under this option, backstop measures promulgated in the initial FIP (or as subsequently adjusted) would become effective automatically if the State and local authorities failed to adopt either the SIP rules or substitute control measures with equivalent emissions reductions. As in Option 1, backstop measures would be rescinded if and when the State or local agencies adopted mitigating measures on their own.

Option 3: SIP Approval in Lieu of FIP

As discussed in the body of this notice, EPA believes that approval of a state or local air quility plan is far preferable to EPA's promulgating a FIP, and EPA strongly supports the South Coast AQMP development process now underway. The proposed AQMP, however, relies heavily on the development of future technologies, funding mechanisms, governmental infrastructures, and long-term societal adjustments. Inevitably, many of the most significant AQMP measures are represented largely as commitments to develop in enforceable form over many years the rules, ordinances, and other implementation mechanisms necessary for the success of the plan.

EPA intends to approve these state and local SIP commitments, at least for the purposes of making them federally enforceable, as soon as they are adopted and submitted in legally binding form, and assuming that they otherwise comply with other Federal requirements. EPA does not anticipate that the state and local agencies will be able to submit most control measures in fully developed and fully approvable form for many years.

Therefore, the proposed AQMP is not expected to meet initially all of EPA's existing requirements for proper adoption of measures, including provisions for legal authority, binding commitments, specificity of limitations, funding, scheduling, approval of appropriate governmental agencies, and monitoring. As such, under EPA's current policies, full and complete approval of the entire pending SIP in lieu of a FIP must be considered a romote possibility.

If, however, the State were to submit a complete, legally adopted plan by the time EPA were to promulgate its FIP, then EPA could find that the SIP measures are sufficient to meet Clean Air Act requirements without additional Federal measures. EPA would then be able to avoid any FIP action and approve the State plan in full, under at least one of the legal theories described in the test of today's notice (see footnotes 20 and 21 and accompanying text).

C. Discussion of the Possibility of Other Types of Federal Measures

In addition to the relatively simple prohibitory FIP measures discussed above, or the list of measures in the local plan, EPA could promulgate in the FIP, at least in theory, other types of federal initiatives that might expedite emission reduction progress in the Basin. These measures would consist of

rules that would supplement the existing and proposed state and local regulations with particular measures applying specific control technology requirements or embodying other available regulatory approaches.

As explained elsewhere in this notice, EPA generally believes that the responsibility for selecting and implementing air pollution control measures rests principally with state and local agencies rather than with EPA. In addition, this notice also discusses the possibility that EPA may lack the authority and resources to promulgate and enforce many types of regulations in a South Coast FIP, particularly those rules that would mandate substantial economic and social change. EPA considers most conventional FIP control approaches to be difficult to implement under a FIP, even assuming federal resources and authority sufficient for enforcement of regulations that require the compliance of thousands of sources or millions of residents. Such controls could also be expected to attract state and local opposition, rather than to enlist that level of support that is a prerequisite to successful implementation. However, we discuss below certain areas where EPA believes a limited active supplemental federal role is or may be possible and appropriate.

1. Currently Planned Federal Measures

EPA proposed to impose nationally two VOC control measures See 52 FR 31162; 52 FR 31,274; (August 19, 1987): (1) Control of refueling emissions through onboard vehicle control systems for gasoline fueled light-duty vehicles and trucks and heavy-duty trucks; and (2) volatility regulations for gasoline and alcohol blends. Because of the current South Coast regulation imposing Stage II refueling controls at service stations, the first of these proposed national promulgations would not be expected to provide significant emissions reductions within the Basin. EPA's proposed restrictions on gasoline volatility would contribute emission reductions beyond those identified in the South Coast plan, and would therefore expedite progress in reducing ozone concentrations in the Basin.[1]

[1] The most common measure of fuel volatility is the Reid Vapor Pressure (RVP). RVP is a measure of the tendency of gasoline to evaporate at 100 degrees Fahrenheit. As RVP increases, evaporative hydrocarbon emissions from gasoline related sources, i.e., motor vehicles and the gasoline transportation and distribution system, increase.

California State law currently limits the RVP of gasoline in the South Coast Basin to 9 pounds square inch (psi) for the seven-month period, April 1 through October 31. EPA has proposed national standards for RVP that would limit fuel for the period May 16 through September 15 to the following levels: 7.8 psi in Orange County and western Los Angles County, and 7.8 psi in Riverside County, San Bernardino County, and eastern Los Angeles County (see 52 FR 31274 and 31315, August 19, 1987). The draft South Coast plan includes a measure to tighten the State standard to 8.0 psi. In the year 2000, this would amount to reductions of 9.6 tons per day of VOC, 16.5 tons per day of CO, and 7.4 tons per day of NO_x. The proposed plan also encourages EPA to work with the FAA to demonstrate and evaluate the potential for methanol-jet fuel use. The plan estimates that significant additional reductions could result from a requirement for methanol fuel.

2. Other Federal Measures

The South Coast plan assigns to either EPA or other federal agencies the following measures, because of legal constraints on the authority of state or local governments. EPA solicits comment as to whether these or other measures should be included in a FIP or another federal promulgation in the case of other federal agencies:

a. *Lower Emissions Standards for Aircraft Engines.* The proposed South Coast plan lists as one of the Tier I control measures lower emission standards for VOC and NO_x from new jet aircraft engines. The plan's control measure (I–2) projects a 50 percent reduction in emissions for all pollutants.

Under Section 231 of the Clean Air Act EPA has authority to promulgate such standards, but under Section 233 state and local governments are prohibited from adopting standards of their own, although they may adopt and enforce EPA's standards. Because aircraft must circulate freely throughout the U.S. to serve their purpose, nationwide regulation would be needed to achieve reductions in the basin.

At present, EPA standards for aircraft engines apply only to commercial jet engines. The standards exclude non-commercial aircraft and all piston-driven engines. Engines smaller than a certain size are also excluded. There are EPA standards for VOC, smoke, and fuel venting, but not for NO_x or CO. The VOC standards apply only for engines manufactured after 1983, although EPA has statutory authority to require retrofit of engines manufactured previously. However, smoke standards apply to all in-use commercial jet engines, regardless of age, and the technology used, for smoke control on pre-1983 engines provides some degree of VOC control. The present standards were established by a rulemaking process that spanned eleven years, ending in 1984. The draft plan in effect proposes that these current exclusions be removed, and that more stringent standards for newly certified engines be adopted.

Some degree of NO_x control, more stringent VOC control, retrofit of 1983 and older engines, controls on smaller engines, and controls on some non-commercial jet engines may be technologically feasible with adequate lead time for development, certification, production, and installation. However, the previous rulemaking process surfaced several concerns about safety, costs, industry disruption, and unintentional disincentives for technological process that led EPA to adopt the standards as they now exist. The cost and favorable emission reduction estimates contained in the draft plan appear to be based largely on EPA analyses from about 1978, and apparently have not been adjusted for inflation and aircraft fleet mix and usage changes since then. EPA's experience from having established the current standards in the 1970's is that adoption of standards for jet engines is a process that requires much more time than for most stationary sources or for motor vehicles. The time frame for implementation of new standards would most likely entend beyond five years, the typical period for Tier I control measure implementation. Thus, new standards most likely would not play a role in a five-year FIP.

b. *Outer Continental Shelf (OCS) Controls.* It may be possible to assist attainment in the South Coast basin by tightening federal controls on OCS emissions sources (primarily, petroleum exploration and development), or by negotiating agreements between the Department of Interior and state or local agencies to allow for partial state or local regulation of OCS sources. The amount of ozone or ozone precursors affecting the South Coast basin from OCS emissions is difficult to forecast. It is heavily dependent upon the scale, location, and form of future petroleum development, as well as the type of emissions control applied.

