12-21-88
Vol. 53 No. 245
Pages 51217-51534

federal register

Wednesday
December 21, 1988

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

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

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

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

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

How To Cite This Publication: Use the volume number and the page number. Example: 53 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

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

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

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

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

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: January 26, at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

LOS ANGELES, CA

WHEN: January 12, at 9:00 a.m.
WHERE: Room 8544,
Federal Building,
300 N. Los Angeles St.,
Los Angeles, CA
RESERVATIONS: Call the Federal Information Center.
Los Angeles 213–894–3800

Contents

Federal Register
Vol. 53, No. 245
Wednesday, December 21, 1988

Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
Vol. 53, No. 245
Wednesday, December 21, 1988

Presidential Documents

Title 3—

The President

Memorandum of December 19, 1988

Renewal of Trade Agreement With the People's Republic of China—Finding and Determination Under Subsection 405(b)(1) of the Trade Act of 1974

Memorandum for the United States Trade Representative

Pursuant to Section 405 of the Trade Act of 1974 (19 U.S.C. 2435), I find that a satisfactory balance of concessions in trade and services has been maintained during the life of the Agreement on Trade Relations between the United States of America and the People's Republic of China. I further determine that actual or foreseeable reductions in United States tariffs and non-tariff barriers to trade resulting from multilateral negotiations have been satisfactorily reciprocated by the People's Republic of China.

This finding and determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, December 19, 1988.

[FR Doc. 88-29404
Filed 12-19-88; 4:26 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 53, No. 245
Wednesday, December 21, 1988

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

Government Use of Commercial Recruiting Firms and Nonprofit Employment Services

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations permitting agencies to use commercial recruiting firms and nonprofit employment services to locate candidates for Federal civil service positions. Candidates identified in this way must then be considered for Federal employment through regular civil service procedures, which include veterans preference where applicable. The effect of this regulation will be to give Federal agencies a recruiting flexibility used by the private sector.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Ellen Russell, (202) 632-6817.

SUPPLEMENTARY INFORMATION: The regulations authorizing agency use of commercial recruiting firms and nonprofit employment services give agencies an additional recruiting tool and also set the conditions necessary to protect merit principles. OPM will closely monitor the new authority, and within three years of use, will evaluate it for further continuation.

Proposed regulations were published on August 23, 1988 (53 FR 32053). 14 Federal agencies, 3 unions and associations, 3 veterans groups, and 15 private sector firms and organizations, and a conference of State agencies submitted comments for which the key points are summarized below.

I. General

A union contended that OPM has no authority to issue these regulations. The legal authorities upon which the regulations are based are cited in this **Federal Register** issuance. The union also asserted OPM has no authority to delegate to agencies the authority to set contract requirements. OPM is not delegating such authority but is permitting agencies to use outside recruiting sources in a manner which assures the protection of merit principles.

An association commented that the regulations would permit an agency to contract with more than one commercial recruiting firm, thus significantly increasing recruitment costs. The association, along with a union, suggested that upgrading salary and benefit levels for shortage jobs might be a better recruitment strategy. The association, along with an organization representing executive search consultants, also suggested OPM develop guidelines to assure use of reputable firms and the best service for the fees paid. Each agency will weigh the costs and benefits of using the new authority, which is intended to supplement, not supplant, other efforts to foster a quality workforce. Agencies are required by the contracting process to examine the qualifications of prospective contractors.

A consultant suggested that recruiting firms receive fair compensation and immediate payment, invoiced weekly; a private sector firm suggested that the fees paid by Federal agencies be competitive with private industry. These are matters to be decided through the contracting process.

An agency asked that the regulations clarify the appeal rights of individuals found unqualified by the outside firm or service. Depending on the alleged prohibited action, appeal rights in various laws may apply. There is no need for these regulations to cover provisions already in law. Additionally, applicants have the opportunity to apply directly to the Government since agencies using outside firms must also continue their own recruiting efforts.

A union suggested Federal agencies would be liable if an applicant brought an EEO suit against the commercial recruiting firm. Since there are numerous statutes and judicial decisions defining and interpreting Federal equal employment opportunity law, any further delineation or definition in these regulations is unnecessary.

A union claimed that OPM had incorrectly stated that the proposal was not a major rule under Executive Order 12291 of February 17, 1981. We determined the regulations do not constitute a major rule because there will be no adverse effects on United States-based enterprises; there will not be a major increase in costs for individual industries or Federal agencies, and there will not be an annual effect on the economy of $100 million or more. Federal agencies are permitted to use commercial recruiting firms to provide candidates for vacancies only when the Government's own recruiting effort, including use of State Employment Service offices, has not been successful. Because of budgetary concerns, Federal agencies will generally be willing to pay placement fees only when key jobs are involved. Assuming an average placement fee of $20,000, Federal agencies would have to hire 5,000 candidates referred from commercial recruiting firms in order to reach the $100 million figure. However, in FY 87, there were approximately 1,600 new hires at grades GS–14 and above, the level at which agencies are likely to seek help. We conclude, therefore, that Federal agencies are unlikely to expend $100 million annually on the use of commercial recruiting firms to recruit candidates.

II. Section 300.401 Definitions

In response to an agency comment, we clarified that commerical firms and nonprofit employment services covered by this regulation provide candidates for specific vacancies rather than lists of names in broad categories, for example, graduates in certain academic disciplines. Another agency asked whether a contract was required to cover the kind of recruiting assistance agencies have traditionally received from nonprofit groups and organizations at no charge to the Federal agency or to the applicant. These regulations do not cover such arrangements, e.g., when an agency sends a vacancy announcement to a veterans organization which then publicizes the vacancy among its members.

We did not, as suggested by a private sector firm, distinguish between firms

operating on a retainer or a contingency fee basis. Individual agencies will decide which kind of firm best suits their needs.

In response to an agency suggestion, the final regulations indicate Federal agencies may contract for recruiting assistance with State and local governments.

III. Section 300.402 Coverage

A union questioned the appropriateness of using commerical firms to screen candidates for excepted civil service appointments which do not require impartial testing procedures. Nothing in current law or regulation prohibits Federal agencies from using commerical recruiting firms or nonprofit employment services for the excepted service. These new regulations set conditions which apply to the use of outside recruiting assistance for certain excepted appointments. Many excepted appointments are career-type for which agencies seek the best qualified candidates available. Agencies should, therefore, have the opportunity to use outside recruiting assistance under the terms of these regulations.

IV. Section 300.403 Use of Commercial Recruiting Firms and Nonprofit Employment Services

We have changed the title to this section to make clear that the provisions cover both commercial recruiting firms and nonprofit employment services.

A veterans group suggested that OPM approve each agency use of outside recruitment services. We believe this would be unduly restrictive, but the regulations set criteria for the use of such firms. The final regulations spell out more clearly when an agency may use a commerical recruiting firm and/or a nonprofit employment service. Use is permitted when the agency determines that:

—The firm or nonprofit service is likely to provide well-qualified candidates who would otherwise not be available, e.g., as an affirmative employment technique to locate minorities and/or women for consideration for positions in occupations where these groups are underrepresented, or

—Well-qualified candidates are in short supply, e.g., when a direct hire authority or a special salary rate is in effect for the position or the agency's own recruiting efforts (for the same or a similar position) have not located a sufficient number of well-qualified candidates.

The agency must also continue its own recruiting and, prior to using outside recruiting assistance, must provide a vacancy notice to the appropriate State Employment Service offices, as suggested by two veterans organizations, a Federal agency, and an organization representing State employment security agencies. We will provide any needed clarification on the posting requirement in the Federal Personnel Manual.

A union suggested that the use of commerical firms should be limited to instances where the firm is likely to provide candidates for a specific position who would otherwise not be available. The final regulations make clear agencies may use outside recruiting assistance to provide candidates for consideration for vacancies.

V. Section 300.404 Use of Fee-charging Firms

An agency and an association representing commerical recruiting firms suggested the regulations be revised to permit agencies to contract with firms who accept fees from applicants for private sector referrals so long as no fees are charged for referrals for Federal jobs. The final regulations do not prohibit an agency from contracting with firms which charge fees but require the firm to refer to Federal agencies only those candidates from whom no fees have been accepted. For example, if a firm charges fees to applicants for placement in private sector clerical jobs but does not charge applicant fees for executive placement, a Federal agency could contract with the firm for filling executive, but not clerical, positions. Federal agencies will have to determine that the practices and procedures of potential firms will assure compliance with this requirement. Firms which charge applicant fees should be carefully scrutinized to make sure an agency's use of such firms would not create the impression on the part of applicants or the public that fees had been charged for referral to Federal agencies.

Two private sector firms asked that we make clear that firms selling Federal job vacancy lists are not excluded by these regulations. Instructions in the Federal Personnel Manual will cover this point.

An agency suggested candidates selected for appointment (after referral by a commerical recruiting firm) be required to certify they did not pay fees prohibited by these regulations. We have not adopted this suggestion, but individual agencies may impose such a requirement at their discretion. We note that the Appointment Affidavits (Standard Form 61), Part C, contains the affidavit on purchase and sale of office that 5 U.S.C. 3332 requires officers to complete. (See Federal Personnel Manual Supplement 296–33, Subchapter 5.)

A union commented that the regulations should also prohibit the use of professionally sponsored nonprofit employment firms which charge member registration fees. For some time, Federal Personnel Manual policy has permitted agencies to use nonprofit employment services sponsored by professional organizations. These organizations typically charge a registration fee which covers a wide variety of services and which is assessed regardless of whether an individual is placed or even referred through the organization's employment service. Since there have been no problems with this arrangement to date, we see no reason why the new policy should not continue it.

VI. Section 300.405 Requirement for Contract

A union commented that the proposed regulations side-stepped the requirement in Office of Management and Budget (OMB) Circular A–76 for agencies to conduct a cost comparison before contracting out work to the private sector. That circular requires a cost comparison when the Government seeks to *replace* its employees with more cost-effective services from the private sector. There will be no replacing of Government employees under these part 300 regulations. Instead, the regulations authorize an agency—after determining the Government's own efforts have been unsuccessful—to *expand* its capability by seeking services from the private sector.

A union questioned the legality and ethics of an agency contract with a nonprofit employment service sponsored by a partisan political organization. The final regulations prohibit such an arrangement. Further, to assure adherence to the merit system principles (one of which requires treatment of applicants without regard to political affiliation), contracts under these regulations must contain a provision requiring recruiting firms and nonprofit employment services to recruit and refer applicants in accordance with applicable merit principles.

In response to an agency suggestion and a question on the use of blanket purchasing, this section now includes a reference to the Federal Acquisition Regulations (FAR). This means agencies may use contract types and procedures stipulated in the FAR to acquire contractor services.

We deleted the requirement that the contract contain a written request for the recruitment services (as required by 18 U.S.C. 211) and clarified in paragraph (a) of the section that the contract itself satisfies the written request for services.

An agency suggested § 300.405 unnecessarily required certain terms in the contract between the agency and the commerical recruiting firm. The agency correctly pointed out that contracts under these regulations are subject to the merit principles in Title 5 of the U.S. Code, laws and regulations on equal employment opportunity, and the general procurement laws and acquisition regulations. We have, therefore, included in the list of required contract provisions only those which specifically relate to the new authority.

Along similar lines, a private sector firm suggested the regulations refer to the use of certified minority business enterprises whenever possible. There is no need for these regulations to repeat procedures already in place under general contracting procedures.

Another private sector firm suggested the contract specify the time frame the Federal agency needs to evaluate the qualifications of applicants presented by the commercial recruiting firm. This is a matter to be determined in the contracting process.

Another private sector firm suggested this section clearly state that agencies may enter into a contract with a commercial recruiting firm for the filling of more than one position over a period of time. We believe the regulations, as written, give agencies the flexibility to contract for the filling of individual vacancies or several vacancies during a fixed period.

A private sector firm recommended a simplified contract for small business to use. The procurement laws and regulations already provide for streamlined competitive procedures under certain circumstances.

VII. Section 300.406 Agency Responsibilities

Two veterans groups observed that the regulations are silent on the obligation of recruiting firms to give preference to veterans. Since the application of veterans preference is part of the rating and appointment process rather than the recruitment process, commercial recruiting firms and nonprofit employment services have no role to play in this area; these entities merely refer to the Federal agency the names of potential candidates who meet the agency-set requirements. Once presented with the referrals, the Federal agency or the Office of Personnel Management will apply veterans preference when candidates are ranked for employment eligibility. Further, in response to comments from two veterans groups, we made clear that all appointments must provide for veterans preference, where applicable. Since individuals recruited by commercial firms or nonprofit employment agencies must be appointed through regular civil service procedures (see § 300.406(a), there regulations do not conflict with statutory appointing requirements, as suggested by a veterans group.

An agency asked how OPM intended agencies to carry out the responsibility under this section to publicize the fact that applicants may apply directly to the Government and need not apply through a commercial recruiting firm or a nonprofit employment service. An agency's continued recruiting efforts required under § 300.403(c) will satisfy this requirement.

A union and an organization representing executive search consultants commented that the proposed regulations did not address whether recruiting firms or nonprofit employment services were permitted to conduct initial testing or interviews or whether they were limited to basic prescreening functions. Outside firms and services are not authorized to perform functions which are inherently Governmental in nature and, therefore, may determine only whether the candidate appears to meet the basic qualifications requirements set out in the contract. The ultimate decision on an individual's qualifications will be made by OPM or the agency (under delegated authority) in accordance with all applicable requirements and procedures. Further clarification on what functions can be contracted will be provided in the Federal Personnel Manual.

The union also suggested that paragraph (b)(2) of this section should be reworded to state that no advantage or preferential treatment will be given to candidates referred from a commercial recruiting firm or nonprofit employment service. The regulation as written requires the same treajment for candidates referred from various sources. Any further clarification needed will be made through the Federal Personnel Manual.

A private sector firm suggested selection officials be prohibited from knowing which candidates had applied through regular procedures and which had been referred by a commercial firm. We do not believe this is a matter for OPM regulation.

VII. Section 300.407 Documentation

A union and an agency recommended this section include detailed information on the content or reports agencies must submit to OPM. We believe the Federal Personnel Manual is the appropriate place in which to include the content of these reports.

VIII. Section 300.308 Corrective Action

In response to an agency comment, we modified § 300.407(c) of the proposal—and set it out as a new section § 300.408—to make clear that corrective action taken by OPM would be against an agency, not a contractor. Any corrective action against a contractor would be taken by the agency involved under the terms of the contract.

We did not adopt a suggestion from a veterans group to make mandatory the ordering of corrective action by OPM because the decision whether to order corrective action, as well as the nature of the action, will depend on the circumstances involved in each case.

Executive Order 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the authority will be used under limited circumstances, e.g., when a Federal agency has been unable to fill a position through Government recruiting procedures.

List of Subjects in 5 CFR Part 300

Administrative practice and procedures, Government employees.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is amending 5 CFR Part 300 as follows:

PART 300—EMPLOYMENT (GENERAL)

1. The authority citation for Part 300 is revised as set forth below.

Authority: 5 U.S.C. secs. 552, 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., page 218.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. secs. 7201, 7204; E.O. 11478, 3 CFR 1966–1970 Comp., page 803. § 300.104 also issued under 5 U.S.C. 7701 *et seg.*

Section 300.301 also issued under 5 U.S.C. 3324.

Sections 300.401 through 300.408 also issued under 5 U.S.C. secs. 1302(c), 2301, and 2302.

Section 300.603 also issued under 5 U.S.C. 1104.

2. Subpart D is added to read as follows:

Subpart D—Use of Commercial Recruiting Firms and Nonprofit Employment Services

Sec.

Subpart D—Use of Commercial Recruiting Firms and Nonprofit Employment Services

§ 300.401 Definitions.

For purposes of this subpart:

(a) A "commercial recruiting firm" is a profit-making entity which, by contract, supplies individual candidates for consideration for specific Federal vacancies, in accordance with the requirements set by the Federal agency.

(b) A "nonprofit employment service" is one legally established as nonprofit under State law. It may be operated, for example, by professional societies, organizations of college graduates, social agencies, or a State or local government. Federal agencies may not, however, use a nonprofit employment service sponsored by a partisan political organization. By contract, a nonprofit employment service supplies individual candidates for consideration for specific Federal vacancies, in accordance with the requirements set by the Federal agency.

§ 300.402 Coverage.

These regulations apply to filling positions in the competitive service; positions in the excepted service under Schedules A, B, and C, or filled by noncareer executive assignment; and positions in the Senior Executive Service.

§ 300.403 When commercial recruiting firms and nonprofit employment services may be used.

An agency may use a commercial recruiting firm and/or a nonprofit employment service in recruiting for vacancies when:

(a) The agency head or designee determines that such use is likely to provide well-qualified candidates who would otherwise not be available or that well-qualified candidates are in short supply;

(b) The agency has provided vacancy notices to appropriate State Employment Service and OPM offices; and

(c) The agency continues its own recruiting efforts.

§ 300.404 Use of fee-charging firms.

(a) Federal agencies are prohibited from using commercial recruiting firms and nonprofit employment services which charge fees to individuals referred to Federal positions. Federal agencies may not consider a candidate referred by a commercial recruiting firm or nonprofit employment service if the individual has paid or is expected to pay any fee to the firm or service.

(b) The prohibition in paragraph (a) of this section does not apply to registration fees paid by individuals to nonprofit employment services operated by professional organizations when the registration fee is imposed regardless of whether the registrant is referred for employment or placed.

§ 300.405 Requirement for contract.

(a) A written contract awarded in accordance with procedures stipulated in the Federal Acquisition Regulations is required between the Federal agency and a commercial recruiting firm or nonprofit employment service. The contract will satisfy the "written request" required by 18 U.S.C. 211. That statute prohibits the acceptance of payment for aiding an individual to obtain Federal employment *except* when an employment agency renders services pursuant to the written request of an executive department or agency.

(b) The contract must include the qualifications requirements for the position(s) to be filled and also provide that the firm or service will:

(1) Screen candidates only against the basic qualifications requirements for the position(s) specified by the Federal agency in the contract and refer to the agency all candidates who appear to meet those requirements;

(2) Refer to the Federal agency only those applicants from whom the firm or service has not accepted fees other than those permitted under § 300.404(b) of this part;

(3) Not imply that it is the sole or primary avenue for employment with the Federal Government or a specific Federal agency; and

(4) Recruit and refer candidates in accordance with applicable merit principles and equal opportunity laws.

§ 300.406 Agency responsibilities.

(a) The purpose of a commercial recruiting firm or nonprofit employment service is to serve as an additional source of applicants. Once recruited, applicants must be evaluated and appointed through regular civil service employment procedures.

(1) For a competitive service position, an individual must be appointed in accordance with the terms of applicable competitive service procedures.

(2) For an excepted service position, an individual must be appointed in accordance with the terms of the applicable appointing authority and the requirements set out in Part 302 of this chapter.

(3) For a Senior Executive Service position filled by career appointment, an individual must be appointed in accordance with the competitive process described in 5 U.S.C. 3393.

(b) In order to use commercial recruiting firms or nonprofit employment services, agencies are required to:

(1) Make known that applicants may apply directly to the Government and thus need not apply through the commercial recruiting firm or nonprofit employment service;

(2) Give the same consideration to candidates who have applied directly and candidates referred from the commercial recruiting firm or nonprofit employment service; and

(3) Follow all requirements for appointment, including veterans preference, where applicable.

§ 300.407 Documentation.

(a) Agencies are required to maintain records necessary to determine that using commercial recruiting firms or nonprofit employment services is cost effective and has not resulted in the violation of merit system principles or the commission of any prohibited personnel practice.

(b) In order for OPM to evaluate the authority granted under this subpart, agencies must submit reports in accordance with its instructions. Reports will be required on at least an annual basis and, as a minimum, will provide information on the kinds of jobs for which recruiting firms were used, the costs to the agency, and the results in terms of candidates referred and selected. Reports will also provide comparative data to show the effect of using a recruiting firm on the agency's ability to locate well-qualified candidates. Specific reporting instructions will be provided through the Federal Personnel Manual.

§ 300.408 Corrective action.

Upon evidence of failure to comply with these regulations, OPM may, pursuant to its authority, order the agency to take appropriate corrective action.

[FR Doc. 88-29241 Filed 12-20-88; 8:45 am]
BILLING CODE 6325-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1633

Standards of Conduct

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (the Board) is publishing in Part 1633 final regulations governing employee responsibilities and conduct. These regulations are being issued pursuant to Executive Order 11222 of May 8, 1965, as amended, and the Ethics in Government Act of 1978, as amended.

EFFECTIVE DATE: Final rule effective December 21, 1988.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, (202) 523-6367, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005.

SUPPLEMENTARY INFORMATION: The Federal Retirement Thrift Investment Board was established by Pub. L. No. 99-335 (June 6, 1986), the Federal Employees' Retirement System Act of 1986 (codified principally at 5 U.S.C. 8401-8479), as amended by Pub. L. 99-509, the Omnibus Budget Reconciliation Act of 1986; Pub. L. 99-556, the Federal Employees' Retirement System Technical Corrections Act of 1986; Pub. L. 100-20, 100-43 and 100-202; and Pub. L. 100-238, the Federal Employees' Retirement System Technical Corrections Act of 1988, to administer the Thrift Savings Plan for Federal employees. Regulations of the Board are contained in Title 5, CFR, Chapter VI, Parts 1600-1699. The Board's regulations published in Subparts A and B of this Part 1633 govern the standards of honesty, integrity, impartiality, and conduct of government employees and special government employees who are employed by the Board. Subpart C covers Board Members.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only persons who work for the Board as government employees, special government employees, and as Board Members.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Under 5 U.S.C. 553 (b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. The Board, as a new agency, has begun operations and it is necessary for these standards of conduct to be in place for the direction and guidance of its personnel.

List of Subjects in 5 CFR Part 1633

Conflicts of interest, Ethical conduct, Financial disclosure, Government employees, Political activities.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,

Executive Director.

Title 5 of the Code of Federal Regulations is amended to add Part 1633 to Chapter VI to read as follows:

PART 1633—STANDARDS OF CONDUCT

Subpart A—Regular Employees

General Provisions

Conflicts of Interest

Rules of Conduct

Statements of Employment and Financial Interests

Subpart B—Preventing Conflicts of Interest on the Part of Special Government Employees of the Board

General Provisions

General Rules of Conduct Applicable to Special Government Employees

Conflict of Interest Statutes

Sec.

Authority: 5 U.S.C. 8474; 5 U.S.C. App. 4.

Subpart A—Regular Employees

General Provisions

§ 1633.1 Purpose.

This part describes the standards of conduct required of all employees, special employees, and Board Members of the Federal Retirement Thrift Investment Board. The regulations in this Part implement Office of Personnel Management regulations at 5 CFR Parts 735 and 737. The standards of conduct in this part are not to be considered all-inclusive and may be supplemented to meet specific needs. The absence of a specific published standard of conduct covering an act tending to discredit an employee or the Board does not mean that such an act is condoned, is permissible, or would not call for and result in corrective or disciplinary action.

§ 1633.2 Scope.

This part covers three general types of employment situations as follows:

(a) Subpart A of this Part sets the general policy and defines rules of conduct and procedures for all regular employees excluding Board Members.

(b) Subpart B of this Part applies to special Government employees, primarily advisers and consultants, excluding Board Members.

(c) Subpart C of this Part applies to Board Members.

§ 1633.3 Policy.

(a) Executive Order 11222 of May 8, 1965, 18 U.S.C. 201 note, states the basic philosophy of conduct for those who carry out the public business:

> Where government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of his government. Each individual officer, employee, or adviser of Government must help to earn and must honor that trust by his own integrity and conduct in all official actions.

(b) Personnel of the Federal Retirement Thrift Investment Board are expected to adhere to the above stated principles and to standards of behavior that will reflect credit on the Government. The Board's position is that of having confidence in its employees and of taking a positive and reasonable approach to the matter of maintaining the high standards of conduct necessary in the transaction of Board activities. A violation of the laws or the rules or regulations on conduct in this Part may subject the employee to discipline, or advice regarding other remedial action, in accordance with the gravity of the violation.

(c) Disciplinary action may be in addition to any penalty prescribed by law. Such action may be taken only after consideration of any explanation offered by the employee.

(d)(1) In addition to disciplinary action, remedial action may include, but is not limited to:

(a) Recusal,

(b) Divestiture, resignation, or reassignment,

(c) A Qualified Trust established in consultation with the Office of Government Ethics, pursuant to Subpart D of 5 CFR Part 734.

(2) An employee may avoid a violation of 18 U.S.C. 208(a) if he or she receives a waiver pursuant to 18 U.S.C 208(b).

(e) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive Orders, and regulations.

§ 1633.4 Definitions.

In this part:

(a) "Board" means the Federal Retirement Thrift Investment Board.

(b) "Executive Director" means the Executive Director of the Federal Retirement Thrift Investment Board, as defined in 5 U.S.C. 8401(13) and as further described in 5 U.S.C. 8474.

(c) "Regular employee" or "employee" means an employee of the Board, but does not include a special Government employee or Board Member.

(d) "Special Government employee" means an employee of the Board who is retained, designated, appointed, or employed to perform, with or without compensation, temporary duties either on a full-time or intermittent basis, for not more than 130 days during any period of 365 consecutive days.

(e) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

§ 1633.5 Assignment of responsibilities.

The assignment of responsibilities to carry out the provisions of this Part is described below in §§ 1633.6 to 1633.10 of this Part.

§ 1633.6 Executive Director.

The Executive Director's responsibilities are to (a) issue policy and basic standards of conduct applicable to all Board employees, (b) periodically review the basic standards and initially and periodically review those additional standards issued by the Board, (c) set requirements to ensure that supervisors and employees are aware of the standards of conduct, of their responsibilities in maintaining and adhering to those standards, and of the fact that disciplinary action will be taken in cases of failure to maintain or adhere to them; and (d) establish procedures for furnishing advice to employees on the application of standards of conduct.

§ 1633.7 The General Counsel.

The General Counsel has general oversight responsibility for the administration of the standards of conduct program of the Board.

§ 1633.8 The Ethics Officer.

The Board's Ethics Officer has responsibility for the day to day operation of the standards of conduct program of the Board and is the "designated agency ethics official" under Part 734 of title 5 of the Code of Federal Regulations. The Board's Ethics Officer is the Assistant General Counsel for Administration. The Deputy Ethics Officer shall assist the Board's Ethics Officer and shall act in the latter's absence.

§ 1633.9 Supervisor.

It is the responsibility of each supervisor to:

(a) Know and adhere to the standards of conduct,

(b) Ensure that the employees under his or her supervision know and adhere to the standards of conduct,

(c) Assist employees under his or her supervision, when necessary, to obtain advice on the application of the standards of conduct; and

(d) Take or recommend disciplinary action when appropriate in cases where the employees under his or her supervision violate the standards or the principles upon which they are based.

§ 1633.10 Employees.

Each employee of the Board is required to:

(a) Know the standards of conduct and their application in his or her case,

(b) Seek information from his or her supervisor in case of doubt or misunderstanding on the application of the standards of conduct,

(c) Adhere to the standards of conduct, and

(d) Be aware of the consequences of violation of the laws, rules and regulations regarding conduct.

Conflicts of Interest

§ 1633.20 General.

The elimination of conflicts of interest in the Federal service is one of the most important objectives in establishing general standards of conduct. A conflict of interest situation may be defined as one in which a Federal employee's private interest, usually of an economic nature, conflicts or raises a reasonable question of conflict with his public duties and responsibilities. The potential conflict is of concern whether it is actual or only apparent. The rules of the Board concerning conflicts of interest appear in §§ 1633.33–1633.38.

§ 1633.21 Summary of provisions of criminal code.

The following is a brief summary of the provisions of the criminal conflict of interest statutes at Title 18 of the United States Code that define the conflicts of interest subject to fines and imprisonment. It should be noted that in some situations, different restrictions may apply to special Government employees than to regular employees, as discussed in more detail in Subpart B of this Part.

(a) 18 U.S.C. 203. Section 203 prohibits an employee from receiving, agreeing to receive, or asking for (directly or indirectly) any compensation for services, otherwise than as provided by law for the proper discharge of official duties, rendered by the employee or another in relation to any matter in which the United States is a party or has a direct and substantial interest before any department or agency.

(b) 18 U.S.C. 205. Section 205 prohibits an employee from (1) acting as an agent or attorney in prosecuting any claim against the United States or receiving any share of or interest in such claim for assistance in its prosecution, or (2) acting as agent or attorney for anyone before any department or agency in connection with any particular matter in which the United States is a party or has a direct and substantial interest. Sections 203 and 205 do not prohibit a regular Government employee from acting with official approval and with or without compensation as agent or attorney for his parents, spouse, or child, or for any estate for which he is serving as guardian or other fiduciary, with certain exceptions set forth in that section. Section 205 does not prevent an employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceeding in connection with such proceeding.

(c) 18 U.S.C. 207(a). Section 207(a) prohibits a former employee, after his employment has ceased, from knowingly acting as agent or attorney for anyone other than the United States in connection with any particular matter involving a specific party or parties in which the United States has a direct and substantial interest and in which he participated personally and substantially as an employee for the lifetime of this matter.

(d) 18 U.S.C. 207(b). Section 207(b)(i) prohibits any such former Government employee within two years after the termination of his employment or the termination of his responsibility in a particular area (if the two events do not occur simultaneously) from appearing personally before any court, department, or agency as agent or attorney for anyone other than the United States in connection with any particular matter involving a specific party or parties in which the United States is a party directly and substantially interested and which was under his official responsibility within 1 year prior to the termination of such responsibility. Section 207(b)(ii) prevents a former employee who occupied a position designated as a Senior Employee (a position which involves significant decisionmaking or supervisory responsibility) for a period of two years after his or her employment has ceased from appearing personally on behalf of another person before a court, department or agency of the United States or the District of Columbia in any matter that was pending under his official responsibility within a one year period prior to the termination of such responsibility or as to which he or she participated personally and substantially as an officer or employee. Section 207(c) prevents a former employee, who served more than sixty days in a given calendar year, and who occupied a position designated as a Senior Employee within one year after such employment has ceased, from acting as agent or attorney for anyone in any appearance or in any written communication before the agency in which he served as an officer or employee in connection with any proceeding pending before such agency. It should be noted that a consultant or adviser usually does not have "official responsibility."

(e) 18 U.S.C. 208. Section 208 prohibits any employee from participating personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter, including general rulemaking, in which, to his knowledge, he, his spouse, minor child, partner, or organization in which he is serving as officer, director, trustee, partner or employee or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment or has a financial interest. An employee may be exonerated from the provisions of this section if he makes full disclosure of the financial interest to the official responsible for his appointment and receives in advance a written determination by that official that the interest is not so substantial as to be likely to affect the integrity of his service.

(f) 18 U.S.C. 209. Section 209 prohibits any employee from receiving any salary or any contribution to or supplementation of his salary as compensation for his services as an employee from any source other than the Government. This section does not apply to a special Government employee, and does not prevent participation in any bona fide pension, retirement, profit sharing, or other welfare or benefit plan maintained by a former employer. This section also does not prohibit payment or acceptance of certain contributions, awards, or

expenses in connection with Government employee training programs or attendance at meetings authorized under 5 U.S.C. 4111.

Rules of Conduct

§ 1633.30 Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this Part, which might result in, or create the appearance of:

(a) Using public office for private gain,

(b) Giving preferential treatment to any person,

(c) Impeding Government efficiency or economy,

(d) Losing complete independence or impartiality,

(e) Making a Government decision outside official channels, or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

§ 1633.31 Political activity.

Employees have the right to vote as they may choose and to express their opinions on all political subjects and candidates, but are forbidden to take active part in political management or campaigns (Hatch Act, 5 U.S.C. 7324). Political activity in some local elections is permissible; but before employees engage in such activity, they should familiarize themselves with statutory provisions and the Office of Personnel Management's regulations on this subject (5 U.S.C. 7324–7327 and 5 CFR Part 733). It is unlawful for employees to solicit, receive, or to be concerned with political assessments, subscriptions, or contributions for any political purpose whatever from other employees. (18 U.S.C. 602, 603, 606, 607.) Employees may make voluntary contributions to a regularly constituted political organization for its general expenditures subject to the limitations set forth in 18 U.S.C. 608.

§ 1633.32 Gifts or gratuities from Government employees.

Employees of the Federal Government are prohibited from soliciting contributions from other employees or from making a donation for gifts or presents to persons in superior official positions. Neither may such superiors receive any gift or present offered to them from employees in the Government receiving less salary then themselves (5 U.S.C. 7351). A voluntary gift of nominal value or a donation in a nominal amount may be made for gifts upon retirement or resignation or for expressing condolences in cases of illness or death. Solicitations for such gifts should be limited to employees in the immediate office of the employee concerned and a few close associates with whom he or she has worked. Gifts to recipients should not be in cash, except that small amounts (e.g. under $10) remaining after the purchase of a gift may be included with the gift. Within the foregoing limitations, a cash gift may be made to an employee, with the approval of his/her supervisor, to assist in a catastrophic illness or disaster, provided that these voluntary gifts are limited to co-workers of approximately equal status to the recipient employee, and to his immediate supervisors.

§ 1633.33 Gifts or gratuities from outside sources.

(a) Except as provided in paragraphs (b) and (c) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Board;

(2) Conducts operations or activities that are regulated by the Board; or

(3) Has interests that may be substantially affected by the performance or non-performance of the employee's official duty.

(b) General exceptions to the rule in paragraph (a) of this section are as follows unless otherwise precluded by the Board:

(1) Acceptance of gifts, entertainment, and food is acceptable when the circumstances make it clear that obvious family or personal relationships (such as those between the parents, children or spouse of the employee and the employee) rather than the business of the person concerned are the motivating factors.

(2) Acceptance of food and refreshments of nominal value on infrequent occasions is permitted when such action occurs in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour when an employee may properly be in attendance.

(3) Acceptance of food and refreshments at widely-attended functions is permitted to the extent that:

(i) It is in the Board's interest that the employee attend the event;

(ii) Consideration is given to the timing of the event, the reason for the event, and the individual or entity sponsoring the event in order to ensure that attendance will not create an appearance of impropriety;

(iii) The event is a widely-attended gathering of mutual interest to the government and private sector such as a reception, seminar, conference or training session;

(iv) The food and refreshments offered in conjunction with this event are not excessive;

(v) Approval to attend the event is obtained from the Executive Director (or his designee) after consultation with the Board's Ethics Officer.

(4) Employees may accept loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans, except where prohibited by law.

(5) Employees may accept unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) The receipt of payment or reimbursement, by outside sources, for the expenses of travel and subsistence for activities related to Government employment is permited only in accordance with § 1633.38(c) (2) and (3) of this Part.

§ 1633.34 Gifts or gratuities from foreign governments.

The Constitution prohibits employees from accepting from foreign governments, except with the consent of the Congress, presents, emoluments, offices, or titles. The Congress has given its consent in 5 U.S.C. 7342 to the acceptance of certain specified gifts and decorations.

§ 1633.35 Outside financial interests.

An employee shall not participate on a private basis, directly or indirectly, in any financial transaction as a result of, or primarily relying on, confidential information obtained through his employment with the Board. An employee shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Government duties and responsibilities.

§ 1633.36 Using official designation.

Employees shall not permit their official position, status, or designation to be used in a manner that is intended to further, or gives the appearance of furthering, the private business interests of the user or any other private interest. See also § 1633.30(a).

§ 1633.37 Outside employment and other outside activities.

(a) No employee shall engage in any outside employment or other outside activity, with or without compensation, which would be incompatible with Government employment because it (a) would impair the employee's mental or physical capacity and thereby interfere with his or her efficient performance of

Government duties, (b) might bring discredit on or cause unfavorable and justifiable criticism of the Government, or (c) might otherwise result in a conflict of interest, or an appearance of conflict of interest, with official duties and responsibilities; nor may an employee accept a fee, compensation or a gift or any other thing of monetary value in circumstances in which acceptance might result in, or create the appearance of, a conflict of interest. Before engaging in outside employment or in an outside activity, employees shall submit a written request for approval, through any intermediate supervisors, to the appropriate Office Director or, in the case of persons assigned to the General Counsel's Office, to the General Counsel. The written request shall identify the organization, duties, hours of work, and remuneration pertaining to the outside employment or activity. Other restrictions on misuse of Government property, Government title, and official information are found at §§ 1633.36, 1633.43, and 1633.46.

(b) Employees shall not solicit financial aid from or sell tickets to persons outside the Federal Government for the benefit of any organization or association comprised of Board employees. No publication of any such organization shall contain any commercial advertising, and the costs of such publications must be wholly paid by the organization or association. Employee organizations and associations may, however, accept financial aid for convention purposes from boards of trade, chambers of commerce, convention bureaus, and other such organizations which hold conventions.

§ 1633.38 Teaching, writing, lecturing, and speechmaking.

(a) Employees may teach, write, lecture, or deliver speeches providing such action is not prohibited by law, Executive Order 11222, 5 CFR Part 735, or the regulations in this Part. The requirements prescribed in § 1633.37 of this Part also apply to engagements to teach, write, lecture, or deliver speeches; however, see paragraph (c)(1) below. An employee shall not, either with or without compensation, engage in teaching, writing, lecturing, or speechmaking (including teaching, writing, lecturing, or speechmaking, for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service) that depends on information obtained as a result of Government employment, except when the information has been made available on request, or when the Ethics Officer gives written authorization for use of nonpublic information on the basis that the use is in the public interest.

(b) A formal speech, a lecture, or an article relating to Board business shall, prior to its release to the public, be submitted to the Executive Director (or to the person designated by the Executive Director).

(c)(1) Determinations by the Executive Director. If the subject matter of any teaching, writing, lecturing, or speechmaking activity is devoted specifically to the responsibilities, programs, or activities of the Board or draws upon official data or ideas which have not been made public, the Executive Director (or designee), after the requestor consults with the Ethics Officer, will determine whether the activity may be undertaken, and if so, whether as official duty or in a private capacity. In determining whether the activity is an official duty or private undertaking, the Executive Director will consider, among other factors, whether the activity will be performed during official hours, whether Government time or facilities will be utilized, whether the official title of the employee will be used, whether the employee will be perceived as conveying agency policy, and whether the activity would justify the expenditure of public funds.

(2) Activities undertaken as an official duty. If the activity is undertaken as an official duty, all expenses will be borne by the Board and the employee may not accept any honorarium or other compensation or permit payment of his or her expenses. However, under 5 U.S.C. 4111 and 5 CFR 410.701–410.706, an employee on official duty may accept reimbursement for actual travel and reasonable lodging and subsistence expenses from organizations determined by the Secretary of the Treasury to be tax exempt, as described in 26 U.S.C. 501(c)(3), if no Government payment or reimbursement is made for the expense, and the acceptance of the payment is consistent with the Board policy of eliminating any conflict of interest or appearance of a conflict of interest with his or her official duties and responsibilities.

(3) Activities undertaken in a private capacity. (i) The Board discourages employees from receiving honoraria or other compensation for teaching, writing, lecturing, or speechmaking on matters relating to Board business, even though the activity is not performed as an official duty. An employee may not receive any such compensation unless, before engaging in the activity, a written request is submitted to and approved by the Executive Director (or designee), after the requestor consults with the Ethics Officer. The request should set forth the facts relating to the amount of compensation, its reasonableness (taking into account the amount of compensation paid to others under similar circumstances), and reasons why its acceptance would be consistent with the Board's policy to eliminate any conflict of interest or appearance of a conflict of interest with the employee's official duties and responsibilities.

(ii) Pursuant to paragraph (3)(i) above, employees may accept payment for travel, lodging, and subsistence expenses actually incurred from the person or group sponsoring an activity which was determined not to be an official duty, if the payment is reasonable in amount and is otherwise consistent with the Board's policy to eliminate any conflict of interest or appearance of a conflict of interest with the official duties and responsibilities of the employee.

(4) Reporting requirements. All employees receiving compensation or reimbursement for expenses for teaching, writing, lecturing, or speechmaking devoted to the responsibilities, programs of activities of the Board or drawing upon official data or ideas which have not been made public, shall immediately submit a written report to the Executive Director stating the amounts paid and by whom, unless this information was previously provided to that official. In addition, the employee may be required by the Executive Director to furnish other relevant information concerning these payments.

(5) Other restrictions. (i) Under 46 Comp. Gen. 689 (1967), no reimbursement or donation may be made to the Board to cover the expenses of travel and subsistence of an employee on official business, unless specifically authorized by law.

(ii) Under 2 U.S.C. 441i, appointed officials are prohibited from receiving honorariums of more than $2,000 for any appearance, speech, or article, and from receiving honorariums aggregating more than $25,000 in any calendar year.

(e) Board employees are prohibited from official attendance at segregated meetings. They should not participate in conferences or speak before audiences where any racial group has been segregated or excluded from the meeting, any of the facilities, the conferences, or from membership in the group.

§ 1633.39 Gambling, betting and lotteries.

While on Government-owned or leased property or while on duty for the Government, an employee shall not participate in any form of gambling, betting, lotteries, or the sending of chain letters, even if such activities are in support of a worthy cause.