3. Potential Federal Measures Not Included in South Coast Draft Plan

Lastly, there are a few potential measures that are not included in the draft South Coast Plan. In theory, these measures could be in a FIP if they are not included in the final South Coast plan. EPA solicits comment from the public as to whether any of the following measures should be included in the FIP. As stated above, EPA continues to feel that the state and local agencies are the appropriate level of government for selection and implementation of these potential measures.

a. *Wintertime Oxygenated Gasoline Blend Program.* The use of oxygenated gasoline blends to reduce the CO emissions from motor vehicles is a recent development in air pollution control strategies. The use of these fuels during the CO season (winter months) has been mandated for the Denver nonattainment area, and more recently, for the Phoenix and Tucson nonattainment areas. Oxygenated fuels reduce CO emissions because the air-to-fuel ratio is made leaner, thus providing more oxygen which results in more complete combustion.

Oxygenated blends are produced by adding an oxygenate in the form of aliphatic alcohols and/or ethers to gasoline. Blends currently on the market include methyl-tertiary-butyl-ether (MTBE) blends, ethanol ("gasohol") blends, and methanol/co-solvent blends.

All alcohol-based oxygenates affect the volatility of the gasoline, i.e., its tendency to evaporate at various temperatures. Unless completely offset, these volatility changes may increase a vehicle's evaporative hydrocarbon emissions (i.e., fuel which evaporates and escapes to the air before it is burned in the engine). The use of oxygenated blends could increase hydrocarbon emissins from motor vehicles and possibly interfere with the attainment of the ozone standard in the South Coast basin during those time periods when the ozone and CO seasons overlap. Additionally, the use of oxygenated fuels results in increased NO_x emissions (less than 10 percent) which could adversely affect the attainment of the NO_2 standard and the PM–10 standard due to secondary aerosol formation.

EPA requests comments on the following:

(1) whether the promulgation of a wintertime oxygenated blends program is an appropriate CO control strategy for the South Coast basin given the impact the program might have on other pollutants;

(2) if an oxygenated fuel blends program is promulgated, whether all blends should be subject to sufficiently stringent Reid Vapor Pressure (see discussion above) so that there is no increase in hydrocarbon emissions due to the use of these blends;

(3) whether an oxygenated blends program will impact the introduction into the basin of alternatively fueled vehicles capable of using, for example, a fuel consisting of at least 85 percent methanol, compressed natural gas or liquid petroleum gas; and (4) whether an oxygenated fuels program would be compatible with the draft plan's proposal to require electrification of most motor vehicles in the basin by the year 2007.

b. *Enhanced Inspection and Maintenance Program.* California's current Inspection and Maintenance (I/M) program requires that gasoline-fueled motor vehicles be subjected to a tailpipe emissions test for hydrocarbons (HC) and carbon monoxide (CO) in an idle or idle and 2500 rpm (1980 and newer model year vehicles) mode and a tampering inspection biennially. Vehicles twenty years of age or newer and up to 8500 pounds gross vehicle weight are included in the program. Vehicles are tested at independently run authorized stations. Vehicles receive waivers if they fail the emissions test but cannot be repaired to the standards for $50 or less. Heavy duty gasoline vehicles are scheduled to be included in the program beginning in October 1989.

In September 1988, the Governor of California signed legislation (SB 1997, Presley) amending the repair cost ceiling to between $50 for 1971 and older model year vehicles up to $300 for 1990 and newer vehicles, effective January 1, 1990. The new law has the following additional provisions: 1966 and newer vehicles will be subject to the program; new, more sophisticated exhaust gas analyzers must be in place no later than January 1, 1992; and local air pollution control districts may request NO_x testing which might be implemented by means of loaded mode testing.

In order to obtain the maximum benefit from the I/M program, EPA might promulgate an enhanced I/M program which could require annual inspection of all 1966 and newer gasoline fueled vehicles. Other potential enhancements could include: (1) Inspections conducted at centralized facilities; (2) emissions testing of vehicles in a loaded mode as well as in the idle mode condition; and (3) measurements of NO_x emissions as well as HC and CO emissions. Also all vehicles could be required to be repaired to the standards, *i.e.*, there would be no limit on the amount the motorist might have to spend to bring the vehicles into compliance with the standards.

Any centralized inspection facilities would be run by an independent contractor or an agency under contract to EPA. EPA would maintain oversight over the program. EPA would hope that the program would continue to be enforced by registration through the California Department of Motor Vehicles. Although EPA may have the authority to assess fees for such a program, any monies generated would go directly into the U.S. Treasury and would require a Congressional appropriation to be returned to a federally promulgated I/M program.

c. *New Source Review (NSR) Program.* While the proposed South Coast plan includes a new source review measure (F–8) tightening the existing NSR requirements for the permitting of new or modified emissions sources, it is not clear that the SCAQMD now contemplates, or will ultimately embody, NSR provisions comparable to the two discussed below.

i. *Prohibition on the Use of Shutdown Emission Reduction Credits.* Relatively unmitigated minor source growth and the use of banked emissions credits to offset stationary source growth in the South Coast severely restrict or eliminate potential NSR contribution to achieving air quality goals. While control technologies have gotten increasingly effective at reducing emissions from permitted sources, the use of certain types of offsets, often from shutdowns many years past, has neutralized possible air quality gains. The SCAQMD and Region 9 agree that the current federal construction ban on major new or modified sources will have a negligible impact on the number and types of sources receiving permits in the South Coast Basin.[2] The SCAQMD thresholds for the aplication of BACT/LAER and offsetting are already significantly below federal levels and affect a large proportion of sources within the basin. On the other hand, applications for new or modified sources with emissions above the federal construction ban levels are extremely rare.

EPA could promulgate an NSR rule for the basin using the existing South coast offset threshold levels but prohibiting for use as an offset or in the determination of net emission increase all Emission Reduction Credits (ERC's) derived from shutdowns prior to 1985. Thereafter, credits from shutdowns would be available for use as ERC's (to the extent not otherwise disallowed by federal NSR requirements) but only within a three-year period following the actual shutdown. In addition, ERC's would be available from the application of innovative or excess controls. These ERC's would not be subject to the three-year restriction on use.

EPA's promulgation could also expedite progress toward attainment by discounting all ERC's derived from shutdowns. The discount could provide that the calculation of shutdown credits assume that the source were controlled to a level equivalent to the best available retrofit control technology (BARCT), determined as of the date of permit application for the source intending to use the credit.

ii. *Penalty for Failure to Obtain an NSR Permit.* Sources constructing and operating in the basin without a permit may be considered to be emitting the equivalent of uncontrolled and/or unmitigated air pollution. Many permit applications in the SCAQMD backlog are for facilities that were constructed without a permit.

EPA could promulgate a penalty for failure to apply for an NSR permit. The penalty should be substantial enough to act as a deterrent to sidestepping the regulations.

d. *Conformity Program.* Section 176(c) of the Clean Air Act prohibits federal agencies from taking actions that do not conform to approved SIPs, and prohibits metropolitan planning organizations, such as SCAG, from approving such actions. Strong conformity provisions in the South Coast would ensure that federally funded and approved projects do not lead to further degradation of the Basin's air quality.

The 1982 South Coast SIP includes conformity requirements. Conformity provisions are also included in the draft South Coast plan. SCAG has also formed a conformity working group, which includes EPA, to refine these conformity provisions. The FIP would address any deficiencies that remain after agency revision.

EPA will review the South Coast Plan according to, and base any needed FIP requirements on, previously published notices addressing conformity: 45 FR 21590 (April 1, 1980); 46 FR 7182 (January 22, 1981); and 52 FR 45055 (November 24, 1987). The elements needed for a fully effective conformity program include: (a) Conformity review procedures, (b) growth projections and a disaggregation process, (c) estimates of emissions for major federal projects, (d) conformity review criteria (45 FR 21590), (e) specification of information that must be provided for conformity determinations (growth, emissions, TCM consistency, modeling) and, (f) requirements for a finding of non-conformity if projects do not satisfy the review criteria or insufficient information is provided.

D. Comparison of Five-year and Longer-Term FIPS

How would the impact of the five-year FIP compare with that of the South Coast twenty-year plan? First, both plans envision roughly the same reductions, one within five, the other within 20 years.

The South Coast's proposed plan, however, pursues a technology forcing strategy in order to establish clean alternatives to existing transportation, industrial, commercial, and domestic fuels, equipment, materials, and activities. The South Coast plan avoids much of the sudden and extreme social and economic dislocations that are unavoidable in a five-year attainment period, by allowing time for the development and practical application of the technologies that are required or encouraged by the proposed plan. These technologies include, most notably, clean fuels or engines for mobile sources (with electrification of most surface vehicles); nonreactive industrial, commercial, and domestic solvents; and further stringent controls for a viarety of stationary and area sources of VOC or NO_x. In addition, the South Coast plan seeks to minimize the technological burden borne by the transportation sector by providing a comprehensive variety of transportation and land use control measures to reduce the

[2] The Clean Air Act requires EPA to enforce a ban on construction of major stationary sources and major modifications, following disapproval of a nonattainment area plan (see discussion above on EPA's disapproval of the South Coast SIP for ozone and CO). The construction ban regulations apply only to new sources with the potential to emit 100 tons per year or more of the relevant pollutant or pollutant precursor, and to modifications with a net emissions increase of 100 tons per year for CO and 40 tons per year of VOC. See 40 CFR 52.24.

existing dependency on private vehicle use, and to reduce future needs for additional private vehicle trips to accommodate growth in population and employment. Most of these transportation and land use measures (such as provisions for jobs-housing balance or construction of new mass transit facilities) necessarily involve lead times of at least five years and, in some cases, more than 15 years, for full implementation.

1. State and Local Expertise

EPA has not yet fully analyzed all features of the South Coast AQMP, and does not yet know if it is adequate to provide for attainment, or whether it can be fully implemented within its projected timeframe. But the SCAQMD has consistently been recognized as one of the nation's most comprehensive, progressive, and effective air quality control agencies, particularly with respect to the development, application and refinement of effective controls of ozone precursors, VOC and NO_x. Their effort on the proposed AQMP, in conjunction with SCAG's, includes identifying and scheduling for adoption every feasible stationary source, transportation, and mobile source control measure. The plan has scheduled pilot studies, legislative needs, funding commitments, public awareness programs, and implementation time frames.

EPA's involvement in the South Coast planning effort has primarily been to oversee and provide technical assistance to the state and local agencies. EPA has limited expertise in the specific approaches that would be used to control emissions in the Basin. Much of EPA's regulatory approach to the control of emissions continues to be derived from the knowledge and experience of the SCAQMD and the ARB in the control of stationary, area, and mobile sources.

EPA would be unable to implement many of the measures identified in the South Coast draft plan. Many control strategies require commitments on the local level and must be initiated by local agencies. These include land use measures, incentive based transportation control measures (TCMs), and long-range transit planning. Because of the nature of these control measures, and the fact that there are over 150 local jurisdictions in the basin, local government coordination is essential.

EPA believes that air quality benefits are best achieved through a federal partnership with the state and local planning agencies to ensure that all needed control measures are adopted, monitored, and enforced primarily at the state and local levels. The SCAQMD, SCAG, ARB, and EPA have been working together successfully to refine control strategies included in the draft plan to generate local support for controversial measures. Federal preemption of the planning process, at the culmination of a uniquely ambitious and resource intensive planning process, could jeopardize the extensive efforts and progress of the state and local agencies and jurisdictions.

2. Federal Versus State/Local Resource Allocation

The staff and budgets of the local and state agencies responsible for solving the air pollution problems in the Basin far exceed currently budgeted federal sources. The staff levels in the fiscal year 1989 budgets of the SCAQMD and the ARB are 900 and 670, respectively; this combined work force is more than 22 times the staff size (70) of the Air Management Division (AMD) in the EPA Region 9 office in San Francisco. The Region 9 office is responsible for directly implementing or overseeing the implementation of the Clean Air Act throughout the states of California, Arizona, Nevada, Hawaii, and the Pacific Islands. The approximate fiscal year 1989 budgets of the three agencies are similarly proportioned:

SCAQMD	$75,000,000
ARB	$58,000,000
EPA Region 9 (AMD)	$3,500,000

The imbalance of federal and state/local air pollution planning resources is still more extreme when the staff and budget of SCAG are considered. SCAG, which is the largest of the approximately 700 Councils of Government in the country, shares responsibility with the SCAQMD for preparation of the local air pollution control plan.

Appendix B: Technical Issues

I. Developing the Federal Implementation Plan

This Appendix is intended to provide a better understanding of the technical issues associated with the FIP process. The process of developing an implementation plan is similar whether the plan is to be promulgated by the state, as a SIP, or by the federal government, as a FIP. Typically, states have been given only nine months to prepare and submit to EPA a fully adopted and approvable plan. During this time, EPA must complete appropriate guidance, and the state must gather information, conduct an analysis of the problem, select appropriate control measures, and write and adopt a plan. Because the development of post-1987 plans is expected to be more difficult than previous efforts, EPA, in its proposed policy to address continued nonattainment of the ozone and CO NAAQS, proposed to allow states two years to develop post-1987 ozone and CO SIPs.

In order to produce a technically sound plan, the following types of activities are required:

a. development of data bases (inventories)
b. determination of emission reduction requirements
c. selection of control measures
d. preparation of the FIP or SIP
e. review and adoption of the plan.

A. Development of Data Bases

1. *Current Emission Inventory.* An emission inventory of air pollutants and their sources is essential in identifying major contributors of air contaminants. Sources of emissions are classified as either stationary or mobile sources. Stationary sources are further divided into point and area sources.

The most recent comprehensive inventory for the South Coast is for the base year 1983. For the purposes of the South Coast draft plan, the 1983 inventory was updated to create a 1985 base year emission inventory. The next comprehensive update is expected in 1990 for the base year 1987.

A technical evaluation of the South Coast draft plan inventory and projections has not yet been performed. However, some preliminary conclusions can be drawn about the inventory. Stationary VOC sources in the South Coast include surface coating operations, consumer use products, petroleum processing, and industrial/manufacturing processes. The total VOC contribution from stationary point and area sources comprises 48 percent of the inventory. For NO_x, stationary point and area sources contribute 28 percent of the inventory. The major stationary NO_x sources include electric utilities, petroleum refineries, and manufacturing/industrial process. Stationary sources contribute only 4 percent to the CO inventory and are mostly fuel combustion sources.

Mobile source emissions are attributed to on-road vehicles (automobiles; light, medium, and heavy duty trucks; buses; and motorcycles) and other mobile sources (airplanes, ships, trains, and mobile utility equipment). On-road vehicles account for 46 percent of the VOC emissions, 59 percent of the NO_x emissions, and 87 percent of the CO emissions in the South Coast.

2. *Forecasted Emission Inventories.* The 1985 base year inventory has been projected to create the baseline inventory for 2000 and 2010. The projected inventories take into account existing control strategies presently in the South Coast, including the California and the Federal Motor Vehicle Control Programs (CMVCP) and (FMVCP), and anticipated stationary and mobile source growth.

Due to existing efforts of local, state and federal air pollution control agencies, per source emissions of VOC, CO, and NO_x in the South Coast are declining. The SCAQMD estimates that per source emissions will continue to decline in the near future because of the effect of existing controls on air pollution sources. The major reason for this steady decrease in per source emissions is the expected turnover of vehicles in use due to the implementation of the CMVCP and the FMVCP. As older cars, which have higher emissions, are replaced by newer, cleaner burning cars, the associated emissions have decreased.

As noted above, however, the South Coast Basin is growing in population at a remarkable rate. If the excess cumulative emissions caused by this growth are not offset or mitigated, the South Coast will quickly begin to experience a net increase in emissions throughout the basin.

3. *FIP Emission Inventory.* The FIP emission inventory would give an indication of what sources would be able to provide additional reductions and would provide an overall baseline against which the adequacy of the control strategy is judged. The FIP emission inventory would include VOC, NO_x, and CO.

EPA would need to establish a base year inventory; a projected inventory for future years with no new control measures; and a series of projected control strategy inventories. This would involve the identification of sources; data collection on stationary source production levels;

estimation of traffic volumes; a calculation of emissions for each mobile and stationary source category; and a determination of growth factors for each source or source category. This effect would require extensive cooperation from the SCAQMD, SCAG, ARB, and the California Department of Transportation (Caltrans) since these agencies are typically the source for emissions data.