§ 1633.40 Use of intoxicants.

Employees must refrain from using intoxicants habitually to excess or in any way which adversely affects their work performance (5 U.S.C. 7352).

§ 1633.41 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. A "just financial obligation," as used in this section, means one acknowledged by the employee; reduced to judgment by a court; or, in the case of taxes, a final administrative determination confirmed by notice of a tax lien issued by a governmental agency, Federal, State, or local. "In a proper and timely manner," as used in this section, means in a manner which the Board determines does not under the circumstances, reflect adversely on the Board as his employer. In the event of dispute between an employeee and an alleged creditor, this section does not require the Board to determine the validity or amount of the disputed debt.

§ 1633.42 Lending or borrowing money.

Employees shall neither directly nor indirectly, lend to or borrow from other employees substantial sums of money. In negotiating loans from authorized sources, such as credit unions, welfare associations, commercial or private banking institutions, etc., if the transaction involves the signature of one or more endorsers or comakers, the borrower must not in any instance solicit, or permit to be affixed to any instrument as endorser or comaker, the signature of any Board employee who is under his or her supervision.

§ 1633.43 Use of Federal property.

Employees may not directly or indirectly use or allow the use of Federal property of any kind for other than officially approved activities. They also have a positive responsibility to protect and conserve all Federal property, including equipment and supplies, which is entrusted or issued to them.

§ 1633.44 Care of documents.

The care of Government documents is a Federal requirement which is regulated by legislation. All records and documents in the custody of employees are in their custody for official purposes only. It is unlawful to remove or conceal, alter, mutilate, obliterate, or destroy records or documents or to remove or attempt to remove them from official custody with the intent of performing any of the above actions (18 U.S.C. 2071). Employees must not remove records and documents from official files without approval from proper authority. Working papers, copies of reports and other official records and documents shall be promptly disposed of when no longer needed for official purposes. Disposal or destruction of records and documents is to be made in accordance with established requirements.

§ 1633.45 Use of Government cars.

Employees are prohibited from using Government cars for other than official purposes. Use of such cars for transportation of employees between their domiciles and places of employment can only be justified where affirmatively authorized by statute, as in 31 U.S.C. 1343 and 1344.

§ 1633.46 Disclosure of information to the public.

Employees may not disclose official information which has not been made available to the general public without either appropriate general or specific authority.

§ 1633.47 Personal communications.

Employees may not conduct personal business while on official duty. Personal use of telephones is restricted to reasonable need. See 41 CFR Part 201–38. Employees who receive personal mail at their office will advise addressors to stop sending such mail to the Board's address.

§ 1633.48 Soliciting, selling, and canvassing.

Except when authorized by the Board, and except as provided by § 1633.33 of this Part, employees are prohibited from soliciting, from making collections, from canvassing for the sale of any article, or from distributing literature or advertising matter in any space occupied by the Board.

§ 1633.49 Influencing legislation or petitioning Congress.

Employees are prohibited from using Government time, money, or property (as, for example, through sending telegrams or letters) to influence a Member of Congress to favor or oppose any legislation. This prohibition does not apply to the official handling through proper channels of matters relating to legislation affecting the Board (18 U.S.C. 1913), or to the rights of employees in their private capacities to petition Members of Congress either individually or collectively or to furnish information to any committee or member of either House of Congress (5 U.S.C. 7102).

§ 1633.50 Civil Service examination processes.

Appointment and future advancement in the Federal career service are based on the important principle of individual merit and qualifications. The selection and merit competitive processes are protected by the Civil Service statutory provisions, 5 U.S.C. Chapter 33, and the Office of Personnel Management (OPM) regulations. Employees shall not, either directly or indirectly:

(a) Intentionally make a false statement or practice any deception or fraud in examination or appointment;

(b) Induce persons to withdraw from competition for competitive service positions;

(c) Engage in any improper activity with respect to the taking of Civil Service examinations and examination ratings; or

(d) Obstruct the right of any person to take examinations according to OPM rules and regulations. See 18 U.S.C. 1917 and 5 CFR 735.210(j).

§ 1633.51 Falsification of official records.

Employees shall avoid making false, misleading, or ambiguous statements, deliberately or willfully, whether verbal or written, in connection with any matter of official interest. Some of these matters of official interest are: transactions with the public, other Federal agencies or fellow employees; application forms and other forms which serve as a basis for appointment, reassignment, promotion or other personnel actions; vouchers; leave records; work reports of any nature or accounts of any kind; affidavits; entry or record of any matter relating to or connected with the employee's duties; and report of any moneys or securities received, held or paid to, for or on behalf of the United States. See 18 U.S.C. 1001 and 5 CFR 735.210(k).

§ 1633.52 Miscellaneous statutory provisions.

The attention of every employee is directed to the statutes relating to conduct listed below:

(a) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643) and (3) embezzlement of the money or property of another person in the

possession of an employee by reason of his employment (18 U.S.C. 654).

(b) House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, the "Code of Ethics for Government Service" (5 U.S.C. 7301 note).

(c) Section 8477 of Title 5, U.S.C. which describes fiduciary responsibilities, liability, and penalties.

(d) Chapter 11 of Title 18, U.S.C. relating to bribery, graft, and conflicts of interest as appropriate to the employees concerned.

(e) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(f) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(g) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(h) The prohibitions against the employment of a member of a Communist organization (50 U.S.C. 784).

(i) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(j) The prohibition against Federal employment of any person convicted of a felony in furtherance of, or while participating in, a riot or civil disorder (5 U.S.C. 7313).

(k) The tax imposed on certain employees (e.g., Presidential appointees, employees excepted under Schedule C, employees whose compensation is equal to or greater than that for GS–16, or executive assistants or secretaries to any of the foregoing) who knowingly engage in self-dealing with a private foundation (26 U.S.C. 4941, 4946). "Self-dealing" is defined in the statute to include certain transactions involving an employee's receipt of compensation or other benefits such as a loan, or reimbursement for travel or other expenses from, or his sale to or purchase of property from, a private foundation.

(l) The prohibition against a public official appointing or promoting a relative, or advocating such an appointment or promotion (5 U.S.C. 3110).

§ 1633.53 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the government.

§ 1633.54 Insurrection.

Employees may be disqualified for employment for knowingly supporting or advocating the violent overthrow of our constitutional form of government.

§ 1633.55 Strikes.

Employees shall not strike against the Government (5 U.S.C. 7311).

§ 1633.56 Purchase of Government property.

Employees are prohibited from either directly or indirectly, bidding or purchasing at any sale of Government property under the direction of or incident to the functions of the Board. Government property under the control of the Board shall not be sold to a Government employee, either directly or indirectly, unless a properly authorized representative of the office disposing of the property has determined that the sale is in the best interest of the Government. Before purchasing any Government property from any agency of the Government, either directly or indirectly, employees of the Board shall make known to the disposing agency that they are such employees and shall be governed by the disposing agency's rules relating to sales to Government employees.

Statement of Employment and Financial Interests

§ 1633.70 Employees required to submit confidential statements.

Except as provided in § 1633.72, statements of employment and financial interests will be filed by the following employees:

(a) Those classified at GS/GM–13–15 under 5 U.S.C. 5332, or at a comparable pay level under another authority, who are in positions the incumbents of which are responsible for making a Government decision or taking a Government action in regard to:

(1) Contracting or procurement;

(2) Regulating or auditing private or other non-Federal enterprise; or

(3) Other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise.

(b) All other positions classified at GS/GM–13–15 under 5 U.S.C. 5332, or at a comparable pay level under another authority. The Executive Director has determined that all such positions have duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflict of interest situation and carry out the purpose of law, executive order, 5 CFR Part 735, and this Part.

(c) Those classified below GS–13 under 5 U.S.C. 5332, or at a comparable pay level under other authority, who are in positions which otherwise meet the criteria in paragraphs (b) and (c) of this section, but only when the inclusion of the positions in an appendix to this Part has been specifically justified by the Executive Director in writing to the Office of Personnel Management as an exception that is essential to protect the integrity of the Government and avoid employee involvement in a possible conflict of interest situation.

§ 1633.71 Employee's complaint on filing requirement.

An employee shall have, in conformity with the grievance procedures prescribed by the Board, an opportunity for review of a complaint that his or her position has been improperly determined to be one requiring the submission of a statement of employment and financial interests.

§ 1633.72 Exceptions.

(a) Employees in positions that meet the criteria in paragraph (b) of § 1633.70 may be excluded from the reporting requirement when the Executive Director determines that:

(1) The duties of a position are such that the likelihood of the incumbent's involvement in a conflict of interest situation is remote; or

(2) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent, or the inconsequential effect on the integrity of the Government.

(b) A statement of employment and financial interests is not required when the employee is required to file a report pursuant to 5 CFR Part 734.

§ 1633.73 Form and content of statements.

The statements of employment and financial interests required under this subpart for use by employees and special Government employees shall contain, as a minimum, the information required by the formats prescribed by the Office of Personnel Management (OPM). Such Board forms shall not include questions that go beyond, or are in greater detail than, those included in OPM formats without the approval of OPM.

§ 1633.74 Time and place for submission of employees' statements.

Each employee required to submit a statement of employment and financial interests shall submit that statement to the Ethics Officer not later than:

(a) Thirty days after the effective date of the regulations in this Part if employed on or before that effective date; or

(b) Thirty days after entrance on duty.

§ 1633.75 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of May 15 each year, except when OPM authorizes a different date. Complete updated statements will be filed annually; reporting a negative or "no change" statement is not allowed. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflict of interest provisions of 18 U.S.C. 208, or Subpart B of 5 CFR Part 735 or this part.

§ 1633.76 Interests of employees' relatives.

For purposes of completing the statements of employment and financial interests, the interests of a spouse and dependent children are to be considered interests of the employee.

§ 1633.77 Information not known by employees.

If any information required to be included in a statement of employment and financial interests or a supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit the information on his or her behalf, unless the trust is a Qualified Trust meeting the requirements of Subpart D of 5 CFR Part 734. If the trust is a Qualified Trust pursuant to Subpart D of 5 CFR Part 734, then those regulations control as to what information must be submitted by the trustee.

§ 1633.78 Information excluded.

The regulations in this Part do not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purposes of the regulations in this part, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

§ 1633.79 Review of statements.

(a) Board employees will file their statements with the Board's Ethics Officer for his review. The Ethics Officer will, in turn, submit the statements to the supervisor of each submitting employee. The supervisor shall sign and date the statement and indicate that he or she has reviewed such statement. The system of review shall be designed to disclose conflicts of interest or apparent conflicts of interest on the part of employees. If information from the statements submitted or from other sources indicates a conflict of interest or an apparent conflict of interest, the employee concerned shall be given an opportunity to explain the conflict or apparent conflict. The Ethics Officer shall report all cases to the Executive Director for decision. The Ethics Officer will file with the Executive Director his statement, which will be reviewed by the Executive Director or his designee.

(b) The Ethics Officer will review the statement of the Executive Director and shall advise the Executive Director of any conflict or appearance of conflict or of any failure to report. If the Executive Director fails to cooperate in the resolution of the conflict or appearance of conflict or continues to fail to file a report after being notified of the failure, the Ethics Officer will report the matter to the Director, Office of Government Ethics.

§ 1633.80 Confidentiality of employees' statements.

Statements of employment and financial interests, and supplementary statements covered by §§ 1633.70–1633.79 are confidential except as to appropriate reviewing officials. Employees reviewing statements in connection with their official duties are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this Part. Information from a statement may not be disclosed except as OPM or the Board may determine for good cause shown.

§ 1633.81 Employees required to submit public statements.

All personnel paid at a level of the Executive Schedule in Subchapter II of Chapter 53 of Title 5, United States Code and all persons paid at a level of the Senior Executive Service set by the President in accordance with Subchapter VIII of Chapter 53 of Title 5, United States Code, must file a statement of financial interests in accordance with section 202 of the Ethics in Government Act of 1978, as amended, and Part 734 of Title 5 of the Code of Federal Regulations. These statements are available to the public.

§ 1633.82 Effect of employees' statements on other requirements.

The statements of employment and financial interests and supplementary statements required of employees under the regulations in this Part are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit the employee or any other person to participate in the matter in which the employee's or the other person's participation is prohibited by law, order, or regulation.

§ 1633.83 Advisory service.

(a) An employee may obtain advice and guidance on questions of conflict of interest covered by these regulations from the Ethics Officer.

(b) If the Ethics Officer determines that there is a conflict of interest, or the appearance of a conflict of interest, on the part of an employee, he or she shall bring this to the attention of the employee. If the employee fails to cooperate in the resolution of the conflict, or the appearance of a conflict, the Ethics Officer shall bring the matter to the attention of the Executive Director. If the Ethics Officer determines that there is a conflict of interest, or the appearance of a conflict of interest on the part of the Executive Director, he or she shall bring this to the attention of the Executive Director. If the Executive Director fails to cooperate in the resolution of the conflict, or the appearance of a conflict, the Ethics Officer will report the matter to the attention of the Director, Office of Government Ethics.

Subpart B—Preventing Conflicts of Interest on the Part of Special Government Employees of the Board

General Provisions

§ 1633.200 Purpose.

This subpart implements the provisions of Executive Orders 11222 and 12565 dated May 8, 1965, relating to special Government employees of the Board.

§ 1633.201 Scope.

This subpart relates basically to special Government employees who are consultants and advisers, including experts. Submission of financial statements by special Government

employees other than advisers, consultants, and experts is waived except where statements would otherwise be required under § 1633.70; nevertheless, such special Government employees are subject to the substantive standards of conduct of this Subpart B. Employees who are employed for more than 130 days are treated as regular employees and are subject to the provisions of Subpart A of this Part.

§ 1633.202 Policy.

It is the Board's policy in issuing the instructions in this Part to adhere rigidly to the policy that every citizen is entitled to have complete confidence in the integrity of his Government and that each individual officer, employee, or adviser of the Government must help to earn and must honor that trust by the individual's own integrity and conduct in all official actions.

General Rules of Conduct Applicable to Special Government Employees

§ 1633.203 Applicability of Subpart A of this Part.

In addition to complying with §§ 1633.204–1633.209, special Government employees shall familiarize themselves with the rules of conduct contained in Subpart A of this Part so they can be guided by the principles contained in those rules insofar as their employment with the Board is concerned.

§ 1633.204 Use of Government employment.

A special Government employee shall not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

§ 1633.205 Use of inside information.

A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. "Inside information" as used in this section means information obtained under Government authority which has not become part of the body of public information.

§ 1633.206 Teaching, lecturing, and writing.

Special Government employees may teach, lecture, or write providing such action is not prohibited by law, Executive Order 11222, or the regulations in this Part. However, a special Government employee shall not, either with or without compensation, engage in teaching, lecturing, or writing that depends upon information obtained as a result of his employment with the Board, except when that information has been made available to the general public or will be made available on request, or when the official to whom he or she reports receives written authorization from the Executive Director for the use of non-public information on the basis that the use is in the public interest.

§ 1633.207 Coercion.

A special Government employee shall not use his or her Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he or she has family, business or financial ties.

§ 1633.208 Gifts, entertainment, and favors.

A special Government employee, while so employed or in connection with employment, shall not receive or solicit from a person having business with the Board anything of value as a gift, gratuity, loan, entertainment, or favor, personally or for another person, particularly one with whom the employee has family, business or financial ties. Exceptions to this are the same exceptions contained in Subpart A of this part for regular employees of the Board.

§ 1633.209 Miscellaneous statutory provisions.

The statutory provisions relating to Board employees referred to in §§ 1633.31, 1633.32, 1633.34, 1633.40, 1633.44, 1633.45, 1633.48, 1633.51, 1633.52, 1633.53, and 1633.55 apply to special Government employees when serving in their official capacities with the Board.

Conflict of Interest Statutes

§ 1633.210 Applicability of 18 U.S.C. 203 and 205.

(a) The prohibitions in 18 U.S.C. 203 and 205 applicable to special Government employees are less stringent than those which affect regular employees, i.e., those who are appointed for more than 130 days a year. These two sections in general operate to preclude a regular Government employee, except in the discharge of his or her official duties, from representing another person before a department, agency or court, whether with or without compensation, in a matter in which the United States is a party or has a direct and substantial interest. However, the same two sections impose only the following major resutrictions upon a special Government employee:

(1) The employee may not, except in the discharge of official duties, represent anyone else before a court or Government agency in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which the employee has at any time participated personally and substantially in the course of Government employment.

(2) The employee may not, except in the discharge of official duties, represent anyone else in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and which is pending before the agency he or she serves. However, this restraint is not applicable if the employee has served the agency no more than 60 days during the past 365. The employee is bound by the restraint, if applicable, regardless of whether the matter is one in which he or she has ever participated personally and substantially.

(b) These restrictions prohibit both paid and unpaid representation and apply to a special Government employee on the days when the employee does not serve the Government as well as on the days when the employee does.

(c) The rules to be followed by the Board to determine the duration of employment of special Government employees and other temporary employees in order to ascertain the application of these statutes are set forth in the Federal Personnel Manual.

(d) An employee who undertakes service with the Board and another department or agency shall inform each of the arrangements with the other.

(e) There may be situations where a consultant or adviser has a responsible position with a regular employer which requires personal participation in contract negotiations with the Board. In this situation, the consultant or adviser should participate in the negotiations for the employer only with the knowledge of a responsible Board official, i.e., the full-time official to whom the consultant or adviser reports. Prior to permitting such participation, the responsible Board official shall obtain the approval in writing of the Executive Director. See also paragraph (f)(1) of this section.

(f) Section 205 of title 18 of the United States Code, contains two exemptive provisions, which apply under § 203 as well.

(1) The first of these deals with a similar situation which may arise after a Government grant or contract has been negotiated. This provision in certain cases permits both the Government and the private employer of a special Government employee to benefit from performance of work under a grant or contract for which the employee would otherwise be disqualified because of participation in the matter for the Government or it is pending in an agency the employee has served more than 60 days in the past year. More particularly, the provision gives the head of a department or agency the power, notwithstanding any prohibition in either section 203 or section 205 of Title 18 of the United States Code, to allow a special Government employee to represent before such department or agency the regular employer or another person or organization in the performance of work under a grant or contract, if the national interest so requires. A written certification by the head of a department or agency concerned with the grant or contract to exempt the employee must be submitted for publication in the **Federal Register**. Where the Board is the agency concerned with the grant or contract, such written certification will be forwarded, through the General Counsel, to the Executive Director for the latter's signature. The exemption will not take effect until the certification is published in the **Federal Register**.

(2) The other exemptive provision requiring action permits a special Government employee to represent, with or without compensation, a parent, spouse, child, or person or estate for whom or which the employee serves as a fiduciary, but only with the approval of the official responsible for appointments to his or her position, and only if the matter involved is neither one in which the employee has participated personally or substantially nor one under the employee's official responsibility. The term "official responsibility" is defined in 18 U.S.C. 202 to mean, in substance, the direct administrative or operating authority to control Government action. For the Board, the "official responsible for appointments" for these purposes will be the Executive Director.

§ 1633.211 Applicability of 18 U.S.C. 207.

(a) Section 207 of Title 18 of the United States Code applies to individuals who have left Government service, including former special Government employees. Section 207(a) prevents a former employee or special Government employee from representing another person in connection with certain matters in which the employee participated personally and substantially on behalf of the Government. The matters are those particular matters involving a specific party or parties in which the United States is also a party or has a direct and substantial interest. In addition, section 207(b)(i) prevents a former employee or special Government employee, for a period of two years after employment has ceased, or responsibility in a particular area has ceased (if the two do not occur simultaneously) from appearing personally on behalf of another person in such matters before a court, department, or agency of the United States or the District of Columbia if the matters were within the area of his official responsibility at any time during the last year of Government service. Section 207(b)(ii) prevents a former employee who occupied a position designated as a Senior Employee (a position which involves significant decision making or supervisory responsibility) for a period of two years after his or her employment has ceased from appearing personally on behalf of another person before a court, department or agency of the United States or the District of Columbia in any matter that was pending under his official responsibility within a one year period prior to the termination of such responsibility or as to which he or she participated personally and substantially as an officer or employee. Section 207(c) prevents a former employee, who served more than sixty days in a given calendar year, and who occupied a position designated as a Senior Employee within one year after such employment has ceased, from acting as agent or attorney for anyone in any appearance or in any written communication before the agency in which he served as an officer or employee in connection with any proceeding pending before such agency. It should be noted that a consultant or adviser usually does not have "official responsibility."

(b) For the purposes of section 207 of Title 18 of the United States Code, the employment of a special Government employee ceases on the day the employee's appointment expires or is otherwise terminated, as distinguished from the day on which he or she last performs service. Accordingly, the appointment of an adviser or consultant should be terminated promptly as soon as it is determined that the services are no longer required. (See Appendix C of Chapter 735 of the Federal Personnel Manual.)

§ 1633.212 Applicability of 18 U.S.C. 208.

(a) Section 208 of Title 18 of the United States Code, bears on the activities of Government personnel, including special Government employees, in the course of their official duties. In general, it prevents an employee or special Government employee from participating as such in a particular matter in which, to his or her knowledge, the employee's spouse, minor child, partner, or a profit or nonprofit enterprise with which the employee is connected has a financial interest. However, section 208(b)(1) permits such an employee's agency to grant an ad hoc exemption if the interest is not so substantial as to affect the integrity of the services to be rendered. Insignificant interests may also be waived by a general rule or regulation (18 U.S.C. 208(b)(2)).

(b) The matters in which special Government employees are disqualified by section 208 of Title 18 of the United States Code are not limited to those involving a specific party or parties in which the United States is a party or has an interest, as in the case of sections 203, 205, and 207 of Title 18, of the United States Code. Section 208, therefore, undoubtedly extends to matters in addition to contracts, grants, judicial and quasi-judicial proceedings, and other matters of an adversary nature. Accordingly, a special Government employee should in general be disqualified from participating as such in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by section 208. However, the power of exemption may be exercised in this situation if the special Government employee renders advice of a general nature from which no preference or advantage over others might be gained by any particular person or organization. The power of exemption may, of course, be exercised also when the financial interests involved are minimal in value.

(c) Exemptions under section 208 of Title 18, of the United States Code may be made by general rule or regulation by the Executive Director.

Consultants and Advisers

§ 1633.220 Advice on rules of conduct and conflict of interest statutes.

If a special Government employee who is a consultant or adviser has doubt as to the ethics of any conduct falling within the standards of conduct and conflict of interest statutes, the employee should confer with the Ethics Officer of the Board.

§ 1633.221 Responsibility of the individual special Government employee.

Each person appointed as a special Government employee with the Board is responsible for:

(a) Becoming familiar with the contents of this part and the applicability of the conflict of interest statutes in the employee's particular case.

(b) Seeking advice and assistance in interpreting the laws and instructions in case of questions concerning them.

(c) Being alert to the possibility of conflicts of interest.

(d) Furnishing the Board with information concerning financial interests and keeping this information current.

Procedures To Be Followed Within the Board

§ 1633.230 Information and assistance to special Government employees and their supervisors.

Each special Government employee and each supervisor of a special Government employee will be given a copy of this part and will be required to become familiar with the conflict of interest laws and the provisions of the instructions applicable to him or her. If a special Government employee or prospective special Government employee or a supervisor desires assistance in interpreting the instructions or laws, the employee will be referred to the Ethics Officer.

§ 1633.231 Disclosure of financial interests.

(a) In order to carry out its responsibility to avoid the use of the services of special Government employees in situations in which violations of the conflict of interest laws or of the regulations in this part may occur, prior to initial employment and each reappointment thereafter, each special Government employee who is a consultant or adviser will be required to supply a statement of all other employment and the financial interests of the special Government employee which the Executive Director determines are relevant in the light of the duties the employee is to perform, including, but not limited to, the name of companies in which he or she has a significant financial interest, and the nature of such financial interest. Each statement of financial interests will be forwarded to the Board's Ethics Officer along with a statement of the duties which the proposed special Government employee will be assigned.

(b) The Board's Ethics Officer will review the statement of employment and financial interests in relationship to the duties to be performed and initially determine whether a conflict of interest exists. Accordingly, such statements must be kept current during the period the special Government employee is on the Government rolls. In any event, special Government employees who are employed intermittently for more than one calendar year shall file the statement as of May 15 of each year of such employment.

§ 1633.232 Service with other Federal agencies.

If a special Government employee is serving in other Federal agencies, he or she will be required to inform the Board and each of the agencies of his or her arrangements with the others so that appropriate administrative measures may be effected. Information on service with other Federal agencies will be submitted along with the statement of employment and financial interests and must be kept current while employed with the Board.

§ 1633.233 Resolution of cases involving a conflict or apparent conflict of interest.

When a situation arises which indicates a conflict of interest or apparent conflict of interest and the matter is not resolved, information about the situation will be reported by the Ethics Officer to the Executive Director. In any such situation, the special Government employee shall be provided an opportunity to explain the conflict or appearance of conflict.

§ 1633.234 Disciplinary and other remedial action.

A violation of the regulations in this part may be cause for appropriate disciplinary action, which may be in addition to any penalty prescribed by law, or other remedial action. In addition to disciplinary action, remedial action may include, but is not limited to:

(a) Recusal,

(b) Divestiture, resignation, or reassignment,

(c) A Qualified Trust established pursuant to Subpart D of 5 CFR Part 734. A special Government employee may avoid a violation of 18 U.S.C. 208(a) if he or she receives an advance written waiver pursuant to 18 U.S.C. 208(b).

§ 1633.235 Legal interpretation.

Whenever the Ethics Officer believes that a substantial legal question is raised by the employment of a particular special Government employee as a consultant or adviser, the Ethics Officer will consult with the Office of Government Ethics and the General Counsel, Office of Personnel Management, and will refer cases of potential criminal violations to the Department of Justice, Criminal Division, Office of Public Integrity, in order to ensure a consistent and authoritative interpretation of the law.

§ 1633.236 Safeguard of information.

Statements of employment and financial interests, and supplementary statements shall be held in confidence. Employees responsible for maintaining or reviewing the statements shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. Information from a statement may not be disclosed except as OPM or the Executive Director may determine for good cause shown.

Subpart C—Members of the Federal Retirement Thrift Investment Board

§ 1633.250 Purpose.

This subpart implements the provisions of Executive Orders 11222 and 12565 for Board Members.

Standards of Conduct

§ 1633.251 General.

(a) General Principles. A Board Member shall avoid any action, whether or not specifically prohibited by these standards of conduct, which might result in or create the appearance of:

(1) Giving preferential treatment to any person;

(2) Impeding Board efficiency or economy;

(3) Losing complete independence or impartiality;

(4) Making a Board decision outside official channels; or

(5) Affecting adversely the confidence of the public in the integrity of the Federal Retirement Thrift Investment Board.

(b) No Board Member shall use his or her position with the Board to coerce, or give the appearance of coercing, a person to provide financial benefit to him or herself or another person.

(c) No Member shall directly or indirectly use, appear or use, or allow the use of, his or her official position or information obtained as a result of his or her position to further any private interest, whether his or her own or that of another person.

(d) The conduct expected and required of a Member will often depend on the particular facts of each instance. Although detailed regulations that will cover every situation cannot practically be prescribed, the following rules provide guidance and illustrate the manner in which the general principles should be applied.

§ 1633.252 Conflicts of interest—financial.

(a) General principles. No Member may have a financial interest, direct or indirect, that conflicts substantially, or appears to conflict substantially, with his or her duties and responsibilities to the Federal Retirement Thrift Investment Board. For purposes of this code, a Member's interests include those of his or her spouse, his or her minor child or children, and other individuals related to the Member by blood who are residents of the Member's household.

(b) No Member shall enter into any contract with the Federal Retirement Thrift Investment Board or otherwise have an interest in any contract with the Federal Retirement Thrift Investment Board unless there has been a prior determination by the Ethics Officer that the interest is so minor that no realistic possibility of a conflict of interest, or the appearance of a conflict of interest, exists. No such determination is required, however, if:

(1) The interest results solely from the Member's ownership of publicly-traded securities of a corporation or the Member's service as a fiduciary of a trust or estate that owns such publicly traded securities; and

(2) Neither the contract, nor a transaction of which it is a part, requires action by the Board.

(c) No Member shall engage, directly or indirectly, in a financial transaction as a result of, or primarily relying on, confidential information obtained as a result of his or her position as Board Member.

(d) No Member shall sell or lease property to the Federal Retirement Thrift Investment Board.

(e) No Member shall recommend or suggest the employment of any private person offering services as a consultant, agent, attorney, expeditor or the like for the purpose of assisting a private party in any negotiations, transactions or other business with the Federal Retirement Thrift Investment Board.

(f) Section 203 of title 18, United States Code, prohibits any Member from soliciting or accepting any fee or other compensation for services rendered by him or herself or another person in representing any person other than the United States before any executive department, agency, court martial, officer or commission in relation to any proceeding or other particular matter involving a specific party or parties in which a Member has participated personally and substantially during his or her term.

(g) Section 208(a) of Title 18, United States Code, prohibits participation by any Member in any decision or other matter in which, to the Member's knowledge, he or she, any entity of which he or she is an employee, director, partner, or other fiduciary, or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest. Although this statute applies even though the interest is minimal, section 208(b) permits the application of section 208(a) to be waived, if it is properly determined that the interest is not so substantial as to be deemed likely to affect the integrity of the services which may be expected from a Member. Under Executive Order 11222, Part V, the waiver decision is made by the Chairman of the Board with respect to Members and is made by the President with respect to the Chairman of the Board.

§ 1633.253 Conflicts of interest—employment.

(a) General principles. No Member shall accept employment, compensation, payment of expense, or any other thing of monetary value under circumstances in which acceptance may result in, or create the appearance of, a conflict of interest.

(b) No Member shall engage in any activity for compensation, or accept any outside employment, or receive any salary or other thing of monetary value which is, directly or indirectly, a form of compensation from a private source for his or her services to the Federal Retirement Thrift Investment Board.

(c) Section 205 of Title 18, United States Code, prohibits any Member, as a special Government employee, from acting as agent or attorney in representing a private party before any department, agency, court, court-martial, officer, or commission in connection with any claim, proceeding or other particular matter involving a specific party or parties in which a Member has participated personally and substantially during his or her term.

(d) No Member shall use his or her official title, position, or authority in the endorsement or advertisement of a commercial product or service.

(e) Within the limitations imposed by this section, a Member may engage in teaching, lecturing, and writing. He or she shall not, however, receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance whose subject matter is devoted substantially to the responsibilities, programs, or operations of the Federal Retirement Thrift Investment Board, or which draws substantially on official data or ideas which have not become part of the body of public information.

(f) This section shall not apply if the Member has been granted a waiver under § 1633.252.

§ 1633.254 Conflicts of interest—gifts, entertainment, and favors.

(a) A Member, even though a special Government employee, while so employed or in connection with employment, shall not receive or solicit from a person having business with the Board anything of value as a gift, gratuity, loan, entertainment, or favor, personally or for another person, particularly one with whom the employee has family, business or financial ties. Exceptions to this are the same exceptions contained in Subpart A of this part for regular employees of the Board.

(b) The Constitution prohibits persons holding Federal office, such as Board Members, from accepting from foreign governments, except with the consent of the Congress, presents, emoluments, offices, or titles. The Congress has given its consent in 5 U.S.C. 7342 to the acceptance of certain specified gifts and decorations.

Ethical Conduct Advisory Services and Post-Employment Activities

§ 1633.255 Advisory service.

(a) A Member may obtain advice and guidance on questions of conflicts on interest covered by this code from the Ethics Officer.

(b) If the Ethics Officer determines that there is a conflict of interest, or the appearance of a conflict of interest, on the part of a Member, he or she shall bring this to the attention of the Member. If the matter is not resolved, the Ethics Officer will report the matter to the Director, Office of Government Ethics.

§ 1633.256 Post-employment activities.

Members of the Federal Retirement Thrift Investment Board are subject to the restrictions on the post-employment activities of special Government employees imposed by section 207 (a) and (b)(i) of Title 18, United States Code. These post-employment restrictions are set out in the Standards of Conduct for Board employees at §§ 1633.21 and 1633.211 of this title.

Statement of Employment and Financial Interests

§ 1633.257 Financial disclosure.

(a) Statement required. All members must annually file a financial disclosure

statement (SF 278) with the Ethics Officer pursuant to the Ethics in Government Act unless:

(1) The Member is beginning his or her first year of service on the Board, reasonably expects to work less than 60 days in the calendar year, and obtains a determination from the Director of the Office of Government Ethics to that effect; or

(2) The Member has completed one year of service on the Board and did not work more than 60 days in the preceding calendar year.

(b) Loss of exemption. Any Member who claimed an exemption from filing a financial disclosure report pursuant to paragraph (a) (1) and (2) of this section and who works more than 60 days in the affected calendar year must file the statement within 15 days of the date on which the Member works his or her 61st day.

(c) Reviewing statements. (1) Financial disclosure statements filed in accordance with the provisions of this section shall, within 60 days after the date of filing, be reviewed by the Ethics Officer who shall either approve the statement, or make an initial determination that a conflict or appearance thereof exists. If the Ethics Officer determines initially that a conflict or the appearance of a conflict exists, he or she shall inform the Member of his determination.

(2) If the Ethics Officer considers that additional information is needed to complete the statement or to allow an adequate review to be conducted, he or she shall request the reporting Member to furnish that information by a specified date.

(3) Whenever the Ethics Officer has reasonable cause to believe that a Member refuses to file a statement or refuses to report required information, he or she will report the matter to the Director, Office of Government Ethics.

(d) Custody of and public access to statements.

(1) Retention of statements. Each statement filed with the Ethics Officer shall be retained by him or her for a period of six years. After the six-year period, the statement shall be destroyed unless needed in connection with an investigation then pending.

(2) The financial disclosure statements filed by Members shall be available to the public.

[FR Doc. 88-29202, Filed 12-20-88; 8:45 am]
BILLING CODE 6760-01-M

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

9 CFR Part 202

Rules of Practice Governing Proceedings Under the Packers and Stockyards Act; Rules Applicable to Rate Proceedings

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: This action establishes procedures for handling rate proceedings under the Packers and Stockyards Act (7 U.S.C. 181, *et seq.*). These new sections, along with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes, 7 CFR Part 1, Subpart H, will be applicable to rate proceedings. Adoption of these rules of practice will provide procedures for conducting rate proceedings, thereby avoiding the necessity for motions adopting special rules of practice for rate proceedings on a case-by-case basis.

EFFECTIVE DATE: January 23, 1989. There is no such proceeding pending at this time and, if any such proceeding is instituted prior to the effective date of these rules, it will be handled in accordance with these rules.

FOR FURTHER INFORMATION CONTACT: Harold W. Davis, Director, Livestock Marketing Division, Packers and Stockyards Administration, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6951.

SUPPLEMENTARY INFORMATION: In October 1978 the Act was amended to reduce the Department's review of rates and charges at posted stockyards and it did not seem likely that rate proceedings would continue to be needed. Thus, the Rules of Practice Governing Rate Proceedings were revoked on December 14, 1979 (44 FR 72575). However, changing industry practices make it apparent that occasional rate proceedings will be required. Since the revocation, formal rate proceedings have been initiated and it has been necessary to adopt special rules of practice for these cases.

Adoption of these rules of practice will provide procedures for conducting rate proceedings, thereby avoiding the necessity for motions adopting special rules of practice for rate proceedings on a case-by-case basis.

Notice of proposed rulemaking and public participation are not required by law for these rules on the basis that they constitute "rules of agency . . . procedures, or practice" under 5 U.S.C. 553(b)(A).

Executive Order

Regulatory impact analysis is not required for this amendment because it has been determined not to be a "major" rule as defined by section 1(b) of E.O. 12291. It will not have an annual effect on the economy of $100 million or more, will not result in major increases in costs or prices for consumers, individual industries, Government agencies, or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This amendment has been determined not to have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

No information collection requirements are affected by these rules of practice.

List of Subjects in 9 CFR Part 202

Administrative practices and procedures, rate proceedings, reparation proceedings.

Accordingly 9 CFR Part 202 is amended as set forth below.

Done at Washington, DC, this 16th day of December 1988.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

PART 202—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE PACKERS AND STOCKYARDS ACT

1. The table of contents of Part 202 is amended by adding the following immediately after the heading:

Rules of Practice Applicable to Rate Proceedings

2. The authority citation of Part 202 is revised to read as follows:

Authority: 7 U.S.C. 228(a), 7 CFR 2.17(e), 2.56.

3. Part 202 is amended by adding a center heading and §§ 202.1 through 202.7.

Rules of Practice Applicable to Rate Proceedings

§ 202.1 Applicability of other rules.

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes, 7 CFR Part 1, Subpart H, are applicable to all rate proceedings under Sections 304, 305, 306, 307 and 310 of the Packers and Stockyards Act, 1921, as amended, 7 U.S.C. 205, 206, 207, 208 and 211, except insofar as those Rules are in conflict with any provision herein.

§ 202.2 Definitions.

As used in these rules:

(a) "Rate proceeding" means a proceeding involving the determination and prescription of any rate or charge made or proposed to be made for any stockyard service furnished at a stockyard by a stockyard owner or market agency, or a proceeding involving any rule, regulation or practice affecting any such rate or charge; and

(b) "Administrator" means the Administrator of the Packers and Stockyards Administration (P&SA), or any officer or employee of P&SA to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act for the Administrator.

§ 202.3 Institution of proceedings.

(a) *Informal complaint.* Any interested person desiring to complain of the lawfulness of any rate or charge made or proposed to be made for any stockyard service furnished at a stockyard by a stockyard owner or market agency, or rule, regulation or practice affecting any such rate or charge, may file an informal complaint with the Administrator.

(b) *Investigation.* If there appears to be any reasonable ground for doing so, the Administrator will investigate the matter complained of. If the Administrator reasonably believes that there are not sufficient facts to form the basis for further proceeding, the matter may be dropped. If it is dropped, the person filing the informal complaint will be informed.

(c) *Status of person filing.* A person filing an informal complaint will be a party to a rate proceeding if the Administrator files such person's informal complaint as a formal complaint, or if the Judge permits such person to intervene upon written application.

(d) *Formal complaint.* A rate proceeding may be instituted only upon filing of a formal complaint by the Administrator. A formal complaint may be filed on the initiative of the Administrator, or on the basis of an informal complaint, or by filing the informal complaint as a formal complaint. A formal complaint filed by the Administrator, or a summary thereof, will be published in the **Federal Register**, together with notice of the time by which, and the place where, any interested person may file a written request to be heard.

§ 202.4 Answer and reply.

Respondent is not required to file an answer. If an answer is filed, complainant is not required to file a reply.

§ 202.5 Hearing.

The hearing will be oral unless all parties waive oral hearing. It will be written if not oral. Notice of the date, time and place of oral hearing, or of the date and place for filing of written submissions in a written hearing, will be served on the Administrator and the respondent, and on such other persons as have requested in writing to be heard.

§ 202.6 Taking no position on the merits.

The proceeding may be instituted by filing of the informal complaint as a formal complaint, and the Administrator may take no position on the merits of the case.

§ 202.7 Modification or vacation of final order.

(a) *Informal petition.* Any interested person may file an informal petition to modify or vacate a final order at any time. Any such petition must be filed with the Administrator, be based on matters arising after the issuance of the final order, and set forth such matters, and the reasons or conditions relied on, with such particularity as is practicable. Any such informal petition will be handled as otherwise provided for an informal complaint.

(b) *Formal motion.* A final order may be modified or vacated at any time only upon filing of a formal motion by the Administrator. Such a motion may be filed on the initiative of the Administrator, on the basis of an informal petition, or by filing of an informal petition as a formal motion.

(c) *Publication.* If the modification or vacation sought would involve an increase of a rate or charge lawfully prescribed by the Secretary, or involve a rate or charge in addition to what is specified in the final order, or involve a regulation or practice so affecting such a rate or charge, the formal motion, or a summary thereof, will be published in the **Federal Register**, together with notice of the place, and the time by which, any interested person may file a written request to be heard.

(d) *Proceedings.* Proceedings upon such a formal motion will be as otherwise provided for a formal complaint.

[FR Doc. 88-29215 Filed 12-20-88; 8:45 am]
BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 309

[Docket No. 60969-7158]

Financial Assistance Requirements; Project Modification

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Affirmation of interim rule.

SUMMARY: This rule adopts as final the Economic Development Administration's (EDA) interim regulations at 13 CFR 309.26—"*Project Modification.*" This rule provides standards and states that EDA will not allow project modification which would constitute a change of scope.

EFFECTIVE DATE: October 20, 1986.

FOR FURTHER INFORMATION CONTACT: James F. Marten, Deputy Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Room 7001, Washington, DC (202) 377-5441.

SUPPLEMENTARY INFORMATION: EDA published an interim rule for project modification on October 20, 1986 (51 FR 37175) and allowed interested persons 60 days to comment. No comments were received. EDA is adopting as a final rule, 13 CFR Part 309, "*General Requirements for Financial Assistance*", § 309.26 "*Project Modification.*"

Under Executive Order 12291 the Department must judge whether a regulation is "major" within the meaning of section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, neither a preliminary nor final Regulatory Impact Analysis has to be or will be prepared.