For the purposes of the greater than five year plan, EPA would use a 1987 base year emission inventory. This emission inventory is already in preparation, and a final draft could be ready as soon as December 1989. Due to limited time, the five-year FIP would use the 1983 inventory.

To be consistent with EPA's proposed post-1987 policy, some revisions to the South Coast's 1987 base year inventory are necessary. The inventory would have to be revised to include all sources which emit more than 10 tons per year. Also, the inventory area would need to be expanded to include sources within a 25 mile boundary of the Basin and additional source categories such as treatment, storage, and disposal facilities of hazardous materials and publicly owned water and sewage treatment facilities.

The projected inventory would take into account existing control measures and expected growth in the South Coast. To be consistent with the proposed post-1987 policy, EPA will project the inventory over five years (1992). The inventories would then be gridded in preparation as input into the Urban Airshed Model (see discussion below).

The quantified emission reductions from the federal control strategies must be allocated to each of the emission inventory categories to produce a series of projected control strategy inventories. Initially, EPA would project the emission reductions over the first five years, then update every three years. To remain consistent with the proposed post-1987 policy, an 80 percent control effectiveness factor would apply to the inventory control categories.

The proposed post-1987 ozone/CO policy give states one year to produce a base year emission inventory. EPA's requirements under a FIP might range between having to do an entire inventory to only having to do a part, depending upon the selection of the base year and the status of any work already done by the state and local agencies. EPA would have to rely heavily on contractor assistance for all phases of inventory preparation.

B. Determination of Emission Reduction Requirements

1. *Ozone Modeling.* There are two modeling techniques recognized by EPA for ozone evaluations and demonstrations of attainment: the Empirical Kinetics Modeling Approach (EKMA) and the Urban Airshed Model (UAM). UAM is the preferred model for ozone control strategy evaluations, but is more complex and expensive to run than EKMA.

EKMA simulates the full range of atmospheric chemical reactions involved in ozone formation, but employs a very simplistic treatment of transport, mixing, and dispersion of the reacting pollutant species. The advantages of EKMA are: (1) That it requires only a limited amount of aerometric input data; (2) it does not require extensive computer resources; and (3) it can provide a fixed VOC emission reduction target necessary to reach attainment. It cannot, on the other hand, be used to evaluate the impact of the spatial variability of emissions, the spatial distribution of ozone, or multi-day effects during ozone episodes.

The UAM is a three dimensional grid-based model which utilizes the same set of chemical reactions as EKMA, but employs a much more rigorous treatment of transport and dispersion. The primary disadvantage to using this model is that it is more costly. It requires detailed, three dimensional data, considerable effort to assemble and input the aerometric and emissions data, and extensive computer resources.

The aerometric and emissions database has been assembled and UAM analyses have been performed by the SCAQMD. Therefore, EPA intends to base its control strategy and attainment analyses on UAM results. EPA would resort to an EKMA analysis only if, by Court order, EPA must promulgate the FIP in a very short time frame, or as discussed below, the SCAQMD modeling analyses or database are found unusable.

Ideally, EPA would build upon the South Coast modeling efforts. If problems are discovered with the model or the data, EPA, or an EPA contractor, will work with the SCAQMD and/or conduct the modeling itself. If serious flaws are found in the SCAQMD's modeling analyses or input data, then EPA may resort to an EKMA analysis.

Two types of modeling analyses will be undertaken: sensitivity and control strategy. Sensitivity analyses will verify that the model is accurately depicting the physics and chemistry of the basin and will provide a rough approximation of the types and magnitudes of emission reduction necessary to attain the NAAQS. The control strategy analysis will be more specific in terms of what types of input parameter changes are analyzed. It is important to note that peak ozone concentrations will not react dramatically to individual control measures. The analysis will evaluate the impact on ozone concentrations of a large group of control measures, with a fairly large overall emission reduction associated with them.

Some of the specific types of analyses which would be performed are the following:

a. *Attainment Demonstration.* The primary analysis needed is the determination of the level of emission reduction necessary to attain the ozone standard. The suggested approach, as outlined by EPA, is to determine the level of VOC reductions, in the absence of NO_x reductions, necessary to reach the standard. Then, if the VOC to NO_x ratio in the nonattainment area is greater than 10 to 1, the effects of NO_x control on the maximum ozone concentrations will be evaluated to determine the overall level of VOC reductions necessary.

In the case of the South Coast Basin, PM–10 and NO_2 ambient levels are also in excess of the standard. The South Coast draft plan proposes major reductions in NO_x emissions as necessary particularly for attainment of the PM–10 standard. EPA would need to take into account the NO_x reductions required by the South Coast. Those reductions will affect ozone attainment, and will make the ozone attainment analyses more complex.

b. *Spatial Effects.* The initial precursor reduction targets will be based on an overall basin reduction level. When actual controls are implemented, some controls may only apply to certain geographic locations. If certain source types are only located in one area of the basin, controls applied to those sources may have different effects on the ozone concentrations than similar controls applied elsewhere in the Basin.

c. *Baseline Changes.* As population patterns shift within the basin, the spatial and temporal distribution of emissions may change, especially vehicle miles traveled (VMT) and associated emissions. Such changes could affect the attainment demonstration.

d. *Maintenance of the Standard.* The modeling must demonstrate maintenance as well as attainment of the NAAQS. Future year projected inventories will be used for this maintenance demonstration.

2. *Carbon Monoxide Modeling.* CO impacts occur on both an urban scale and a microscale. The overall buildup of pollutants on a large scale defines an urban scale impact, while high, but more transient, levels of pollutants near a roadway are considered microscale impacts. Most CO problems are the result of a combination of both types of impacts; however, the CO nonattainment problem in the South Coast basin primarily involves a large urban scale component. Therefore, an attainment demonstration for the basin will require urban scale modeling.

Although the UAM was developed primarily for ozone applications, it can also be used for evaluating relatively inert pollutants, such as CO. It has been successfully used for this purpose in Denver, Colorado, and Phoenix, Arizona. Because of the complex meteorology and disparate emission patterns in the South Coast basin, the model would be appropriate for use there as well.

At this time, only proportional rollback procedures have been used in the analysis of CO in the South Coast basin. Therefore, CO airshed modeling will require assembling an appropriate aerometric and emissions database. EPA intends to construct the CO FIP attainment demonstration based on the UAM unless time and resource contraints disallow its use. In that event, EPA's analysis must use rollback modeling.

C. Selection of Control Measures

Before being selected for inclusion in a plan, measures must be evaluated for their emission reduction potential, costs, technical and administrative feasibility, and social and political impacts.

The evaluation process is expected to take considerable time and resources, and will involve contractor assistance and the input of numerous outside agencies and affected industries. The evaluation of measures is normally performed by the state and local agencies; however, under a FIP, EPA would assume this responsibility.

The selection process is also typically handled by the state and local agencies, with little federal input aside from measures

mandated by the Clean Air Act, such as inspection and maintenance (I/M) or Reasonably Available Control Technology. Again, under a FIP, EPA would have the legal responsibility for selecting measures which are sufficient to accomplish the goal for attaining and maintaining the standard in the required time period.

D. Preparation of the FIP

After all the data have been collected, analyses conducted, and measures selected, EPA would assemble the results into a usable form. This entire process would be documented and represented in the form of selected measures and regulations, and a description of how those measures will enable the standard to be attained and maintained. This is the draft implementation plan.

A major portion of the effort involved in preparing a plan would be the development of the regulations needed to implement those selected control measures which are in addition to measures currently approved. Regulations need to be technically defensible and legally enforceable. This will require considerable effort, expertise, and time, especially for measures which address less traditional source categories and controls.

E. Adoption of the Plan

The final state in the preparation of a plan is the process of public review, formal approval, and adoption or promulgation. The purpose of the adoption process is the same for a SIP and a FIP, that is, to provide all interested parties an opportunity to examine the control strategy chosen as well as the technical and legal basis for the strategy, and to make the plan a legally enforceable document. However, the process is somewhat different for a FIP because of the necessity to conform to federal procedural requirements. EPA would be required to publish a summary of the FIP's demonstration of attainment and draft control measures in the **Federal Register**, provide for a public comment period, and hold formal public hearings. A final **Federal Register** notice would contain the final control measures and responses to public comments. EPA regional offices are primarily responsible for drafting **Federal Register** notices, holding public hearings, and obtaining public comment.

II. Implementing a Plan

After a plan has been prepared and promulgated, it must be implemented. Implementation is an ongoing process of administering programs to achieve and maintain compliance with the control measures set forth in the plan. The following activities are encountered in the implementation of a plan:

A. Source Permitting, Testing, and Inspection

B. Enforcement

C. Effectiveness evaluation

The implementation phase is critical, as it, along with the quality of the planning effort, determines how effective the plan is. As in the case of plan preparation, the responsibility for implementing a FIP rests with EPA. While EPA cannot legally require another agency to implement FIP control measures, it would hope that state and local air agencies would want to be involved.

A. Source Permitting, Testing, and Inspection

The process of implementing the measures in a plan requires that the compliance status of the various stationary and mobile sources be determined, corrected when necessary, and maintained. Ideally, a FIP would build from the existing state rules which have been approved, adding federal measures where necessary but leaving the state or local measures in place. Implementation would then be shared between the state and local agencies and EPA. Compliance determination inspection could be a cooperative venture also; however, since sources subject to federal measures would be operating under federally issued permits, enforcement actions probably would be carried out at the federal level.

The task of determining compliance varies with the nature of the source. Stationary sources such as manufacturing facilities, industrial plants, and gasoline terminals require emissions testing and visual inspection of stack emission points, probable non-stack or fugitive emissions points, and production and control equipment. Mobile source measures require not only emission testing and visual inspection, as with an I/M program, but more non-traditional techniques as well, in order to gauge compliance with control measures such as reduced fuel volatility, oxygenated fuels, gasoline rationing, parking restrictions, and mandatory ridesharing.

B. Enforcement

Enforcement is the process of compelling sources to comply, generally through actual or threatened legal action. As previously mentioned, enforcement of federal measures would mean that EPA would have the responsibility for initiating action against sources operating out of compliance with those measures. While EPA routinely conducts enforcement activities against large emitters, these activities are limited. Under a FIP, EPA's enforcement role would expand significantly in the affected area.

C. Plan Tracking

Essential to the FIP process is a program to monitor how measures are being implemented and if emission reductions are occurring as scheduled and committee to assure attainment of the NAAQS. Reports on the plan's implementation status must be timely and made public. EPA could promulgate a plan provision for such a tracking program. This program would include emission quantification techniques, required resources, and time frames for completing the analysis. Quarterly reports would document current control measures development, adoption and implementation, and how they would provide the quantitative analysis necessary to document emission changes. Both quarterly and annual reports would be distributed to the public. EPA would rescind this measure if the SCAQMD and SCAG adopt such a provision in their SIP and show evidence of sufficient staff and financial resources for implementation.

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December 7, 1988

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 121, 127, 135 and 145

Special Federal Aviation Regulation No. 36; Development of Major Repair Data; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 127, 135, and 145

[Docket No. 17551; SFAR No. 36-4]

Special Federal Aviation Regulation No. 36; Development of Major Repair Data

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment extends the effective date of Special Federal Aviation Regulation (SFAR) No. 36 which provides that repair stations, air carriers, air taxis, and commercial operators of large aircraft may accomplish major repairs using self-developed repair data which have not been specifically approved by the FAA. In addition, the regulation will continue to provide an alternative from the need to obtain FAA approval of repair data on a case-by-case basis and allow additional time for the FAA to incorporate the SFAR provisions into the regulations.

DATES: Effective Date January 23, 1989. Comments must be received on or before January 6, 1989.

ADDRESS: Comments on this rule may be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 17551, 800 Independence Ave., SW., Washington DC 20591. Comments delivered must be marked Docket No. 17551. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jess Lewis, Continued Airworthiness Staff, Aircraft Engineering Division, AWS-100, Office of Airworthiness, Federal Aviation Administration, 800 Independence Ave., SW., Washington DC 20591, telephone: (202) 267-9287.

SUPPLEMENTARY INFORMATION:

Background

SFAR 36, which became effective on January 23, 1978, was issued to provide qualifying certificated air carriers, air taxis, commercial operators, and repair stations with an alternative to the need to obtain FAA approval of data developed by them for major repairs on a case-by-case basis. The certificate holders eligible for authorization under the SFAR are those employing adequately trained personnel and complying with specified procedural requirements.

SFAR 36 was adopted as an interim rulemaking action to obtain information upon which to base a permanent rule change. However, most of the affected certificate holders did not utilize the provisions of SFAR 36 until it was well into its second year and near its expiration date of January 23, 1980. Since the FAA did not have sufficient data upon which to base a permanent rule change, the termination date for SFAR 36 was extended an additional 2 years, to January 23, 1982.

Although the FAA initiated rulemaking to consolidate certain authorizations along with those issued under SFAR 36 and make them a permanent part of the Federal Aviation Regulations (FAR) the rulemaking action was not completed and the termination date for SFAR 36 was extended two additional periods. The first period was for 2 years and the second period, with a termination date of January 23, 1989, was for 5 years. Each authorization issued under the SFAR was made effective from the date of issuance. There are presently more than 30 certificated air carriers and repair stations holding SFAR 36 authorizations. For reasons unrelated to the subject matter of SFAR 36, the rulemaking project that was to permanently codify SFAR 36 was canceled. A new regulatory project which will codify the provisions of SFAR 36 into FAR 21 (14 CFR Part 21) is underway. This new project broadens existing delegation of aircraft certification and approval functions and extends these functions to domestic organizations which possess the necessary technical and managerial qualifications. These changes are beyond the scope of SFAR 36 and are likely to stimulate significant interest and comment. This will prevent codification before SFAR 36 expires. Consequently, to provide continuity and avoid hardships to those relying on SFAR 36 as it presently exists, the FAA finds it necessary to extend the effective date of SFAR 36 an additional 5 years, to January 23, 1994.

Paperwork Reduction Act

Information collection requirements in this regulation [SFAR 36] have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0507.

Good Cause Justification for Immediate Adoption

The termination date for SFAR 36 and the authorizations issued thereunder is January 23, 1989. The reasons which supported the adoption of SFAR 36 still exist and, to avoid hardships to those relying on the provisions of SFAR 36, it is in the public interest to extend the termination date of SFAR 36 from January 23, 1989, to January 23, 1994. The amendment also extends the effective date of each current authorization issued under this SFAR from the date of issuance until January 23, 1994. This rule extension should provide ample time for provisions to be incorporated into a permanent rule change.

This amendment is necessary to provide regulatory continuity and avoid hardship and costs to those relying on SFAR 36 as it presently exists. Since this amendment continues to effect the provisions of a currently effective SFAR and imposes no additional burden on any person, we find that notice and public procedures hereon are unnecessary. However, interested persons are invited to submit such comments as they may desire regarding this amendment. Communications should identify the docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

Federalism Implications

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

Conclusion

The FAA has determined that this document involves a rule change which imposes no additional burden on any person. Accordingly, it has been determined that: the rule change does not involve a major action under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its anticipated impact is so minimal that an evaluation is not required.

List of Subjects

14 CFR Part 121

Air carriers, Aviation safety, Airworthiness directives and standards, Safety.

14 CFR Part 127

Air carriers, Aircraft, Airmen, Airworthiness, Helicopters.

14 CFR Part 135

Air carriers, Air taxis, Air transportation, Aircraft, Airmen, Airplanes, Airworthiness, Aviation safety, Safety, Helicopters.

14 CFR Part 145

Air Carriers, Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Parts 121, 127, 135, and 145 (14 CFR Parts 121, 127, 135, and 145) as follows, effective January 23, 1989.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

2. The authority citation for Part 127 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

3. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

PART 145—REPAIR STATIONS

4. The authority citation for Part 145 continues to read as follows:

Authority: Secs. 313, 314, 601, and 607, 72 Stat. 752; 49 U.S.C. 1354(a), 1355, 1421, and 1427; unless otherwise noted.