This final rule is exempt from all requirements of 5 U.S.C. 553 including notice and opportunity to comment and delayed effective date because it relates to public property, loans, grants, benefits and contracts.

No other law requires that notice and opportunity for comment be given for the rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget that dispensing with notice and opportunity for comment is consistent with the Administrative Procedure Act (APA) and all other relevant laws.

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

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96-511).

List of Subjects in 13 CFR Part 309

Community development, Grant programs—community development, Loan programs—community development, Penalties.

PART 309—[AMENDED]

Under authority of section 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); sec. 1-105, Department of Commerce Organization Order 10-4, as amended (40 FR 56702), as amended, the interim regulation amending 13 CFR Part 309 which was published October 20, 1986 (51 FR 37175) is adopted as final without changes.

Date: December 9, 1988.

Orson G. Swindle, III,

Assistant Secretary for Economic Development.

[FR Doc. 88-29229 Filed 12-20-88; 8:45 am]

BILLING CODE 3510-24-M

13 CFR Part 314

[Docket No. 40333-7161]

Property Management Standards; Real Property

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Affirmation of interim rule.

SUMMARY: This rule adopts as final the Economic Development Administration's (EDA) interim regulations at 13 CFR 314.5—*"Mortgages" without change.* This rule provides that funds obtained from loans secured by mortgages on property which has been financed by an EDA grant shall be provided only to the grantee for use on the project which is being mortgaged, or for working capital purposes relating to that project. This is consistent with and clarifies EDA regulations concerning waiver of the prohibition against placing mortgages on property improved by an EDA grant.

EFFECTIVE DATE: May 30, 1984.

FOR FURTHER INFORMATION CONTACT: James F. Marten, Deputy Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street, between Pennsylvania and Constitution Avenues, NW., Room 7001, Washington, DC 20230, (202) 377-5441.

SUPPLEMENTARY INFORMATION: EDA published this interim rule regarding mortgage waivers on May 20, 1984 (49 FR 22463) and allowed interested persons 60 days to comment. No comments were received.

Under Executive Order 12291 the Department must judge whether a regulation is "major" within the meaning of section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, neither a preliminary nor final Regulatory Impact Analysis has to be or will be prepared.

This final rule is exempt from all requirements of 5 U.S.C. 553 including notice and opportunity to comment and delayed effective date because it relates to public property, loans, grants, benefits and contracts.

No other law requires that notice and opportunity for comment be given for the rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget, that dispensing with notice and opportunity for comment is consistent with the Administrative Procedure Act (APA) and all other relevant laws.

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

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96-511).

List of Subjects in 13 CFR Part 314

Economic development, Grant programs—economic development, Government property management, Public works grants.

PART 314—[AMENDED]

Under authority of section 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); sec. 1-105, Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended), the interim regulation amending 13 CFR Part 314 which was published May 30, 1984 (49 FR 22463) is adopted as final without changes.

Date: December 9, 1988.

Orson G. Swindle, III,

Assistant Secretary for Economic Development.

[FR Doc. 88-29230 Filed 12-20-88; 8:45 am]

BILLING CODE 3510-24-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 316

49 CFR Part 89

[OST Docket No. 45431; Amdt 316-1; Amdt 89-1]

Collection of Claims Owed the United States

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Final rule.

SUMMARY: This rule revises 49 CFR Part 89, Implementation of Federal Claims Collection Act of 1966, by adding procedures that implement the Debt Collection Act of 1982 for the Department of Transportation (DOT). This rule provides DOT with formal procedures for the collection of claims owed the United States arising from activities under the jurisdiction of the Department. No comments were received.

EFFECTIVE DATE: This rule is effective January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Paul B. Larsen, Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Room 10102, Washington, DC 20590, (202) 366–9161.

SUPPLEMENTARY INFORMATION: Congress adopted the Debt Collection Act of 1982 to increase the Government-wide efforts to collect debts owed the United States and to provide additional procedures for the collection of debts. The Act applies to debts owed the Department of Transportation. The Department has previously implemented the Debt Collection Act with regard to those functions previously performed by the Civil Aeronautics Board, see 14 CFR Part 316. The Department now will apply the debt collection procedures under 14 CFR Part 316 (50 FR 2428, January 16, 1985) to the entire Department. Also, a new provision is being added under which debts over 90 days delinquent may be turned over to professional debt collection contractors. The use of debt collection agencys is specifically provided for under section 13 (b) of the Debt Collection Act which added section 3(f) to the Federal Claims Collection Act (see 31 U.S.C. 3718).

The former CAB debt collection rules, 14 CFR Part 316, will be removed. They will be consolidated with existing DOT rules in 49 CFR Part 89. Subject to the qualifications stated in § 89.3 this rule applies to all claims under the Federal Claims Collection Act which are owed the Department. DOT operating elements, may, however, use different procedures for the collection of fines and penalties to the extent that such different procedures are allowed by applicable laws and regulations.

The provisions on interest, late payment penalties and collection charges and on collection by administrative offset will not apply to debts which other United States government agencies, state governments, or units of general local government owe the Department (see 31 U.S.C. 3701(c)) (however other statutory or common law may provide such authority). Neither will they apply to recovery of debts owed by current or former employees of the United States governed by 5 U.S.C. 5514. However they will apply to the debts of former employees not receiving the types of pay listed in that section.

DOT will, whenever feasible, collect claims by means of administrative offset against obligations of the United States to the debtor. DOT can refer claims to the Internal Revenue Service for collection by a reduction of tax refunds.

The notice of proposed rulemaking on the collection of claims owed the United States, 53 FR 4180, did not result in any comments.

Regulatory Process Matters

This regulation is classified as a "non-major" regulation under Executive Order 12291. This regulation has been evaluated under the Department of Transportation's Regulatory Policies and Procedures; the regulation is not significant under those procedures and its economic impact is expected to be so minimal that a regulatory evaluation is not warranted.

Regulatory Flexibility Act Determination

It has been certified that this regulation would not have a significant impact on a substantial number of small entities. The economic impact of the rule is expected to be minimal. In this regard, measures would be triggered only by a failure to pay debts owed the United States and, therefore, are avoidable, This Department has no reason to believe that small entities, in particular, would be seriously affected by this rule Environmental Impact

This regulation does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321, *et. seq.*) because it is not a major Federal action significantly affecting the quality of the human environment.

Federalism

The Department has determined that this rule does not involve sufficient Federalism impacts to warrant the preparation of a Federalism assessment.

List of Subjects

14 CFR Part 316

Claims, Penalties, Reporting and Recordkeeping Requirements.

49 CFR Part 89

Administrative practice and procedure, Claims Collection.

Accordingly, the Department of Transportation amends 14 CFR Chapter 11 and 49 CFR Subtitle A as set forth below:

PART 316—[REMOVED]

1. 14 CFR Part 316 is removed.

2. 49 CFR Part 89 is revised to read as follows:

PART 89—IMPLEMENTATION OF THE FEDERAL CLAIMS COLLECTION ACT

Subpart A—General

Sec.

Subpart B—Collection of Claims Section

Authority. Pub. L. 89–508, July 19, 1966, 80 Stat. 308 (31 U.S.C. 3701, 3711; Pub. L. 97–365, secs. 3, 10, 11, 13(b), Oct. 25, 1982, 96 Stat. 1749, 1754, 1755, 1757 (31 U.S.C. 3701–3720A); Pub. L. 98–167, Nov. 29, 1983, 97 Stat. 1104 (31 U.S.C. 3718); Pub. L. 99–578, Oct. 28, 1986, 100 Stat. 3305 (31 U.S.C. 3718).

Subpart A—General

§ 89.1 Purpose.

This part implements the Federal Claims Collection Act of 1966, 31 U.S.C. 3701–3720 A, as amended primarily by the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749) and the Debt Collection Amendments of 1986 (Pub. L. 99–578, 100 Stat. 3305). It supplements the Federal Claims Collection Standards (FCCS), 4 CFR Parts 101–105, issued jointly by the Comptroller General of the United States and the Attorney General of the United States under 31 U.S.C. 3711(e)(2). Pursuant to the Federal Claims Collection Act, as amended, and the FCCS, this part sets forth procedures by which the Department of Transportation (DOT) and its operating elements (see 49 CFR 1.3) through designated officials:

(a) Collect claims owed to the United States arising from activities under its jurisdiction;

(b) Determine and collect interest and other charges on those claims;

(c) Compromise claims; and

(d) Refer unpaid claims for litigation.

§ 89.3 Applicability.

(a) The part applies to collection of all claims due the United States under the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 and the Debt Collection Amendments of 1986 (Pub. L. 99–578), arising from activities under the jurisdiction of DOT including amounts due the United States from fees, overpayments, fines, civil penalties, loans, damages, interest, and other sources.

(b) This part does not apply to collection, settlement or compromise of debts owed the United States pursuant to authority other than Title 31, Chapter 37, Subchapter II: for example, application of this part to the enforcement of contracts under 46 U.S.C. 1117, delegated to the DOT Maritime Administration, is not required.

(c) Section 89.23 (interest, late payment penalties, and collection charges) and § 89.25 (collection by administrative offset) of this part do not apply to debts which other United States government agencies or state governments or units of general local government owe the Department (see 31 U.S.C. 3701(c)); however, other statutory or common law may provide legal authority. Neither does the proposed rule apply to recovery of debts owed by current or former employees of the United States governed by 5 U.S.C. 5514.

(d) Claims arising out of contracts that contain specific provisions relating to claims are governed by those specific provisions to the extent that those provisions comply with existing law and with 4 CFR Chapter II.

(e) As used in this part, the terms debt and claims are interchangeable and have the meaning defined in 4 CFR 101.2(a). A debtor's liability arising out of a particular incident or adjudication exclusive of interest, administrative costs, and late payment penalties, is a single claim.

(f) Except as provided in paragraphs (b), (c) and (d) of this section the provisions of this part shall apply to the collection of all debts and claims owed to any DOT operating element. A claim arising from the assessment of civil penalty or fine is not subject to the procedures of this subpart until the claim has been reduced to a liquidated debt by a signed settlement agreement, a court order or judgment, or a final administrative determination.

§ 89.5 Delegations of authority.

The functions, powers, and duties of the Secretary of Transportation to attempt collection of claims, to compromise claims of the United States not exceeding $20,000 and to suspend and terminate action to collect such claims are delegated to:

(a) The Assistant Secretary for Administration with respect to claims arising out of the activities of, or referred to, the Office of the Secretary; and

(b) The heads of other DOT operating elements with respect to claims arising out of the activities of, or referred to, their organizations.

§ 89.7 Exceptions to delegated authority.

The authority delegated under § 89.5 does not apply to any claim:

(a) As to which there is an indication of (1) fraud; (2) the presentation of a false claim; or (3) misrepresentation on the part of the debtor or any other party having an interest in the claim;

(b) Based on tax statutes; or

(c) Arising from an exception made by the General Accounting Office in the account of an accountable officer.

§ 89.9 Redelegation.

Each officer to whom authority is delegated under § 89.5 may redelegate and authorize successive redelegations of the authority within the organization under his or her jurisdiction.

§ 89.11 Standards for exercise of delegated authority.

The authority delegated under § 89.5 shall be exercised in accordance with the standards for the collection and compromise of claims and for the suspension and termination of action to collect claims promulgated by the United States General Accounting Office and the United States Department of Justice, and published at 4 CFR Chapter II, as those standards may be amended.

§ 89.13 Documentary evidence of compromise.

A compromise of any claim is not final or binding on the United States unless it is in writing, signed by an officer or employee authorized to compromise that claim.

§ 89.15 Regulations, reports, and supporting documentation.

(a) Each officer to whom authority is delegated under § 89.5 may promulgate regulations for the exercise of that authority within his or her organization. These regulations shall be revised, as necessary, to conform to any amendments to this part.

(b) Each officer to whom authority is delegated under § 89.5 shall furnish the following information to the Assistant Secretary for Administration:

(1) A copy of each redelegation of that authority.

(2) A semiannual report listing those claims compromised or with respect to which collection action has been suspended or terminated, specifying the name of the debtors, the amount of the claim, the nature of the claim, the type of action taken, and the general basis for the action taken.

(3) A copy of any implementing regulations governing the exercise of the authority delegated under § 89.5, and any amendments to those regulations.

(c) Each officer or employee to whom the Secretary's authority has been delegated or redelegated, before exercising such authority, shall acquire sufficient documentation to demonstrate that the action taken is in the best interests of the United States. This documentation will be retained with and treated as part of the file concerning the debt.

(d) The failure of any officer or employee to comply with this section does not limit or impair his or her exercise of authority.

Subpart B—Collection of Claims

§ 89.21 Administrative collection.

Except as provided differently by the DOT operating elements pursuant to § 89.3:

(a) DOT shall send a debtor a total of three progressively stronger written demands at not more than 30-day intervals, unless a response to the first or second demand indicates that a further demand would be futile or the debtor's response does not require rebuttal, or other pertinent information indicates that additional written demands would be unnecessary.

(b) The initial written demand for payment (and the notice of offset under § 89.25) shall inform the debtor of:

(1) The basis for the indebtedness and the debtor's right to obtain review (see § 89.21(f) for details on review).

(2) The amount of the claim;

(3) That domestic and overseas payment in excess of ten thousand dollars or more shall be made by wire transfer through the Federal Reserve communications, commonly known as Fedwire, to the account of the U.S. Treasury in accordance with the instructions provided in the demand letter; payments originating in foreign countries shall be made by wire transfer to the extent practicable.

(4) The delinquency date, or the date by which payment is to be made (30 days from the date of mailing or hand delivery of the initial demand letter);

(5) The standard for interest, penalties, and administrative charges in accordance with 31 U.S.C. 3717, if payment is not received by the due date [see § 89.23 for details regarding interest, collection charges, and late payment penalty charges];

(6) Where a notice of offset is concerned, the right to make voluntary payment before collection by offset begins (see § 89.25).

(7) The possible reporting of the claim to commercial credit bureaus and consumer reporting agencies; however a notice of offset should not include this warning.

(8) The possibility that DOT will forward the claim to a collection agency, the General Accounting Office, the Department of Justice, or private counsel contracting with the Department of Justice for collection; however a notice of offset should not include this warning.

(c) If the debtor fails to respond to the demands for payment by the due date specified in the notice, the Department may take further action under this part or the FCCS under 4 CFR Parts 101 through 105, pursuant to 31 U.S.C. 3701–3720A. These actions may include reports to commercial credit bureaus, consumer reporting agencies, contracts with commercial collection agencies, revocation of licenses, or the use of administrative offset, as authorized in 31 U.S.C. 3701–3720A.

(d) DOT may collect by administrative offset, (see § 89.25, Collection by administrative offset), if the debtor:

(1) Has not made payment by the payment due date;

(2) Has not requested a review of the claim within the agency as set out in paragraph (f) of this section; or

(3) Has not made an arrangement for payment by the payment due date;

(e) Except for information that may properly be withheld under 49 CFR Part 7, the debtor may inspect and copy the records of the agency related to the claim. Any reasonable costs associated with the copying and inspection of the records shall be borne by the debtor. (Payment of cost is governed by 49 CFR Part 7, Subpart I.) The debtor shall give reasonable notice in advance to the agency of the date on which it intends to inspect and copy the records involved;

(f)(1) Except for debts established by settlement agreement, court order or judgment, or final administrative decision, the debtor may request review of the validity or amount of a claim. To do so, the debtor shall make a request in writing for review of the claim prior to it becoming delinquent. (*See* 4 CFR 101.2 for definition of when a debt is considered delinquent.) The debtor's written response shall state the basis for the dispute, and provide all factual information, documents, citation to authority, argument and any other matters to be considered. If only part of the claim is disputed, the undisputed portion shall be paid by the delinquency date stated in the initial demand. During the period that the claim is being reviewed, the amount of the debt is owed, but the accrual of interest and accrual of time to delinquency may be suspended on the disputed portion of the debt.

(2) Review of claims shall be based upon the written record unless an oral hearing is required by 4 CFR 102.3(c). Upon completion of review, within 30 days whenever feasible, the Department shall advise the debtor whether the debt has been found to be valid in any amount, or that collection will be terminated. If the claim is found to be valid in any amount, the accrual of interest and time to delinquency shall commence 15 days after mailing of the notification of the review results. The notification of the review may also include notice of a specific collection action to be undertaken if payment is not received.

(g) The debtor may offer to make a written agreement to pay the amount of the claim. The acceptance of such an agreement is discretionary with DOT. If the debtor requests an installment payment arrangement because a lump sum payment would create a financial hardship, DOT may agree to a written installment payment schedule with the debtor (see 4 CFR 102.11(a)). The debtor shall execute a confess-judgment note which specifies all of the terms of the arrangement and includes a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments shall bear a reasonable relation to the size of the debt and the debtor's ability to pay. Interest shall be provided in the note (see § 89.23). The debtor shall be provided with a written explanation of the consequences of signing a confess-judgment note. The debtor shall sign a statement acknowledging receipt of the written explanation, which shall recite that the statement was read and understood before execution of the note and that the note is being signed knowingly and voluntarily. Evidence of these facts shall be maintained in DOT's file on the debtor in accordance with the practice of the DOT operating element.

§ 89.23 Interest, late payment penalties, and collection charges.

(a) DOT shall charge interest on an outstanding debt at the Treasury Current Value of Funds Rate published by the Secretary of the Treasury in accordance with 31 U.S.C. 3717 and 4 CFR 102.13(c), unless DOT determines that a higher rate is necessary to protect the interests of the United States. DOT shall charge a late payment penalty at a rate of six percent a year on any portion of a debt that is more than 90 days past due. DOT shall also assess administrative charges to cover additional cost incurred in processing and handling the debt beyond the payment due date. The imposition of interest, collection charges, and late payment penalty charges shall be made in accordance with 31 U.S.C. 3717, 4 CFR 102.13 (see § 89.3(c) regarding payment of such charges by Federal, state and local government agencies).

(b) Interest on debt shall begin to accrue on the date on which the debtor is mailed or delivered notice of the debt and the interest requirements or, in the case of advance billings, on the calendar day following the specified due date of the debt, provided the advance billing gives notice of the interest requirements for late payment. Interest on the debt shall continue to accrue until payment is received. Interest shall be calculated only on the principal of the debt (simple interest). The rate of interest assessed shall be the rate in effect on the date from which interest begins to accrue, and will remain fixed for the duration of the indebtedness. The rate of interest assessed will generally be the Treasury Current Value of Funds Rate.

(c) The Department shall waive interest on debt that is paid within 30 calendar days after the date on which interest began to accrue.

(d) Collection charges on debt shall be computed to cover the cost of processing and handling the delinquent debt. It shall be either the actual cost to process the particular delinquent debt to which it is applied, or operating elements may set the amount of such monthly charge by cost analysis establishing the average of actual additional costs incurred by the operating element in processing similar debts. Collection charges may also include the expense of obtaining credit reports and of using a professional debt collection contractor.

(e) DOT may waive interest, collection charges, or late payment penalty charges if it finds that:

(1) The debtor would be eligible for compromise under standards set forth in 4 CFR 103.2 with regard to the amount of the debt;

(2) Collection of interest, administrative charges, or penalties will jeopardize collection of the principal of the debt; or

(3) It is otherwise in the best interests of the United States, including the situation in which an offset or installment payment agreement is in effect.

§ 89.25 Collection by administrative offset.

(a) Whenever feasible, after a debtor fails to pay a claim, request a review of a claim, or make an arrangement for payment following a demand made in accordance with § 89.21, DOT shall collect claims under this part by means of administrative offset against obligations of the United States to the debtor pursuant to 31 U.S.C. 3716 and 4 CFR 102.3. Salary offset against present or former employees of the United States is not governed by this Part (see 49 CFR Part 92).

(b) The Department shall notify the debtor in writing in conformance with 31 U.S.C. 3716 and the FCCS of its intent to collect the debt by offset, unless the debtor pays the debt in full, including all interest, administrative charges, and penalties, or executes an agreement to pay the debt by installment at terms acceptable to DOT.

(c) In making collection by administrative offset under 31 U.S.C. 3716, DOT must do so in accordance with the requirements set forth in § 89.21(b)(1–6). (See also procedures for recovery of debts to the United States by salary offset, 49 CFR Part 92.)

§ 89.27 Referral for litigation.

Claims that are not settled or for which collection action is not compromised, suspended or terminated under 4 CFR Parts 103 and 104 or collected by collection agencies shall be referred to the General Accounting Office or the Department of Justice for litigation in accordance with the procedures in 4 CFR Part 105.

§ 89.29 Disclosure to commercial credit bureaus and consumer reporting agencies.

(a) Data on all delinquent commercial and consumer debts may be reported to commercial credit bureaus and consumer reporting agencies (see 31 U.S.C. 3701(a)(3)). Sixty days prior to release of information to a consumer reporting agency, the debtor shall be notified, in writing, of the intent to disclose the existence of the debt to a consumer reporting agency. Such notice of intent may be by separate correspondence or included in correspondence demanding direct payment. The notice shall be in conformance with 31 U.S.C. 3711(f) and the Federal Claims Collection Standards.

(b) The information that may be disclosed is the debtor's name, address, social security number or taxpayer identification number, and any other information to establish the identify and location of the individual, the amount of the claim, status and history of the claim, and the program under which the claim arose.

§ 89.31 Use of professional debt collection agencies.

Debts over 90 days delinquent (see § 89.21(b)(4)) may be turned over to professional debt collection agencies except for those debts owed by State and local governments, other Federal agencies, current employees, and other debts prohibited by statute from being turned over to commercial collection agencies.

§ 89.33 Collection of claims by reduction of tax refunds.

Pursuant to 31 U.S.C. 3720A and regulations issued thereunder and in accordance with 26 CFR 301.6402, the Department may refer claims to the Internal Revenue Service for collection by reduction of tax refunds owed to the debtor by the United States.

Issued in Washington, DC, on this 14th day of December, 1988.

Jim Burnley,

Secretary of Transportation.

[FR Doc. 88–29240 Filed 12–20–88; 8:45 am]

BILLING CODE 4910–62–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C–3241]

Certain Sioux Falls Obstetricians, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, certain physicians practicing in the Sioux Falls, SD area, from continuing to act in combination to interfere with the operation of the University of South Dakota School of Medicine, obstetrical/gynecological (OB/GYN) program, and from further restricting competition for the provision of OB/GYN care in the Sioux Falls area.

DATE: Complaint and order issued October 11, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Paul J. Nolan, FTC/S–3115, Washington, DC 20580. (202) 326–2770.

SUPPLEMENTARY INFORMATION: On Wednesday, July 20, 1988, there was published in the **Federal Register**, 53 FR 27357, a proposed consent agreement with analysis In the Matter of Thomas L. Looby, M.D.,/Certain Sioux Falls Obstetricians, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—*Boycotting Seller-Suppliers:* § 13.302 *Boycotting seller-suppliers.* Subpart—*Coercing And Intimidating:* § 13.345 *Competitors;* § 13.355 *Customers or prospective customers of competitors;* § 13.367 *Members.* Subpart—*Combining Or Conspiring:* § 13.384 *Combining or conspiring;* § 13.385 *To boycott seller-suppliers;* § 13.470 *To restrain and monopolize trade;* § 13.497 *To terminate or threaten to terminate contracts, dealings, franchises, etc.* Subpart—*Corrective Actions And/Or Requirements:* § 13.533 *Corrective actions and/or requirements;* § 13.533–20 *Disclosures;* § 13.533–50 *Maintain means of communication;* § 13.533–60 *Release of general, specific, or contractual constrictions, requirements, or restraints.*

List of Subjects in 16 CFR Part 13

Gynecologists, Obstetricians, Physicians, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 88–29243 Filed 12–20–88; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

16 CFR Part 13

[Docket No. 9198]

MidCon Corp., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's consent order issued on Feb. 6, 1986 (51 FR 8485), by removing a requirement that the company divest its interests in the Acadian Gas Pipeline System.

DATES: Consent order issued February 6, 1986. Modifying order issued August 31, 1988.

FOR FURTHER INFORMATION CONTACT: David C. Dickey, FTC/S–3302, Washington, DC 20580. (202) 326–2618.

SUPPLEMENTARY INFORMATION: In the Matter of MidCon Corporation, et al. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, as set forth at 51 FR 8485, remain unchanged.

List of Subjects in 16 CFR Part 13

Natural gas, Pipelines, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Federal Trade Commission Order Modifying Order Issued February 6, 1986

Commissioners: Daniel Oliver, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

In the matter of MidCon Corporation, a corporation, and United Energy Resources, Inc., a corporation, Docket No. 9198.

On July 8, 1988, MidCon Corporation ("MidCon") filed a Request To Reopen Proceeding and Modify Order ("Request"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, asking that the Commission reopen and modify the consent order in Docket No. 9198 ("Order"). The Order requires MidGon, among other things, to divest its interest in five natural gas pipelines ("Schedule A Properties") in the area between Baton Rouge and New Orleans, Louisiana ("Baton Rouge-New Orleans Corridor" or "Corridor").

In its Request, MidCon asks that the Commission reopen the Order and set aside the requirement that MidCon divest the Schedule A Properties. MidCon asserts that the sale of the common stock of United Gas Pipeline Company ("United") and UER Marketing Company ("UER Marketing") to LaSalle Energy Corporation ("LaSalle") on June 30, 1987, together with Commission adoption of two additional order provisions that MidCon proposes relating to agreements between MidCon and LaSalle, will accomplish the remedial purposes of the Order in Docket No. 9198. MidCon submits that "these circumstances (*i.e.*, the sale to LaSalle and the proposed order provisions) constitute changed conditions of fact sufficient to warrant reopening this proceeding to modify the Order" to set aside the divestiture requirement. MidCon also claims that the sale to LaSalle, together with the order modifications proposed by MidCon, satisfy the public interest concerns that led the Commission to issue the Order in this matter and that "it would be inequitable" in the circumstances to require MidCon to divest the Schedule A Properties.

Background

On February 6, 1986, the Commission issued the Order in this matter, requiring MidCon to divest the Schedule A Properties within one year from the date the Order became final. The purpose of the divestiture was to remedy the lessening of competition and increase in concentration in the transportation and sale of natural gas in the Baton Rouge-New Orleans Corridor that the Commission believed would result from MidCon's acquisition of United Energy Resources, Inc. ("UER"), as alleged in Count Two of the Commission's complaint. The Order became final on February 26, 1986. MidCon has not divested the Schedule A Properties.[1]

On June 30, 1987, MidCon's subsidiary, UER, sold the common stock of United and UER Marketing to LaSalle, a newly formed corporation. In partial payment of the purchase price, UER accepted a promissory note from LaSalle. The note provides that MidCon will acquire an equity interest in LaSalle in the event that LaSalle fails to meet its payment obligations. In addition to its note indebtedness to MidCon, LaSalle assumed substantial potential liabilities arising from the contract obligations of United.

MidCon and LaSalle also entered into a Master Agreement on Transportation ("Transportation Agreement"), in which MidCon guaranteed certain revenues to LaSalle for a period of years and LaSalle agreed to transport gas for MidCon on the United pipeline system. To ensure that LaSalle would not grant more favorable terms to other shippers than to MidCon, MidCon and LaSalle agreed to a "most-favored-nation" provision that prevents LaSalle from charging a higher price to MidCon than to other shippers for reasonably comparable shipments.

On July 23, 1987, MidCon filed a request to reopen the proceeding and modify the Order to set aside the requirement that MidCon divest the Schedule A Properties. The Commission denied the request on December 11, 1987. The Commission stated that the substantial and continuing financial and contractual commitments between MidCon and LaSalle would reduce the parties' incentives and ability to compete in the corridor, that MidCon had failed to establish that LaSalle would be an independent, viable competitor in the Corridor and that MidCon had failed to establish that the sale of United to LaSalle would achieve the remedial purposes of the Order. *See* Letter to Priscilla Mims, Esq., MidCon Corporation (December 11, 1987) ("MidCon Letter") (unpublished).

In its Request filed on July 8, 1988, MidCon again asks that the Commission reopen and modify the Order to set aside the requirement that MidCon divest the Schedule A Properties. As in its earlier request, MidCon asserts that the sale of United to LaSalle eliminates the horizontal overlap between United and the Schedule A Properties in the relevant market. In addition, MidCon asks that the Commission modify the Order to require MidCon to divest absolutely within nine months from the date of acquisition, subject to the prior approval of the Commission, any LaSalle stock that MidCon may acquire pursuant to the terms of the promissory note. MidCon also asks that the Commission modify the Order to prohibit MidCon from invoking the "most-favored-nation" clause of the Transportation Agreement in the Corridor. Finally, MidCon has supplied information that it claims attests to the financial viability of LaSalle. MidCon asserts that under these circumstances the sale of United to LaSalle restores United as a viable competitor in the

[1] On February 25, 1987, MidCon requested an extension of time to accomplish divestiture under the Order. On April 28, 1987, MidCon supplemented its request for an extension of time, disclosing the proposed sale of the United assets to LaSalle and asserting that the proposed sale would accomplish the remedial purposes of the Order. The Commission denied the request for an extension, noting that the appropriate procedure for proposing a divestiture different from that required by an order is by a request to reopen and modify the order so that the Commission may consider whether the alternative divestiture is sufficient to accomplish the remedial purposes of the order and thereby obviate the need for the remedy provided in the order. Letter to Priscilla Mims, Esq., MidCon Corporation (June 26, 1987) (unpublished).

Corridor and accomplishes the remedial purposes of the Order.

Standards for Reopening a Final Order

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified in the petitioner "makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside in whole or in part." A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *See Louisiana-Pacific Corp.*, Docket No. C–2956, Letter to John C. Hart (June 5, 1986) (unpublished). The burden is on the petitioner to make the satisfactory showing of changed conditions required by the statute. This burden is not a light one, in view of the public interest in repose and the finality of Commission orders. *See Federated Department Stores, Inc.* v. *Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality). If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification.

Section 5(b) also provides that the Commission may modify an order when the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification. In such a case, a petitioner must demonstrate as a threshold matter some affirmative need to modify the order. Once such a need has been shown, the Commission will weigh the reasons favoring the modification requested against any reasons not to to make the modification. *See Damon Corp.*, Docket No. C–2916, Letter to Joel E. Hoffman, Esq. (March 24, 1984), at 2 (unpublished); *see also Chevron Corp.*, Docket No. C–3147, 105 F.T.C. 228 (1985) (public interest warrants modification where potential harm to respondent's ability to compete outweights any further need for the order). The Commission also will consider whether the particular modification sought is appropriate to remedy the identified harm.

The Public Interest Warrants Modification of the Order

The Commission has determined that it is in the public interest to reopen and modify the Order to set aside the requirement that MidCon divest the Schedule A Properties.[2] The sale of United to LaSalle, together with the additional order provisions proposed by MidCon to address the Commission's concerns that MidCon and LaSalle would not compete aggressively in the Corridor and that LaSalle would not be an independent, viable competitor in the Corridor, appear to be sufficient to remedy the lessening of competition and increase in concentration alleged in Count Two of the complaint. Divestiture of the Schedule A Properties as required by the Order would result in MidCon's exit from the relevant market, which is no longer necessary in light of MidCon's proposed additions to the Order and the additional information regarding LaSalle's viability.

The Commission was concerned that MidCon could acquire an interest in United as a result of MidCon's retained security interest under the promissory note. Such an interest would be inconsistent with the remedial purpose of the Order to eliminate the horizontal overlap and to reestablish the assets divested by MidCon as an independent competitive entity. A new order provision proposed by MidCon would require MidCon to divest, within nine months from the date of acquisition and subject to the prior approval of the Commission, any stock of LaSalle that it may acquire by operation of the promissory note or any other security interest. The proposed provision would prevent the possibility that MidCon could control or influence LaSalle in the event that MidCon contains LaSalle stock pursuant to the security interest.

The Commission was concerned that LaSalle's incentives to compete aggressively with MidCon for transportation of natural gas might be deterred by the requirement of the Transportation Agreement that LaSalle transport natural gas for MidCon on the same terms that LaSalle offers to any third parties. A new order provision proposed by MidCon would preclude MidCon's use of the "most-favored-nation" clause of the Transportation Agreement in the Corridor and thereby reduce the potential deterrent effect of the Transportation Agreement on competition. As modified, the Transportation Agreement would no longer provide a disincentive for LaSalle to compete aggressively with MidCon in the Corridor.[3]

The Commission also was concerned that the financial viability of LaSalle had not been demonstrated by MidCon, particularly in view of LaSalle's assumption of United's substantial potential liabilities and LaSalle's undertaking considerable debt obligations to finance the acquisition of United, including the promissory note to MidCon. MidCon has submitted financial statements of LaSalle, showing that LaSalle has operated United successfully during the past year. LaSalle has had positive operating revenue and has been able to meet its debt obligations following the acquisition of the United assets. In addition, the changes in the Transportation Agreement that eliminate possible disincentives for LaSalle to compete in the Corridor may enhance LaSalle's ability to compete and, therefore, its viability.

Conclusion

For the reasons described above, the Commission has determined to reopen and modify the Order to set aside the requirement that MidCon divest the Schedule A Properties. Therefore, the Order will be modified to set aside the requirement that MidCon divest the Schedule A Properties and to incorporate the other changes set forth below.[4]

Accordingly, *it is ordered* that this matter be reopened and that the Commission's order in Docket No. 9198, issued on February 6, 1986, be modified, as of the date of service of this Order, as follows:

1. The term "LaSalle stock" shall be substituted in every case for the term "Schedule A Properties" or "Properties" in Paragraphs III through VII.

2. The term "9-month" shall be substituted in every case for the term

[2] MidCon has not made a satisfactory showing of changed conditions of fact that require reopening of the Order. Because of the continuing connections between MidCon and LaSalle and the issues relating to LaSalle's viability, the sale of United does not achieve the remedy ordered by the Commission. *See* MidCon Letter at 3–5.

[3] In addition, MidCon and LaSalle have amended the Transportation Agreement to limit the operation of the "most-favored-nation" clause outside the Corridor. MidCon has represented that the amendment, § 7.8 of the Transportation Agreement, becomes effective if the Order is modified as requested by MidCon. In granting MidCon's request to modify the Order, the Commission has relied on this representation by MidCon.

[4] Occidental Petroleum Corporation acquired MidCon on April 1, 1986. Occidental has agreed to be bound as MidCon's parent by the terms of the Order in Docket No. 9198. Letter from Samuel Wolfson, *Esq.*, Assistant General Counsel, Occidental Petroleum Corp., to Elliot Feinberg, Assistant Director, Bureau of Competition, Federal Trade Commission (July 5, 1988).

"12-month" in Paragraphs III through VII.

3. Paragraph I shall be modified by replacing Paragraph I.(c) with the following:

(c) "MidCon" means MidCon Corp., its parent, subsidiaries, divisions, groups and affiliates controlled by MidCon and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

4. Paragraph I shall be modified to add the following:

(g) "LaSalle" means LaSalle Energy Corp., its subsidiaries, divisions, groups and affiliates controlled by LaSalle and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

5. Paragraph I shall be modified to add the following:

(h) "Transportation Agreement" means the Master Agreement on Transportation executed between MidCon and LaSalle on June 30, 1987.

6. Paragraph II shall be modified by replacing Paragraph II.(A) with the following:

(A) In the event MidCon, as a result of the operation of any promissory note, mortgage, bona fide lien, deed or trust or other form of security interest, executed in connection with the sale of United Gas Pipeline Company and UER Marketing Company to LaSalle, acquires, directly or indirectly, any LaSalle stock, MidCon shall, within ten (10) days, notify the Commission in writing and shall divest the acquired stock, absolutely and in good faith, in accordance with Paragraphs II through VII of this Order within nine (9) months of the acquisition.

7. Paragraph II shall be modified by replacing Paragraph II.(B) with the following:

(B) Divestiture of the LaSalle stock shall be made only to an acquirer or acquirers and only in a manner that receives the prior approval of the Federal Trade Commission. The purpose of the divestiture of the LaSalle stock is to ensure the continuation of the assets, interests and pipelines as ongoing, viable enterprises engaged in the same business in which they are presently employed and to remedy the lessening of competition resulting from the Acquisition as alleged in Count Two of the Commission's complaint.

8. A new Paragraph VIII shall be added:

It Is Further Ordered that MidCon cease and desist from taking any action to implement or otherwise enforce Section 3.5 (regarding rates for comparable natural gas transportation services) of the Transportation Agreement with respect to the shipment or transportation of any natural gas by LaSalle to any delivery point within the New Orleans-Baton Rouge Corridor.

9. Paragraph III shall be modified by replacing Paragraph III.(C) with the following:

(C) MidCon through its ownership of LaSalle stock shall not take any action to impair the viability of LaSalle's business.

10. Paragraph IV shall be modified by replacing Paragraph IV with the following:

It Is Further Ordered that, within sixty (60) days after giving the Commission notice required by Paragraph II of this Order and every sixty (60) days thereafter until MidCon has fully complied with the provisions of Paragraphs II and III of this Order, MidCon shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with those provisions. MidCon shall include in compliance reports, among other things that are required from time to time, a full description of contacts or negotiations for the divestiture of properties specified in Paragraph II of this Order, including the identity of all parties contacted. MidCon also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture.

11. Paragraph V shall be modified to include the following sentence at the end of the first paragraph:

The provisions of this Paragraph shall not apply to the acquisition by MidCon of any LaSalle stock through the operation of any promissory note, mortgage, bona fide lien, deed or trust or other form of security interest executed in connection with the sale of United Gas Pipeline Company and UER Marketing Company to LaSalle.

By direction of the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Chairman Daniel Oliver, MidCon Corporation, Docket No. 9198

In September 1985 the Commission issued the complaint in this matter, challenging MidCon's acquisition of the United Gas Pipeline Company ("United").[1] Count II of the complaint alleged that the acquisition might substantially lessen competition in the transmission of natural gas in the area between Baton Rouge and New Orleans (the "Corridor"). In February 1986 the Commission settled Count II by accepting a consent order which permitted MidCon to retain the United pipeline assets in the Corridor, but required MidCon to divest other natural gas pipeline interests in the same market (the "Acadian Partnership" interests).[2]

In June 1987 MidCon sold United to LaSalle Energy Corporation. As a result, MidCon and United are once again competitors in the Corridor. MidCon subsequently filed a petition to modify the consent order to permit it to retain its Acadian Partnership interests. The Commission denied the petition in December of last year. I dissented from that decision because, in my view, MidCon's sale of United effectively eliminated any competitive problems that its earlier acquisition of United might have created.

The Commission staff and MidCon have now been able to negotiate additional modifications that have led a majority of the Commission to agree to delege the divestiture requirement. Although I do not believe that those additional modifications are necessary, I support the Commission decision to relieve MidCon of any additional divestiture obligations.

[FR Doc. 88-29242 Filed 12-20-88; 8:45 am]

BILLING CODE 6750-01-M

[1] *MidCon Corp.*, 107 F.T.C. 48 (1986) (consent order). The complaint actually addressed the acquisition of United Energy Resources ("UER"), but the acquisition of United—the pipeline subsidiary of UER—was the gravamen of Count II of the complaint. *Id.* at 52-54.

[2] *Id.* at 56. Count I of the complaint is currently in administrative litigation.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Ch. I

[T.D. 89-1]

Customs Regulations Amendments To Conform With Harmonized System of Tariff Classification

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

ACTION: Interim regulations; solicitation of comments.

SUMMARY: Classification of imported merchandise for rate of duty and statistical purposes is now determined by reference to the Tariff Schedules of the United States (TSUS). The U.S. intends to replace the TSUS effective

January 1, 1989, by acceding to the International Convention on the Harmonized Commodity Description and Coding System (HS). The new U.S. tariff based on the HS will be known as the Harmonized Tariff Schedule of the United States (HTSUS). The HS is a multipurpose nomenclature, intended to be used to describe and classify goods in international trade for customs purposes, for reporting all import and export trade statistics, and eventually for freight and transport documentation. To implement the HS, this document amends the Customs Regulations on an interim basis by removing all references to the TSUS and, in their stead, by inserting the appropriate HTSUS reference. Comments are solicited regarding the correctness of the HTSUS references being inserted, as well as any other changes that may be necessitated by the U.S. acceding to the HS.

DATES: The interim regulations become effective on January 1, 1989. Comments must be received on or before February 21, 1989.

ADDRESS: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2119, Washington, DC 20229 (202–566–8237).

FOR FURTHER INFORMATION CONTACT: Hubbard L. Volenick, International Nomenclature Staff (202–566–8530).

SUPPLEMENTARY INFORMATION:

Background

The Harmonized System (HS) is the culmination of a 10-year effort by the member states of the Customs Cooperation Council (CCC), particularly the U.S. and its major trading partners, to develop a single modern structure for product classification which can be used for customs, tariff, trade statistics, and transport documentation purposes. Based on the present Customs Cooperation Council Nomenclature (CCCN), the HS is a more detailed classification scheme reflecting changes in technology, trade patterns and user requirements.