5. By amending Parts 121, 127, 135, and 145, Special Federal Aviation Regulation No. 36 (the text of which is found at the beginning of Part 121), by revising the termination date from "January 23, 1989" to "January 23, 1994" and by revising paragraph 5 to read as follows:

SFAR–36

* * * * *

5. *Duration of Authorization.* Each authorization issued under this Special Federal Aviation Regulation is effective from the date of issuance until January 23, 1994, unless it is surrendered or the Administrator suspends, revokes, or otherwise terminates it at an earlier date.

* * * * *

Issued in Washington, DC, on November 28, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88–28101 Filed 12–6–88; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
December 7, 1988

Part VII

Department of Education

Drug Prevention Programs in Higher Education; Institution-Wide Program; Notice Inviting Applications for New Awards for Fiscal Year 1989

DEPARTMENT OF EDUCATION

[CFDA No. 84.183A]

Drug Prevention Programs in Higher Education; Institution-Wide Program; Applications for New Awards for Fiscal Year (FY) 1989

Purpose of Program: Provide grants to institutions of higher education to develop, implement, operate, and improve drug abuse education and prevention programs for students enrolled in institutions of higher education (IHEs).

Deadline for Transmittal of Applications: March 1, 1989.

Applications Available: December 20, 1988.

Available Funds: $10,200,000.

Estimated Range of Awards: $10,000 to $250,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 75 to 125.

Note: The Department is not bound by any estimates in this notice.

Budget Period: 24 months.

Project Period: 24 months.

Applicable Regulations: (a) The regulations for this program in 34 CFR Part 612 (Final regulations for this program were published in the **Federal Register** on June 30, 1988 (53 FR 24884); and (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, and 77.

Absolute Priority: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary gives an absolute preference for comprehensive, institution-wide programs designed to prevent or eliminate students' use of illegal drugs and abuse of other drugs and alcohol, including activities whose direct or indirect purpose is to train students, faculty, and staff in drug abuse education and prevention as described at 34 CFR 612.21(b). The Secretary funds under this competition only applications that meet this absolute priority.

Selection Criteria

In evaluating applications for Institution-Wide grants, the Secretary will use the specific competition selection criteria for Institution-Wide awards listed in 34 CFR 612.23(c)(1). The program regulations in 34 CFR 612.22(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the 15 points will be distributed as follows:

Methods and management plan. (34 CFR 612.23(c)(1)(iii)) Five (5) points will be added to this criterion for a possible total of 20 points.

Cost effectiveness and budget clarity. (34 CFR 612.23(c)(1)(vi)) Five (5) points will be added to this criterion for a possible total of 15 points.

Organizational commitment. (34 CFR 612.23(c)(1)(vii)) Five (5) points will be added to this criterion for a possible total of 20 points.

For Applications or Information Contact: Dr. Ronald B. Bucknam, Drug Prevention Programs in Higher Education, FY 1989–A Competition, Fund for the Improvement of Postsecondary Education, ROB–3—Room 3100, 7th and D Streets, SW., Washington, DC 20202–5175. Telephone: (202) 732–5750.

Program Authority: 20 U.S.C. 3211.

Dated: December 1, 1988.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–28171 Filed 12–6–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.183B]

Drug Prevention Programs in Higher Education: Special Focus Program Competition: National College Student Organizational Network Program; Applications for New Awards for Fiscal Year (FY) 1989

Purpose of Program: Provide grants to institutions of higher education to develop, implement, operate, and improve drug abuse education and prevention programs for students enrolled in institutions of higher education (IHEs).

Deadline for Transmittal of Applications: May 1, 1989.

Applications Available: December 9, 1988.

Available Funds: $900,000.

Estimated Range of Awards: $100,000 to $250,000.

Estimated Number of Awards: 2 to 4.

Note: The Department is not bound by any estimate in this notice.

Budget Period: 24 months.

Project Period: 24 months.

Applicable Regulations: (a) the regulations for this program in 34 CFR Part 612 (Final regulations for this program were published in the **Federal Register** on June 30, 1988 (53 FR 24884)); and (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, and 77.

Absolute Priority: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to Special Focus Program competitions, described at 34 CFR 612.21(c)(2), for projects addressing one or more specific approaches or problem areas related to drug abuse education and prevention for students enrolled in IHEs. The Secretary has chosen as an absolute priority one approach from the list at 34 CFR 612.21(c)(2): the development and implementation of programs conducted in conjunction with national student networks or organizations (34 CFR 612.21(c)(2)(ii)). The Secretary funds under this competition only applications that meet this absolute priority.

Eligible Applicants: IHEs are the only eligible applicants for grants under this competition. Therefore, interested national student networks or organizations must be sponsored by an IHE which will serve as the applicant and fiscal agent for a grant award.

Selection Criteria

In evaluating applications for National College Student Organizational Network grants, the Secretary will use the specific competition selection criteria for National College Student Organizational Network awards listed in 34 CFR 612.23(c)(2)(ii). The program regulations in 34 CFR 612.22(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the 15 points will be distributed as follows:

Design. (34 CFR 612.23(c)(2)(ii)(A)) Five (5) points will be added to this criterion for a possible total of 25 points.

Organizational commitment. (34 CFR 612.23(c)(2)(ii)(F)) Ten (10) points will be added to this criterion for a possible total of 20 points.

For Applications or Information Contact: Dr. Ronald B. Bucknam, Drug Prevention Programs in Higher Education, FY 1989–B Competition, Fund for the Improvement of Postsecondary Education, ROB–3—Room 3100, 7th and D Streets SW., Washington, DC 20202–5175. Telephone: (202) 732–5750.

Program Authority: 20 U.S.C. 3211.

Dated: December 1, 1988.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–28172 Filed 12–6–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.183C]

Drug Prevention Programs in Higher Education: Special Focus Program Competition: Approaches to Accountability in Prevention Program; Applications for New Awards for Fiscal Year (FY) 1989

Purpose of Program: Provide grants to institutions of higher education to develop, implement, operate, and improve drug abuse education and prevention programs for students enrolled in institutions of higher education (IHEs).

Deadline for Transmittal of Applications: February 8, 1989.

Applications Available: December 9, 1988.

Available Funds: $100,000.

Estimated Range of Awards: Up to $15,000.

Estimated Number of Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: 9 months.

Applicable Regulations: (a) The regulations for this program in 34 CFR Part 612 (Final regulations for this program were published in the **Federal Register** on June 30, 1988 (53 FR 24884)); and (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, and 77.

Absolute Priority: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to Special Focus Program competitions, described at 34 CFR 612.21(c)(2), for projects addressing one or more specific approaches or problem areas related to drug abuse education and prevention for students enrolled in IHEs. The Secretary has chosen as an absolute priority one approach from the list at 34 CFR 612.21(c)(2): the formulation of promising new approaches to individual and institutional leadership and responsibility (34 CFR 612.21(c)(2)(i)). The Secretary funds under this competition only applications that meet this absolute priority.

Invitational Priority: In accordance with EDGAR at 34 CFR 75.105(c)(1), the Secretary invites applications from IHEs to produce papers which develop and articulate new theories, theoretical models, and conceptual approaches on a variety of topics and issues in a number of fields and areas of knowledge related to individual and institutional leadership and responsibility in drug abuse education and prevention.

Areas of knowledge which applicants may wish to consider in developing their formulations include, but are not limited to, the following: higher education, psychology (including motivation, character, and responsibility), social psychology (including social deviance), ethics and moral education, health, sociology of organizations, management science, and leadership. Applications that meet this invitational priority will not receive a competitive or absolute preference over other applications that do not meet this priority.

The Secretary is not interested in inviting applications for grants for research, the development of instructional or training materials, program evaluation, restatements of existing theory, or literature reviews that are not conducted as part of a theoretical formulation.

Selection Criteria

In evaluating applications for Approaches to Accountability in Prevention grants, the Secretary will use the selection criteria for Approaches to Accountability in Prevention awards listed in 34 CFR 612.23(c)(2)(i). The program regulations in 34 CFR 612.22(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the 15 points will be distributed as follows:

Design. (34 CFR 612.23(c)(2)(i)(B)) Five (5) points will be added to this criterion for a possible total of 35 points.

Methods and management plan. (34 CFR 612.23(c)(2)(i)(C)) Five (5) points will be added to this criterion for a possible total of 20 points.

Key personnel. (34 CFR 612.23(c)(2)(i)(D)) Five (5) points will be added to this criterion for a possible total of 25 points.

For Applications or Information Contact: Donald R. Fischer, Drug Prevention Programs in Higher Education, FY 1989–C Competition, Fund for the Improvement of Postsecondary Education, ROB–3—Room 3100, 7th and D Streets, SW., Washington, DC 20202–5175. Telephone: (202) 732–5750.

Program Authority: 20 U.S.C. 3211

Dated: December 1, 1988.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–28173 Filed 12–6–88; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.183D]

Drug Prevention Programs in Higher Education: Special Focus Program Competition: Specific Approaches to Prevention Projects; Applications for New Awards for Fiscal Year (FY) 1989

Purpose of Program: Provide grants to institutions of higher education to develop, implement, operate, and impove drug abuse education and prevention programs for students enrolled in institutions of higher education (IHEs).

Deadline for Transmittal of Applications: June 1, 1989.

Applications Available: January 6, 1989.

Available Funds: $1,800,000.

Estimated Range of Awards: $5,000 to $40,000.

Estimated Number of Awards: 30 to 60 awards.

Note: The Department is not bound by any estimates in this notice.

Budget Period: 24 months.

Project Period: 24 months.

Applicable Regulations: (a) The regulations for this program in 34 CFR Part 612 (Final regulations for this program were published in the **Federal Register** on June 30, 1988 (53 FR 24884)); and (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, and 77.

Absolute Priority: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105 (c)(3), the Secretary gives an absolute preference for Special Focus Program competitions, described at 34 CFR 612.21 (c) (2), for projects addressing one or more specific approaches or problem areas related to drug abuse education and prevention for students enrolled in IHEs. The Secretary has chosen as an absolute priority one approach from the list at 34 CFR 612.21 (c) (2); specific approaches to the prevention of drug use or alcohol abuse (34 CFR 612.21 (c) (2) (iii). The Secretary funds under this competition only applications that meet this absolute priority.

Invitational Priority: In accordance with EDGAR at 34 CFR 75.105 (c) (1), the Secretary invites applications from IHEs to develop, implement, operate, or improve higher education consortia for drug prevention. Applicants are invited to propose consortia arrangements to assist local and nearby prevention professionals, representing institutions of higher education, to meet on a monthly basis to discuss, investigate, and act on efforts to develop and improve their own comprehensive,

institution-wide programs of drug education and prevention. Other specific approaches meeting the absolute priority are also eligible. Applications that meet this invitational priority will not receive a competitive or absolute preference over other applications that do not meet this priority.

Selection Criteria

In evaluating applications for specific approaches to prevention grants, the Secretary will use the selection criteria for awards for specific approaches to prevention listed in 34 CFR 612.23(c) (2) (iii). The program regulations in 34 CFR 612.23 (b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the 15 points will be distributed as follows:

Need. (34 CFR 612.23 (c) (2) (iii) (A)) Five (5) points will be added to this criterion for a possible total of 20 points.

Methods and management plan. (34 CFR 612.23 (c)(2) (iii) (C)) Five (5) points will be added for a possible total of 20 points.

Cost effectiveness and budget clarity. (34 CFR 612.23 (c) (2) (iii) (F)) Five (5) points will be added for a possible total of 15 points.

For Applications or Information Contact: Dr. Ronald B. Bucknam, Drug Prevention Programs in Higher Education, FY 1989–D Competition, Fund for the Improvement of Postsecondary Education, ROB–3—Room 3100, 7th and D Streets, S.W., Washington, DC 20202–5175. Telephone: (202) 732–5750.

Program Authority: 20 U.S.C. 3211.

Dated: December 1, 1988.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–28174 Filed 12–6–88; 8:45 am]

BILLING CODE 4000–01–M

federal register

Wednesday
December 7, 1988

Part VIII

Office of Management and Budget

Budget Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Deferrals

To the Congress of the United States

In accordance with the Impoundment Control Act of 1974, I herewith report four new deferrals of budget authority totaling $4,635,275,000 and three revised deferrals of budget authority now totaling $3,725,586,833.

The deferrals affect programs in Funds Appropriated to the President, and the Departments of State and Transportation.

The details of these deferrals are contained in the attached report.

Ronald Reagan,

The White House.

November 29, 1988.

BILLING CODE 3110-01-M

1

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	International Security Assistance:	
D89-11	Foreign military sales credit.....	4,122,750
D89-1A	Economic support fund.....	2,646,760
D89-12	Military assistance.....	457,000
D89-13	International military education and training.....	37,400
	Agency for International Development:	
D89-14	International disaster assistance....	18,125
	Department of State:	
	Bureau for Refugee Programs:	
D89-9A	U.S. emergency refugee and migration assistance fund.....	53,135
	Department of Transportation:	
	Federal Aviation Administration:	
D89-10A	Facilities and equipment (Airport and airway trust fund).....	1,025,692
	Total, deferrals.....	8,360,862

SUMMARY OF SPECIAL MESSAGES
FOR FY 1989
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Second special message:		
New items	---	4,635,275
Revisions to previous special messages	---	2,283,084
Effects of second special message	---	6,918,359
Amounts from previous special messages that are changed by this message (changes noted above)	---	1,442,503
Subtotal, rescissions and deferrals	---	8,360,862
Amounts from previous special messages that are not changed by this message	---	581,669
Total amount proposed to date in all special messages	---	8,942,531

Deferral No: D89-11

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... $4,272,750,000 (P.L. 100-461)
Bureau: International Security Assistance	Other budgetary resources..
Appropriation title and symbol:	Total budgetary resources.. 4,272,750,000
Foreign military sales credit 1/	Amount to be deferred:
1191082	Part of year..... $4,122,750,000
	Entire year.....
OMB identification code:	Legal authority (in addition to sec. 1013):
11-1082-0-1-152	[X] Antideficiency Act
Grant program:	[ ] Other
[ ] Yes [X] No	
Type of account or fund:	Type of budget authority:
[X] Annual	[X] Appropriation
[ ] Multiple-year (expiration date)	[ ] Contract authority
[ ] No-Year	[ ] Other

Justification: The President is authorized by the Arms Export Control Act to sell or finance by credit or guarantee articles and defense services to friendly countries to facilitate the common defense. Under Section 2 of the Act, the Secretary of State, under the direction of the President, is responsible for sales made under the Act, including determining whether there shall be a sale to a country and the amount thereof. Executive Order No. 11958 further requires the Secretary of State to obtain the prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding standards and criteria for credit and guarantee transactions that are based upon national security and financial policies. These funds have been deferred pending approval of specific loans to eligible countries by the Departments of State, Defense and Treasury. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1988 (D88-20).

D89-1A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D89-1 transmitted to Congress on September 30, 1988.

This increases by $2,054,000,000 the previous deferral of $592,760,000 in the Economic support fund, Funds Appropriated to the President, resulting in a total deferral of $2,646,760,000. The increase in the amount deferred results from the deferral of funds included in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989. Funds are deferred pending approval of specific grants by the Secretary of State.

Deferral No: D89-1A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President

Bureau: International Security Assistance

Appropriation title and symbol:

Economic support fund 1/
118/91037
11X1037
*119/01037

OMB identification code:

11-1037-0-1-152

Grant program:

[X] Yes [ ] No

Type of account or fund:

[ ] Annual
*Sept. 30, 1990
[X] Multiple-year Sept. 30, 1989
(expiration date)
[X] No-Year

New budget authority.....* $3,258,500,000
(P.L. 100-461)
Other budgetary resources.* 378,855,012

Total budgetary resources.* 3,637,355,012

Amount to be deferred:
Part of year.....* $2,646,760,000

Entire year..... _____

Legal authority (in addition to sec. 1013):

[X] Antideficiency Act

[ ] Other _____

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Amount Deferred
Economic support fund.....	11 X 1037	11-1037-0-1-152	1,000,000
*Economic support fund.....	119/01037	11-1037-0-1-152	2,054,000,000
Economic support fund.....	118/91037	11-1037-0-1-152	591,760,000
			2,646,760,000

*Justification: This action defers funds pending approval of specific loans and grants to eligible countries by the Secretary of State after review by the Agency for International Development and the Treasury Department. This interagency review process will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1988 (D88-1A).