In August 1981 the President requested the U.S. International Trade Commission to initiate an investigation for the purpose of preparing a conversion of the Tariff Schedules of the U.S. (TSUS), the current reference source for determining the classification of imported merchandise, into the structure of the HS. The conversion provides numerical coding beyond the 6-digits of the international system, taking into account U.S. tariff and statistical requirements. Thus, each tariff provision is coded in 8-digits and the tariff reporting number in 10-digits.

This conversion, submitted to the President on June 30, 1983, was reviewed and revised by the Trade Policy Staff Committee, Office of U.S. Trade Representative, and republished as TPSC 84–76 on September 30, 1984. A further, more comprehensive, revision published in October 1986 was the basic working document employed in the GATT Article XXVIII negotiations aimed at U.S. adoption of the HS.

The HS Convention was opened for signature July 1, 1983, and thus far has been acceded to by 42 countries and the European Economic Community. The U.S. will deposit the instrument of accession to the Convention in 1988. The U.S. tariff based on the HS will be known as the Harmonized Tariff Schedule of the United States (HTSUS), as provided by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418.

Purpose of Harmonized System

The HS is a multipurpose nomenclature, intended to be used to describe and classify goods in international trade for customs purposes, for reporting all import and export trade statistics, and eventually for freight and transport documentation. Its use is expected to increase uniformity and predictability of trade data, and promote standardization of trade and transport documentation. Implementation of the HS will impact not only all areas of trade, *i.e.*, imports, exports, transportation of goods, and trade statistics, but all aspects of Customs operations, including classification and appraisement of merchandise, selection for and examination of merchandise data entry into the Automated Commercial System (ACS), and the pre-release and release of goods. Brokers and importers will experience significant changes to their entry procedures.

Purpose of Document

To implement the HS, the Customs Regulations (19 CFR Chapter I), are being amended by removing all references to the TSUS, and, in their stead, inserting the appropriate HTSUS reference. In addition, due to an ongoing change in regulations style, footnotes to some parts are being omitted with references, where appropriate, being incorporated into the body of the section.

Comments

Before adopting the interim regulations as a final rule, consideration will be given to any written comments timely submitted to Customs. Customs is particularly interested in receiving comments regarding the correctness of HTSUS references being inserted, as well as any other changes that may be necessitated by the U.S. acceding to the HS. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified by E.O. 12291. Accordingly, no regulatory analysis has been prepared.

Paperwork Reduction Act

Sections of the regulations being amended or revised contain collections of information, subject to the Paperwork Reduction Act.

The regulation in § 134.22(b) is being revised without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this section has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1515–0163.

Comments concerning the collections of information and the accuracy of estimated average annual burden, and suggestions for reducing burden should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for U.S. Customs Service.

The collection of information in this regulation is in § 134.22(b), pertaining to country of origin marking on imported containers and holders. This information is required by statute, 19 U.S.C. 304, to inform the public of the origin of certain imported containers and holders and is part of the general requirement that all imported goods be legibly marked showing the country of origin. The

primary potential user of the collected information is the ultimate consumer of the imported goods. The U.S. Customs Service enforces the law through its regulation, but it has no use for and makes no regular record of the information found in the marking. The likely respondents are business or other for-profit institutions and small businesses or organizations.

The reporting burden associated with this information collection is 15 seconds per response.

Estimated average annual burden hours per respondent is 10 minutes.

Estimated number of respondents: 10,000.

The information collection requirements contained in §§ 141.89, 151.63, and 151.82 of the Customs Regulations have been previously reviewed and approved under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

Drafting Information

The principal author of this document was John G. Black, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR, Chapter I

Customs Duties and Inspection; Harmonized Tariff Schedule of the United States, Imports.

Amendments to the Regulations

Parts 4, 7, 10, 11, 12, 18, 19, 24, 54, 101, 103, 111, 113, 114, 122, 123, 127, 132, 134, 141, 142, 143, 144, 145, 146, 147, 148, 151, 152, 158, 159, 171, 177, and 191, Customs Regulations (19 CFR Parts 4, 7, 10, 11, 12, 18, 19, 24, 54, 101, 103, 111, 113, 114, 122, 123, 127, 132, 134, 141, 142, 143, 144, 145, 146, 147, 148, 151, 152, 158, 159, 171, 177, 191), are amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for Part 4 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 3.

§ 4.94 [Amended]

2. Section 4.94(d) is amended by removing the last sentence of the form and by adding, in its place, "See Chapter 89, Additional U.S. Note 1, HTSUS, and subheadings 8903.10, 8903.91, 8903.92, 8903.99.10, 8903.99.20, and 8903.99.90, HTSUS."

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

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

Authority: R.S. 251, sec. 624, 46 Stat. 759, sec. 101, 76 Stat. 72; 19 U.S.C. 66, 1624, General Note 9, Harmonized Tariff Schedule of the United States, unless otherwise noted.

§ 7.8 [Amended]

2. Section 7.8 is amended by removing the words "General Headnote 3(a), Tariff Schedules of the United States" in the first sentence of both paragraph (a) and paragraph (b) and by adding, in their place, the words "General Note 3(a)(iv), HTSUS."

PART 10—ARTICLES CONDITIONALLY FREE SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for Part 10 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 9, Harmonized Tariff Schedule of the United States), 1624. Secs. 10.11 through 10.24 also issued under sec. 502, 46 Stat. 731, as amended, 77A Stat. 14, 19 U.S.C. 1202 (General Note 10, Harmonized Tariff Schedule of the United States), 1502. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

§ 10.1 [Amended]

2. Section 10.1 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 800.00 and item 805.00, Tariff Schedules of the United States" in the introductory paragraph and adding, in their place, "subheading 9801.00.10 and subheading 9802.00.20, Harmonized Tariff Schedule of the United States (HTSUS)."

(b) Paragraph (b) is amended by removing the words "Schedule 8, Part 1, Tariff Schedules of the United States" and adding, in their place, "Chapter 98, Subchapter I, HTSUS."

(c) Paragraph (d) is amended by removing the words "item 800.00 or item 805.00 Tariff Schedules of the United States, and the related headnotes" and adding, in their place, the words "subheadings 9801.00.10 or 9802.00.20, HTSUS; and related section and additional U.S. notes."

(d) Paragraph (e) is revised to read as follows:

(e) No evidence relative to the conditions of subheading 9801.00.10, HTSUS, shall be required in the case of articles the product of the U.S. in use at the time of importation as the usual coverings or containers of merchandise not subject to an ad valorem rate of duty unless such articles would be dutiable if not products of the U.S. under General Rule of Interpretation 5, HTSUS.

(e) Paragraph (f) is amended by removing the words "item 805.00," and adding, in their place, the words "subheading 9802.00.20, HTSUS".

(f) Paragraph (g) is amended by removing the words "item 800.00, Tariff Schedules of the United States" and adding, in their place, the words "subheading 9801.00.10, HTSUS".

(g) Paragraph (h) is amended by removing the words "item 800.00, Tariff Schedules of the United States" from subparagraph (1) and adding, in their place, the words "subheading 9801.00.10, HTSUS"; by removing the words "item 804.20, Tariff Schedules of the United States" from subparagraph (1)(iv) and adding, in their place, the words "subheading 9801.00.80, HTSUS"; by removing the words "item 800.00", from subparagraph (5)(i), and by adding, in their place, the words "subheading 9801.00.10"; by removing the words "item 800.00, Tariff Schedules of the United States", from subparagraph (j)(2), and by adding, in their place, the words "subheading 9801.00.10, HTSUS".

§ 10.3 [Amended]

3. Section 10.3 is amended as follows:

(a) Paragraph (a) is amended by removing the words "schedule 8, part 1, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter 1, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) The chart in paragraph (b) is revised to read as follows:

Article	Duty assessment
Drums, metal (when not exempted from duty in accordance with sec. 10.3(c))	24 cents each.
Hosiery, nylon	45 cents per dozen.
Lead compound, tetraethyl	$0.003 per kilogram.
Lithopone	$0.00065 per kilogram.
Oxide, zinc	$0.0029 per kilogram.
Piece goods, cotton:	
Bleached	$0.03199 per square meter.

Article	Duty assessment
Dyed	$0.03454 per square meter.
Printed	$0.03226 per square meter.
Piece goods, nylon: Dyed	$0.29086 per square meter.
Piece goods, rayon:	
Printed	$0.04867 per square meter.
Other than printed (white, piece dyed or yarn dyed)	$0.08478 per square meter.
Tallow, refined, inedible	$0.003 per kilogram.

(c) Paragraph (c) is amended by removing the words "Schedule 8, Part 1, Tariff Schedules of the United States" from subparagraph (1), and by adding, in their place, the words "Chapter 98, Subchapter 1, HTSUS"; by removing the words "item 804.10 and 804.20, Tariff Schedules of the United States", and the words "items 804.10 or 804.20", from subparagraph (3), and by adding, in their place, the words "9801.00.70 or 9801.00.80, HTSUS"; by removing footnote 3 from subparagraph (4).

(d) Paragraph (f) is amended by removing the words "item 804.20, Tariff Schedules of the United States," and by adding, in their place, the words "subheading 9801.00.80, HTSUS".

4. Section 10.5(h) is revised to read as follows:

§ 10.5 Shooks and staves; cloth boards; district director's account.

* * * * *

(h) A record of cloth boards of domestic manufacture exported to be wrapped with foreign textiles shall be kept by the district director in a similar manner as for shooks and staves. Cloth boards of domestic manufacture are conditionally free of duty under Chapter 98, subchapter 1, Harmonized Tariff Schedule of the United States (HTSUS). If such boards are advanced in value or improved in condition while aboard, free entry shall be denied on importation.

§ 10.8 [Amended]

5. Section 10.8 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 806.20, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9802.00.40, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (e) is amended by removing the words "item 806.20" and by adding, in their place, the words "subheading 9802.00.40, HTSUS" and by removing the reference to footnote 1 and footnote 1 to the chart; and by adding in the third column of the chart after the word "alterations", the phrase "(see Chapter 98, Subchapter 2, HTSUS)".

(c) Paragraphs (i) and (j) are amended by removing the words "item 806.20 and related headnotes" and by adding, in their place, the words "subheading 9802.00.40, HTSUS, and related section and additional U.S. notes."

(d) Paragraphs (k) and (l) are amended by removing the words "item 806.20, TSUS" and "item 806.20," and by adding, in their place, the words "subchapter 9802.00.40, HTSUS".

§ 10.8a [Amended]

6. Section 10.8a is amended by removing the words "item 801.10, Tariff Schedules of the United States" from paragraphs (a), (b) and (c) and by adding, in their place, the words "subheading 9801.00.25, Harmonized Tariff Schedule of the United States". Section 10.8a is further amended by removing the word "headnotes" from paragraph (c) and by adding, in its place, the words "section and additional U.S. notes".

§ 10.9 [Amended]

7. Section 10.9 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 806.30" and adding, in their place, the words "subheading 9802.00.60, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (e) is amended by removing the words "item 806.30" and by adding, in their place, the words "subheading 9802.00.60, HTSUS" and by removing the reference to footnote 1 and footnote 1 to the chart and by adding, in the third column of the chart, after the word "processing", the words "(see Chapter 98, Subchapter II, HTSUS)".

(c) Paragraph (g) is amended by removing the words "item 806.30 and related headnotes" and by adding, in their place, the words "subheading 9802.00.60, HTSUS, and related section and additional U.S. notes."

(d) Paragraph (h) is amended by removing the words "item 806.30, Tariff Schedules of the United States, and related headnotes" and by adding, in their place, the words "subheading 9802.00.60, HTSUS, and related section and additional U.S. notes."

(e) Paragraph (i) is amended by removing the words "item 806.30, TSUS" and adding, in their place, "subheading 9802.00.60, HTSUS".

(f) Paragraph (j) is amended by removing the words "item 806.30" and by adding, in their place, the words "subheading 9802.00.60, HTSUS".

§ 10.11 [Amended]

8. Section 10.11 is amended by removing the words "item 807.00, Tariff Schedules of the United States" wherever they appear and by adding, in their place, the words "subheading 9802.00.80, Harmonized Tariff Schedule of the United States".

§ 10.12 [Amended]

9. Section 10.12 is amended by removing the words "item 807.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9802.00.80, Harmonized Tariff Schedule of the United States".

10. Section 10.13 is amended as follows:

(a) The section heading is revised as follows:

§ 10.13 Statutory provision: Subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(b) The paragraph is amended by removing the words "Item 807.00, Tariff Schedules of the United States" and by adding, in their place, the words "Subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS)," and by removing the words "Tariff Schedules of the United States" and by adding, in their place, the word "HTSUS".

§ 10.14 [Amended]

11. Section 10.14 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 807.00, Tariff Schedules of the United States" and adding, in their place, the words "subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b) is amended by removing the words "item 807.00, Tariff Schedules of the United States" from Example 3 and by adding, in their place, the words "subheading 9802.00.80, HTSUS".

§ 10.15 [Amended]

12. Section 10.15(d) and the Example are amended by removing the words "item 864.05, Tariff Schedules of the

United States" and by adding, in their place, the words "subheading 9813.00.05, HTSUS".

§ 10.16 [Amended]

13. Section 10.16 is amended as follows:

(a) Paragraph (c) is amended by removing the words "item 807.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9802.00.80, Harmonized Tariff Schedule of the United States".

(b) Paragraph (f) is amended by removing the words "General Headnote 6, Tariff Schedules of the United States" and by adding, in their place, the words "General Rule of Interpretation 5, HTSUS".

§ 10.18 [Amended]

14. Section 10.18 is amended by removing the words "item 807.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS)".

§ 10.24 [Amended]

15. Section 10.24 is amended as follows:

(a) The introductory text of paragraph (a) is amended by removing the words "item 807.00, Tariff Schedules of the United States", and by adding, in their place, the words "subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) The form appearing in paragraph (a)(1) is amended by removing the words "Headnote 3, part 1B, Schedule 8, Tariff Schedules of the United States", from footnote 1 and by adding, in their place, the words "U.S. Note 4 to Subchapter II of Chapter 98, Harmonized Tariff Schedule of the United States".

(c) The form appearing in paragraph (a)(1) is further amended by removing the words "item 807.00, Tariff Schedules of the United States," and by adding, in their place, the words "subheading 9802.00.80, Harmonized Tariff Schedule of the United States".

(d) The form in paragraph (a)(2) is amended by removing the words "headnotes of the Tariff Schedules of the United States" and by adding, in their place, the words "legal notes to the Harmonized Tariff Schedule of the United States."

(e) Paragraph (d) is amended by removing the words "item 807.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9802.00.80, HTSUS".

(f) Paragraph (e) is amended by removing the words "item 807.00, Tariff Schedules of the United States (19 U.S.C. 1202), and related headnotes" and by adding, in their place, the words "subheading 9802.00.80, HTSUS, and related legal notes".

§ 10.31 [Amended]

16. Section 10.31 is amended as follows:

(a) Paragraph (a)(1) is amended by removing the words "Schedule 8, Part 5C, Tariff Schedules of the United States (TSUS)," and by adding, in their place, the words "Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS)" and by removing footnote 34.

(b) Paragraph (a)(2) is amended by removing the words "item 864.05, TSUS", and by adding, in their place, the words "subheading 9813.00.05, HTSUS".

(c) Paragraph (a)(3)(i) is amended by removing the words "TSUS item" and by adding, in their place, the words "HTSUS subheading".

(d) Paragraph (b) is amended by removing the words "item 864.35, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.35, HTSUS"

(e) Paragraph (e) is amended by removing the words "item 864.05 of the Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.05, HTSUS", and by removing the words "Schedule 8, Part 5C, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter XIII, HTSUS".

(f) Paragraph (f) is amended by removing the words "item 864.20, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.20, HTSUS"; by removing the words "item 864.25" and by adding, in their place, the words "subheading 9813.00.25, HTSUS"; by removing the words "item 864.50" and by adding, in their place, the words "subheading 9813.00.50, HTSUS"; by removing the words "item 864.05, 864.20, or 864.50, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.05, 9813.00.20, or 9813.00.50, HTSUS"; by removing the words "item of Schedule 8, Part 5C, Tariff Schedules of the United States" and by adding, in their place, the words "subheading of Chapter 98, Subchapter XIII, HTSUS".

(g) Paragraph (g) is amended by removing the words "Schedule 8, Part 5C, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter XIII, HTSUS".

§ 10.34 [Amended]

17. Section 10.34 is amended by removing the words "item 864.70, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.70, Harmonized Tariff Schedule of the United States".

§ 10.35 [Amended]

18. Section 10.35 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 864.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.10, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b) is amended by removing the words "item 864.10 or 864.25" and by adding, in their place, the words "subheading 9813.00.10 or 9813.00.25, HTSUS".

§ 10.36 [Amended]

19. Section 10.36 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 864.20 or item 864.50, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9813.00.20 or 9813.00.50, Harmonized Tariff Schedule of the United States, (HTSUS)".

(b) Paragraph (b) is amended by removing the words "item 864.65, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.65, HTSUS" and by removing the words "items in Schedule 8, Part 5c, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings in chapter 98, subchapter XIII, HTSUS".

(c) The concluding text is amended by removing the words "item 864.20 or item 864.50, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.20 or subheading 9813.00.50, HTSUS".

20. Section 10.36a is amended as follows:

(a) Paragraph (a) is revised to read as follows:

§ 10.36a Vehicles, pleasure boats and aircraft brought in for repair or alteration.

(a) A vehicle (such as an automobile, truck, bus, motorcycle, tractor, trailer), pleasure boat, or aircraft brought into the United States by an operator of such vehicle, pleasure boat, or aircraft for repair or alteration (as defined in paragraph (a) of § 10.8) may be entered on the operator's baggage declaration, in lieu of formal entry and examination, and may be passed under subheading 9813.00.05, Harmonized Tariff Schedule

of the United States (HTSUS), at the place of arrival in the same manner as passengers' baggage. When the vehicle, aircraft, or pleasure boat to be entered is being towed by or transported on another vehicle, the operator of the towing or transporting vehicle may make entry for the vehicle, aircraft or pleasure boat to be repaired or altered. The bond, prescribed by § 10.31(f), filed to support entry under this section shall be without surety or cash deposit except as provided by this paragraph and paragraph (d) of this section. The examination may be made by an inspector who is qualified to determine the amount of such bond to be filed in support of the entry. The privilege accorded by this paragraph shall not apply when two or more vehicles, pleasure boats, or aircraft are to be entered by the same importer under subheading 9813.00.05, HTSUS, at the same time. In that event, the importer must file a formal entry supported by bond with surety or cash deposit in lieu of surety.

* * * * *

(b) Paragraph (d) is amended by removing the words "item 864.05, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.05, HTSUS".

§ 10.37 [Amended]

21. Section 10.37 is amended by removing the words "schedule 8, part 5, subpart C, Tariff Schedules of the United States" and by adding, in their place, the words "chapter 98, subchapter XIII, Harmonized Tariff Schedule of the United States".

§ 10.38 [Amended]

22. Section 10.38 is amended as follows:

(a) Paragraph (a) is amended by removing the words "schedule 8, part 5c, subpart C, Tariff Schedules of the United States" and by adding, in their place, the words "chapter 98, subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (g) is amended by removing the words "item 864.20, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.20, HTSUS" and by removing the words "item 864.50" and by adding, in their place, the words, "subheading 9813.00.50, HTSUS".

§ 10.39 [Amended]

23. Section 10.39 is amended as follows:

(a) Paragraph (a) is amended by removing the words "Schedule 8, Part 5c, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States, (HTSUS)" and by removing the words "item 864.30, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.30, HTSUS".

(b) Paragraph (d)(1) and (d)(3) are amended by removing the words "Schedule 8, Part 5C, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, subchapter XIII, HTSUS".

(c) Paragraphs (e) and (f) are amended by removing the words "Schedule 8, Part 5C" and by adding, in their place, the words "Chapter 98, subchapter XIII".

§ 10.40 [Amended]

24. Section 10.40(b) is amended by removing the words "Schedule 8, Part 5C, Tariff Schedules of the United States" and by adding, in their place, the words" "Chapter 98, subchapter XIII, Harmonized Tariff Schedule of the United States".

25. The title "International Traffic" that appears immediately before § 10.41, is amended by removing footnote 37.

§ 10.41a [Amended]

26. Section 10.41a is amended by removing footnote 38a.

§ 10.41b [Amended]

27. Section 10.41b is amended as follows:

(a) Paragraph (b) is amended by removing the word "item 800.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.10, Harmonized Tariff Schedule of the United States" and by removing the number "800.00" in paragraphs (b)(1) and (b)(3), and by adding, in its place, the numbers "9801.00.10".

(b) Paragraph (c)(1) introductory text is amended by removing the words "item 808.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9803.00.50, HTSUS".

(c) Paragraphs (c)(1)(i) and (c)(1)(iv) are amended by removing the number "808.00" and by adding, in its place, the number "9803.00.50".

(d) Paragraph (c)(2) introductory text is amended by removing the words "40,000 pounds" and adding, in their place, the words "18,120 kilograms" and by removing the words "item 808.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9803.00.50, HTSUS".

§ 10.43 [Amended]

28. Section 10.43 is amended by removing the words "items 850.10, 850.40, 850.70, 851.10, 851.20, 851.30, 851.40, 851.50, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9810.00.05, 9810.00.15, 9810.00.25, 9810.00.30, 9810.00.40, 9810.00.45, 9810.00.50, 9810.00.55, Harmonized Tariff Schedule of the United States".

§ 10.46 [Amended]

29. Section 10.46 is amended by removing the words "items 830.00 and 831.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9808.00.10 and 9808.00.20" and by removing footnote 41.

§ 10.47 [Amended]

30. Section 10.47 is amended by removing the words "item 807.27, Tariff Schedules of the United States" and by adding, in its place, the words "subheading 4705.00.00, Harmonized Tariff Schedule of the United States" and by removing footnote 42.

§ 10.48 [Amended]

31. Section 10.48 is amended as follows:

(a) Paragraph (a) is amended by removing the words "items 765.10, 765.15, 765.20, 765.25, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9701.90.00, 9702.00.00, and 9703.00.00, Harmonized Tariff Schedule of the United States (HTSUS)", and by removing footnote 43.

(b) Paragraph (e) is amended by removing the words "item 765.25, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9701.90.00, HTSUS".

§ 10.49 [Amended]

32. Section 10.49 is amended as follows:

(a) Paragraph (a) is amended by removing the words "Schedule 8, Part 5B, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter XII, Harmonized Tariff Schedule of the United States (HTSUS)"; by removing footnote 44, and by removing the words "Schedule 8, Part 5B" and by adding, in their place, the words "Chapter 98, Subchapter XII".

(b) Paragraph (c) is amended by removing the words "item 862.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9812.00.20, HTSUS".

(c) Paragraph (d) is amended by removing the words "Schedule 8, Part 5B" and by adding, in their place, the words "Chapter 98, Subchapter XII".

§ 10.52 [Amended]

33. Section 10.52 is amended by removing the words "item 850.30, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9810.00.10, Harmonized Tariff Schedule of the United States".

§ 10.53 [Amended]

34. Section 10.53 is amended as follows:

(a) Paragraphs (a) and (c) are amended by removing the words "item 766.20 or 766.25, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9705.00.00 or 9706.00.00, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraphs (b), (d) and (f) are amended by removing the words "items 766.20 and 766.25, Tariff Schedules of the United States" wherever they appear and by adding, in their place, the words "subheadings 9705.00.00 and 9706.00.00, HTSUS".

(c) Paragraph (c) is further amended by adding the following new sentences at the end of the paragraph: "Furniture as used in this section of the regulations is defined as 'movable articles of convenience or decoration for use in furnishing a house, apartment, place of business or accommodation'. This definition embraces most articles claimed to be free of duty as antiques."

(d) Paragraphs (f) and (g) are amended by removing the words "item 766.30, Tariff Schedules of the United States" and by adding, in their place, the words "additional U.S. Note 2, Chapter 96, HTSUS".

§ 10.54 [Amended]

35. Section 10.54 is amended by removing the words "item 364.05, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 5805.00.10, Harmonized Tariff Schedule of the United States", and is further amended by removing the words "$20 per square foot" and by adding, in their place, the words "$215 per square meter".

§ 10.56 [Amended]

36. Section 10.56(a) is amended by removing the words "item 176.28, 176.32, 176.44, 176.45, 176.49, or 176.54, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 1509.10.20, 1509.10.40, 1509.90.20, 1509.90.40, 1510.00.20, 1512.19.20, 1513.29.00, 1514.90.10, 1514.90.50, 1515.50.00, Harmonized Tariff Schedule of the United States".

§ 10.57 [Amended]

37. Section 10.57 is amended by removing the words "item 137.20, Tariff Schedules of the United States, or as seed corn or maize under item 130.30, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 0701.10.00, as seed corn (maize) under subheading 1005.10., HTSUS".

§ 10.58 [Amended]

38. Section 10.58(a) is amended by removing the words "item 357.25, Tariff Schedules of the United States"; by adding, in their place, the words "subheading 5911.20.20, Harmonized Tariff Schedule of the United States"; and by removing the phrases "4 inches" and "3 inches" and by adding, in their place, "10.16 centimeters" and "7.62 centimeters", respectively.

§ 10.59 [Amended]

39. Section 10.59 is amended as follows:

(a) Footnote 56 referred to in the section heading is removed.

(b) Paragraph (c) is amended by removing the words "general headnote 6, Tariff Schedules of the United States" and by adding, in their place, the words "General Rule of Interpretation 5".

(c) Paragraph (e) is amended by removing the reference to footnote 57 and by adding the text of the footnote at the end of paragraph.

(d) Paragraph (f) is amended by removing footnote 57a.

§ 10.63 [Amended]

40. Section 10.63 is amended by removing footnote 58.

§ 10.65 [Amended]

41. Section 10.65 (a) and (c)(2) are amended by removing footnote 59 and the reference to footnote 60, and by adding the text of footnote 60 at the end of paragraph (c)(2).

§ 10.66 [Amended]

42. Section 10.66 (a) and (c) are amended by removing the words "item 802.20 or item 802.30, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.50 or 9801.00.60, Harmonized Tariff Schedule of the United States (HTSUS)".

§ 10.67 [Amended]

43. Section 10.67 is amended as follows:

(a) Paragraphs (a) and (c) are amended by removing the words "item 802.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.40, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Footnote 63 to § 10.67 is removed.

§ 10.70 [Amended]

44. Section 10.70 (a) is amended by removing the words "item 100.01, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 0101.11.00, Harmonized Tariff Schedule of the United States (HTSUS)".

§ 10.71 [Amended]

45. Section 10.71 (e) is amended by removing the words "item 100.01, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 0101.11.00, Harmonized Tariff Schedule of the United States (HTSUS)".

§ 10.74 [Amended]

46. Section 10.74 is amended by removing the words "item 100.03, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.90, Harmonized Tariff Schedule of the United States".

§ 10.75 [Amended]

47. Section 10.75 is amended by removing the words "item 852.20, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9810.00.70, Harmonized Tariff Schedule of the United States (HTSUS), (19 U.S.C. 1202)"; and by removing the words "item 852.20" and by adding, in their place, the words "subheading 9810.00.70, HTSUS".

§ 10.76 [Amended]

48. Section 10.76 is amended as follows:

(a) Paragraphs (a) and (b) are amended by removing the words "item 100.05, Tariff Schedules of the United States," and by adding, in their place, the words "subheading 9817.70, Harmonized Tariff Schedule of the United States (HTSUS),".

(b) Paragraph (a) is further amended by removing the reference to footnote 70.

§ 10.77 [Removed and Reserved]

49. Part 10 is amended to removing § 10.77 and marking it "reserved" and by removing footnote 71 to § 10.77.

§ 10.78 [Amended]

50. Section 10.78 is amended as follows:

(a) Paragraph (b) is amended by removing the words "schedule 1, Part 15A, Tariff Schedules of the United States" and by adding, in their place, the words "Subchapter XV of Chapter 98, Harmonized Tariff Schedule of the United States".

(b) The section is further amended by removing footnote 72.

51. Section 10.80 is revised to read as follows (footnote 74 is consequently removed):

§ 10.80 Remission of duty; withdrawal; bond.

Imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish in the shores of the navigable waters of the U.S., whether such fish are taken by licensed or unlicensed vessels, and upon proof that the sale has been used for either of such purposes, the duties on the same shall be remitted. (Section 313(e), Tariff Act of 1930, 19 U.S.C. 1313(e)). Imported salt entered for warehouse may be withdrawn under bond for use in curing fish. Upon proof that the salt has been so used, the duties thereon shall be remitted. In no case shall the quantity of salt withdrawn exceed the reasonable requirements of the case. Withdrawal shall be made on Customs Form 7506. Each withdrawal shall contain the statement prescribed for withdrawals in § 144.32 of this chapter. When the withdrawal is made by a person other than the importer of record, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production of proof of proper use shall be filed. Upon acceptance of the bond, a withdrawal permit shall be issued on Customs Form 7506.

§ 10.84 [Amended]

52. Section 10.84 is amended as follows:

(a) Paragraphs (a) and (b)(4) are amended by removing the words "General Headnote 3(d), Tariff Schedules of the United States" and by adding, in their place, the words "General Note 3(c)(iii)(A)(1), Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (c) is amended by removing the words "Schedule 6, Part 6, Subpart B, Headnote 2(a), Tariff Schedules of the United States" and by adding, in their place, the words "General Note 3(c)(iii)(A)(2)".

(c) Paragraph (d) is amended by removing the words "Schedule 6, Part 6, Subpart B, Headnote 2(d)(ii)" and by adding, in their place, the words "General Note 3(c)(iii)(B).".

§ 10.90 [Amended]

53. Section 10.90(a) is amended by removing the words "item 724.30, Tariff Schedules of the United States" and by adding in their place, the words "subheading 8524.20, HTSUS".

§§ 10.91 through 10.97 [Removed and Reserved]

54. Part 10 is further amended by removing the heading "Wools and Hair of the Camel for Use in Manufacturing Floor Coverings and Other Articles" that precedes § 10.91 and by removing §§ 10.91, 10.92, 10.93, 10.94, 10.95, 10.96, 10.97, and by marking them "Reserved."

§ 10.98 [Amended]

55. Section 10.98 is amended as follows:

(a) By removing the words "item 602.25, Tariff Schedules of the United States," from paragraph (a) and by adding, in their place, the words "subheading 2603.00.00, Harmonized Tariff Schedule of the United States".

(b) By removing footnote 89 from paragraph (a).

§ 10.99 [Amended]

56. Section 10.99 is amended as follows:

(a) Footnote 90, referred to in the section heading, is removed.

(b) The introductory text of paragraph (a) is amended by removing the words "item 427.88, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 2207.10.60, Harmonized Tariff Schedule of the United States".

(c) Paragraph (a) is further amended by removing footnotes 91 and 92.

§ 10.100 [Amended]

57. Section 10.100 is amended by removing the words "item 830.00, 831.00, 832.00, 833.00, 834.00, 835.00, 836.00, or other items in the Tariff Schedules of the United States" and by adding, in their place, "subheadings 9808.00.10, 9808.00.20, 9808.00.30, 9808.00.40, 9808.00.50, 9808.00.60, 9808.00.70, or other subheadings in the Harmonized Tariff Schedule of the United States".

§ 10.102 [Amended]

58. Section 10.102 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 830.00, 831.00, 832.00, 833.00, 834.00, 835.00, 836.00, or other items in the Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9808.00.10, 9808.00.20, 9808.00.30, 9808.00.40, 9808.00.50, 9808.00.60, 9808.00.70, or other subheadings in the Harmonized Tariff Schedule of the United States (HTSUS)" and by removing the words "item 832.00, 833.00, or 834.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9808.00.30, 9808.00.40, 9808.00.50, HTSUS".

(b) The introductory text of paragraph (b) is amended by removing the words "item 832.00, 833.00, or 834.00, Tariff Schedules of the U.S." and by adding, in their place, the words "subheadings 9808.00.30, 9808.00.40, or 9808.00.50, HTSUS".

(c) Paragraph (b)(1) is amended by removing the words "*item 832.00, TSUS*" from the section heading and by adding, in their place, the words "subheading 9808.00.30, HTSUS" and by removing the words "item 832.00, Tariff Schedules of the United States" from the text and by adding, in their place, the words "subheading 9808.00.30, HTSUS".

(d) Paragraph (b)(2) is amended by removing the words "*item 833.00, TSUS.*" from the section heading and the words "Pursuant to item 833.00, Tariff Schedules of the United States" from the text and by adding, in their place, the words "*subheading 9808.00.40, HTSUS.* Pursuant to subheading 9808.00.40, HTSUS".

(e) Paragraph (b)(3) is amended by removing the words "*item 834.00, TSUS*", from the section heading and by adding, in their place, the words "*subheading 9808.00.50, HTSUS*" and by removing the words "item 834.00, Tariff Schedules of the United States" from the text and by adding, in their place, the words "subheading 9808.00.50, HTSUS".

(f) Paragraphs (c) and (d) are amended by removing the words "item 832.00, 833.00, or 834.00 of the Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9808.00.30, 9808.00.40, 9808.00.50, HTSUS".

§ 10.103 [Amended]

59. Section 10.103 is amended as follows:

(a) Paragraph (a) and number 3 on the certification form are amended by removing the words "item 800.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.10, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b) is amended by removing the words "item 800.00 and other articles claimed to be free under item 832.00, 833.00, or 834.00 of the Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.10 and other articles claimed to be free under subheadings 9808.00.30, 9808.00.40, 9808.00.50, HTSUS".

10.104 [Amended]

60. Section 10.104 is amended by removing the words "Schedule 8, Part 5C, Tariff Schedules of the United States

(19 U.S.C. 1202)" and by adding, in their place, the words "Chapter 98, Subchapter XIII, Heading 9813, Harmonized Tariff Schedule of the United States (HTSUS)" and by removing the words "Schedule 8, Part 5C, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter XIII, HTSUS".

§ 10.107 [Amended]

61. The introductory text to § 10.107(a) is amended by removing footnote 99.

§ 10.108 [Amended]

62. Section 10.108 is amended by removing the words "item 801.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.20, Harmonized Tariff Schedule of the United States".

§ 10.121 [Amended]

63. Section 10.121 is amended as follows:

(a) Paragraphs (a) and (b) are amended by removing the words "item 870.30, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9817.00.40, Harmonized Tariff Schedule of the United States (HTSUS)", and by removing the words "item 870.30" and by adding, in their place, the words "subheading 9817.00.40, HTSUS".

(b) Paragraph (a) is further amended by removing the words "headnote 1, Part 6, schedule 8, Tariff Schedules of the United States" and by adding, in their place, the words "U.S. Note 1, Subchapter XVII, Chapter 98, HTSUS".

§ 10.132 [Removed and Reserved]

64. Part 10 is amended by removing § 10.132 and by marking it "Reserved."

10.133 [Amended]

65. Section 10.133 is amended by removing the words "item of the Tariff Schedules of the United States" and by adding, in their place, the words "subheading of the Harmonized Tariff Schedule of the United States".

§ 10.134 [Amended]

66. Section 10.134 is amended by removing the words "item number" and by adding, in their place, the word "subheading"; by removing the words "Tariff Schedules of the United States" where they first appear and by adding, in their place, the words "Harmonized Tariff Schedule of the United States (HTSUS)"; by removing the words "Tariff Schedules of the United States" where they next appear and by adding, in their place, the word "HTSUS", and by removing the word "schedules" wherever it appears and by adding, in its place, the word "HTSUS".

§ 10.139 [Amended]

67. Section 10.139 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item of the Tariff Schedules of the United States" and by adding, in their place, the words "subheading of the Harmonized Tariff Schedule of the United States".

(b) Paragraph (b) is amended by removing the number "10.128" and by adding, in its place, the number "10.138".

§ 10.172 [Amended]

68. Section 10.172 is amended by removing the words "Tariff Schedules of the United States Annotated item number" and by adding, in their place, the words "subheading of the Harmonized Tariff Schedule of the United States".

§ 10.179 [Amended]

69. The introductory text of § 10.179 (a) is amended by removing the words "Schedule 4, Part 10, Headnote 4(a), Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 27, Additional U.S. Note 1, Harmonized Tariff Schedule of the United States".

§ 10.180 [Amended]

70. Section 10.180 is amended by removing the words "item 107.61, Tariff Schedules of the United States (TSUS)" and by adding, in their place, the words "subheadings 0201.20.20, 0201.30.20, 0202.20.20, 0202.30.20, Harmonized Tariff Schedule of the United States (HTSUS)" and by removing the words "item 107.61, TSUS" and by adding, in their place, "subheadings 0201.20.20, 0201.30.20, 0202.20.20, 0202.30.20, HTSUS".

§ 10.181 [Amended]

71. Section 10.181 is amended by removing the words "Tariff Schedules of the United States" in paragraph (a) and by adding, in their place, the words "Harmonized Tariff Schedule of the United States".

§ 10.182 [Removed and Reserved]

72. Part 10 is further amended by removing § 10.182 and the preceding center heading and by marking it "reserved."

§ 10.183 [Amended]

73. Section 10.183 is amended as follows:

(a) Paragraph (b) is amended by removing the words "headnote 3, subpart C, part 6, schedule 6, Tariff Schedules of the United States" and by adding, in their place, the words "General Note 3(c)(iv), Harmonized Tariff Schedule of the United States (HTSUS)."

(b) Paragraph (c)(1) is amended by removing the words "subpart C, part 6, schedule 6, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 88, HTSUS".

(c) Paragraph (c)(2) is amended by removing the words "headnote 3, subpart C, part 6, schedule 6, Tariff Schedules of the United States" and adding, in their place, the words "General Note 3(c)(iv), HTSUS".

(d) Paragraph (d)(2) is amended by removing from the form the words "TSUS item number" and by adding, in their place, the words "HTSUS subheading number"; by removing the words "item number" and by adding, in their place, the words "subheading number" and by removing "subpart C, part 6, schedule 6, TSUS" and by adding, in their place, the words "Chapter 88, HTSUS".

§ 10.191 [Amended]

74. Section 10.191 is amended as follows:

(a) Paragraph (b)(2)(iv) is amended by removing the words "Part 10, Schedule 4, Tariff Schedules of the United States (TSUS)" and by adding, in their place, the words "Chapter 27, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b)(2)(v) is amended by removing the word "TSUS" and by adding, in its place, the word "HTSUS".

(c) Paragraph (b)(2)(vi) is amended by removing the words "item 155.20 or item 155.30, TSUS" and by adding, in their place, the words "subheadings 1701.11.00 and 1701.12.00, HTSUS" and by removing the words "Headnote 4, Schedule A [should read "Subpart"], Part 10, Schedule 1, TSUS" and by adding, in their place, the words "Additional U.S. Note 4, Chapter 17, HTSUS".

(d) Paragraph (b)(2)(vii) is amended by removing the words "Subpart A, Part 2, Appendix, TSUS" and by adding in their place the words "the subheadings of Subchapter III, from the beginning through 9903.85.21, Chapter 99, HTSUS".

§ 10.192 [Amended]

75. Section 10.192 is amended by removing the words " 'C' as a prefix to the TSUS item" and by adding, in their place, the words " 'E' as a prefix to the HTSUS subheading".

PART 11—PACKING AND STAMPING; MARKING

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

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, General Note 9, Harmonized Tariff Schedule of the United States, except as otherwised noted.

§ 11.3 [Amended]

2. Section 11.3 is amended by removing the words "schedule 8, part 2A, Tariff Schedules of the United States" and by adding, in their place, the words "Subchapter IV, Chapter 98, Harmonized Tariff Schedule of the United States".

§ 11.6 [Amended]

3. Section 11.6 is amended by removing footnote 3.

§ 11.9 [Amended]

4. Section 11.9 (a) and (b) are amended by removing the words "schedule 7, part 2E, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 91, Harmonized Tariff Schedule of the United States (HTSUS)" and by removing the words "headnote 4 of that subpart" and by adding, in their place, the words "Additional U.S. Note 4, Chapter 91".

5. Section 11.13(a) is revised to read as follows:

§ 11.13 False designation of origin and false descriptions; false marking of articles of gold or silver.

(a) Articles which bear, or the containers which bear, false designations of origin, or false descriptions or representations, including words or other symbols tending falsely to describe or represent the articles, are prohibited importation under 15 U.S.C. 294, 295, 296, 1124, 1125 or 48 U.S.C. 1405q, and shall be detained.

* * * * *

6. Part 11 is further amended by removing footnote 14 to § 11.13.

PART 12—SPECIAL CLASSES OF MERCHANDISE

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

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, General Note 9, Harmonized Tariff Schedule of the United States, unless otherwise noted. Sections 12.105 through 12.109 also issued under 19 U.S.C. 2094. Sections 12.110 through 12.117 also issued under § 17(e), Federal Insecticide, Fungicide and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972; Pub. L. 92–516 (7 U.S.C. 1360(e)). Sections 12.118 through 12.127 also issued under § 13, 90 Stat. 2034 (15 U.S.C. 2621).

§ 12.7 [Amended]

2. Section 12.7(b) is amended by removing footnote 6.

§ 12.8 [Amended]

3. Section 12.8(a) is amended by removing the references to footnote 7; by adding the text of footnote 7 between the first and second sentences; and by removing footnote 8.