* Revised from previous report.

Deferral No: D89-12

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority.....** $ 467,000,000 (P.L. 100-461)
Bureau: International Security Assistance	**Other budgetary resources..** _____
Appropriation title and symbol:	**Total budgetary resources..** 467,000,000
Military assistance 1/	**Amount to be deferred:**
1191080	**Part of year.....** $ 457,000,000
	Entire year..... _____
OMB identification code:	**Legal authority** (in addition to sec. 1013):
11-1080-0-1-152	[X] Antideficiency Act
Grant program: [X] Yes [ ] No	[ ] Other _____
Type of account or fund:	**Type of budget authority:**
[X] Annual	[X] Appropriation
[ ] Multiple-year _____ (expiration date)	[ ] Contract authority
[ ] No-Year	[ ] Other _____

Justification: Pursuant to the Foreign Assistance Act (FAA) of 1961, as amended, the President is authorized to furnish grant military assistance to any friendly country or international organization if he finds that it will strengthen the security of the United States or promote world peace. Executive Order No. 12163 of September 29, 1979, as amended, delegates certain Presidential functions under the FAA to the Secretaries of State and Defense. These funds are being deferred until approval of specific programs by the Departments of State, Treasury, and Defense. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1988 (D88-21A).

Deferral No: D89-13

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority**..... $ 47,400,000 (P.L. 100-461)
Bureau: International Security Assistance	**Other budgetary resources**..
Appropriation title and symbol:	**Total budgetary resources**.. 47,400,000
International military education and training 1/ 1191081	**Amount to be deferred:** **Part of year**..... $ 37,400,000 **Entire year**.....
OMB identification code: 11-1081-0-1-152	**Legal authority** (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other
Type of account or fund:	**Type of budget authority:**
[X] Annual	[X] Appropriation
[ ] Multiple-year (expiration date)	[ ] Contract authority
[ ] No-Year	[ ] Other

Justification: Pursuant to the Foreign Assistance Act (FAA) of 1961, as amended, the President is authorized to furnish grant military training to any friendly country or international organization if he finds that it will strengthen the security of the United States or promote world peace. Executive Order No. 12163 of September 29, 1979, as amended, delegates certain of the President's functions under the FAA to the Secretaries of State and Defense. These funds are being deferred until approval of specific programs by the Departments of State, Treasury, and Defense. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limit of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a deferral in 1987 (D87-24).

Deferral No: D89-14

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... $ 25,000,000 (P.L. 100-461)
Bureau: Agency for International Development	Other budgetary resources.. 4,000,000
Appropriation title and symbol:	Total budgetary resources.. 29,000,000
International disaster assistance, Executive 1/	**Amount to be deferred:**
11X1035	Part of year..... $ 18,125,000
	Entire year.....
OMB identification code:	**Legal authority (in addition to sec. 1013):**
11-1035-0-1-151	[X] Antideficiency Act
Grant program: [X] Yes [ ] No	[ ] Other
Type of account or fund:	**Type of budget authority:**
[ ] Annual	[X] Appropriation
[ ] Multiple-year (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other

Justification: The International disaster assistance account allows the President to respond to humanitarian disaster relief efforts throughout the world. Responsibility for administration of this account has been delegated by Executive Order to the Administrator of the Agency for International Development. The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 provided $25 million for disaster assistance activities. Funds are deferred pending the development of country-specific plans and to insure that funds are available to meet emergency needs throughout the year. This deferral action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1988 (D88-22).

D89-9A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D89-9 transmitted to Congress on September 30, 1988.

This revision to a deferral of the Department of State's Emergency refugee and migration assistance fund increases the amount previously reported from $26,135,000 to $53,135,000. This net increase of $27,000,000 results from the deferral of 1989 appropriations pending Presidential designation of the refugees to be assisted.

Deferral No: D89-9A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of State **Bureau:** Bureau for Refugee Programs **Appropriation title and symbol:** United States emergency refugee and migration assistance fund 1/ 11X0040	**New budget authority.....*** $ 50,000,000 (P.L. 100-461) **Other budgetary resources.*** 23,835,000 **Total budgetary resources.*** 73,835,000 **Amount to be deferred:** **Part of year.....*** $ 53,135,000 **Entire year.....***
OMB identification code: 11-0040-0-1-151 **Grant program:** [ ] Yes [X] No	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other
Type of account or fund: [ ] Annual [ ] Multiple-year (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

Justification: * Section 501(a) of the Foreign Relations Authorization Act, 1976 (Public Law 94-141) and Section 414(b)(1) of the Refugee Act of 1980 (Public Law 96-212) amended Section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund not to exceed $50,000,000 to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs. The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461) expressly waived the provision that placed a limit on the amounts in the fund.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

1/ This account was the subject of a similar deferral in FY 1988 (D88-11).

* Revised from previous report.

D89-9A

* These funds have been deferred pending Presidential decisions required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

D89-10A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D89-10 transmitted to Congress on September 30, 1988.

This increases by $202,084,287 the previous deferral of $823,607,546 in the Department of Transportation's Facilities and equipment, FAA trust fund account, resulting in a total deferral of $1,025,691,833. The increase results from the multi-year funding of modernization and improvement projects in the Department of Transportation and Related Agencies Appropriations Act, 1989. Due to the complexity and lengthy lead time for many of these projects, some of these funds will not be obligated until after FY 1989. This is fully consistent with the full-funding approach used for most projects in this account and ensures that sufficient funds will be available in future years to complete the acquisition, testing, and installation of improved air traffic control equipment and facilities.

Deferral No: D89-10A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:

Department of Transportation

Bureau:
Federal Aviation Administration

Appropriation title and symbol:

Facilities and equipment (Airport and airway trust fund) 1/

69X8107 695/98107 *699/38107
697/18107 698/28107 696/08107

OMB identification code:

69-8107-0-7-402

Grant program:

[ ] Yes [X] No

Type of account or fund:

[ ] Annual Sept. 30, 1989
Sept. 30, 1990
[X] Multiple-year Sept. 30, 1991
(expiration date)
[X] No-Year Sept. 30, 1992
Sept. 30, 1993

New budget authority.....* $1,384,528,000
(P.L. 100-457)
Other budgetary resources.* 1,354,416,717

Total budgetary resources.* 2,738,944,717

Amount to be deferred:
Part of year..... $_____

Entire year.....* 1,025,691,833

Legal authority (in addition to sec. 1013):

[X] Antideficiency Act

[ ] Other _____

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

*Justification: Funds from this account are used to continue to procure specific Congressionally-approved facilities and equipment for the expansion and modernization of the National Airspace System. The projects financed from this account include construction of buildings, and the purchase of new equipment for new or improved air traffic control towers, automation of the en route airway control system, and expansion/improvement of navigational and landing aid systems. Funds to continue these activities were justified and provided for in the Department's regular budget submissions and were appropriated by Congress for the year in which requested.

Because of the lengthy procurement and construction time for these interrelated facilities and complex equipment systems, it is not possible to obligate all the funds necessary to complete each project in the year funds were appropriated. Therefore, it is necessary to apportion funds so that sufficient resources will be available in future periods to complete these projects. This deferral action is consistent with FAA's full funding approach and Congressional intent to provide resources for a project's total cost, and is taken under provision of the Antideficiency Act (31 U.S.C. 1512).

1/ This account was the subject of a similar deferral in FY 1988 (D88-12A).

* Revised from previous report.

D89-10A

Estimated Program Effect: None

Outlay Effect: None

[FR Doc. 88-28184 Filed 12-6-88; 8:45 am]
BILLING CODE 3110-01-C

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