§ 12.16 [Amended]

4. Section 12.16(a) is amended by removing footnote 9.

§ 12.17 [Amended]

5. Section 12.17 is amended by removing footnote 10.

§ 12.24 [Amended]

6. Section 12.24(a) is amended by removing footnote 11.

§ 12.26 [Amended]

7. Section 12.26 (b) and (d) are amended by removing footnotes 13, 13a, and 13b.

8. Section 12.27 is revised to read as follows:

§ 12.27 Importation or exportation of wild animals or birds, or the dead bodies thereof illegally captured or killed, etc.

Customs officers shall perform all duties required of them under statutory provisions that prohibit or restrict the importation or exportation of wild animals or birds, or the dead bodies thereof, or the eggs of such birds, killed, captured, taken, transported, etc., contrary to law. Such laws and statutory provisions include 18 U.S.C. 43, 44, 3054, 3112.

§ 12.29 [Amended]

9. Section 12.29 is amended as follows:

(a) Paragraph (a) is amended by removing the words "schedule 1, part 15D, headnote 2, Tariff Schedules of the United States"; by adding, in their place, the words "Chapter 5, Additional U.S. Note 1"; by removing footnote 16; and by removing the words "said headnote 2" and by adding, in their place, the words "Additional U.S. Note 1 to Chapter 5, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b) is amended by removing footnote 16; by removing the words "schedule 1, part 15D, headnote 2, Tariff Schedules of the United States" and by adding, in their place, the words "Additional U.S. Note 1, Chapter 5, HTSUS".

(c) Paragraph (c) is amended by removing footnotes 16a and 16b.

(d) Paragraph (d) is amended by removing the words "schedule 1, part 4E, headnote 1, Tariff Schedules of the United States, 17" and by adding, in their place, the words "Chapter 4, additional U.S. Note 2" and by removing the footnote 17.

10. Section 12.30 is revised to read as follows:

§ 12.30 Whaling.

The importation and exportation of whales or whale products taken or processed in violation of the International Convention for the Regulation of Whaling signed at Washington under date of December 2, 1946 (Publication No. 3383, Department of State, Whaling Convention), or of the Whaling Convention Act of 1949 (16 U.S.C. 916–916(1)), or of any regulation issued under the Act (50 CFR Part 351) is unlawful. Customs officers and employees shall perform all functions required of them by the above-mentioned convention, law and regulation.

§ 12.31 [Amended]

11. Section 12.31 is amended by removing footnote 18.

§ 12.32 [Amended]

12. Section 12.32 is amended by removing footnote 19.

§ 12.33 [Amended]

13. Section 12.33 is amended by removing footnote 20.

§ 12.34 [Amended]

14. Section 12.34 is amended by removing footnote 21.

§ 12.36 [Amended]

15. Section 12.36 is amended by removing footnote 23.

§ 12.37 [Amended]

16. Section 12.37 is amended by removing footnote 24.

§ 12.38 [Amended]

17. Section 12.38 is amended by removing footnote 25.

§ 12.42 [Amended]

18. Section 12.42 is amended by removing footnote 29.

§ 12.45 [Amended]

19. Section 12.45 is amended by removing footnote 30.

§ 12.48 [Amended]

20. Section 12.48 is amended by removing footnote 31.

§ 12.60 [Amended]

21. Section 12.60 is amended by removing footnotes 36 and 37.

§ 12.61 [Amended]

22. Section 12.61 is amended by removing footnotes 38, 39, and 40.

§ 12.62 [Amended]

23. Section 12.62 is amended by removing footnote 41.

§ 12.130 [Amended]

24. Section 12.130 is amended as follows:

(a) The introductory text to paragraph (a) is revised to read as follows:

(a) *General.* Textile or textile products subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), include merchandise which is subject to the provisions of the International Arrangement Regarding Trade in Textiles (The Multi-Fiber Arrangement).

(b) Paragraph (c) is amended by removing the words "Headnote 2, Part 1, Schedule 8, TSUS," wherever they appear and adding, in their place, the words "Chapter 98, Subchapter II, Note 2, Harmonized Tariff Schedule of the United States,".

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The authority citation for Part 18 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, General Note 9, Harmonized Tariff Schedule of the United States, unless otherwise noted.

§ 18.1 [Amended]

2. Section 18.1 (a) and (b) are amended by removing footnotes 1 and 2, and by adding in (b), following the date "1936," the words "(19 U.S.C. 1551, 1551a)".

§ 18.3 [Amended]

3. Section 18.3 is amended by removing the footnote 3.

§ 18.4a [Amended]

4. Section 18.4a is amended by removing footnotes 3a, 3b, and 3c.

§ 18.10 [Amended]

5. Section 18.10 is amended by removing footnote 4, and by adding a new sentence immediately following the words "Virgin Islands (U.S.)", as follows:

Before shipping merchandise in bond to another port for the purpose of warehousing or rewarehousing, the shipper should ascertain whether warehouse facilities are available at the intended port of destination.

§ 18.11 [Amended]

6. Section 18.11, paragraphs (a), (c), and (e), are amended by removing footnotes 5, 6, and 7.

§ 18.20 [Amended]

7. Section 18.20 is amended by removing footnote 8.

8. The heading immediately preceding § 18.25 is amended by removing footnote 10.

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE

1. The authority citation for Part 19 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, General Note 9, Harmonized Tariff Schedule of the United States, unless otherwise noted.

§ 19.1 [Amended]

2. Section 19.1 is amended by removing footnotes 1, 2, 3, 4, 5, and 6.

§ 19.11 [Amended]

3. Section 19.11 is amended by removing footnotes 14 and 15.

§ 19.13 [Amended]

4. Section 19.13(a) and (d) are amended by removing footnotes 16 and 17.

§ 19.15 [Amended]

5. Section 19.15(a) and (f) are amended by removing footnotes 18 and 19.

§ 19.17 [Amended]

6. Section 19.17(a) is amended by removing footnote 22 and by removing the words "Schedule 6, Part 1 or 2, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 26, 71, 72, and 73, Harmonized Tariff Schedule of the United States".

§ 19.18 [Amended]

7. Section 19.18(a) is amended by removing the words "Schedule 6, Part 1, headnote 4(b), Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 26, Additional U.S. Note 1, Harmonized Tariff Schedule of the United States."

§ 19.19 [Amended]

8. Section 19.19 is amended as follows:

(a) Paragraph (a) is amended by removing the words "schedule 6, part 1, headnote 4, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 26, Additional U.S. Note 1, Harmonized Tariff Schedule of the United States".

(b) Paragraph (b) is amended by removing footnote 23.

§ 19.23 [Amended]

9. Section 19.23 is amended by removing footnote 24.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for Part 24 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, 31 U.S.C. 9701, General Note 9, Harmonized Tariff Schedule of the United States, unless otherwise noted.

§ 24.16 [Amended]

2. Section 24.16 is amended as follows:

(a) The section is amended by removing the footnotes number 3, 4, 5, and 5a.

(b) Paragraph (b) is amended and by adding a new last sentence as follows: "For example: At a port where the regular hours of business have been fixed at 8 a.m. to 5 p.m. for the inside force and 7 a.m. to 4 p.m. for the outside force, a clerk whose regular working hours are 8 a.m. to 5 p.m. is not entitled to reimbursable extra compensation if assigned to inspectional work from 7 a.m. to 8 a.m. on a week day, since he works within the regular hours for the service to which he is assigned."

§ 24.17 [Amended]

3. Section 24.17(a)(8) is amended by removing the footnote 5aa; and by adding a new sentence at the end of paragraph (a)(8), as follows: "A customs officer so assigned is not acting as a customs warehouse officer, since the services have no connection with a customs bonded warehouse."

§ 24.36 [Amended]

4. Section 24.36 is amended as follows:

(a) The heading to § 24.36 is amended by removing footnote 6.

(b) Paragraph (d) is amended by removing footnote 7.

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

1. The authority citation for Part 54 is revised to read as follows:

Authority: 19 U.S.C. 66, 1624, General Note 9, Harmonized Tariff Schedule of the United States (HTSUS), (sec. 101, 76 Stat. 72; Subheadings 9817.00.80 and 9817.00.90, HTSUS; Section XV, Note 5, HTSUS.

§ 54.5 [Amended]

2. Section 54.5 is amended as follows:

(a) The introductory text of paragraph (a) is amended by removing the words "in chief value of metal" and by adding, in their place, the words "predominating by weight of metal".

(b) The introductory text of paragraph (a) is further amended by removing the words "item 870.50, 870.55, and 870.60, Tariff Schedules of the United States (TSUS)" and by adding in their place, the words "subheadings 9817.00.80 and 9817.00.90, Harmonized Tariff Schedule of the United States (HTSUS)".

(c) Paragraphs (a)(1–3) are revised to read as follows:

(a) * * *

(1) Articles of lead, zinc, or tungsten;

(2) Metal-bearing materials provided for in Chapter 26, HTSUS; or

(3) Unwrought metal provided for in Section XV, HTSUS."

§ 54.6 [Amended]

3. Section 54.6 is amended as follows:

(a) The introductory text is amended by removing the words "in chief value" and by adding, in their place, the words "predominating by weight".

(b) Paragraph (a) is amended by removing footnote 1.

(c) Paragraph (d) is amended by removing the words "items 870.50, 870.55 or 870.60, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9817.00.80 or 9817.00.90, HTSUS."

(d) Concluding text is added to read as follows: As used in this section, the phrase "in connection with the entry" means any time before liquidation of the entry or within the period during which a reliquidation may be completed (§ 113.43(c)). Therefore, a claim for free entry under subheading 9817.00.80 or 9817.00.90, HTSUS, supported by a statement of intent may be filed at any time before liquidation of the entry or within the period during which a valid reliquidation may be completed."

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 9, Harmonized Tariff Schedule of the United States), 1624, Reorganization Plan 1 of 1965; 3 CFR 1965 Supp. Additional authority and statutes interpreted or applied are cited in the text or following the section affected.

PART 103—AVAILABILITY OF INFORMATION

1. The authority citation for Part 103 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 19 U.S.C. 66, 1624, 31 U.S.C. 483a.

§ 103.11 [Amended]

2. Section 103.11 is amended as follows:

(a) Paragraph (b)(2)(i) is amended by adding the words "and the Harmonized Tariff Schedule of the United States" immediately following the words "Tariff Schedules of the United States".

(b) Paragraph (b)(2)(xii) is amended by adding the words "and Chapter 98, Subchapter XIII, HTSUS" immediately following the words "Tariff Schedules of the United States".

PART 111—CUSTOMS BROKERS

1. The authority citation for Part 111 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 9, Harmonized Tariff Schedule of the United States), 1624, 1641.

§ 111.11 [Amended]

2. Section 111.11 (d) is amended by removing the words "Tariff Schedules of the United States" and by adding, in their place, the words "Harmonized Tariff Schedule of the United States".

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 is revised to read as follows:

Authority: 19 U.S.C. 66, 1551, 1565, 1624.

§ 113.66 [Amended]

2. Section 113.66 is amended as follows:

(a) The introductory text to paragraph (b) is amended by removing the words "Items 800.00 or 808.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.10, or 9803.00.50 Harmonized Tariff Schedule of the United States (HTSUS)" and by removing the words "item 800.00 or 808.00, TSUS" and by adding, in their place, the words "subheading 9801.00.10 or 9803.00.50, HTSUS".

(b) Paragraph (b)(1) is amended by removing the words "item 800.00, TSUS" and by adding, in their place, the words "subheading 9801.00.10, HTSUS".

(c) Paragraph (b)(2) is amended by removing the words "item 808.00, TSUS" and by adding, in their place, the words "subheading 9803.00.50, HTSUS".

PART 114—CARNETS

1. The authority citation to Part 114 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 9, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1433, 1436, 1459, 1590, 1594, 1624, 1644; 49 U.S.C. 1474, App. 1509.

§ 122.48 [Amended]

2. Section 122.48(d) is amended by removing the words, "Schedule 8, Tariff Schedules of the United States" in the second sentence and by adding, in their place, "Chapter 98, HTSUS".

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

The general authority citation for Part 123 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 9, Harmonized Tariff Schedule of the United States), 1624, unless otherwise noted.

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

1. The general authority citation for Part 127 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624.

§ 127.33 [Amended]

2. Section 127.33 is amended by removing the words "schedule 8, part 2A, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter XV, Harmonized Tariff Schedule of the United States".

PART 132—QUOTAS

1. The authority citation for Part 132 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 9, Harmonized Tariff Schedule of the United States), and 1624.

§ 132.6 [Amended]

2. Section 132.6 is amended by removing the words "General Headnote 3(e), Tariff Schedules of the United States, as amended" and by adding, in their place, the words "General Note 3(c), Harmonized Tariff Schedule of the United States".

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for Part 134 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 9, Harmonized Tariff Schedule of the United States), 1304, 1624.

§ 134.0 [Amended]

2. Section 134.0 is amended by removing the words "Tariff Schedules of the United States" and by adding, in their place, the words "Harmonized Tariff Schedule of the United States".

§ 134.22 [Amended]

3. Section 134.22, paragraph (b) is revised as follows:

(b) *Containers or holders treated as imported articles.* Containers or holders for imported merchandise which are subject to treatment as imported articles under the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall be marked to indicate clearly the country of their own origin in addition to any marking which may be required to show the country of origin of their contents.

§ 134.23 [Amended]

4. Section 134.23 is amended as follows:

(a) Paragraph (a) is amended by removing the words "headnote 6(b)(ii), Tariff Schedules of the United States" and by adding, in their place, the words "General Rule of Interpretation 5(b), Harmonized Tariff Schedule of the United States".

(b) Paragraph (b) is amended by removing the words "within the purview of headnote 6(b)(iii), Tariff Schedules of the United States" and by adding, in their place, the words "which give the whole importation its essential character, as described in General Rule of Interpretation 5(a)".

§ 134.24 [Amended]

5. Section 134.24(b) is amended by removing the words "general headnote 6(a), Tariff Schedules of the United States" and by adding, in their place, the words "the Harmonized Tariff Schedule of the United States".

§ 134.33 [Amended]

6. The list in § 134.33 is amended as follows:

(a) The entry "Articles classifiable under items 850.40, 850.70, 851.30, and 853.30, Tariff Schedules of the United States" is removed and the words "Articles classified under subheadings 9810.00.15, 9810.00.25, 9810.00.40 and 9810.00.45, Harmonized Tariff Schedule of the United States" are added in their place.

(b) The entry "Rails, joint bars, and tie plates covered by item 610.20 through 610.26, Tariff Schedules of the United States" is removed and the words "Rails, joint bars, and tie plates covered by subheadings 7302.90.00, Harmonized Tariff Schedule of the United States" are added in their place.

(c) The entry "Stamps, postage and revenue, and other articles covered in item 247.40, Tariff Schedules of the United States" is removed and the words "Stamps, postage and revenue, and other articles covered in subheadings 9704.00.00 and 4907.00.00, Harmonized Tariff Schedule of the United States" are added in their place.

§ 134.43 [Amended]

7. Section 134.43(a), is revised to read as follows:

(a) *Marking previously required by certain provisions of the Tariff Act of 1930.* Articles of a class or kind listed below shall be marked legibly and conspicuously by die stamping, cast-in-the-mold lettering, etching (acid or electrolytic), engraving, or by means of metal plates which bear the prescribed marking and which are securely attached to the article in a conspicuous place by welding, screws, or rivets: knives, forks, steels, cleavers, clippers, shears, scissors, safety razors, blades for safety razors, surgical instruments, pliers, pincers, nippers and hinged hand tools for holding and splicing wire, vacuum containers, and parts of the above articles.

8. Section 134.43(b) is amended by removing the words "schedule 7, part 2, subpart E, headnotes 4 and 5 of the Tariff Schedules of the United States" and by adding in their place the words "Chapter 91, Additional U.S. Note 4".

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for Part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

§ 141.4 [Amended]

2. Section 141.4 is amended as follows:

(a) Paragraph (a) is revised to read as follows:

(a) The exemptions listed in General Note 5 to the Harmonized Tariff Schedule of the United States (HTSUS); and.

(b) Paragraph (b) is revised to read to follows:

(b) Vessels (not including vessels classified in heading 8903 or in Chapter 98, HTSUS, such as under subheadings 9804.00.35 or 9813.00.35). See also Chapter 89, Additional U.S. Note.

(c) A new paragraph is added, designated paragraph "c" as follows:

(c) Articles specifically exempted by law or regulations from the requirement for entry. (19 U.S.C. 1498.)

§ 141.53 [Amended]

3. Section 141.53(c) is amended by removing the words "schedule 8, part 5C, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States".

§ 141.61 [Amended]

4. Section 141.61 is amended as follows:

(a) Paragraph (e)(1)(i)(A) is amended by removing the words "General Statistical Headnotes, Tariff Schedules of the United States Annotated ("TSUSA")" and by adding, in their place, the words "General Statistical Notes, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (e)(1)(i)(B) (1) is amended by removing the words "Headnotes, Tariff Schedules of the United States Annotated (TSUSA)" and by adding, in their place, the words "Notes, HTSUS".

(c) Paragraph (e)(1)(ii)(A) is amended by removing the words "Annex 8, TSUSA" and by adding, in their place, the words "Annex B, HTSUS".

(d) Paragraph (e)(1)(ii)(C) is amended by removing the word "TSUSA" and by adding in its place "HTSUS".

(e) The introductory text to paragraph (e)(2) is amended by removing the words "(xiv), (xv), and (xvi) General Statistical Headnote 1(a), TSUSA" and by adding, in their place, the words "General Statistical Note 1(a)(xiv)(xvii), HTSUS".

(f) Paragraph (e)(3) is amended by removing the words "subparagraph (v), General Statistical Headnote 1(b), TSUSA" and by adding, in their place, the words "General Statistical Note 1(b)(V), HTSUS".

(g) Paragraph (e)(5) is amended by removing the words "General Statistical Headnotes, TSUSA" and by adding, in their place, the words "General Statistical Note, HTSUS".

§ 141.82 [Amended]

5. Section 141.82, paragraph (d), is amended by removing the words "Schedule 3; Parts 1, 4A, 7B, 12A, 12D and 13B of Schedule 7; items 772.30 and 772.35; and Parts 2 and 3 of the Appendix of the Tariff Schedules of the United States Annotated)" and by adding, in their place, the words "Sections VII, VIII, XI, and XII; Chapter 94; and Chapter 99, Subchapters III and IV, Harmonized Tariff Schedule of the United States".

§ 141.83 [Amended]

6. Section 141.83, paragraph (d)(5), is amended by removing the words "item 806.20 or 806.30, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9802.00.40 and 9802.00.60, Harmonized Tariff Schedule of the United States".

7. Section 141.89, paragraphs (a) and (b) are revised to read as follows:

§ 141.89 Additional information for certain classes of merchandise.

(a) Invoices for the following classes of merchandise, classifiable under the Harmonized Tariff Schedule of the United States (HTSUS), shell set forth the additional information specified: [75–42, 75–239, 78–53, 83–251, 84–149.]

Aluminum and alloys of aluminum classifiable under subheadings 7601.10.60, 7601.20.60, 7601.20.90, or 7602.00.00, HTSUS (T.D. 53092, 55977, 56143)—Statement of the percentages by weight of any metallic element contained in the article.

Articles manufactured of textile materials, Coated or laminated with

plastics or rubber, classifiable in Chapter(s) 39, 40, and 42—Include a description indicating whether the fabric is coated or laminated on both sides, on the exterior surface or on the interior surface.

Bags manufactured of plastic sheeting and not of a reinforced or laminated construction, classified in Chapter 39 or in heading 4202—Indicate the gauge of the plastic sheeting.

Ball or roller bearings classifiable under subheading 8482.10.50 through 8482.80.00, HTSUS (T.D. 68-306)—(1) Type of bearing (i.e. whether a ball or roller bearing); (2) If a roller bearing, whether a spherical, tapered, cylindrical, needled or other type; (3) Whether a combination bearing (i.e. a bearing containing both ball and roller bearings, etc.); and (4) If a ball bearing (not including ball bearing with integral shafts or parts of ball bearings), whether or not radial, the following: (a) outside diameter of each bearing; and (b) whether or not a radial bearing (the definition of radial bearing is, for Customs purposes, an antifriction bearing primarily designed to support a load perpendicular to shaft axis).

Beads (T.D. 50088, 55977)—(1) The length of the string, if strung; (2) The size of the beads expressed in millimeters; (3) The material of which the beads are composed, i.e. ivory, glass, imitation pearl, etc.

Bed linen and Bedspreads—Statement as to whether or not the article contains any embroidery, lace, braid, edging, trimming, piping or applique work.

Chemicals—Furnish the use and Chemical Abstracts Service number of chemical compounds classified in Chapters 27, 28 and 29, HTSUS.

Colors, dyes, stains and related products provided for under heading 3204, HTSUS—The following information is required: (1) Invoice name of product; (2) Trade name of product; (3) Identity and percent by weight of each component; (4) Color Index number (if none, so state); (5) Color Index generic name (if none so state); (6) Chemical Abstracts Service number of the active ingredient; (7) Class of merchandise (state whether acid type dye, basic dye, disperse dye, fluorescent brightener, soluble dye, vat dye, toner or other (describe); (8) Material to which applied (name the material for which the color, dye, or toner is primarily designed).

Copper (T.D. 45878, 50158, 55977) articles classifiable under the provisions of Chapter 74, HTSUS—A statement of the weight of articles of copper, and a statement of percentage of copper content and all other elements—by weight—to articles classifiable according to copper content.

Copper ores and concentrates (T.D. 45878, 50158, 55977) classifiable in heading 2603, and subheadings 2620.19.60, 2620.20.00, 2620.30.00, and heading 7401—Statement of the percentages by weight of the copper content and any other metallic elements.

Cotton fabrics classifiable under the following HTSUS headings: 5208, 5209, 5210, 5211, and 5212—(1) Marks on shipping packages; (2) Numbers on shipping packages; (3) Customer's call number, if any; (4) Exact width of the merchandise; (5) Detailed description of the merchandise; trade name, if any; whether bleached, unbleached, printed, composed of yarns of different color, or dyed; if composed of cotton and other materials, state the percentage of each component material by weight; (6) Number of single threads per square centimeter (All ply yarns must be counted in accordance with the number of single threads contained in the yarn; to illustrate: a cloth containing 100 two-ply yarns in one square centimeter must be reported as 200 single threads); (7) Exact weight per square meter in grams; (8) Average yarn number use this formula:

$$\frac{100 \times \text{(Total Single Yarns Per Square Centimeter)}}{\text{(Number of Grams Per Square Meter)}}$$

(9) Yarn size or sizes in the warp; (10) Yarn size or sizes in the filling; (11) Specify whether the yarns are combed or carded; (12) Number of colors or kinds (different yarn sizes or materials) in the filling; (13) Specify whether the fabric is napped or not napped; and (14) Specify the type of weave, for example, plain, twill, sateen, oxford, etc., and (15) Specify the type of machine on which woven: if with Jacquard (Jacq), if with Swivel (Swiv), if with Lappet (Lpt.), if with Dobby (Dobby).

Cotton raw See § 151.82 of this chapter for additional information required on invoices.

Cotton waste (T.D. 5044)—(1) The name by which the cotton waste is known, such as "cotton card strips"; "cotton comber waste"; "cotton lap waste"; "cotton sliver waste"; "cotton roving waste"; "cotton fly waste"; etc.; (2) Whether the length of the cotton staple forming any cotton card strips covered by the invoice were made is less than 3.016 centimeters (1 3/16 inches) or is 3.016 centimeters (1 3/16 inches) or more.

Earthenware or crockeryware composed of a nonvitrified absorbent body (including white granite and semiporcelain earthenware and cream-colored ware, stoneware, and terra cotta, but not including common brown, gray, red, or yellow earthenware), embossed or plain; common salt-glazed stoneware; stoneware or earthenware crucibles; Rockingham earthenware; china, porcelain, or other vitrified wares, composed of a vitrified nonabsorbent body which, when broken, shows a vitrified, vitreous, semi-vitrified, or semivitreous fracture; and bisque or parian ware (T.D. 53236)—(1) If in sets, the kinds of articles in each set in the shipment and the quantity of each kind of article in each set in the shipment; (2) The exact maximum diameter, expressed in centimeters, of each size of all plates in the shipment; (3) The unit value for each style and size of plate, cup, saucer, or other separate piece in the shipment.

Fish or fish livers (T.D. 50725, 49640, 55977) imported in airtight containers classifiable under Chapter 3, HTSUS—(1) Statement whether the articles contain an oil, fat, or grease which has had a separate existence as an oil, fat, or grease, (2) The name and quantity of any such oil, fat, or grease.

Footwear, classifiable in headings 6401 through 6405 of the HTSUS—

1. Manufacturer's style number.

2. Importer's style and/or stock number.

3. Percent by area of external surface area of upper (excluding reinforcements and accessories) which is:

Leather a. _____%
Composition Leather b. _____%
Rubber and/or plastics c. _____%
Textile materials d. _____%
Other (give separate e. _____%
Percent for each f. _____%
Type of material)

4. Percent by area of external Surface area of outersole (excluding reinforcements and accessories) which is:

Leather a. _____%
Composition Leather b. _____%
Rubber and/or plastics c. _____%
Textile materials d. _____%
Other (give separate e. _____%
Percent for each f. _____%
Type of material)

You may skip this section if you choose to answer *all* questions A through Z below.

I. If 3(a) is larger than any other percent in 3 and if 4(a) is larger than any other percent in 4, answer questions F, G, L, M, O, Q, R, S, and X.

II. If 3(a) is larger than any other percent in 3 and if 4(c) is larger than any other percent in 4, answer questions F, G, L, M, N, O, Q, S and X.

III. If 3(a) plus 3(b) is larger than any single percent in 3 and if 4(d), 4(e) or 4(f) is larger than any other percent in 4, stop.

IV. If 3(c) is larger than any other percent in 3 and if 4(a) or 4(b) is larger than any other percent in 4, stop.

V. If 3(c) is larger than any other percent in 3 and if 4(c) is larger than any other percent in 4, answer questions B, E, F, G, H, J, K, L, M, N, O, P, T and W.

VI. If 3(d) is larger than any other percent in 3 and if 4(a) plus 4(b) is larger than any single percent in 4, answer questions C and D.

VII. If 3(d) is larger than any other percent in 3 and if 4(c) is larger than any other percent in 4, answer questions A, C, J, K, M, N, P and T.

VIII. If 3(d) is larger than any other percent in 3 and if 4(d) is larger than any other percent in 4, answer questions U, Y and Z.

IX. If the article is made of paper, answer questions V and Z.

If the article does not meet any of conditions I through IX above, answer all questions A through Z, below.

A Percent of external surface area of upper (including leather reinforcements and accessories) Which is leather _____%

B Percent by area of external surface area of upper (*including* all reinforcements and accessories). Which is rubber and/or plastics _____%

C Percent by weight of rubber and/or plastics is _____%

D Percent by weight of textile materials plus rubber and/or plastics is _____%

E Is it waterproof?

F Does it have a protective metal toe cap?

G Will it cover the wearer's ankle bone?

H Will it cover the wearer's knee cap?

I [Reserved.]

J Is it designed to protect against water, oil, grease, or chemicals, or cold or inclement weather?

K Is it a slip-on?

L Is it a downhill or cross-country skiboot?

M Is it serious sports footwear other than skiboots? (Chapter 64 subheading note defines sports footwear.)

N Is it a tennis, basketball, gym, or training shoe or the like?

O Is it made on a base or platform of wood?

P Does it have open toes or open heels?

Q Is it made by the (lipped insole) welt construction?

R Is it made by the turned construction?

S Is it worn exclusively by men, boys or youths?

T Is it made by an exclusively adhesive construction?

U Are the fibers of the upper, by weight, predominately vegetable fibers?

V Is it disposable, i.e., intended for one-time use?

W Is it a "Zori"?

X Is the leather in the upper pigskin?

Y Are the sole and upper made of woolfelt?

Z Is there a line of demarcation between the outer sole and upper?

The information requested above may be furnished on CF 5523 or other appropriate format by the exporter, manufacturer or shipper.

Also, the following information must be furnished by the importer or his authorized agent if classification is claimed under one of the subheadings below:

If subheading 6401.99.80, 6402.19.10, 6402.30.30, 6402.91.40, 6402.99.15, 6402.99.30, 6406.11.40, 6404.11.60, 6404.19.35, 6404.19.40, or 6404.19.60 is claimed:

Does the shoe have a foxing or foxing-like band? If so, state its materials(s).

Does the sole overlap the upper other than just at the front of the toe and/or at the back of the heel?

Definitions for some of the terms used in questions A to Z above: For the purpose of this section, the following terms have the approximate definitions below. If either a more complete definition or a decision as to its application to a particular article is needed, the maker or importer of record (or the agent of either) should contact Customs prior to entry of the article.

a. In an *exclusively adhesive construction*, all of the piece(s) of the bottom would separate from the upper or from each other if all adhesives, cements, and glues were dissolved. It includes shoes in which the pieces of the upper are stitched to each other, but not to any part of the bottom. Examples include:

1. Vulcanized construction footwear;

2. Simultaneous molded construction footwear;

3. Molded footwear in which the upper and the bottom are one piece of molded rubber or plastic, and

4. Footwear in which staples, rivets, stitching, or any of the methods above are either primary or just extra or auxiliary, even through adhesive is a major part of the reason to bottom will not separate from the upper.

b. *Composition leather* is made by binding together leather fibers or small pieces of natural leather. It does not include imitation leathers not based on natural leather.

c. *Leather* is the tanned skin of any animal from which the fur or hair has been removed. Tanned skins coated or laminated with rubber and/or plastics are "leather" only if the leather gives the material its essentail character.

d. A *line of demarcation* exists if one can indicate where the sole ends and the upper begins. For example, knit booties do not nrmally have a line of demarcation.

e. *Men's, boys' and youths'* sizes cover footwear of American youths sizes 11½ and larger for males, and do not include footwear commonly worn by both sexes. If more than 4% of the shoes sold in a given size will be worn by females, that size is "commonly worn by both sexes."

f. Footwear is designed to *protect* against water, oil or cold or inclement weather only if it is substantially more of a protection against those item than the usual shoes of that type. For example, leather oxfords will clearly keep one's feet warmer and drier than going barefoot, but they are not a protection in this sense. On the other hand the snow-jobber is the protective version of the nonprotective jogging shoe.

g. *Rubber and/or plastics* includes any textile material visibly coated (or covered) externally with one or both of those materials.

h. *Slip-on* includes:

1. A boot which must be pulled on.

2. Footwear with elastic cores which must be stretched to get it on, but not bootwear having a separate piece of elasticized fabric which forms a full circle around the foot or ankle.

i. *Sports footwear* includes only:

(1) Footwear which is designed for a sporting activity and has, or has provision for, the attachment of spikes, sprigs, cleats, stops, clips, bars or the like;

(2) Skating boots (without skates attached), ski boots and cross-country

ski footwear, wrestling boots, boxing boots and cycling shoes.

j. *Tennis shoes, basketball shoes, gym shoes, training shoes and the like* covers athletic footwear other than sports footwear, whether or not principally used for such athletic games or purposes.

k. *Textile materials* are made from cotton, other vegetable fibers, wool, hair, silk or man-made fibers. Note: Cork, wood carboard and leather are not textile materials.

l. In *turned* construction, the upper is stitched to the leather sole wrong side out and the shoe is then turned right side out.

m. *Vegetable fibers* include cotton, flax and ramie, but do not include either rayon or plaiting materials such as rattan or wood strips.

n. *Waterproof footwear* includes footwear designed to protect against penetration by water or other liquids, whether or not such footwear is primarily designed for such purposes.

o. *Welt footwear* means footwear constructed with a welt, which extends around the edge of the outer sole, and in which the welt and shoe upper are sewed to a lip on the surface of the insole, and the outer sole is sewed or cemented to the welt.

p. A *zori* has an upper consisting only of straps or thongs of molded rubber or plastic. This upper is assembled to a foamed rubber or plastic sole by means of plugs.

Fur products and furs (T.D. 53064)—(1) Name or names (as set forth in the Fur Products Name Guide (16 CFR 301.0) of the animal or animals that produced the fur, and such qualifying statements as may be required pursuant to § 7(c) of the Fur Products Labeling Act (15 U.S.C. 69e(c)); (2) A statement that the fur product contains or is composed of used fur, when such is the fact; (3) A statement that fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact; (4) A statement that the fur product is composed wholly or in substantial part of paws, tails, bellies, or waste fur, when such is the fact; (5) Name and address of the manufacturer of the fur product; (6) Name of the country of origin of the furs or those contained in the fur product.

Glassware and other glass products (T.D. 53079, 55977)—Classifiable under Heading 7013 HTSUS—Statement of the separate value of each component article in the set.

Gloves—State if the merchandise has a plastics or a rubber exterior. (See Chapter 59, Note 2(a)(3)).

Grain or grain and screenings (T.D. 51284)—Statement on Customs invoices for cultivated grain or grain and screenings that no screenings are included with the grain, or, if there are screenings included, the percentage of the shipment which consists of screenings commingled with the principal grain.

Handkerchiefs—(1) State the exact dimensions (length and width) of the merchandise; (2) If of cotton indicate whether the handkerchief is hemmed and whether it contains lace or embroidery.

Hats or headgear—(1) If classifiable under subheading 6502.00.40 or 6502.00.60, HTSUS—Statement as to whether or not the article has been bleached or colored; (2) If classifiable under subheadings 6502.00.20 through 6502.00.60 or 6504.00.30 through 6504.00.90, HTSUS—Statement as to whether or not the article is sewed or not sewed, exclusive of any ornamentation or trimming.

Hosiery—(1) Indicate whether a single yarn measures less than 67 decitex. (2) Indicate whether the hosiery is full length, knee length, or less than knee length. (3) Indicate whether it contains lace or net.

Iron or steel classifiable in Chapter 72 or headings 7301 to 7307, HTSUS (T.D. 53092, 55977)—Statement of the percentages by weight or carbon and any metallic elements contained in the articles, in the form of a mill analysis or mill test certificate.

Iron oxide (T.D. 49989, 50107)—For iron oxide to which a reduced rate of duty is applicable, a statement of the method of preparation of the oxide, together with the patent number, if any.

Machines, equipment and apparatus—Chapters 84 and 85, HTSUS—A statement as to the use or method of operation of each type of machine.

Machine parts (T.D. 51616)—Statement specifying the kind of machine for which the parts are intended, or if this is not known to the shipper, the kinds of machines for which the parts are suitable.

Machine tools: (1) Headings 8456 through 8462—machine tools covered by these headings equipped with a CNC (Computer Numerical Control) or the facings (electrical interface) for a CNC must state so; (2) Headings 8458 through 8463—machine tools covered by these headings if used or rebuilt must state so; (3) Subheading 8456.30.10—EDM: (Electical Discharge Machines) if a Traveling Wire (Wire Cut) type must state so. Wire EDM's use a copper or brass wire for the electrode; (4) Subheading 8457.10.0010 through 8457.10.0050—Machining Centers. Must state whether or not they have an ATC (Automatic Tool Changer). Vertical spindle maching centers with an ATC must also indicate the Y-travel; (5) Subheading 8458.11.0030 through 8458.11.0090—horizontal lathes: numerically controlled. Must indicate the rated HP (or KW rating) of the main spindle motor. Use the continuous rather than the 30 minute rating.

Madeira embroideries (T.D. 49988)—(1) With respect to the materials used, furnish: (a) country of production; (b) width of the material in the piece; (c) name of the manufacturer; (d) kind of material, indicating manufacturer's quality number; (e) landed cost of the material used in each item; (f) date of the order; (g) date of the invoice; (h) invoice unit value in the currency of the purchase; (i) discount from purchase price allowed, if any; (2) With respect to the finished embroidered articles, furnish: (a) manufacturers's name, design number, and quality number; (b) importer's design number, if any; (c) finished size; (d) number of embroidery points per unit of quantity; (e) total for overhead and profit added in arriving at the price or value of the merchandise covered by the invoice.

Motion-picture films—(1) Statement of footage, title, and subject matter of each film; (2) Declaration of shipper, cameraman, or other person with knowledge of the facts identifying the films with the invoice and stating that the basic films were to the best of his knowledge and belief exposed abroad and returned for use as newsreel; (3) Declaration of importer that he believes the films entered by him are the ones covered by the preceding declaration and that the films are intended for use as newsreel.

Paper classifiable in Chapter 48—Invoices covering paper shall contain the following information, or will be accompanied by specification sheets containing such information:

(1) Weight of paper in grams per square meter; (2) Thickness, in micrometers (microns); (3) If imported in rectangular sheets, length and width of sheets, in cm; (4) if imported in strips, or rolls, the width, in cm. In the case of rolls, the diameter of rolls in cm; (5) Whether the paper is coated or impregnated, and with what materials; (6) Weight of coating, in grams per square meter; (7) Percentage by weight of the total fiber content consisting of wood fibers obtained by a mechanical process, chemical sulfate or soda process, chemical sulfite process, or semi-chemical process, as appropriate; (8) Commercial designation, as "Writing", "Cover", "Drawing", "Bristol", "Newsprint", etc.; (9) Ash

content; (10) Color; (11) Glaze, or finish; (12) Mullen bursting strength, and Mullen index; (13) Stretch factor, in machine direction and in cross direction; (14) Tear and tensile readings; in machine direction, in cross direction, and in machine direction plus cross direction; (15) Identification of fibers as "hardwood" where appropriate; (16) Crush resistance; (17) Brightness; (18) Smoothness; (19) If bleached, whether bleached uniformly throughout the mass; (20) Whether embossed, perforated, creped or crinkled.

Plastic plates, sheets, film, foil and strip of headings 3920 and 3921—(1) Statement as to whether the plastic is cellular or noncellular; (2) Specification of the type of plastic; (3) Indication of whether or not flexible and whether combined with textile or other material.

Printed matter classifiable in Chapter 49—Printed matter entered in the following headings shall have, on or with the invoices covering such matter, the following information: (1) *Heading 4901*—(a) Whether the books are: dictionaries, encyclopedias, textbooks, bound newspapers or journals or periodicals, directories, bibles or other prayer books, technical, scientific or professional books, art or pictorial books, or "other" books; (b) if "other" books, whether hardbound or paperbound; (c) if "other" books, paperbound, other than "rack size": number of pages (excluding covers). (2) *Heading 4902*—(a) Whether the journal or periodical appears at least four times a week. If the journal or periodical appears other than at least four times a week, whether it is a newspaper supplement printed by a gravure process, is it a newspaper, business or professional journal or periodical, or other than these; (3) *Heading 4904*—Whether the printed or manuscript music is sheet music, not bound (except by stapling or folding); (4) *Heading 4905*—(a) Whether globes or not; (b) if not globes, whether in book form or not; (c) in any case, whether or not in relief; (5) *Heading 4908*—Whether or not vitrifiable; (6) *Heading 4904*—Whether post cards, greeting cards, or other; (7) *Heading 4910*—(a) Whether or not printed on paper by a lithographic process; (b) if printed on paper by a lithographic process, the thickness of the paper, in mm; (8) *Subheading 4911.91*—(a) Whether or not printed over 20 years at time of importation; (b) if printed not over 20 years at time of importation, whether suitable for use in the production of articles of heading 4901; (c) if not printed over 20 years at time of importation, and not suitable for use in the production of articles of heading 4901, whether the merchandise is lithographs on paper or paperboard; (d) if lithographs on paper or paperboard, under the terms of the immediately preceding description, thickness of the paper or paperboard, and whether or not posters; (e) in any case, whether or not posters; (f) in any case, whether or not photographic negatives or positives on transparent bases; (g) *Subheading 4911.99*—If not carnets, or parts thereof, in English or French, whether or not printed on paper in whole or in part by a lithographic process.

Pulp classifiable in Chapter 47—(1) Invoices covering chemical woodpulp, dissolving grades, in *Heading 4702* shall state the insoluble fraction (as a percentage) after 1 hour in a caustic soda solution containing 18% sodium hydroxide (NaOH) at 20 °C; (2) *Subheading 4702.00.0020*—Pulp entered under this subheading shall in addition contain on or with the invoice the ash content as a percentage to the third decimal point, by weight.

Refrigeration equipment (1) Refrigerator-freezers classifiable under subheading 8418.10.00 and (2) refrigerators classifiable under subheading 8418.21.00—(a) Statement as to whether they are compression or absorption type; (b) Statement of their refrigerated volume in liters. (3) Freezers classifiable under subheading 8418.30.00 and 8418.40.00—Statement as to whether they are chest or upright type. (4) Liquid chilling refrigerating units classifiable under subheadings 8418.69.0045 through 8418.69.0060—Statement as to whether they are centrifugal open-type, centrifugal hermetic-type, absorption-type or reciprocating type.

Rolling mills—Subheadings 8455.30.0005 through 8455.30.0085. Rolls for rolling mills: Indicate the composition of the roll—gray iron, cast steel or other—and the weight of each roll.

Rubber products of Chapter 40—(1) Statement as to whether combined with textile or other material; (2) Statement whether the rubber is cellular or noncellular, unvulcanized or vulcanized, and if vulcanized, whether hard rubber or other than hard rubber.

Screenings or scalpings of grains or seeds (T.D. 51096)—(1) Whether the commodity is the product of a screening process; (2) If so, whether any cultivated grains have been added to such commodity; (3) If any such grains have been added, the kind and percentage of each.

Textile fiber products (T.D. 55095)—(1) The constituent fiber or combination of fibers in the textile fiber product, designating with equal prominence each natural or manufactured fiber in the textile fiber product by its generic name in the order of predominance by the weight thereof if the weight of such fiber is 5 per centum or more of the total fiber weight of the product; (2) The percentage of each fiber present, by weight, in the total fiber content of the textile fiber product; (3) The name, or other identification issued and registered by the Federal Trade Commission, of the manufacturer of the product or one or more persons subject to § 3 of the Textile Fiber Products Identification Act (15 U.S.C. 70a) with respect to such product; (4) The name of the country where processed or manufactured. *See also* "Wearing Apparel" below.

Tires and tubes for tires, of rubber or plastics—(1) Specify the kind of vehicle for which the tire is intended, i.e. airplane, bicycle, passenger car, on-the-highway light or heavy truck or bus, motorcycle; (2) If designed for tractors provided for in subheading 8701.90.10 or for agricultural or horticultural machinery or implements provided for in Chapter 84 or in subheading 8716.80.10, designate whether the tire is new, recapped, or used; pneumatic or solid; (3) Indicate whether the tube is designed for tires provided for in subheading 4011.91.10, 4011.99.10, 4012.10.20, or 4012.20.20.

Tobacco (including tobacco in its natural state) (T.D. 44854, 45871)—(1) Specify in detail the character of the tobacco in each bale by giving (a) country and province of origin, (b) year of production, (c) grade or grades in each bale, (d) number of carrots or pounds of each grade if more than one grade is packed in a bale, (e) the time when, place where, and person from whom purchased, (f) price paid or to be paid for each bale or package, or price for the vega or lot if purchased in bulk, or if obtained otherwise than by purchase, state the actual market value per bale; (2) If an invoice covers or includes bales of tobacco which are part of a vega or lot purchased in bulk, the invoice must contain or be accompanied by a full description of the vega or lot purchased; or if such description has been furnished with a previous importation, the date and identity of such shipment; (3) Packages or bales containing only filler leaf shall be invoiced as filler; when containing filler and wrapper but not more than 35 percent of wrapper, they shall be invoiced as mixed; and when containing more than 35 percent of wrapper, they shall be invoiced as wrapper.

Watches and watch movements classifiable in Chapter 91 of the

HTSUS—For all commercial shipments of such articles, there shall be required to be shown on the invoice, or on a separate sheet attached to and constituting a part of the invoice, such information as will reflect with respect to each group, type, or model, the following:

(A) For watches, a thorough description of the composition of the watch cases, the bracelets, bands or straps; the commercial description (ebauche caliber number, ligne size and number of jewels) of the movements contained in the watches; and the type of battery (manufacturer's name and reference number), if the watch is battery-operated;

(B) For watch movements, the commercial description (ebauche caliber number, ligne size and number of jewels). If battery-operated, the type of battery (manufacturer's name and reference number);

(C) The name of the manufacturer of the exported watch movements and the name of the country in which the movements were manufactured.

Wearing apparel—(1) All invoices for textile wearing apparel should indicate a component material breakdown in percentages by weight for all component fibers present in the entire garment, as well as separate breakdowns of the fibers in the (outer) shell (exclusive of linings, cuffs, waistbands, collars and other trimmings) and in the lining. (2) For garments which are constructed of more than one component or material (combinations of knit and not knit fabric or combinations of knit and/or not knit fabric with leather, fur, plastic including vinyl, etc.), the invoice must show a fiber breakdown in percentages by weight for each separate textile material in the garment and a breakdown in percentages by weight for each nontextile material for the entire garment; (3) For woven garments—Indicate whether the fabric is yarn dyed and whether there are "two or more colors in the warp and/or filling"; (4) For all-white T-shirts and singlets—Indicate whether or not the garment contains pockets, trim, or embroidery; (5) For mufflers—State the exact dimensions (length and width) of the merchandise.

Wood products—(1) Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm (lumber), classifiable under Chapter 44, heading 4407, HTSUS, and wood continuously shaped along any of its edges or faces, whether or not planed, sanded or finger-jointed: Coniferous: Subheading 4409.10.90 and Nonconiferous: Subheading 4409.20.90, HTSUS, and dutiable on the basis of cubic meters—

Quantity in cubic meters (m) before dressing; (2) Fiberboard of wood or other ligneous materials whether or not bonded with resins or other organic substances, under Chapter 44, Heading 4411, HTSUS, and classifiable according to its density—Density in grams per cubic centimeter (cm); (3) Plywood consisting solely of sheets of wood, classifiable under Chapter 44, Subheading 4412.11, 4412.12, and 4412.19, HTSUS, and classifiable according to the thickness of the wood sheets—Thickness of each ply in millimeter (mm).

Wool and hair—See § 151.62 of this chapter for additional information required on invoices.

Wool products, except carpets, rugs, mats, and upholsteries, and wool products made more than 20 years before importation (T.D. 50388, 51019)—(1) The percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (a) wool; (b) reprocessed wool; (c) reused wool; (d) each fiber other than wool if said percentage by weight of such fiber is 5 per centum or more; and (e) the aggregate of all other fibers; (2) the maximum percentage of the total weight of the wool product, of any nonfibrous loading, filling, or adulterating matter; and (3) the name of the manufacturer of the wool product, except when such product consists of mixed wastes, residues, and similar merchandise obtained from several suppliers or unknown sources.

Woven fabric of man-made fibers in headings 5407, 5408, 5512, 5513, 5514, 5515, 5516—

(1) State the exact width of the fabric;

(2) Provide a detailed description of the merchandise, (trade name, if any);

(3) Indicate whether bleached, unbleached, dyed, of yarns of different colors and/or printed;

(4) If composed of more than one material, list percentage by weight in each;

(5) Identify the man-made fibers as artificial or synthetic, filament or staple, and state whether the yarns are high tenacity. Specify the number of turns per meter in each yarn;

(6) Specify yarn sizes in warp and filling;

(7) Specify how the fabric is woven (plain weave, twill, sateen, dobby, jacquard, swivel, lappet, etc.);

(8) Indicate the number of single threads per square centimeter in both warp and filling;

(9) Supply the weight per square meter in grams;

(10) Provide the average yarn number using this formula:

$$\frac{100 \times \text{number of single threads per square centimeter}}{\text{(number of grams per square meter)}}$$

(11) For spun yarns, specify whether combed or carded.

(12) For filament yarns, specify whether textured or not textured.

Yarns—(1) All yarn invoices should show: (a) Fiber content by weight; (b) whether single or plied; (c) whether or not put up for retail sale (*See* Section XI, Note 4, HTSUS); (d) whether or not intended for use as sewing thread;

(2) If chief weight of silk—show whether spun or filament;

(3) If chief weight of cotton—show:

(a) Whether combed or uncombed

(b) Metric number (mn)

(c) Whether bleached and/or mercerized;

(4) If chief weight of man-made fiber—show:

(a) Whether filament, or spun, or a combination of filament and spun

(b) If a combination of filament and spun—give percentage of filament and spun by weight.

(5) If chief weight of filament man-made fiber—show:

(a) Whether high tenacity (See Section XI, note 6 HTSUS).

(b) Whether monofilament, multifilament or strip

(c) Whether texturized

(d) Yarn number in decitex

(e) Number of turns per meter

(f) For monofilaments—show cross sectional dimension in millimeters

(g) For strips—show the width of the strip in millimeters (measure in folded or twisted condition if so imported).

(b) *Special Summary Steel Invoice* (1) A Special Summary Steel Invoice (Customs Form 5520) shall be filed in duplicate at the time of filing the entry

summary for each shipment determined by the District Director to have an aggregate purchase price of $10,000 or over or, if from a contiguous country, of $5,000 or over (including all expenses incident to placing the merchandise in condition packed ready for shipment to the United States), and containing any of the articles of steel listed in paragraph (b)(2) of this section. In addition to the information required by § 141.86, the Special Summary Steel Invoice shall set forth the following: (T.D.'s 78–53, 79–79, 79–221, 81–291.)

(A) The date of agreement on the final sales price for the shipment.

(B) A description of, and the additional price charged for, extras, other than width and length, with extras described in terms understood in the U.S. market.

(C) American Iron and Steel Institute (AISI) category.

(D) The base price for each steel category on which the total sales price was based.

(E) The name of the producer, the importer, and the price paid by the first unrelated purchaser in the United States, if that price is available at the time of filing the entry summary. One or more continuation sheets may be used to supply this information, if necessary. (T.D. 79–221.)

(2) The following articles of steel, listed by AISI category and product name, are subject to the special invoice requirements of § 141.89(b)(1):

(1) Ingots, blooms, billets, slabs, etc.
(2) Wire rods.
(3) Structural shapes, plain 76 mm and over.
(4) Sheet piling.
(5) Plates.
(6) Rail and track accessories.
(7) Wheels and axles.
(8) Concrete reinforcing bars.
(9) Bar shapes under 76 mm.
(10) Bars, hot rolled, carbon.
(11) Bars, hot rolled, alloy.
(12) Bars, cold finished.
(13) Hollow drill steel.
(14) Welded pipe and tubing.
(15) Other pipe and tubing.
(16) Round and shaped wire.
(17) Flat wire.
(18) Bale ties.
(19) Galvanized wire fencing.
(20) Wire nails.
(21) Barbed wire.
(22) Black plate.
(23) Tin plate.
(24) Terne plate.
(25) Sheets, hot rolled.
(26) Sheets, cold rolled.
(27) Sheets, coated including galvanized.
(28) Sheets, coated, alloy.
(29) Sheets, hot rolled.
(30) Strip, cold rolled.
(31) Strip, hot and cold rolled-alloy.
(32) Sheets, other, electric coated.
(38) Fabricated structurals.
(43) Wire rope.
(44) Wire strand.
(51) Rigid conduit.

Note.—Although not in sequence with existing numbers in § 141.89(b)(2), the numbers listed are those assigned to these articles by the American Iron and Steel Institute. [TD 87–43.]

§ 141.90 [Amended]

8. Section 141.90, paragraph (b), is amended by removing the words "item number of the Tariff Schedules of the United States" and by adding, in their place, the words "subheading of the Harmonized Tariff Schedule of the United States".

§ 141.113 [Amended]

9. Section 141.113 is amended as follows:

(a) Paragraph (a)(5) is amended by removing the words "Schedule 7, part 2E, headnote 4, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 91, Additional U.S. Note 4, United States Tariff Schedule (HTSUS)".

(b) Paragraph (g) is amended by removing the words "Schedule 8, part 5C, Tariff Schedules of the United States" in each place that they appear and by adding, in their place, the words "Chapter 98, Subchapter XII, HTSUS".

PART 142—ENTRY PROCESS

§ 142.17 [Amended]

3. Section 142.17, paragraph (b)(5), is amended by removing the words "Tariff Schedules of the United States item number" and by adding, in their place, the words "Harmonized Tariff Schedule of the United States subheading number, to the eight-digit level".

§ 142.17a [Amended]

4. Section 142.17a(a)(2) is amended by removing the words "Tariff Schedules of the United States Annotated statistical reporting number" and by adding in their place the words "Harmonized Tariff Schedule of the United States Annotated subheading to the ten-digit level".

PART 143—CONSUMPTION, APPRAISEMENT, AND INFORMAL ENTRIES

1. The authority citation for Part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

§ 143.21 [Amended]

2. Section 143.21 is amended as follows:

(a) Paragraph (a) is amended by removing the words "Schedule 3; Parts 1, 4A, 7B, 12A, 12D, and 13B of Schedule 7; items 772.30 and 772.35; and Parts 2 and 3 of the Appendix to the Tariff Schedules of the United States Annotated" and by adding, in their place, the words "Sections VII, VIII, XI, and XII; Chapter 94 and Chapter 99, Subchapters III and IV, HTSUS".

(b) Paragraph (c) is amended by removing the words "in items from Schedule 3; Parts 1, 4A, 7B, 12A, 12D, and 13B of Schedule 7; items 772.30 and 772.35; and Parts 2 and 3 of the Appendix of the Tariff Schedules of the United States Annotated;" and by adding, in their place, the words "under subheadings from Sections VII, VIII, XI, and XII; or in Chapter 94 and Chapter 99, Subchapters III and IV, HTSUS".

(c) Paragraph (d) is amended by removing the words "schedule 8, part 2A, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter IV, HTSUS".

(d) Paragraph (f) is amended by removing the words "item 806.20, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9802.00.40, HTSUS".

(e) Paragraph (h) is amended by removing the words "item 270.25, 273.10, 273.35, 765.03, 850.10 or 851.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 4903.00.00, 4904.00.00, 4905.91.00, 4905.99.00, 9701.10.00, 9701.90.00, 9810.00.05, HTSUS".

(f) Paragraph (h) is further amended by removing the words "item 850.10 or 851.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9810.00.05 and 9810.00.30, HTSUS".

§ 143.23 [Amended]

3. Section 143.23, paragraph (d), is amended by removing the words "Schedule 3; Parts 1, 4A, 7B, 12A, 12D, and 13B of Schedule 7; items 772.30 and

772.35; and Parts 2 and 3 of the Appendix the Tariff Schedules of the United States Annotated" and by adding, in their place, the words "Sections VII, VIII, XI, and XII; Chapter 94; and Chapter 99, Subchapter III and IV, Harmonized Tariff Schedule of the United States".

§ 143.25 [Amended]

4. Section 143.25 is amended by removing the words "Tariff Schedules of the United States" and by adding, in their place, the words "Harmonized Tariff Schedule of the United States".

§ 143.29 [Amended]

5. Section 143.29, paragraph (b), is amended by removing the words "Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202)" and by adding, in their place, the words "Harmonized Tariff Schedule of the United States".

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. The general authority citation for Part 144 is revised to read as follows:

Authority: 9 U.S.C. 66, 1484, 1557, 1559, 1624.

§ 144.15 [Amended]

2. In § 144.15, paragraph (a)(2), is amended by removing the words "item 804.20, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.80, Harmonized Tariff Schedule of the United States".

PART 145—MAIL IMPORTATIONS

1. The general authority citation for Part 145 is revised as follows:

Authority— 19 U.S.C. 66, 1202 (General Note 9, Harmonized Tariff Schedule of the United States), 1624.

§ 145.12 [Amended]

2. Section 145.12, paragraph (e)(1), is amended by removing the words "item 869.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9816.00.40, Harmonized Tariff Schedule of the United States".

§ 145.34 [Amended]

3. Section 145.34, paragraph (a), is amended by removing the words "item 817.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9805.00.50, Harmonized Tariff Schedule of the United States".

§ 145.35 [Amended]

4. Section 145.35, is amended by removing the words "item 800.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.10, Harmonized Tariff Schedule of the United States".

§ 145.36 [Amended]

5. Section 145.36 is amended by removing the words "items 270.25, 273.10, 273,35, 765.03, 850.10, or 851.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 4903.00.00, 4904.00.00, 4905.91.00, 4905.99.00, 9701.10.00, 9701.90.00, 9810.00.05, Harmonized Tariff Schedule of the United States (HTSUS" and by removing the words "item 850.10 or 851.10" and by adding, in their place, the words "subheading 9810.00.05 or 9101.30, HTSUS".

§ 145.37 [Amended]

6. Section 145.37(b) is amended by removing the words "item 270.25, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 4903.00.00, Harmonized Tariff Schedule of the United States (HTSUS)" and by removing the words "item 830.00" and by adding, in their place, the words "subheading 9808.00.10, HTSUS".

§ 145.43 [Amended]

7. Section 145.43 is amended by removing the words "item 813.31, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.70, Harmonized Tariff Schedule of the United States".

PART 146—FOREIGN TRADE ZONES

1. The authority citation for Part 146 is revised to read as follows:

Authority: 19 U.S.C. 66, 81a—81u, 1202 (General Note 9, Harmonized Tariff Schedule of the United States), 1623, 1624. Section 146.5 also issued under 31 U.S.C. 9701.

§ 146.1 [Amended]

2. Section 146.1, paragraph (b)(5), is amended by removing the worlds "General Headnote 2, Tariff Schedules of the United States" and by adding, in their place, the words "General Note 2, Harmonized Tariff Schedule of the United States".

§ 146.67 [Amended]

3. Section 146.67, paragraph (e), is amended by removing the words "Schedule 8, Part 1, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter I, Harmonized Tariff Schedule of the United States".

§ 146.70 [Amended]

4. Section 146.70, paragraph (b), is amended by removing the words "Schedule 8, Part 1, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter I, Harmonized Tariff Schedule of the United States".

PART 147—TRADE FAIRS

1. The authority citation for Part 147 is revised to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624, 1751–1756, unless otherwise noted.

§ 147.2 [Amended]

2. Section 147.2 is amended as follows:

(a) Paragraph (a)(2) is amended by removing the words "Schedule 8, Part 5B, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter XII, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b) is amended by removing the words "Schedule 8, Part 5C, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter XIII, HTSUS".

§ 147.45 [Amended]

3. Section 147.45 is amended by removing the words "item 804.10, if aircraft, or item 804.20, if not aircraft, unless excluded by headnote 1(c), Subpart A, Part 1, Schedule 8, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.70, if aircraft, or subheading 9801.00.80, if not aircraft, unless excluded by U.S. Note 1(c), Chapter 98, Subchapter I, Harmonized Tariff Schedule of the United States".

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority citation for Part 148 is revised to read as follows:

Authority: 19 U.S.C 66, 1496, 1624. The provisions of this part, except for Subpart C, are also issued under General Note 9, Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202. Additional authority and statutes interpreted or applied are cited in the text or following the section affected.

§ 148.2 [Amended]

2. Section 148.2, paragraph (b), is amended by removing the words "schedule 8, part 2A, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States".

§ 148.5 [Amended]

3. Section 148.5 is amended by removing the words "item 810.20 or 813.10, Tariff Schedules of the United States" and by adding, in their place, the

words "subheadings 9804.00.10, or 9804.00.45, Harmonized Tariff Schedule of the United States".

§ 148.6 [Amended]

4. Section 148.6 paragraph (a), is amended by removing from the first sentence the words "items 810.20, 812.10, 812.30, or 313.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9804.00.10, 9804.00.20, 9804.00.25, 9804.00.35 or 9804.00.45, Harmonized Tariff Schedule of the United States (HTSUS)"; and by removing from the second sentence the words "item 810.20 for tools of trade taken abroad or unless item 813.10 for personal and household effects taken abroad"; and by removing from the third sentence the words "item 810.20 or item 813.10" and by adding in the second and third sentences, in their place, the words "subheadings 9804.00.10 or 9804.00.45".

§ 148.8 [Amended]

5. Section 148.8 is amended as follows:

(a) The introductory text is amended by removing the words "items 812.10, 812.20, 812.25, 812.30, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9804.00.20, 9804.00.25, 9804.00.30, 9804.00.35, Harmonized Tariff Schedule of the United States".

(b) Paragraph (a) is amended by removing the words "item 812.25" and by adding, in their place, the words "subheading 9804.00.30".

§ 148.13 [Amended]

6. Section 148.13 is amended as follows:

(a) Paragraph (c)(1) is amended by removing the words "item 810.20, Tariff Schedules of the United States (19 U.S.C. 1202), for tools of trade taken abroad, or under item 813.10, for personal and household effects taken abroad" and by adding in their place the words "subheading 9804.00.10, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), for tools of trade taken abroad, or under subheading, 9804.00.45, HTSUS, for personal or household effects taken abroad."

(b) Paragraph (c)(2) is amended by removing the words "item 812.10, Tariff Schedule of the United States (19 U.S.C. 1202), for wearing apparel and other similar personal effects; item 812.20, for tobacco products and alcoholic beverages; item 812.25, for articles to be disposed of as bona fide gifts; or item 812.40, for articles accompanying a person in transit to a place outside U.S. Customs territory" and by adding, in their place, the words "subheading 9804.00.20, HTSUS (19 U.S.C. 1202), for wearing apparel and other similar personal effects; subheading 9804.00.25, HTSUS, for tobacco products and alcoholic beverages; subheading 9804.00.30, HTSUS, for articles to be disposed of as bona fide gifts; or subheading 9804.00.40, HTSUS, for articles accompanying a person in transit to a place outside U.S. customs territory."

(c) Paragraph (c)(3) is revised to read as follows:

(c) * * *

(3) Books, libraries, furniture, and similar household effects entitled to free entry under subheading 9804.00.05, HTSUS.

§ 148.23 [Amended]

7. Section 148.23 is amended as follows:

(a) Paragraph (a)(1) is amended by removing the words "schedule 8, part 2A, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (a)(2) is revised as follows:

(a) * * *

(2) Work of art classifiable under subheadings 9701.10.00 or 9701.90.00, HTSUS.

(c) Paragraph (a)(3) is revised as follows:

(a) * * *

(3) Works of art classifiable under subheadings 9702.00.00 or 9703.00.00, HTSUS, upon compliance with § 10.48 of this chapter.

(d) Paragraph (a)(4) is removed.

(e) Paragraph (c) is amended by removing the words "Schedule 3; Parts 1, 4A, 7B, 12A, 12D, and 13B of Schedule 7; items 772.30 and 772.35; and Parts 2 and 3 of the Appendix of the Tariff Schedules of the United States Annotated" and by adding in their place the words "Sections VII, VIII, XI, and XII; Chapter 94, and Chapter 99, Subchapter III and IV, HTSUS".

(f) Paragraph (c)(2) is amended by removing the words "Schedule 3; Part 1, 4A, 7B, 12A, 12D, and 13B of Schedule 7; items 772.30 and 772.35; and Parts 2 and 3 of the Appendix to the Tariff Schedules of the United States Annotated" and by adding, in their place, the words "Sections VII, VIII, XI, and XII; Chapter 94 and Chapter 99, Subchapters III and IV, HTSUS".

§ 148.26 [Amended]

8. Section 148.26(b) is amended by removing the second sentence, beginning with the words "Alcoholic beverages found * * *", in its entirety.

§ 148.31 [Amended]

9. Section 148.31 is amended by removing the words "item 813.10 and schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.45, and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States".

§ 148.33 [Amended]

10. Section 148.33 (a) is amended by removing the words "item 813.30 and 813.31 and schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9804.00.65 and 9804.00.70, and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States".

§ 148.37 [Amended]

11. Section 148.37(b) is amended by removing the words "item 813.40, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.75, Harmonized Tariff Schedule of the United States."

§ 148.39 [Amended]

12. Section 148.39 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 813.25, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.60, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b) is amended by removing the words "item 813.25, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9804.00.60, HTSUS".

§ 148.41 [Amended]

13. Section 148.41 is amended by removing the words "item 812.40, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.40 and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States".

§ 148.42 [Amended]

14. Section 148.42(a) is amended by removing the words "item 812.10, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.20, and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States".

§ 148.43 [Amended]

15. Section 148.43(a) is amended by removing the words "item 812.20, and

schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.25 and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States (HTSUS)".

§ 148.44 [Amended]

16. Section 148.44(a) is amended by removing the words "item 812.25, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.30 and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States".

§ 148.45 [Amended]

17. Section 148.45 is amended by removing the words "item 812.30, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.35 and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States".

§ 148.46 [Amended]

18. Section 148.46(a) by removing the words "schedule 8, part 2A, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter IV, U.S. Note 1, HTSUS"

§ 148.51 [Amended]

19. Section 148.51 is amended as follows:

(a) Paragraph (a)(1) is amended by removing the words "item 812.25, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.39, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (a)(2) is amended by removing the words "item 813.31, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.70, HTSUS".

§ 148.52 [Amended]

20. Section 148.52(a) is amended by removing the words "item 810.10, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.05, Harmonized Tariff Schedule of the United States".

§ 148.53 [Amended]

21. Section 148.53 is amended as follows:

(a) Paragraph (a) is amended by removing the words "schedule 8, part 2, headnote 1, and item 811.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.15, Harmonized Tariff Schedule of the United States (HTSUS)"; by removing the words "item 810.20" and by adding, in their place, the words "subheading 9804.00.10"; and by removing the words "item 811.10" and by adding, in their place, the words "subheading 9804.00.15".

(b) Paragraph (b) is amended by removing the words "item 810.20, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.10, HTSUS".

§ 148.54 [Amended]

22. Section 148.54(a) is amended by removing the words "item 815.00, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.85 and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States."

§ 148.63 [Amended]

23. In § 148.63, the introductory text to paragraph (a) is amended by removing the words "item 814.00, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.80, Harmonized Tariff Schedule of the United States (HTSUS)".

§ 148.64 [Amended]

24. Section 148.64 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 812.25 or 813.31, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9804.00.30 or 9804.00.70, Harmonized Tariff Schedule of the United States (HTSUS)"; and by removing the words "item 814.00, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9804.00.80, HTSUS".

(b) Paragraph (b)(2) is amended by removing the words "item 814.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.80, HTSUS"; and by adding, following the words, "Alcoholic perfumery not in excess of 150 milliliters", the words "(Subheading 9805.00.50, HTSUS (19 U.S.C. 1202, 1321)). [TD 80-179.]"

§ 148.65 [Amended]

25. Section 148.65(a) is amended by removing the words "schedule 8, Part 2A, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States".

§ 148.66 [Amended]

26. Section 148.66 is amended as follows:

(a) Paragraph (a) is amended by removing the words "schedule 8, part 2A, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b)(2) is amended by removing the words "item 812.40, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9808.00.40, HTSUS".

(c) Paragraph (c) is amended by removing the words "item 812.25, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.30, HTSUS".

§ 148.71 [Amended]

27. Section 148.71 introductory text is amended by removing the words "schedule 8, part 2A, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States".

§ 148.73 [Amended]

28. Section 148.73(b) is amended by removing the words "schedule 8, part 2A, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States".

§ 148.74 [Amended]

29. Section 148.74 is amended as follows:

(a) The introductory text to paragraph (a) is amended by removing the words "item 817.00, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9805.00.50, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) The introductory text to paragraph (b) is revised as follows:

(b) The term "personal effects" as used in subheading 9805.00.50, HTSUS, is not confined to that class of articles described in subheading 9804.00.20, HTSUS, nor is any period of use, such as prescribed by subheading 9804.00.05, HTSUS, applicable to household effects entered under subheading 9805.00.50, HTSUS. The privilege of free entry under subheading 9805.00.50, HTSUS, does not apply to:.

(c) Paragraph (b)(1) is amended by removing the words "item 817.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9805.00.50, HTSUS".

(d) Paragraph (c) is revised to read as follows:

(c) *Limitation on alcoholic beverages and tobacco products.* A total of not more than 4 liters of alcoholic beverages and not more than 100 cigars shall be accorded free entry under subheading 9805.00.50, HTSUS, subject to the conditions that:

(1) These articles accompany the person making the claim for free entry upon his arrival in the U.S.;

(2) Not more than 1 liter of any such alcoholic beverages shall have been distilled or otherwise manufactured and bottled in any place other than the United States or its possessions;

(3) Such individual has not concurrently claimed exemption as a returning resident under subheading 9804.00.65 and 9804.00.70, HTSUS; and

(4) Such person, if other than one in the service of the U.S., shall have attained the age of 21.

(e) The introductory text to paragraph (d) is amended by removing the words "item 817.00" and by adding in their place the words "subheading 9805.00.50, HTSUS,".

§ 148.75 [Amended]

30. Section 148.75 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 817.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9805.00.50, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b) is amended by removing the words "item 817.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9805.00.50, HTSUS".

(c) Paragraph (c) is amended by removing the words "item 817.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9805.00.50, HTSUS".

§ 148.77 [Amended]

31. Section 148.77 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 817.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9805.00.50, Harmonized Tariff Schedule of the United States" and by removing the words "item 817.00, Tariff Schedules of the United States" and the words "item 817.00" and by adding, in their place, the words "subheading 9805.00.50, HTSUS".

(b) Paragraph (b)(1) is amended by removing the words "item 817.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9805.00.50, HTSUS".

(c) The form in paragraph (b)(2) is amended by removing the words "item 817.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9805.00.50, Harmonized Tariff Schedule of the United States".

(d) Paragraph (c)(1) is amended by removing the words "item 817.00" and by adding, in their place, the words "subheading 9805.00.50".

§ 148.82 [Amended]

32. Section 148.82 is amended as follows:

(a) Paragraph (b)(1) is amended by removing the words "item 820.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9806.00.05, Harmonized Tariff Schedule of the United States (HTSUS),".

(b) Paragraph (b)(2) is amended by removing the words "item 820.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9806.00.05, Harmonized Tariff Schedule of the United States (HTSUS)".

(c) Paragraph (b)(4) is amended by removing the words "item 820.50, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9806.00.25, HTSUS".

(d) Paragraph (b)(5) is amended by removing the words "item 820.60, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9806.00.30, HTSUS".

§ 148.85 [Amended]

33. Section 148.85 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 822.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9806.00.40, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b) is amended by removing the words "item 822.30, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9806.00.50, HTSUS".

(c) Paragraph (c) is amended by removing the words "item 822.40, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9806.00.55, HTSUS".

§ 148.86 [Amended]

34. Section 148.86 is amended by removing the words "item 841.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9809.00.20, Harmonized Tariff Schedule of the United States".

§ 148.87 [Amended]

35. Section 148.87 (a) is amended by removing the words "item 820.30, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9806.00.15, Harmonized Tariff Schedule of the United States".

§ 148.88 [Amended]

36. Section 148.88(c) is amended by removing the words "item 822.40, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9806.00.55, Harmonized Tariff Schedule of the United States".

§ 148.90 [Amended]

37. Section 148.90 is amended as follows:

(a) Paragraph (a)(1) is amended by removing the words "item 820.40, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9806.00.20, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (a)(2) is amended by removing the words "item 822.20, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9806.00.45, HTSUS".

(c) Paragraph (a)(3) is amended by removing the words "item 841.20, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9809.00.30, HTSUS".

(d) Paragraph (c) is amended by removing the words "item 820.40, 822.20, or 841.20, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheadings 9806.00.20, 9806.00.45 and 9809.00.30, HTSUS".

(e) Paragraph (d)(1)(i) is amended by removing the words "item 822.20, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9806.00.45, HTSUS".

(f) Paragraph (d)(3) is amended by removing the words "item 822.20, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9806.00.45, HTSUS".

(g) Paragraph (e) is amended by removing the words "item 820.40, 822.20, or 841.20, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheadings 9806.00.20, 9806.00.45, 9809.00.30, HTSUS".

§ 148.101 [Amended]

38. Section 148.101 is amended by removing the words "item 869.00 or

869.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9816.00.20 or 9816.00.40, Harmonized Tariff Schedule of the United States".

§ 148.105 [Amended]

39. Section 148.105(a) is amended by removing the words "item 869.00 or 869.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9816.00.20 or 9816.00.40, Harmonized Tariff Schedule of the United States".

§ 148.111 [Amended]

40. Section 148.111 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 813.31, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.70, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b) is amended by removing the words "item 869.10 of the Tariff Schedules" and by adding, in their place, the words "subheading 9816.00.40, HTSUS".

§ 148.113 [Amended]

41. Section 148.113(a)(1) is amended by removing the words "item 813.31, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.70, Harmonized Tariff Schedule of the United States (HTSUS)" and by removing the words "item 869.10 of the tariff schedules" and by adding, in their place, the words "subheading 9816.00.40, HTSUS".

§ 148.115 [Amended]

42. Section 148.115 is amended as follows:

(a) Paragraph (a)(1) is amended by removing the words "item 813.31, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.70, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) The introductory text to paragraph (a)(2) is amended by removing the words "item 869.10 of the tariff schedules" and by adding, in their place, the words "subheading 9816.00.40, HTSUS".

(c) Paragraph (a)(2)(iv) is amended by removing the words "item 869.10" and by adding, in their place, the words "subheading 9816.00.40, HTSUS".

(d) Paragraph (d) is amended by removing the words "item 813.31 of the Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place the words "subheading 9804.00.70, HTSUS" and by removing the words "item 869.10 of the tariff schedules" and by adding, in their place, the words "subheading 9816.00.40, HTSUS".

(e) Paragraph (e) is amended by removing the words "item 813.31, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9804.00.70, HTSUS" and by removing the words "item 869.10 of the tariff schedules" and by adding, in their place, the words "subheading 9816.00.40, HTSUS".

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The authority citation for Part 151 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 9 and 10, Harmonized Tariff Schedule of the United States (HTSUS)), 1624. Subpart A also issued under 19 U.S.C. 1499. Subpart D also issued under additional U.S. Notes to Chapter 26, HTSUS; 19 U.S.C. 1202. Subpart E also issued under Additional U.S. Note 2(f) to Chapter 51, HTSUS. Subpart F also issued under Additional U.S. Notes to Chapter 52, HTSUS; 19 U.S.C. 1202. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

§ 151.13 [Amended]

2. Section 151.13 is amended as follows:

(a) By changing the title "Director, Technical Services Division" to read "Director, Office of Laboratories and Scientific Services", wherever it appears.

(b) By revising paragraph (a) to read as follows:

(a) *Acceptance of reports.* Provided that the commercial gauger or laboratory has complied with the appropriate provisions of the Customs Regulations, and in the absence of clear evidence that District Director should not do so, the District Director shall accept the reports as described in the following paragraphs.

(1) Customs shall accept, from Customs-approved commercial gaugers, gauging reports of the net landed quantity of the products described below, except that in the case of crude petroleum of Heading 2709, the gross quantity may be accepted; see § 151.47. Reports shall be given in the appropriate Harmonized Tariff Schedule units of quantity, e.g., liters, barrels, and kilograms.

HTSUS	Product	Unit of quantity
1501 through 1515.	Animal and vegetable oils.	—Kilogram.
2707.10 through 2707.30 and 2902.20 through 2902.44.	Benzene, toluene, and xylene.	—Liter.
2709	Crude petroleum	—Barrel.
2710 (various sub-headings).	Such as fuel oil, motor fuel, kerosene, naptha, and lubricating oils.	—Barrel.
Chapter 29 (various).	Organic compounds in bulk and in liquid form.	—Kilogram, liter, etc.

(2) Customs shall accept, from Customs-accredited commercial laboratories, laboratory analysis reports giving the characteristics of the products described below when determined according to the analysis methods indicated. In cases where neither a published commercial method such as an ASTM procedure nor an Official Customs Laboratory Method (OCLM) is indicated, the commercial laboratory shall use a method of analysis which has been approved for use in Customs-related transactions by the Director, Office of Laboratories and Scientific Services. OCLM's and approved methods will be made available to the public under the Freedom of Information Act (5 U.S.C. 552) and 19 CFR, Part 103. Methods published by organizations such as ASTM, API, TAPPI, ICUMSA, and similar organizations, are not available from Customs.

HTSUS	Product	Characteristic (analysis method)
1701	Sugar (sucrose, raw sugar).	—Polarization of sugar in sugar degrees (ICUMSA method entitled "Polarization of Raw Sugar").
1703	Molasses	—Percent soluble nonsugar solids. —Percent total sugars. —Weight per gallon in air at 60 °F.

HTSUS	Product	Characteristic (analysis method)
2707.10 through 2707.30 and 2902.20 through 2902.44.	Benzene, toluene and xylene.	—Distillation characteristics (ASTM D 86).
		—Xylene isomer content (ASTM D 2306 or equivalent).
		—Percent composition by weight (ASTM D 2360, D 3797, D 3798, D 4492 or equivalents).
2709	Crude petroleum	—Water by distillation (ASTM D 4006).
		—Sediment and water (ASTM D 96).
		—API gravity (ASTM D 287).
		—Sediment by extraction (ASTM D 473).
2710 (various subheadings).	Such as, fuel oil, motor fuel, kerosene, naptha, and lubricating oils.	—Distillation characteristics (ASTM D 86).
		—Water by distillation (ASTM D 95).
		—Sediment and water (ASTM D 96).
		—API gravity (ASTM D 287).
		—Reid vapor pressure (ASTM D 323).
		—Saybolt universal viscosity (ASTM D 445 and D 2161).
		—Sediment by extraction (ASTM D 473).
		—Percent by weight sulfur (ASTM D 1266, ASTM D 2622, or ASTM D 3120).
		—Percent by weight lead (ASTM D 2547, ASTM D 2599, or ASTM D 3341).
		—Antiknock index (ASTM D 2699 (RON) and ASTM D 2700 (MON); see ASTM D 439).
Chapter 29 (various subheadings).	Organic compounds in bulk and in liquid form.	—Identity using HTSUS descriptions or common or IUPAC nomenclature.
		—Composition, giving percent by weight of each component. (Various methods published by ASTM, API, AOAC, USP, and similar organizations, may be used for identity and composition, e.g., ASTM D 2593 for butadiene, D 2192 for aldehydes, ketones, and similar substances. Approved methods involving gas or liquid chromatography, infrared spectroscopy, mass spectrometry, nuclear magnetic resonance spectrometry, and various "wet" chemical procedures and physical tests, e.g., refractive index, and melting point, may also be used.)
4801	Standard newsprint.	—Weight per area (grammage) in g/m^2 (TAPPI T 410).
		—Thickness in mm (TAPPI T 411).
		—Ash (TAPPI T 413).
		—Sizing by water transudation via ground glass method (TAPPI T 432).
		—Bekk smoothness (TAPPI T 479).

§ 151.14 [Amended]

3. Section 151.14 is amended by removing the table and by adding, in its place, the following table:

Analysis method	Characteristic	Difference between customs value and commercial laboratory's value
ASTM D 96	Sediment & water.	0.11 percent.
ICUMSA	Polarization	0.4 sugar degree.
ICUMSA or AOAC.	Total sugars	2.0 percent total.

§ 151.21 [Amended]

4. Section 151.21 is amended as follows:

(a) The introductory text is amended by removing the words "schedule 1, part 10, Tariff Schedules of the United States" and by adding, in their place, the words "the provisions of Chapters 17 and 18, Harmonized Tariff Schedule of the United States".

(b) Paragraph (a) is revised to read as follows:

(a) *Degree.* "Degree" or "sugar degree" means an International Sugar Degree as determined by polarimetric test performed in accordance with procedures recognized by the International Commission for Uniform Methods of Sugar Analysis. This test discloses the percentage of sucrose contained in the sugar.

§ 151.22 [Amended]

5. Section 151.22 is amended by adding the words and punctuation after the words "raw sugar" as follows: ", as defined in Subheading Note 1 to Chapter 17, Harmonized Tariff Schedule of the United States,".

§ 151.28 [Amended]

6. Section 151.28(a) is amended by removing the words "United States Gallons per inch" and by adding, in their place, the words "liters per centimeter".

§ 151.41 [Amended]

7. Section 151.41 is amended by removing the words "United States gallons" and by adding, in their place, the word "barrels" and by adding a new sentence after the word "unladen.", as follows: "The term 'barrels' is defined in Chapter 27, Additional U.S. Note 7, Harmonized Tariff Schedule of the United States."

§ 151.42 [Amended]

8. Section 151.42(b) is amended by removing the words "public gauger" or "public gaugers" wherever they appear and by adding, in their place, the words "commercial gauger" or "commercial gaugers".

§ 151.44 [Amended]

9. Section 151.44(a) is amended by removing the word "gallon" and by adding, in its place, the word "barrel" and by removing the words "United States gallons per inch or fraction of an inch" and by adding, in their place, the words "barrels per centimeter or tenth of a centimeter."

10. Section 151.46 is revised to read as follows:

§ 151.46 Allowance for excessive water and sediment.

Application for an allowance in duties for all detectable water and sediment in imported petroleum and petroleum products shall be made on Customs Form 4315. The application shall be filed with the district director within 10 days of the district director's receipt of the

gauging report or within 10 days of Customs acceptance of the entry's invoice gauge. If the district director is satisfied that the application for an allowance in duties is acceptable, he shall liquidate the entry accordingly.

§ 151.47 [Amended]

11. Section 151.47 is amended by removing the words and punctuation ", which shall be determined in accordance with §§ 151.46 and 158.13 of this chapter".

§ 151.51 [Amended]

12. Section 151.51 is amended as follows:

(a) Paragraph (a) is amended by removing the words "schedule 6, part 1, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 26, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b) is amended by removing the words "item 601.66, Tariff Schedules of the United States (19 U.S.C. 1202), as containing less than 1 percent of metals dutiable under item 602.10, 602.20, 602.28, or 602.30, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "heading 2617, HTSUS, as containing less than 1 percent of metals dutiable under headings 2603, 2607, and 2608, HTSUS".

§ 151.55 [Amended]

13. Section 151.55 is amended by removing the words "schedule 6, part 1, headnote 4, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 26, Additional U.S. Note 1, Harmonized Tariff Schedule of the United States".

§ 151.61 [Amended]

14. Section 151.61 is amended as follows:

(a) Paragraph (a) is revised to read as follows:

"(a) *Clean kg.* 'Clean kg' means kilograms of clean yield as defined in paragraph (b) of this section."

(b) Paragraph (b) is amended by adding, following the heading "*Clean yield.*", the words, "Except for the purposes of carbonized fibers,".

(c) The section is amended by redesignating paragraphs (c) and (d) as (d) and (e), respectively, and adding new paragraph (c) to read as follows:

"(c) For the purposes of carbonized fibers, the term clean yield means the condition as entered."

15. The introductory text of § 151.62 is amended by removing the words "pound under schedule 3, part 1C, Tariff Schedules of the United States" and by adding, in their place, the words "kilogram under Chapter 51, Harmonized Tariff Schedule of the United States".

16. Section 151.63 is revised to read as follows:

§ 151.63 Information on entry summary.

Each entry summary covering wool or hair subject to duty at a rate per clean kilogram under Chapter 51, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall show as to each lot of wool or hair covered thereby, in addition to other information required, the total estimated or actual net weight of the wool or hair in its condition as imported, its total estimated clean yield in kilograms, and the estimated percentage clean yield. (19 U.S.C. 1484.)

§ 151.64 [Amended]

17. Section 151.64(b) is amended by removing the word "pound" and adding, in its place, the word "kilogram".

§ 151.65 [Amended]

18. Section 151.65 is amended by removing the word "pound" and by adding, in its place, the word "kilogram".

§ 151.68 [Amended]

19. Section 151.68 is amended by removing the word "pound" from paragraphs (a) and (b) and by adding, in its place, the word "kilogram".

§ 151.76 [Amended]

20. Section 151.76(a) is amended by removing the word "pound" and by adding, in its place, the word "kilogram" and by removing the words "schedule 3, part 1C, headnote 2, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 51, Additional U.S. Note 2, Harmonized Tariff Schedule of the United States".

§ 151.81 [Amended]

21. Section 151.81 is amended by removing the word "inch" and by adding in its place the word "millimeter".

22. Section 151.82 is revised to read as follows:

§ 151.82 Information on invoices.

Invoices of cotton provided for in subheading 5201.00.10, 5201.00.20, 5201.00.50, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall show the following detailed information in addition to other required information:

(a) One of the following statements regarding each lot of cotton covered by the invoice:

(1) This is harsh or rough cotton under 19.05 millimeters in staple length;

(2) The staple length of this cotton is under 28.58 millimeters. (This statement is not to be used if paragraph (a)(1) of this section is applicable);

(3) The staple length of this cotton is 28.58 millimeters or more and under 34.93 millimeters;

(4) This cotton is harsh or rough cotton (other than cotton of perished staple, and cotton pickings), white in color, and has a staple length of 29.37 millimeters or more and under 44.45 millimeters;

(5) The staple length of this cotton is 34.93 millimeters or more and under 42.86 millimeters; or

(6) The staple length of this cotton is 42.86 millimeters or more.

(b) The name of the country of origin and, if practicable, the name of the province or other subdivision of the country of origin in which the cotton was grown.

(c) The variety of the cotton, such as Karnak, Gisha, Pima, Tanguis, etc.

§ 151.91 [Amended]

23. Section 151.91 is amended by removing the words "schedule 1, part 12A, headnote 3, Tariff Schedules of the United States" and by adding in their place the words "the Additional U.S. Notes to Chapter 20, Harmonized Tariff Schedule of the United States (HTSUS)" and by removing the words "headnote 4 of part 12A" and by adding in their place the words "Additional U.S. Note 2, Chapter 20, HTSUS"

Subpart H—[Removed and Reserved]

24. Subpart H is removed and marked "Reserved."

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

1. The authority citation for Part 152 is revised to read as follows:

Authority: 19 U.S.C. 66, 1401a, 1500, 1502, 1624. Subpart B is also issued under 19 U.S.C. 1315. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

§ 152.1 [Amended]

2. Section 152.1(d) is amended by removing the words "Schedule 8, Tariff Schedules of the United States" and by adding, in their place, the words "Section XXII, Harmonized Tariff Schedule of the United States".

§ 152.11 [Amended]

3. Section 152.11 is amended by removing the words "Tariff Schedules of the United States" in the heading and in the text and by adding, in both places, the words "Harmonized Tariff Schedule of the United States".

§ 152.13 [Amended]

4. Section 152.13 is amended as follows:

(a) Paragraph (b)(1) is amended by removing the words "general headnote 7(a) Tariff Schedules of the United States" and by adding, in their place, the words "General Note 5, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b)(2) is amended by removing the words "general headnote 7 (b), (c), or (d), Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "General Note 5 (b), (c), or (d), HTSUS".

(c) The introductory text to paragraph (c) is amended by removing the words "general headnote 7 (a)(iii), (b), (c), or (d), Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "General Note 5 (a)(iii), (b), (c), or (d), HTSUS".

(d) Paragraph (c)(1) is amended by removing the words "general headnote 7(a)(iii), Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "General Note 5(a)(iii), HTSUS".

(e) Paragraph (c)(2) is amended by removing the words "general headnote 7 (b), Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "General Note 5(b), HTSUS".

(f) Paragraph (c)(3) is amended by removing the words "general headnote 7(c) or (d), Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "General Note 5 (c) or (d), HTSUS".

(g) Paragraph (d) is amended by removing the words "general headnote 7(a)(iii) or for performing the segregation specified in general headnote 7(b), Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "General Note 5(a)(iii) or for performing the segregation specified in General Note 5(b), Harmonized Tariff Schedule of the United States".

§ 152.101 [Amended]

5. Section 152.101(a) is amended by removing the words "item 700.60, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 6401.10.00, Harmonized Tariff Schedule of the United States".

PART 158—RELIEF FROM DUTIES ON MERCHANDISE LOST, DAMAGED, ABANDONED, OR EXPORTED

1. The authority citation for Part 158 is revised to read as follows:

Authority: 19 U.S.C. 66, 1624. Subpart C also issued under 19 U.S.C. 1563, unless otherwise noted.

§ 158.12 [Amended]

2. Section 158.12(a) is amended by removing the words "schedule 6, part 2, headnote 4, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 72, Additional U.S. Note 3, Harmonized Tariff Schedule of the United States".

§ 158.13 [Amended]

3. Sections 158.13, paragraph (b) is amended by adding at the end of paragraph (b) the citation "(19 U.S.C. 1507)", and paragraph (c) and the authority citation following it are removed.

PART 159—LIQUIDATION OF DUTIES

1. The authority citation for Part 159 is revised to read as follows:

Authority: 19 U.S.C. 66, 1500, 1624. Subpart C also issued under 31 U.S.C. 372. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

§ 159.4 [Amended]

2. Section 159.4 is amended as follows:

(a) Paragraph (a) is amended by removing the words "schedule 1, part 12, Tariff Schedules of the United States" and by adding in their place the words "headings 2207 and 2208, Harmonized Tariff Schedule of the United States (HTSUS),"; and by removing the words "items 167.20 and 167.90, Tariff Schedules of the United States (19 U.S.C. 1202) and distilled spirits provided for in schedule 1, part 12, Tariff Schedules of the United States" and by adding in their place the words "subheadings 2206.00.30 and 2206.00.90, HTSUS, and distilled spirits provided for in headings 2207 and 2208".

(b) The introductory text to paragraph (b) is amended by removing the words "schedule 1, part 12, Tariff Schedules of the United States" and by adding, in their place, the words "headings 2207 and 2208".

§ 159.7 [Amended]

3. Section 159.7 is amended as follows:

(a) Paragraph (a)(1) is amended by removing the words "schedule 1, part 12, Tariff Schedules of the United States" and by adding, in their place, the words "headings 2207 and 2208, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (a)(4) is amended by removing the words "clean pound under schedule 3, part 1, subpart C, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "clean kilogram under Chapter 51, HTSUS."

§ 159.22 [Amended]

4. Section 159.22, paragraph (c) is amended by converting the weights associated with the scheduled tares to their metric equivalents as follows:

* * * * *

Apple boxes. 2.984 kilograms per box. This schedule tare includes the paper wrappers, if any, on the apples.

China clay in so-called half-ton casks: 26.856 kilograms per cask.

* * * * *

Fresh tomatoes: 113 grams per 100 paper wrappings.

Lemons and oranges: 283 grams per box and 142 grams per half box for paper wrappings, and actual tare for outer containers.

* * * * *

Pimientos in tins imported from Spain: The following schedule drained weight shall be used as the Customs dutiable weight in the liquidation of entries, the difference between the weight of the new contents of pimientos in tins and such drained weight being the allowance made in liquidation for tare for water:

Size can	Drained weight
3 kilo	13.6 kilograms-case of 6 tins.
794 grams	16.7 kilograms-case of 24 tins.
425 grams	8.0 kilograms-case of 24 tins.
198 grams	3.9 kilograms-case of 24 tins.
113 grams	2.4 kilograms-case of 24 tins.

Tobacco, leaf not stemmed: 5.9 kilograms per bale: Sumatra: actual tare for outside coverings, plus 1.9 kilograms for the inside matting and, if a certificate is attached to the invoice certifying that the bales contain paper wrapping and specifying whether light or heavy paper has been used, either 113 grams or 227 grams for the paper wrapping according to the thickness of paper used.

§ 159.43 [Amended]

5. Section 159.43 is amended by removing the words "Schedule 2, part 4, headnote 4, Tariff Schedules of the United States" and by adding, in their place, the words "additional U.S. Note 1 to Section X, Harmonized Tariff Schedule of the United States".

PART 171—FINES, PENALTIES, AND FORFEITURES

1. The authority citation for Part 171 is revised to read as follows:

Authority: 19 U.S.C. 66, 1592, 1618, 1624. The provisions of subpart C also issued under 22 U.S.C. 401; 46 U.S.C. App. 320 unless otherwise noted.

Appendix A—[Amended]

2. Appendix A to Part 171 is amended as follows:

(a) Part II. (Violations Involving Absolutely or Conditionally Free Articles) is amended by removing the words "Schedules 1–7, Tariff Schedules of the United States (TSUS)" and by adding in their place the words "Chapters 1–97, Harmonized Tariff Schedule of the United States (HTSUS)"; and by removing the words "Schedule 8, TSUS" and by adding, in their place, the words "Chapter 98, HTSUS".

(b) The text of Part II, 1., a., is amended by removing the words "Schedule 8, TSUS" and by adding, in their place, the words "Chapter 98, HTSUS".

(c) Part III, 4., is amended by removing the words "Schedule 1–7, TSUS" and by adding, in their place, the words "Chapters 1–97, HTSUS"; and by removing the words "Schedule 8, TSUS" and by adding, in their place, the words "Chapter 98, HTSUS".

Appendix B—[Amended]

3. Appendix B, section H(1)(c), to Part 171 is amended by removing the words "item 807, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9802.00.80, Harmonized Tariff Schedule of the United States."

PART 177—ADMINISTRATIVE RULINGS

1. The authority citation for Part 177 is revised to read as follows:

Authority: 19 U.S.C. 66, 1624.

§ 177.1 [Amended]

2. Section 177.1(d)(5) is amended by removing the words "Tariff Schedules of the United States" and by adding, in their place, the words "Harmonized Tariff Schedule of the United States".

§ 177.2 [Amended]

3. Section 177.2(b)[(2)(ii)(A) is amended by removing the words "Tariff Schedules of the United States" and by adding, in their place, the words "Harmonized Tariff Schedule of the United States".

§ 177.9 [Amended]

4. Section 177.9(b)(2) is amended by removing the words "Tariff Schedules of the United States" and by adding, in its place, the words "Harmonized Tariff Schedule of the United States".

PART 191—DRAWBACK

1. The authority citation for Part 191 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 9, Harmonized Tariff Schedule of the United States), 1313, 1624. Additional authority and statutes interpreted or applied are cited in the text or following the section affected.

§ 191.133 [Amended]

2. Section 191.133(b) is revised to read as follows:

(b) *Merchandise released under Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS).* Merchandise released as provided for in Chapter 98, Subchapter XIII, HTSUS (19 U.S.C. 1202), shall not be deemed to be in the continuous custody of Customs officers. [T.D. 84–213].

Michael H. Lane,

Acting Commissioner of Customs.

Approved: October 19, 1988.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 88–28041 Filed 12–15–88; 9:57 am]

BILLING CODE 4820–02–M

---

19 CFR Part 122

[T.D. 89–2]

Customs Regulations Amendment Designating Tamiami Airport, Miami, FL, for Private Aircraft Reporting

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding Tamiami Airport, Miami, Florida, to the list of designated airports at which private aircraft arriving in the U.S. from the southern portion of the Western Hemisphere via the U.S./Mexican border, or via the Atlantic, Pacific or Gulf of Mexico coasts must land for Customs inspection. This addition is being made to help relieve the congestion at the seven other designated airports in south Florida, a condition which makes it difficult to effectively conduct the Customs private airport enforcement program.

The amendment was originally proposed as an amendment to 19 CFR Part 6, and comments were solicited from the public on the proposal. In the interval between the publication of the proposal and this announcement, Customs has deleted Part 6 and redesignated the subject matter of that part as a new Part 122. (T.D. 88–12 (53 FR 9285)). This action required redesignation of the proposed action as an amendment to Part 122 rather than Part 6, but it does not affect its substance in any manner.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Glenn Ross, Office of Inspection and Control (202–566–5607).

SUPPLEMENTARY INFORMATION: Customs efforts to combat the problem of drug smuggling by air resulted in the amendment of the Customs Regulations, in 1975, by adding a new § 6.14 (19 CFR 6.14), that provides in part that private aircraft arriving in the U.S. via the U.S./Mexican border must provide a notice of intended arrival with Customs (T.D. 75–201; 40 FR 33203). The section further provides that these private aircraft must land at any one of the designated airports near the U.S./Mexican border. The purpose of this regulation was to provide Customs with increased enforcement efficiency by providing tight control over air traffic arriving from the direction of countries that are major sources of illegal drugs destined for the U.S.

Customs has amended § 6.14 several times since it was initially issued in 1975, as part of the continuing effort to fight the national epidemic of illegal drugs. Amendments have included extending coverage to private aircraft arriving via the Pacific, Gulf of Mexico, or Atlantic coasts (T.D. 83–192; 48 FR 41381), expanding the coverage by modifying the definition of private aircraft (T.D. 84–236; 49 FR 46885); extending the coverage to include some flights arriving from Puerto Rico and all flights arriving from the U.S. Virgin Islands, increasing from 15 minutes to one hour the miminum time required for notice to be given prior to penetrating U.S. Airspace, and requiring aircraft seeking exemption from landing requirements to be equipped with functioning transponders (T.D. 86–72; 51 FR 11004); and removing San Diego International Airport (Lindberg Field) from the list of designated airports in § 6.14 because Lindberg Field's distance from the U.S./Mexican border was permitting smugglers to operate in the area (T.D. 86–146; 51 FR 27836.

For a variety of reasons, the airspace over southern Florida has become increasingly congested in recent years. With this heavy volume of traffic, the workload at the seven airports in the area which have already been designated for private aircraft reporting has greatly increased. This places undue burdens on both the Customs inspectors

and the members of the public. In order to provide some relief from the congested situations at these other airports, Customs proposed adding Tamiami Airport, Miami, Florida to the list of designated airports. The airports which are already on the list are: Fort Lauderdale Executive Airport and Fort Lauderdale-Hollywood International Airport, in Fort Lauderdale; St. Lucie County Airport, in Fort Pierce; Key West International Airport, in Key West; Miami International Airport and Opa-Locka Airport, in Miami, and Palm Beach International Airport, in West Palm Beach.

Analysis of Comments

In announcing the proposed addition of Tamiami Airport to the list of designated airports, Customs invited members of the public to comment on the proposal. Three comments on the proposed addition of Tamiami Airport to the list of designated airports were received during the comment period. All three comments strongly supported the proposal. After reviewing the comments, Customs has concluded that the addition of Tamiami Airport would indeed improve the efficiency of the private aircraft enforcement program and reduce the congestion at the already existing airports in the southern Florida area. As a result, the addition, as proposed, should be adopted as a final rule.

Redesignation of Part 6 as Part 122

During the interval between the publication of the proposal and this action, the Customs Service has amended the underlying Air Commerce Regulations. As part of the general revision of the Customs Regulations, by T.D. 88-12, published in the Federal Register on March 22, 1988 (53 FR 9285), the air commerce regulations formerly in Part 6, Customs Regulations (19 CFR Part 6), were deleted and revised air commerce regulations were set forth in Part 122 in a new format. Accordingly, in order to conform to the amended Regulations, the designation of the proposed regulation has been changed from § 6.14 to § 122.24(b). This redesignation does not affect the substantive content of the regulation in any way.

Executive Order 12291

These amendments do not constitute a "major rule" as defined by § 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

It is certified that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), are not applicable to this amendment because the rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 122

Air carriers, Air transportation, Aircraft, Airports.

Amendment To The Regulations

Part 122, Customs Regulations (19 CFR Part 122), is amended as set forth below:

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122, Customs Regulations (19 CFR Part 122), continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1624, 1644, 49 U.S.C. 1509.

§ 122.24 [Amended]

2. Section 122.24(b), Customs Regulations (19 CFR 122.24(b)), is amended by inserting, in the appropriate alphabetical order, "Miami, Fl." in the column headed "Location", and, on the same line, "Tamiami airport" in the column headed "Name".

Approved: November 28, 1988.

William von Raab,

Commissioner of Customs.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 88-29268 Filed 12-20-88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 88N-0085]

Aspartame; Food Chemicals Codex

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to adopt the Food Chemicals Codex (FCC) specifications for aspartame. This action is based on the agency's practice of adopting FCC specifications for food ingredients if FCC has developed acceptable specifications. This action will amend 21 CFR 172.804(b) by removing the extant specifications and by adding the FCC specifications for aspartame.

DATES: Effective December 21, 1988, written objections and requests for a hearing by January 23, 1989. The Office of the Federal Register approved the incorporation by reference of certain publications in 21 CFR 172.804(b), effective December 21, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 21, 1988 (53 FR 13134), the agency proposed to adopt the FCC specifications for aspartame. The agency did not receive any comments to the proposal. Therefore, the agency is now issuing a final order to remove the current specifications from 21 CFR 172.804(b) and add the requirement that the additive meet FCC specifications for aspartame.

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (April 21, 1988; 53 FR 13134). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as defined by the Order. The agency has not received any new information or comments that would alter its previous determination.

List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 172.804 is amended by revising paragraph (b) to read as follows:

§ 172.804 Aspartame.

* * * * *

(b) The additive meets the specifications of the "Food Chemicals Codex," 3d Ed. (1981) pp. 28–29 and First Supplement p. 5, which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies are available from the National Academy Press, 2101 Constitution Avenue NW., Washington, DC 20418, or for inspection at the Office of the Federal Register, 1100 L Street NW., Washington, DC 20408.

* * * * *

Dated: December 6, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–29123 Filed 12–20–88; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Ivermectin Paste and Liquid

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Merck Sharp & Dohme Research Laboratories. The NADA's provide for an additional use of Eqvalan® (ivermectin) paste and liquid for treating and controlling certain parasites in horses and for deletion of a caution statement.

EFFECTIVE DATE: December 21, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065–0914, has filed supplements to NADA's 134–314 for Eqvalan® (ivermectin) paste and 140–439 for Eqvalan® liquid. The supplements provide for an additional use of the products for the control and treatment of third- and fourth-stage larvae as well as adults of *Parascaris equorum* in horses and removal of the caution statement concerning use in horses under 4 months of age. The supplements are approved and the regulations in 21 CFR 520.1192(c)(1)(ii) and (iii) and 520.1195(c)(2) and (3) are amended to reflect the approvals. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520–ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.1192 [Amended]

2. Section 520.1192 *Ivermectin paste* is amended in paragraph (c)(1)(ii) by removing the phrase "ascarids (adult) (*Parascaris equorum*)" and replacing it with" ascarids (third- and fourth-stage larvae and adults) (*Parascaris equorum*)" and in paragraph (c)(1)(iii) by removing the statements "Safety has not been demonstrated in horses under 4 months old. Do not administer to foals of this age class."

§ 520.1195 [Amended]

3. Section 520.1195 *Ivermectin liquid* is amended in paragraph (c)(2) by removing the phrase "ascarids (adult) (*Parascaris equorum*)" and replacing it with "ascarids (third- and fourth-stage larvae and adults) (*Parascaris equorum*)" and in paragraph (c)(3) by removing the statements "Safety has not been demonstrated in horses under 4 months old. Do not administer to foals of this age class."

Dated: December 13, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88–29214 Filed 12–20–88; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 280 and 281

[FRL–UST–3; 3494–9]

Underground Storage Tanks Containing Petroleum—Financial Responsibility Requirements and State Program Approval Objective; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting errors in the financial responsibility requirements and state program approval objective for underground storage tanks containing petroleum which appeared in the Federal Register on October 26, 1988 (53 FR 43322).

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 (toll free) or (202) 382–3000 in Washington, DC.

SUPPLEMENTARY INFORMATION: On October 26, 1988, EPA promulgated financial responsibility requirements and, for the purposes of state program approval, a federal technical objective applicable to owners and operators of underground storage tanks containing petroleum. The final rule (53 FR 43322) contained errors which are corrected by this notice.

Dated: November 28, 1988.

Jonathan Z. Cannon,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

The following corrections are made in FRL–UST–3; 3419–3, Underground Storage Tanks Containing Petroleum—Financial Responsibility Requirements and State Program Approval Objective published in the Federal Register on October 26, 1988 (53 FR 43322).

§ 280.100 [Amended]

1. In § 280.100(c), in the last sentence, on page 43378, first column, line 55, change "petition" to "petitioner".

§ 280.103 [Amended]

2. In § 280.103(b)(1) introductory text, on page 43379, first column, line one, insert ", or trust agreement," after "The standby trust agreement".

3. In § 280.103(b)(1), in the trust agreement, on page 43379, first column, line 15, delete "[" before "Whereas".

4. In § 280.103(b)(1), in the trust agreement, on page 43379, first column, line 26, insert". The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the standby trust agreement." after "the underground storage tank".

5. In § 280.103(b)(1), in the trust agreement, on page 43379, first column, lines 26–28, delete "[This paragraph is only applicable to the standby trust agreement.]];" after "the underground storage tank".

6. In § 280.103(b)(1), in the trust agreement, on page 43379, first column, line 38, delete "[" before "Whereas".

7. In § 280.103(b)(1), in the trust agreement, on page 43380, third column, line 26, insert ", or trust agreement." after "The standby trust agreement."

§ 280.37 [Amended]

8. In § 280.37(b), on page 43383, second column, line 11, change "18 months" to "21 months".

[FR Doc. 88–29162 Filed 12–20–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6820]

Suspension of Community Eligibility; Connecticut et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES:

The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001 through 4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 *et. seq.*). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I					
Connecticut	Salisbury, town of Litchfield County	090052	Oct. 3, 1974, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp..	Jan. 5, 1989	Jan. 5, 1989.
Maine	Rockland, city of Knox County	230076	Oct. 31, 1975, Emerg.; Jan. 5, 1989, Reg. Jan. 5, 1989, Susp.	...do...	Do.
Do	Skowhegan, town of Somerset County	230128	Apr. 14, 1975, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Region III					
Pennsylvania	Matamoras, borough of, Pike County	420758	Oct. 28, 1975, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Do	Pleasant, township of, Warren County	422548	Feb. 27, 1976, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Virginia	Bland County, unincorporated areas	510017	July 29, 1975, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Region IV					
Kentucky	Whitely County, Whitley County	210226	July 9, 1975, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Do	Williamsburg, city of, Whitely County	210228	Mar. 6, 1975, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Region V					
Illinois	Aurora, city of, Kane and Dupage Counties	170320	Apr. 9, 1973, Emerg.; June 15, 1979, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Indiana	DeKalb County, unincorporated areas	180044	Nov. 8, 1976, Emerg.; Jan. 5, 1979, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Do	Marshall County, unincorporated areas	180443	June 14, 1979, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Do	Roseland, town of, St. Joseph County	185179	May 5, 1972, Emerg.; May 4, 1973, Reg.; Jan. 5, 1989, Susp.	...do	Do
Wisconsin	Gilman, village of, Taylor County	550433	Aug. 5, 1975, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.	...do	Do

State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region VI					
New Mexico	Taos County, unincorporated areas	350078	Sept. 25, 1975, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Region VII					
Missouri	Howard County, unincorporated areas	290162	July 25, 1984, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Region X					
Washington	Moses Lake, city of, Grant County	530053	Oct. 15, 1974, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Region III					
Virginia	Middlesex County, unincorporated areas	510098	Oct. 18, 1974, Emerg.; Jan. 18, 1989, Reg.; Jan. 18, 1989, Susp.	Jan. 18, 1989	Jan. 18, 1989.
Region V					
Michigan	Grant, township of, Cheboygan County	260610	June 2, 1977, Emerg.; Jan. 18, 1989, Reg.; Jan. 18, 1989, Susp.	...do...	Do.
Do	Saint Louis, city of, Gratiot County	260085	July 31, 1975, Emerg.; Jan. 18, 1989, Reg.; Jan. 18, 1989, Susp.	...do...	Do.
Region VI					
Texas	Burleson County, unincorporated areas	481169	July 6, 1987, Emerg.; Jan. 18, 1989, Reg.; Jan. 18, 1989, Susp.	...do...	Do.
Region VII					
Missouri	Anniston, city of, Mississippi County	290229	May 11, 1977, Emerg.; Jan. 4, 1985, Reg.; Jan. 18, 1989, Susp.	...do...	Do.
Do	Charleston, city of, Mississippi County	290231	June 5, 1975, Emerg.; Jan. 4, 1985, Reg.; Jan. 18, 1989, Susp.	...do...	Do.
Do	Mississippi County, unincorporated areas	290781	Apr. 14, 1975, Emerg.; Jan. 18, 1989, Reg.; Jan. 18, 1989, Susp.	...do...	Do.
Do	Wilson City, village of, Mississippi County	290235	Feb. 5, 1975, Emerg.; Aug. 19, 1985, Reg.; Jan. 18, 1989, Susp.	...do...	Do.

Code 'or reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension

Issued: December 16, 1988
Harold T. Duryee,
Administrator, Federal Insurance Administration.
[FR Doc. 88-29244 Filed 12-20-88; 8:45 am]
BILLING CODE 6718-21-M

DEPARTMENT OF ENERGY

48 CFR Part 927

Acquisition Regulation, Patents, Data and Copyrights

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Energy Acquisition Regulation (DEAR) as it relates to Patents, Data and Copyrights. The revisions amend the DEAR to provide that requests for waiver of Government patent rights to inventions and discoveries under contracts or subcontracts of the Naval Nuclear Propulsion Program or nuclear weapons programs or other atomic energy defense activities of the Department of Energy (DOE) be decided within 150 days after the date of submission of a "complete request" for waiver. This amendment specifies the elements of a "complete request" for such a waiver.

EFFECTIVE DATE: This rule will be effective January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Patents (GC-42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4792. Robert M. Webb, Procurement and Assistance Management Office of Policy, (MA-421), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202)-586-8264.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

The purpose of this rulemaking is to adopt, as a final rule, the proposed amendments to 48 CFR Part 927 implementing section 3135 of Pub. L. 100-180, which provide that a decision on a complete request for waiver of Government patent rights to inventions and discoveries under contracts or subcontracts of the Naval Nuclear Propulsion Program or nuclear weapons programs or other atomic energy defense activities of DOE be made within 150 days after receipt thereof. This amendment specifies the elements of a "complete request" for such a waiver.

The proposed rule on this matter was published August 5, 1988 (53 FR 29494), and provided an opportunity for a public hearing, and a public comment period which ended September 23, 1988. No requests to speak at a public hearing were received, and the hearing was cancelled. (53 FR 35281, September 12, 1988.) No public comments were received. This final rule consists of the proposed rule with insignificant or clarifying editorial changes. Of these changes, the only one which should be discussed is the distillation of proposed section 927.370 (e) (1) and (2) into a single paragraph. The new section 927.370 (e)(1) restates the proposed provisions much more succinctly and eliminates any unintended implications that DOE requires submission of proprietary information on the details of commercialization budgets.

This rule amends Part 927 by adding a section 927.370 entitled "Waiver of title to certain sensitive inventions."

II. Procedural Requirements

A. Review Under Executive Order 12291

Section 3 of Executive Order (E.O.) 12291 (46 FR 13193, February 19, 1981) requires that DOE determine whether a rule is a "major rule," as defined by section 1(b) of E.O. 12291, and prepare a regulatory impact analysis for each major rule. DOE has determined that the proposed rule does not meet the E.O. 12291 definition of a major rule as one 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 the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

Pursuant to section 3(c)(3) of E.O. 12291 this rule was submitted to the Director of OMB for a ten-day review. The Director has concluded his review under that Executive Order.

B. Review Under Regulatory Flexibility Act

This amended rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities. This amendment concerns policy and procedures for patent waivers affecting entities that are generally not small businesses since there is separate statutory authority (35 U.S.C. 202) governing disposition of invention rights of Government contractors that are small businesses. The amended rule imposes no significant burdens or impact on small entities. Therefore, DOE certifies that the amendment will not have significant economic impact on a substantial number of small entities.

C. Review Under the Paperwork Reduction Act

The information collection and reporting requirements contained herein were approved by OMB and assigned Control No. 1910-0800.

D. Review Under National Environmental Policy Act

DOE has determined that the amendment is not a major Federal action with significant environmental impact and does not affect the quality of the environment. Consequently, the amendment does not require preparation of an Environmental Assessment or Environmental Impact Statement under National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et.seq.* (1982).

E. Federalism

Executive Order (EO) 12612 requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the national government and States, or the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then E.O. 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

The principal impact of today's regulation will be more efficient processing of waivers of government patent rights to private entities. The regulation will not have any effect on the States, the relationship between the States and Federal government, or the distribution of power and responsibilities among various levels of government.

List of Subjects in 48 CFR Part 927

Inventions, patents and waivers.

In consideration of the foregoing, Part 927 of Title 48 of the Code of Federal Regulations is amended, as set forth below.

Issued in Washington, D.C. December 15, 1988.

Berton J. Roth,

Deputy Assistant Secretary for Procurement and Assistance Management.

PART 927—PATENTS, DATA, AND COPYRIGHTS

1. The citation of authority for Part 927 is revised as follows:

Authority: Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); Sec. 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168); Federal Nonnuclear Energy Research and Development Act of 1974, Sec. 9, (42 U.S.C. 5908); Atomic Energy Act of 1954, as amended, Sec. 152, (42 U.S.C. 2182); Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987, as amended, Sec. 3131(a), (42 U.S.C. 7261a.)

2. Section 927.370 is added as follows:

§ 927.370 Waiver of title to certain sensitive inventions.

(a) Whenever any contractor makes an invention or discovery to which the title vests in the Department of Energy pursuant to exercise of section 202(a) (ii) or (iv) of title 35, United States Code, or pursuant to section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182) or section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908), in the course of or under any Government contract or subcontract of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy, and the contractor requests waiver of any or all of the Government's property rights, the Secretary of Energy may decide to waive the Government's rights and assign the rights in such invention or discovery.

(b) In making a decision under this Section, the Secretary or his designee shall:

(1) Apply the stated general objectives for patent waivers under sec. 92.300(a) of this subpart;

(2) Take into account the specific considerations applicable to advance waivers and identified invention waivers, respectively, under sec. 927.300(a) of this subpart;

(3) Consider whether national security will be compromised;

(4) Consider whether sensitive technical information (whether classified or unclassified) under the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy for which dissemination is controlled under Federal statutes and regulations will be released to unauthorized persons;

(5) Consider whether an organizational conflict of interest contemplated by Federal statutes and regulations will result; and

(6) Consider whether waiving such rights will adversely affect the operation of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy.

(c) A decision under this section shall be made within 150 days after the date on which a complete request for waiver, as described by paragraph (d) of this section, has been submitted to the Patent Counsel by the contractor.

(d) In addition to the requirements for content which apply generally to all waiver requests under sec. 927.300(a) of this subpart, a requestor must include a full and detailed statement of facts, to the extent known by or available to the requestor, directed to the considerations set forth in paragraphs (b)(3) through (6) of this section, as applicable. To be considered complete, a waiver request must contain sufficient information, in addition to the content requirements under sec. 927.300(a) of this subpart, to allow the Secretary or his designee to make a decision under this section. Such information shall include, at a minimum, for advance waiver requests:

(1) An identification of all of the petitioner's contractual arrangements involving the Government (including contracts, subcontracts, grants, or other arrangements) in which the technology involved in the contract was developed or used and any other funding of the technology by the Government, whether direct or indirect, involving any other party, of which the petitioner is aware;

(2) A description of the petitioner's past, current, and future private investment in and development of the technology which is the subject of the contract. This includes expenditures not reimbursed by the Government on research and development which will directly benefit the work to be performed under the instant contract, the amount and percentage of contract costs to be shared by the petitioner, the out-of-pocket costs of facilities or equipment to be made available by the petitioner for performance of the contract work which are not charged directly or indirectly to the Government under contract, and the contractor's plans and intentions to further develop and commercialize the technology at private expense;

(3) A description of competitive technologies or other factors which would ameliorate any anticompetitive effect of granting the waiver.

(4) Identification of whether the contract pertains to work that is classified, or sensitive, i.e., unclassified but controlled pursuant to section 148 of the Atomic Energy Action of 1954, as amended (42 U.S.C. 2168) (1982), or subject to export control under Chapter 17 of the Military Critical Technology List (MCTL) contained in Department of Defense Directive 5230.25, including identification of all principal uses of the subject matter of the contract, whether inside or outside the contractor program, and an indication of whether any such uses involve classified or sensitive technologies.

(5) Identification of all DOE and DOD programs and projects in the same general technology as the contract for which the petitioner intends to be providing program planning advice or has provided program planning advice within the last three years.

(e) For identified invention requests, such requests shall include at a minimum:

(1) A brief description of the intentions of the petitioner (or its present or intended licensee) to commercialize the invention. This description should include: (i) estimated expenditures, (ii) anticipated steps, (iii) the associated time periods to bring the invention to commercialization, and (iv) a statement that petitioner (or its present or intended licensee) has the capability to carry out its stated intentions.

(2) A description of any continuing Government funding of the development of the invention (including investigation of materials or processes for use therewith), from whatever Government source, whether direct or indirect, and, to the extent known by the petitioner, any anticipated future Government funding to further develop the invention.

(3) A description of competitive technologies or other factors which would ameliorate any anticompetitive effects of granting the waiver.

(4) A statement that petitioner will reimburse the Department of Energy for any and all costs and fees incurred by the Department in the preparation and prosecution of the patent applications covering the invention that is the subject of the waiver petition.

(5) Where applicable, a statement of reasons why the petition was not timely filed in accordance with the applicable patent rights clause of the contract, or why a request for an extension of time to file the petition was not filed in a timely manner.

(6) Identification of whether the invention pertains to work that is classified, or sensitive, i.e., unclassified but controlled pursuant to section 148 of the Atomic Energy Action of 1954, as amended, (42 U.S.C. 2168) (1982), or subject to export control under Chapter 17 of the Military Critical Technology List (MCTL) contained in Department of Defense Directive 5230.25, including identification of all principal uses of the invention inside or outside the contractor program, and an indication of whether any such uses involve classified or sensitive technologies.

(7) Identification of all DOE and DOD programs and projects in the same general technology as the invention for which the petitioner intends to be providing program planning advice or has provided program planning advice within the last three years.

(8) A statement of whether a classification review of the invention disclosure, any resulting patent application(s), and/or any reports and other documents disclosing a substantial portion of the invention has been made, together with any determinations on the existence of classified or sensitive information in either the invention disclosure, the patent application(s), or reports or other documents disclosing a substantial portion of the invention; and

(9) Identification of any and all proposals, work for others activities, or other arrangements submitted by the petitioner, DOE, or a third party, of which petitioner is aware, which may involve further funding of the work on the invention at either the contractor facility where the invention arose or another facility owned by the Government.

(f) Patent Counsel will notify the petitioner promptly if the waiver request is found not to be a complete request and, in that event, will provide the petitioner with a reasonable period, not to exceed 60 days, to correct any such incompleteness. If petitioner does not respond within the allotted time period, the waiver request will be considered to be withdrawn. If petitioner responds within the allotted time period, but the submittal is still deemed incomplete or insufficient, the waiver request may be denied.

(g) For waiver requests as described in this section, waiver decisions shall be made within 150 days after the date on which a complete request for waiver of such rights, as specified herein, has been submitted by the petitioner to the DOE Patent Counsel. If the original waiver request does not result in a communication from DOE Patent Counsel indicating that the request is incomplete, the 150-day period for decision commences on the date of receipt of the waiver petition. If the original waiver request results in a communication from DOE Patent Counsel indicating that the request is incomplete, the 150-day period for decision commences on the date on which supplementary information is received by Patent Counsel sufficient to make the waiver request complete. For advance waiver requests, if petitioner is not notified that the request is incomplete, the 150-day period for decision commences on the date of receipt of the petition, or on the date on which negotiation of contract terms is completed, whichever is later.

(h) Failure of DOE to make a patent waiver decision within the prescribed 150-day period shall in no way be construed as a grant of the waiver.

[FR Doc. 88-29295 Filed 12-20-88; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 92

[OST Docket No. 45432; Amdt. 92-1]

Recovering Debts to the United States by Salary Offset

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: In the February 12, 1988, Federal Register (53 FR 4170) the Department of Transportation (DOT) issued a final rule (49 CFR Part 92), with a request for comments. This rule established procedures enabling DOT to offset a debt against the Federal pay of a current or former Federal employee who is indebted to the United States under a program administered by DOT. DOT is amending 49 CFR Part 92 by revising § 92.9 (Exceptions to notice, hearings, written response, and final decision). The amendment reflects a change requested by the Office of Personnel Management which is to eliminate a general exception for notice, hearing, written response and final decision in administrative adjustments apart from those associated with Federal benefits programs.

EFFECTIVE DATE: This rule was effective March 14, 1988.

FOR FURTHER INFORMATION CONTACT: Paul B. Larsen, (202) 366-9161, Department of Transportation, Office of the General Counsel, 400 7th Street SW., Room 10102, Washington, DC 20590 or Rolf O. Wold, (202) 366-9874, Department of Transportation, Office of Financial Management, 400 7th Street SW., Room 9114, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Regulatory Process Matters

This regulation is classified as a "non-major" regulation under Executive Order 12291. This regulation has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures; the regulation is not significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted. This regulation does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) because it is not a major Federal action significantly affecting the quality of the human environment.

List of Subjects in 49 CFR Part 92

Administrative practice and procedure, Debt collection, Government employees.

PART 92—RECOVERING DEBTS TO THE UNITED STATES BY SALARY OFFSET

Authority: 5 U.S.C. 5514, as amended; 5 CFR Part 550, Subpart K; 4 CFR Parts 101-105.

49 CFR Part 92 is amended by revising § 92.9(a) to read as follows:

§ 92.9 [Amended]

* * * * *

(a) *Exceptions.* The procedural requirements of 5 U.S.C. 5514 do not apply to recovery by way of retroactive deductions for administrative adjustments associated with the Federal benefits program. In such cases the content of the notification to employees is stated in § 92.9(b).

* * * * *

Issued at Washington, DC this 14th day of December, 1988.

Jim Burnley,

Secretary of Transportation.

[FR Doc. 88-29239 Filed 12-20-88; 8:45 am]
BILLING CODE 4910-62-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 bag limit reductions.

SUMMARY: The Secretary of Commerce (Secretary) reduces to zero the bag limits in the exclusive economic zone (EEZ) for king mackerel from the Gulf of Mexico migratory group. The Secretary has determined that the recreational allocation for the Gulf migratory group of king mackerel will be reached on December 16, 1988. This reduction of the bag limits is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: Reduction of the bag limits is effective at 12:01 a.m., local time, December 17, 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 recreational allocation for Gulf migratory group king mackerel at 2.31 million pounds (53 FR 25611, July 8, 1988). The Gulf migratory group of king mackerel extends from the Mexico/United States border to, (1) November 1 through March 31, a line extending directly east from the Volusia/Flagler County, Florida, boundary (29°25'N. latitude) to the outer boundary of the EEZ, and (2) from April 1 through October 31, a line extending directly west from the Monroe/Collier County, Florida, boundary (25°48'N. latitude) to the outer limit of the EEZ.

Under § 642.22(b), after consulting with the Councils, the Secretary is required to reduce to zero the bag limits for a king mackerel migratory group when the appropriate recreational allocation for that group is reached, or is projected to be reached, and when that group is overfished, by publishing a notice in the **Federal Register**. The Secretary, based on current catch statistics, has determined that the recreational allocation of 2.31 million pounds for the Gulf migratory group of king mackerel will be reached on December 16, 1988. He also finds, based upon the most recent stock assessment, that the Gulf migratory group king mackerel resource remains overfished. Further, he has consulted with the Councils and they agree with this finding and concur in this action. Hence, the bag limits for king mackerel from the Gulf migratory group are reduced to zero effective 12:01 a.m., December 17, 1988, through the end of the current fishing year. During this period, king mackerel from the Gulf migratory group caught in the EEZ in the recreational fishery or by any person fishing under the bag limit must be returned immediately to the sea with a minimum of harm.

Other Matters

This action is required by 50 CFR 642.22(b) 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 16, 1988.

Richard H. Schaefer,

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

[FR Doc. 88-29297 Filed 12-16-88; 4:35 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 245
Wednesday, December 21, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

Transportation Regulations; Compatibility With the International Atomic Energy Agency (IAEA): Second Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On June 8, 1988 (53 FR 21550), the NRC published for public comment a proposed rule to make its transportation regulations in 10 CFR Part 71 compatible with those of the International Atomic Energy Agency (IAEA) as contained in IAEA Safety Series No. 6, Regulations for the Safe Transport of Radioactive Material, 1985 Edition. This rulemaking action, combined with a parallel action by the Department of Transportation (DOT), would make United States regulations for the safe transportation of radioactive material internationally compatible. Because it is important that the public have the opportunity to review and comment on the DOT and NRC proposed rules concurrently, NRC set its initial public comment period to expire on October 6, 1988, expecting the DOT rule to be available for publication by the end of June 1988. Availability of the DOT proposed rule was delayed to early October 1988. To achieve its goal of having some portion of the public comment period common for both rules, the NRC extended the comment period for an additional two months, to December 6, 1988. Now that the expected time for publication of the DOT proposed rule has been delayed to mid-February 1989, NRC has decided to extent its comment period to March 6, 1989. This extension is being held to 3 months to give NRC the opportunity to judge the need for more public comment time as we approach the DOT's expected publication date.

DATES: The comment period has been extended and now expires March 6, 1989. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received before this date.

ADDRESSES: Send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. Examine comments received at the NRC Public Document Room, 2120 L Street, NW., lower level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donald R. Hopkins, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301–492–3784).

Dated at Rockville, Maryland, this 14th day of December, 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88–29273 Filed 12–20–88; 8:45 am]
BILLING CODE 7590–01–M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 213

Proposed Rules Governing Trade Remedy Assistance

AGENCY: International Trade Commission.

ACTION: Proposed rules and request for comments.

SUMMARY: The Commission is proposing to revise Part 213 of the Commission's Rules of Practice and Procedure. Part 213 sets forth the rules governing trade remedy assistance provided by the Commission through the Trade Remedy Assistance Office.

These proposed revisions to Part 213 will conform the rules to the changes made in section 339 of the Tariff Act of 1930 (19 U.S.C. 1339) by section 1614 of the Omnibus Trade and Competitiveness Act of 1988 ("the Omnibus Trade Act"). The amendments provide, in particular, that an office to be known as the Trade Remedy Assistance Office ("Office") is established in the Commission; that the Office shall provide advice and assistance concerning remedies and procedures under the trade laws identified in section 339 of the Tariff Act of 1930; and that the Office, in coordination with other agencies administering trade laws, shall provide technical assistance to eligible small businesses up through administrative review or appeals to the administering agency.

DATE: Comments on the proposed rules will be considered if received by February 6, 1989.

ADDRESS: Comments concerning the proposed amended rules should be submitted to the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Whieldon, Esq., U.S. International Trade Commission, telephone (202) 252–1580. Hearing impaired individuals may obtain further information on this matter by contacting the Commission's TDD terminal at (202) 252–1810.

SUPPLEMENTARY INFORMATION: Section 335 of the tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties. The Commission has determined that the proposed revisions do not constitute a major rule for the purposes of Executive Order 12291 because they do not fall within the categories described in section 1(b) of that Excutive Order. The Commission has also determined that since the proposed revisions merely implement the amendments required by the Omnibus Trade Act, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) does not apply.

Explanation of Proposed Revisions to 19 CFR Part 213

Section 213.1

Section 213.1 is amended to refer to the new statutory provisions in the Omnibus Trade Act, to identify the Trade Remedy Assistance Office, to expressly incorporate the statutory requirement of assisting and advising interested parties concerning remedies and procedures under the trade laws listed in § 213.2(b) of this Part, and to indicate that the Trade Remedy

Assistance Office, in coordination with the other agencies responsible for administering those trade laws, shall provide technical assistance to eligible small businesses up through administrative review or appeals to the administering agency.

Section 213.2

Existing § 213.2 has been deleted as duplicative and unnecessary in view of the requirements for assistance set forth in existing § 213.4, renumbered as § 213.3.

Section 213.3

Section 213.3 is renumbered § 213.2. Section 213.3(a) is renumbered § 213.2(a) and amended to reflect the replacement of the "Trade Remedy Assistance Center" by the "Trade Remedy Assistance Office," to include and to correct the Office's address which appears in existing § 213.4, to expressly incorporate the new statutory requirement of advising and assisting interested parties concerning remedies and procedures, to provide that technical assistance to eligible small businesses is to be coordinated with the other agencies responsible for administering the trade laws listed in § 213.2(b), and to extend the provision of technical assistance up through administrative review or appeals to the administering agency. Under prior law and the existing rule, the Trade Remedy Assistance Center only provided technical assistance to eligible small buisnesses with respect to certain laws administered by the Commission, which the existing rule refers to as "Trade Remedy Laws."

Section 213.3(b) is renumbered § 213.2(b) and amended to replace the words "Trade Remedy Laws" with the term "Trade Laws," which appears in section 339 of the Tariff Act of 1930, and to list each of the trade laws specified in the statute since the Office is now required to provide technical assistance to eligible small businesses regarding all of these laws. Prior to passage of the Omnibus Trade Act, the Trade Remedy Assistance Center was responsible for providing technical assistance only with regard to those trade remedy laws administered by the Commission. Section 406 of the Trade Act of 1974 (19 U.S.C. 2436, relating to market disruption) is also included in the list of trade laws in § 213.2(b); section 406, which is administered by the Commission, provides for relief similar to that which may be obtained under section 201 of the Trade Act of 1974 (19 U.S.C. 2251) and is included in the list of "Trade Remedy Laws" appearing in existing section 213.3(b).

A new § 213.2(c) is added to define the term "administering agency" as used in these proposed rules and to identify the agency or agencies responsible for administering each of the trade laws listed in § 213.2(b).

Existing § 213.3(c) is renumbered § 213.2(d) and has been revised to reflect amendments to section 339 of the Tariff Act of 1930. Specifically, language has been added to indicate that technical assistance is available up through administrative review or appeals to the administering agency. Under the prior law and the existing rule, such assistance was limited to the period "up to the date of the filing of a petition or complaint at the Commission." Language has also been added to make clear that technical assistance, which includes informal legal advice and assistance, does not include legal representation of an eligible small business or advocacy on its behalf, and that receipt of such assistance does not ensure that the recipient will prevail in any trade remedy proceeding. *See* H.R. Rep. No. 40, 100th Cong., 1st Sess. 172–173 (1987). Language also has been added to this section to indicate that, as had been the practice of the Trade Remedy Assistance Center, the staff of the Office may consult with other Commission personnel when providing technical assistance.

Existing § 213.3(d) is renumbered § 213.2(e), but is not substantively changed from existing § 213.3(d). Existing § 213.3(e) is renumbered § 213.2(f), but is not substantively changed from existing § 213.3(e).

Section 213.4

Section 213.4 is renumbered § 213.3. Section 213.4(a) is renumbered § 213.3(a), retitled more appropriately "Application for Technical Assistance from Small Businesses," and amended to delete the Office's address and to add language that an application for assistance is available from the Office. Otherwise this section is substantively the same as existing § 213.4(a). Section 213.4(b) is renumbered § 213.3(b) and retitled more appropriately "Application for Technical Assistance from Business Concerns, Joint Applicants, Trade Associations and Unions," but is otherwise substantively unchanged from existing § 213.4(b). Section 213.4(c) is renumbered § 213.3(c), retitled more appropriately "Determination of Eligibility and Notification of Determination," and amended to specifically recite that the Office will make a determination of eligibility. Section 213.4(d) is renumbered § 213.3(d), but is not substantively changed from existing § 213.4(d).

Section 213..5

Section 213.5 is renumbered § 213.4 and amended to add the requirement that an applicant that has received technical assistance from the Office must disclose that fact in any petition, application or complaint filed with any agency which administers the trade law under which remedies or benefits are sought. In the existing rule, such disclosure was only required for petitions or complaints filed with the Commission. This change is consistent with the requirement in section 1614 of the Omnibus Trade Act that the Office shall now provide technical assistance regarding all the trade laws.

Section 213.6

Section 213.6 is renumbered § 213.5, but is not substantively changed from existing § 213.6.

Section 213.7

Section 213.7 is renumbered § 213.6, but is not substantively changed from existing § 213.7.

Appendix A

The application form in Appendix A has been revised to include acknowledgements by the applicant regarding trechnical assistance available from the Trade Remedy Assistance Office. The revised form includes acknowledgements that technical assistance is provided as required by section 339 of the Tariff Act of 1930 and Part 213 of the Commission's Rules, that Trade Remedy Assistance Office personnel and other Commission personnel that work with the Office to provide trade remedy assistance will not serve as legal representatives of the applicant or a substitute for private counsel, and that the receipt of assistance does not ensure that the recipient will prevail in any trade remedy proceeding. Language has also been added to advise applicants that they should contact the Trade Remedy Assistance Office before signing the form if they have questions relating to the certification or acknowledgements.

List of Subjects

19 CFR Part 213

Administrative practice and procedure, trade remedy assistance.

The Part 213 rules are revised as follows:

PART 213—TRADE REMEDY ASSISTANCE

Sec.

Sec.
213.3 Determination of small business eligibility.
213.4 Disclosure of receipt of technical assistance.
213.5 Access to Commission resources.
213.6 Information concerning assistance.

Appendix A—Application for Technical Assistance from the Trade Remedy Assistance Office of the U.S. International Trade Commission.

Authority: Sec. 339 of the Tariff Act of 1930 (19 U.S.C. 1339), as added by sec. 221, Trade and Tariff Act of 1984 (Pub. L. 98-573, approved Oct. 30, 1984; 98 Stat. 2989), and as amended by sec. 1614, Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, approved Aug. 23, 1988; 102 Stat. 110); sec. 335, Tariff Act of 1930 (72 Stat. 680; 19 U.S.C. 1335).

§ 213.1 Purpose and applicability of part.

Section 339 of the Tariff Act of 1930, as amended, establishes in the Commission an office known as the Trade Remedy Assistance Office and directs the Commission to provide general information to the public, upon request, and, to the extent feasible, assistance and advice to interested parties concerning the remedies and benefits available under the trade laws identified in § 213.2(b) and the procedures to be followed and appropriate filing dates in investigations under the trade laws. In coordination with other agencies administering the trade laws, the Trade Remedy Assistance Office also shall provide technical assistance to eligible small businesses to enable them to prepare and file petitions and complaints, and to seek to obtain the remedies and benefits available under the trade laws up through administrative review or appeals to the administering agency. The rules in this Part reflect the establishment of the Trade Remedy Assistance Office, describe its function, and govern small business eligibility for technical assistance and procedures for obtaining such assistance. Members of the public seeking general information from the Trade Remedy Assistance Office are not subject to the application procedures set forth in this Part.

§ 213.2 Definitions.

(a) *Office.* The Trade Remedy Assistance Office shall be referred to as the Office. The Office provides general information to the public, upon request, and, to the extent feasible, assistance and advice to interested parties concerning the remedies and benefits available under the trade laws identified in § 213.2(b) and the procedures to be followed and appropriate filing dates in investigations under those trade laws. In coordination with other agencies responsible for administering the trade laws listed in § 213.2(b), the Office also provides technical assistance to eligible small businesses to enable them to prepare and file petitions and complaints, and to seek to obtain the remedies and benefits available under the trade laws up through administrative review or appeals to the administering agency. The Office's address is Trade Remedy Assistance Office, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

(b) *Trade Laws.* The trade laws (with respect to which general information and technical assistance is available) are defined as: (1) Chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq., relating to injury caused by import competition); (2) chapters 2 and 3 of such title II (relating to adjustment assistance for workers and firms); (3) chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq., relating to relief from foreign import restrictions and export subsidies); (4) title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq., relating to the imposition of countervailing duties and antidumping duties); (5) section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862, relating to the safeguarding of national security); (6) section 337 of the Tariff Act of 1930 (19 U.S.C. 1337, relating to unfair practices in import trade); and (7) section 406 of the Trade Act of 1974 (19 U.S.C. 2436, relating to market disruption).

(c) *Administering Agency.* Administering agency refers to the agency or agencies responsible for administering a particular trade law. The trade laws relating to injury caused by import competition, unfair practices in import trade and market disruption are administered by the Commission. The trade laws relating to countervailing and antidumping duties are jointly administered by the Commission and the Department of Commerce. The trade laws relating to adjustment assistance for firms and safeguarding national security are administered by the Department of Commerce. The trade law relating to adjustment assistance for workers is administered by the Department of Labor. The trade law relating to relief from foreign import restrictions and export subsidies is administered by the United States Trade Representative.

(d) *Technical Assistance.* Technical assistance is informal advice and assistance, including informal legal advice and assistance, to enable eligible small businesses to determine the appropriateness of pursing particular trade remedies, to prepare petitions and complaints (other than those which are frivolous in the opinion of the agency) and to seek to obtain the remedies and benefits available under the trade laws identified in § 213.2(b). Technical assistance is available to eligible small businesses at any time up through administrative review or appeals to the administering agency regarding proceedings under the trade laws listed in § 213.2(b). Technical assistance does not include legal representation of an eligible small business or advocacy on its behalf, and receipt of such assistance does not ensure that the recipient will prevail in any trade remedy proceeding. The Office provides technical assistance independently of other Commission staff but may consult with other staff as appropriate.

(e) *Applicant.* An applicant is an individual, partnership, corporation, joint venture, trade or other association, cooperative, group of workers, or certified or recognized union, or other entity which applies for technical assistance under this Part.

(f) *Eligible Small Business.* An eligible small business is an applicant that the Office has determined to be entitled to technical assistance in accordance with the SBA size standards and the procedures set forth in this Part.

(g) *SBA Size Standards.* SBA size standards are the small business size standards of the Small Business Administration set forth in 13 CFR 121.2. The SBA size standards categorize business concerns according to the Standard Industrial Classification ("SIC") code of the Bureau of the Census and base the size determination upon the number of employees or annual receipts of the business concern in the appropriate SIC category.

§ 213.3 Determination of small business eligibility.

(a) *Application for Technical Assistance from Small Businesses.* An applicant for technical assistance must qualify under the SBA size standards as an eligible small business. In order to apply, an applicant must certify to the Commision that it meets the appropriate SBA size standards. An application for technical assistance is available from the Office. The application, which is reproduced in Appendix A of this Part, must be signed under oath by an office or principal of the applicant. The completed application should be submitted to the Office at the address set forth in § 213.2(a).

(b) *Application for Technical Assistance from Business Concerns, Joint Applicants, Trade Associations and Unions.* A business concern applying for technical assistance must certify that it is independently owned

and operated. If several business concerns jointly or simultaneously from the same industry apply for technical assistance, each business concern must meet the appropriate SBA size standard(s) and so certify. If a trade association applies for technical assistance, an officer of the trade association must certify that eighty (80) percent of the trade association's members meet the appropriate size standard(s). If a union applies for technical assistance, an officer of the union must certify that the union has less than ten thousand (10,000) members within the industry for which trade relief is being sought.

(c) *Determination of Eligibility and Notification of Determination.* The Office shall determine whether the applicant is eligible for technical assistance and notify the applicant of the determination within ten (10) days of receipt of a properly completed application. Pursuant to 19 U.S.C. 1339(c)(1), the determination of eligibility is not reviewable by any other agency or by any court.

(d) *Notification to Administering Agencies.* When an applicant seeks technical assistance on matters involving the trade laws, and the Office determines that the applicant is eligible for technical assistance, the Office shall: (1) promptly notify the appropriate administering agency or agencies of the Office's determination that the applicant is eligible to receive technical assistance; and (2) consult with that administering agency or agencies as to the provision of technical assistance to that applicant.

§ 213.4 Disclosure of receipt of technical assistance.

An applicant which has received technical assistance from the Office must state that it has received technical assistance from the Trade Remedy Assistance Office in any resulting petition, complaint or application which is filed with the Commission or any other agency which administers the trade law under which remedies or benefits are sought.

§ 213.5 Access to Commission resources.

Commission resources, in addition to the Office's resources, are available to an eligible small business to the same extent as those resources are available to members of the general public. No special rights of access to Commission resources shall be accorded to an eligible small business.

§ 213.6 Information concerning assistance.

Any person may contact the Office with questions regarding eligibility for technical assistance. Summaries of the trade laws and the SBA size standards can be obtained by writing to the Trade Remedy Assistance Office, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Appendix A—Application for Technical Assistance from the Trade Remedy Assistance Office of the U.S. International Trade Commission

Certification of Applicant

The undersigned certifies that applicant (Name of business entity) _____ (hereinafter referred to as "applicant") is independently owned and operated and qualifies as a small business under the Small Business Size Standards set forth in 13 CFR 121.2. The undersigned further certifies that:

(1) The Standard Industrial Classification ("SIC") code for applicant's line of business is (4-digit SIC code) _____; and

(2) Applicant employs "Number of employees) [1] _____; or, if a service industry,

(3) Applicant has (Annual receipts in dollars) [2] _____ in annual receipts.

Acknowledgements

The applicant acknowledges that it has received copies of section 339 of the Tariff Act, as amended, 19 U.S.C. 1339, and Part 213 of the U.S. International Trade Commission's Rules concerning trade remedy assistance. The statute and rules provide for the provision of technical assistance, which includes informal legal advice, to eligible persons seeking remedies and benefits under certain trade remedy laws. The personnel of the Trade Remedy Assistance Office, and other Commission personnel that work with the Office, provide such technical assistance in their official capacity as required by section 339 of the Tariff Act and Part 13 of the Commission's Rules. These personnel will not serve as legal representatives of the applicant or a substitute for private counsel, and the receipt of technical assistance from the Trade Remedy Assistance Office does not ensure that the recipient will prevail in any trade remedy proceeding.

If the applicant has any questions relating to the certification or acknowledgements required by this form, it should contact the Trade Remedy Assistance Office before signing this form. Of course, the applicant may also wish to consult with private counsel to discuss these and other related matters.

_____

(Date)

_____

(Signature of Authorized Official)

_____

(Name and Title of Authorized Official)

_____

_____

_____

(Address and Phone Number)

Sworn to before me this _____ day of _____, 19____.

_____

(Notary Public)

My commission expires on

_____

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 14, 1988.

[FR Doc. 88-29290 Filed 12-20-88; 8:45 am]

BILLING CODE 7020-02-M

[1] "Number of Employees" is defined in 13 CFR 121.2(b).

[2] "Annual Receipts" is defined in 13 CFR 121.2(c).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 270

[Docket No. 80860-8160]

Fish and Seafood Promotion

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

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement the Fish and Seafood Promotion Act of 1986 (FSPA), as it pertains to seafood marketing councils for one or more species of fish or fish products. This action describes the conditions under which the councils may be established and operated. This rule is intended to implement the Act and provide a vehicle to strengthen the competitiveness of the United States fishing industry in the domestic and international marketplace; encourage development and utilization of all species of fish available for harvest by the United States fishing industry; encourage the utilization of domestically-produced fish through enhancement of markets, promotion and public relations; help the United States fishing industry develop methods to improve product quality and efficiency

in the marketplace; develop better coordination of fisheries marketing and promotion activities with commercial fisheries research and development programs; and inform and educate the public about the nutritional value of fish in the diet.

DATES: Public comments must be received on or before February 21, 1989.

ADDRESSES: Comments on the proposed rule should be addressed to Thomas J. Billy, Acting Director, Office of Trade and Industry Services, National Marine Fisheries Service, NOAA, 1335 East-West Highway, Silver Spring, MD 20910. Comments on the information requirements in this proposed rule should be addressed both to NMFS, as above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley V. Smith, Office of Trade and Industry Services, 301–427–2358.

SUPPLEMENTARY INFORMATION: The Fish and Seafood Promotion Act of 1986 (FSPA), enacted November 14, 1986, authorizes a National Fish and Seafood Promotional Council and seafood marketing councils for one or more species of fish or fish products. The National Council has been established. It is authorized by the Act to fund referenda to establish seafood marketing councils, coordinate their activities, and enter into agreements with one or more of them.

Seafood marketing councils established under the Act will be funded through self-assessment by segments of the industry represented on the council. The councils will be established through (1) application of particular sector(s) of industry to the Secretary of Commerce (Secretary) for a council; (2) favorable review of the application by the Secretary, and (3) passage of a referendum conducted by the Secretary among sector participants on the proposed charter. Appointment of members to the seafood marketing councils will be made by the Secretary from lists of nominees supplied by the industry. The councils will submit annual plans and budgets for species-specific marketing and promotion, including consumer education, research, and other activities of the councils. The councils may also develop quality standards for the fish or fish products being promoted.

Interested persons should read the Act along with this document. In a few cases, portions of the Act are repeated for contextual clarity, particularly with regard to the application and review process.

Classification

The Under Secretary, NOAA, reviewed this rule in accordance with Executive Order 12291 and determined that it is not a "major rule" requiring a regulatory impact analysis. This determination was made because this action 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 the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This is because the proposed rule will not have a direct regulatory impact on the general public, industry, or small business since it only establishes procedures and requirements for preparing an application for a council charter and for conducting activities necessary to establish and operate species-specific seafood marketing councils. The rule itself does not require industry action and does not impose significant direct costs on small entities. Therefore, a regulatory flexibility analysis has not been prepared. If individuals do decide to take action under the Act, it would be done on a voluntary basis and any costs for consulting with members of the industry on the application would likely be minor. It is unlikely that the costs would be so great as to affect a firm's financial condition, cash flow position, liquidity position, or its ability to remain in the industry.

Individual councils, once established, may have an impact on small entities, but this cannot be determined prior to receipt of an application for a proposed charter with ranges of assessments based on volume, income, etc., of sector participants to be involved in a council. Specifically, the imposition of assessments on certain members of the industry could have an effect on a firm's financial situation. Any other costs or requirements which would impose a cost on industry would also have to be considered and analyzed. Since these parameters will vary with each application, a determination of impact will be made on a case-by-case basis as applications for council charters are received. Prior to conducting a referendum on a proposed charter, the charter will be published in the Federal Register with opportunity for comment. This notice would act as a proposed rule and would trigger the Regulatory Flexibility Act requirements.

This proposed rule contains several different information requirements subject to the Paperwork Reduction Act (PRA). A request to collect this information has been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the PRA. The general public may respond to the information requirements in § 270.3 of the proposed rule. The estimated reporting time for this collection is 320 hours, with an average of 320 hours per response. All other information requirements in the proposed rule are imposed on the councils, once they are established. The estimated reporting time for these information requirements vary from 1 to 160 hours per response, with an average reporting time of 6.9 hours per response. These estimated reporting times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this information collection and estimate of reporting time, including suggestions for reductions, should be sent to both NMFS and OMB (see **ADDRESSES** section).

This rule does not have the potential for a significant effect on the environment and is therefore exempt from the preparation of either an environmental impact statement or environmental assessment under the National Environmental Policy Act of 1969.

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

List of Subjects in 50 CFR Part 270

Administrative practice and procedure, Fish, Marketing and seafood.

For the reasons set out in the preamble, Title 50 CFR Chapter II is amended as follows:

1. Subchapter H consisting of Parts 280, 281, and 285; Subchapter I consisting of Part 290, and Subchapter J consisting of Part 296 are redesignated as Subchapter I, J, and K, respectively.

2. A new Subchapter H, consisting at this time of Part 270, is added to read as follows:

Subchapter H—Fish and Seafood Promotion

PART 270—SPECIES-SPECIFIC SEAFOOD MARKETING COUNCILS

Sec.

Authority: 16 U.S.C. 4001–4017.

§ 270.1 Scope.

This part describes matters pertaining to the establishment, representation, organization, practices, and procedures of seafood marketing councils.

§ 270.2 Definitions.

The following terms and definitions are in addition to or amplify those contained in the Act:

Act means the Fish and Seafood Promotion Act of 1986 (Pub. L. 99–659) and any subsequent amendments.

Council means a seafood marketing council for one or more species of fish and fish products of that species established under section 210 of the Act.

Fiscal year means any 12-month period as shall be recommended by a council and approved by the Secretary.

Harvester means any individual who is in the business of catching or growing fish for purposes of sale in domestic or foreign markets.

Importer means any person in the business of importing fish or fish products from another country, into the United States and its territories, as defined by the Act for commercial purposes or who acts as an agent, broker, or consignee for any person or nation that produces, processes or markets fish or fish products outside of the United States for sale or other commercial purposes in the United States.

Marketer means any person who is in the business of selling fish or fish products in the wholesale, export, retail or restaurant trade, but whose primary business function is not the processing or packaging of fish or fish products in preparation for sale.

Marketing and promotion means any activity aimed at encouraging the consumption of fish or fish products and for expanding or maintaining commercial markets for fish or fish products.

National Council means the National Fish and Seafood Promotional Council established under section 205 of the Act.

Processor means any person who is in the business of preparing or packaging fish or fish products (including fish of the processor's own harvesting) for sale in domestic or export markets.

Secretary means the Secretary of Commerce, or the Secretary's designee.

Sector Participant means any individual, group of individuals, association, proprietorship, partnership, corporation, cooperative, or any private entity of the U.S. fishing industry organized or existing under the laws of the United States or any State, commonwealth, territory or possession of the United States.

Species means a fundamental category of taxonomic classification, ranking after genus, and consisting of animals which possess common characteristic(s) distinguishing them from other similar groups.

§ 270.3 Submission of application

(a) The Secretary will by order establish a species-specific seafood marketing council upon passage of a referendum conducted by the Secretary under the terms specified in § 270.5 of this part if the application for such council meets the criteria as set forth in this section, and is consistent with the provisions of the Act and any other applicable law.

(b) The application may be filed with the Secretary by persons who meet the minimum requirements for sector participants as described in the proposed charter.

(c) The application consists of three parts:

(1) The proposed charter under which the council will operate;

(2) The petition (or requesting document); and

(3) The list of eligible referendum participants.

(d) *Content of application*—(1) *Text of proposed charter*—A proposed charter must contain, at a minimum, the following information:

(i) The name of the council and a provision proclaiming its establishment;

(ii) A declaration of the purposes and objectives of the council;

(iii) A description of the species of fish and fish products including the scientific and common name(s), for which the council will implement marketing and promotion plans under the Act. The American Fisheries Society's *List of Common and Scientific Names of Fishes from the United States and Canada* or where available, an appropriate volume of its *List of Common and Scientific Names of Aquatic Invertebrates of the United States and Canada* (latest edition) will be used as the authority for all scientific and common names. For species or products of non-U.S. origin, the American Fisheries Society's *Annotated List of Selected Fishes of the World* (scheduled for publication in 1988) will be used as the authority for the scientific and common names.

(iv) A description of the geographic area (State(s)) within the United States covered by this council;

(v) The identification of each sector within the geographic area as defined in the proposed charter and the number and terms of representatives for each sector that will be voting members on the council. The number of council members should be manageable, while ensuring equitable geographic representation. The term for members is three years. Initially, to ensure continuity, half of the members' terms will be two years and half will be three years. Reappointments are permissible.

(vi) The identification of those sectors as defined in § 270.3(d)(1)(v) of this part, but which must include harvesters, receivers, and if subject to assessment, importers, eligible to vote in a referendum to establish a council;

(vii) A threshold level for each sector participant described under § 270.3(d)(1)(v) of this part specifying the minimum requirements, as measured by income, volume of sales, or other relevant factors, that a person engaging in business in the sector must meet in order to participate in a referendum;

(viii) A description of the rationale and procedures for determining assessment rates under section 213 of the Act;

(ix) The proposed rate or rates that will be imposed by the council on receivers and, if subject to assessment, importers during its first year of operation;

(x) The maximum amount by which an assessment rate for any period may be raised above the rate applicable for the immediately preceding period;

(xi) The maximum rate or rates that can be imposed by a council on receivers or importers during operation of the council;

(xii) The maximum limit on the amount any one sector participant may be required to pay under an assessment for any period;

(xiii) The procedures for providing refunds, including interest earned, to sector participants subject to assessment who request the same in accordance with time limits specified in the Act;

(xiv) A provision setting forth the voting procedures by which votes may be cast by proxy;

(xv) A provision that the council will have voting members representing the harvesting, receiving and, if subject to assessment, importing sectors;

(xvi) A provision setting forth the definition of a quorum for making decisions on council business and the procedures for selecting a chairperson of the council; and

(xvii) A provision that members of the council will serve without compensation, but will be reimbursed for reasonable expenses incurred in performing their duties as members of the council.

(2) *Petition (requesting document).* The petition is a document submitted by the applicants to the Secretary requesting that the council be established. To the extent practicable, the petition will include the signatures or corporate certifications, as the case may be, of no less than three sector participants representing each sector identified in accordance with § 270.3 (d)(1)(v) of this part and who, according to the best available data, collectively accounted for, in the 12-month period immediately preceding the month in which the application was filed, not less than 10 percent of the value of the fish or fish products specified in the charter that were handled by each such sector during that period. The petition also must include a statement that, if established, sufficient resources will be available to the council for initial administrative expenditures pending collection of assessments.

(3) *List of referendum participants.* A list identifying, to the extent practicable, by address of place(s) of business, those sectors participants that are considered by the applicants to meet the requirements for eligibility to vote in the referendum on the adoption of the proposed charter. The business addresses for each sector participant should include addresses for all of his/her businesses in all locations covered by the geographic area of the council. If more than one address is submitted, a primary address should be designated. This will provide the Secretary with a basis for planning the nomination and council appointment process to ensure that all geographic areas are represented on the council in accordance with the Act.

(4) *Where to submit applications.* Applicants must submit one signed original and two copies of the completed application to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, Silver Spring, MD 20910. Applications must not be bound in any manner.

§ 270.4 Review of application.

Within 180 days of receipt of the application to establish a council, the Secretary will render a final determination on the acceptability of the application. To make this decision, the Secretary will do the following:

(a) Determine if the application is complete and complies with all of the requirements set out in § 270.3(d) of this part and complies with all provisions of the Act and other applicable laws.

(b) Verify, to the extent practicable, if the list of sector participants, submitted by the applicants, meets the requirements for eligibility to participate in the referendum to establish the council. The Secretary will use various sources to verify eligibility of sector participants to participate in referenda. Therefore, additional information may be required from the applicants or proposed participants in order to carry out this responsibility. The Secretary is authorized under the Act to request such information as necessary. The verification process may result in the Secretary adding or deleting names of sector participants.

(c) If any negative determination is made regarding a proposed charter, the Secretary will advise in writing the sector participants who submitted the application of the reasons for such determination. A corrected application may be submitted thereafter to the Secretary for approval.

§ 270.5 Conduct of referendum.

(a) The Secretary will estimate the cost of conducting the referendum, notify the applicants, and request that applicants post a bond or provide other applicable security such as a cashier's check to cover costs of the referendum. The Secretary will initially pay all costs of a referendum to establish a council. Within two years after a council is established, the council must reimburse the Secretary for the total actual costs from assessments collected by the council. If a referendum fails to result in establishment of a council, the Secretary will immediatley recover all expenses incurred for conducting the referendum from the bond or security posted by applicants. In either case, such expenses will not include salaries of Government employees or other administrative overhead, but will be limited to those additional direct costs incurred in connection with conducting the referendum. Costs associated with each referendum may vary according to the number of sector participants and locations, and whether a public meeting is requested.

(b) No less than thirty (30) days prior to holding a referendum, the Secretary will—

(1) Publish (by such means that will result in wide publicity in regions affected by the proposed charter) the text of the proposed charter, and the most complete list available of sector participants eligible to vote in the referendum; and

(2) Provide for public comment, including the opportunity for a public meeting. Additional names may be added to the list of eligible sector participants until the time of the referendum based on additional information received.

§ 270.6 Sector participants eligible to vote.

(a) Any participant who meets the minimum requirements as measured by income, volume of sales or other relevant factors specified in the approved charter may vote in a referendum.

(b) Only one vote may be cast by each participant who is eligible to vote, regardless of the number of individuals that make up such "participant" and how many sectors the participant is engaged in. The vote may be made by any responsible officer, owner, or employee representing a participant.

§ 270.7 Results of referendum.

(a) *Favorable vote to establish council.* The Secretary will by order establish the council, if the referendum votes which are cast in favor of the proposed charter constitute a majority of the sector participants voting in each and every sector. Further, according to the best available data, the majority must collectively account for, in the 12-month period immediately preceding the month in which the proposed charter was filed, at least 66 percent of the value of the fish and fish products described in the proposed charter handled by that sector during such period. The Secretary will publish the results of the referendum in the **Federal Register** and local media of the geographic area of the new council.

(b) *Unfavorable vote to establish council.* If a referendum fails to pass, the Secretary will notify the applicants immediately and recover costs of conducting the referendum according to § 270.5(a) of this part. The Secretary will also publish a notice in the **Federal**

Register and in local media of the geographic area of the proposed council of the failure of the referendum to result in the establishment of a council.

§ 270.8 Nomination of council members.

Within 30 days after a council is established, the Secretary will solicit nominations for council members from the sectors represented on the council in accordance with the approved charter. If the harvesters and receivers represented on the council are engaged in business in two or more States, but within the geographic boundary of the council, the nominations made under this section must, to the extent practicable, result in equitable representation for those States. Nominees must be knowledgeable and experienced with regard to the activities of, and be or have been actively engaged in the business of, the sector which such person will represent on the council. Therefore, a resume will be required for each nominee.

§ 270.9 Removal of a council member.

Any person appointed under this Act who consistently fails or refuses to perform his or her duties properly and/or participates in acts of dishonesty or willful misconduct with respect to responsibilities under the Act will be removed from the council by the Secretary if two-thirds of the members of the council recommend action. All requests from a council to the Secretary for removal of a council member must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

§ 270.10 Notice of council meetings.

The council must give the Secretary the same notice of its meetings as it gives to its members in order that the Secretary or a representative of the Secretary may attend the meetings.

§ 270.11 Books, records and reports.

The council must maintain books and records, prepare and submit to the Secretary semi-annually a progress report on implementation of the marketing and promotion plan and a financial report with respect to the receipt and disbursement of funds entrusted to it, and cause a complete audit report to be conducted by an independent public accountant and submitted to the Secretary at the end of each fiscal year. The books and records of the council must be maintained for a minimum of three years.

§ 270.12 Update of sector participant data.

The council must submit to the Secretary at the end of each fiscal year an updated list of sector participants who meet the minimum requirements for eligibility to participate in a referendum as stated in the approved charter.

§ 270.13 Quality standards.

Each council may—

(a) Develop and submit to the Secretary for approval, or upon the request of a council the Secretary will develop, quality standards for the species of fish or fish products described in the approved charter. Any quality standard developed under this paragraph must be consistent with the purposes of the Act.

(b) A quality standard developed under § 270.13(a) of this part may be adopted by a council by a majority of its members following a referendum conducted by the council among sector participants of the concerned sector(s). In order for a quality standard to be brought before council members for adoption, the majority of the sector participants of the concerned sector(s) must vote for the standard. Further, according to the best available data, the majority must collectively account for, in the 12-month period immediately preceding the month in which the referendum is held, not less than 66 percent of the value of the fish or fish products described in the charter that were handled by that sector during such period.

(c) The council must submit a plan to conduct the referendum on the quality standards to the Secretary for approval at least 60 days in advance of such referendum date. The plan must consist of the following:

(1) Date(s) for conducting the referendum;

(2) Method (by mail or in person);

(3) Copy of the proposed notification to sector participants informing them of the referendum;

(4) List of sector participants eligible to vote;

(5) Name of individuals responsible for conducting the referendum;

(6) Copy of proposed ballot package to be used in the referendum; and

(7) Dates(s) and location of ballot counting.

(d) An official observer appointed by the Secretary may be present at the ballot counting and any other phases of the referendum process, and may take whatever steps as the Secretary deems appropriate to verify the validity of the process and results of the referendum.

(e) Quality standards developed under this section of the regulations must at least meet Food and Drug Administration (FDA) minimum requirements for fish and fish products for human consumption.

(f) Quality standards must be consistent with existing approved Department of Commerce (National Oceanic and Atmospheric Administration) standards for fish and fish products.

(g) No quality standard adopted by a council may be used in the advertising or promotion of fish or fish products as being inspected by the United States Government unless the standard requires sector participants to be in the National Seafood Inspection Program (NSIP) and the product has been inspected or is under an NSIP approved inspection program.

(h) The intent of quality standards may not be to discriminate against importers who are not members of the council.

(i) Quality standards may not be developed for the purpose of creating non-tariff barriers. Such standards must be compatible with U.S. obligations under the General Agreement on Tariffs and Trade.

(j) The procedures applicable to the adoption and the operation of quality standards developed under this subsection also apply to subsequent amendments or the termination of such standards.

(k) With respect to a quality standard adopted under this section, the council must develop and file with the Secretary an official identifier in the form of a symbol, stamp, label or seal that will be used to indicate that a fish or fish product meets the quality standard at the time the official identification is affixed to the fish or fish product, or is affixed to or printed on the packaging material of the fish or fish product.

(l) The Secretary will establish by regulation procedures for the use of an official identification filed with the Secretary under § 270.13(k) of this part.

§ 270.14 Deposit of funds.

All funds collected or received by a council under this section must be deposited in a appropriate account in the name of the council specified in its charter. Funds eligible to be collected or received by a council must be limited to those authorized under the Act.

(a) Pending disbursement, under an approved marketing plan and budget, funds collected through assessments authorized by the Act must be deposited in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States Government.

(b) The council may, however, pending disbursement of these funds,

invest in risk free, short-term, interest-bearing instruments.

(1) *Risk-free.* All investments must be insured or fully collateralized with Federal Government securities. In the absence of collateral, accounts established at financial institutions should, in aggregate, total less than $100,000 to assure both principal and interest are fully insured. Accounts must be insured by FDIC or FSLIC.

(2) *Short-term.* Generally, all investments should be for a relatively short period (one year or less) to assure that the principal is maintained and readily convertible to cash.

(3) *Collateralization.* Investments exceeding the $100,000 insurance coverage level must be fully collateralized by the financial institution.

(i) Collateral must be pledged at face value and must be pledged prior to sending funds to the institution.

(ii) Government securities are acceptable collateral. Declining balance, mortgage backed securities such as Government National Mortgage Association (GNMA) and Federal National Mortgage Association (FNMA) are not acceptable as collateral.

(iii) If an account has been established, collateral may be held at the local Federal Reserve bank. Otherwise another depository must hold the collateral.

§ 270.15 Notice of assessment.

(a) The council must serve each person subject to assessment with notice that the assessment is due. The notice of assessment must contain:

(1) A specific reference to the provisions of the Act, regulations, charter and referendum that authorize the assessment;

(2) The amount of the assessment;

(3) The date the assessment is due and payable, which shall not be earlier than 30 days from the date of the notice;

(4) The form(s) of payment; and

(5) To who and where the payment must be made.

(6) The notice will advice such person of his or her right to seek review of the assessment by filing a written petition of objection with the Secretary of Commerce at any time during the time period to which the assessment (or the marketing and promotion plan) applies, including the right to request a hearing on the petition. The notice will state that the petition must be filed in accordance with the procedures in § 270.16 of this part.

(7) The notice will also advise such persons of his or her right to a refund of the assessment as provided in § 270.17 of this part. The notice will state that refunds may only be requested for a period covering 90 days or more from the date the assessment is collected and the council will make the refund within 60 days from the date of the demand.

(b) Persons subject to assessment must pay the assessment on the date due, whether or not they have demanded a refund or filed a petition of objection with the Secretary under § 270.16 of this part.

§ 270.16 Petition of objection.

(a) *Filing a petition.* Any person issued a notice of assessment under § 270.15 of this part may seek review of the assessment by filing a written petition with the Secretary. Petitions of objection may be filed only upon one or more of the following grounds:

(1) The assessment;

(2) The marketing and promotion plan on which the assessment was based; or

(3) Any obligation imposed on the petitioner under the plan, is not in accordance with law.

Filing a petition does not relieve the petitioner of the obligation to pay the assessment when it is due. A petition may only be filed during the time period to which the assessment, or the marketing and promotion plan, applies.

(b) *Contents of petition.* A petition must be addressed to the Secretary, U.S. Department of Commerce, Washington, DC, 20230, and must contain the following:

(1) The petitioner's correct name, address, and principal place of business. If the petitioner is a corporation, this must be stated, together with the date and state of incorporation, and the names, addresses and respective positions of its officers; if a partnership, the date and place of formation and the name and address of each partner;

(2) The grounds upon which the petition is based, including the specific terms or provisions of the assessment, the marketing and promotion plan, or obligation imposed by the plan, to which the petitioner objects;

(3) A full statement of the facts upon which the petition is based, set forth clearly and concisely, accompanied by any supporting documentation;

(4) The specific relief requested; and

(5) A statement as to whether or not the petitioner requests a hearing.

(c) *Notice to council.* The Secretary will promptly furnish the appropriate council with a copy of the petition.

(d) *Opportunity for informal hearing.* (1) Any person filing a petition may request and informal hearing on the petition. The hearing request must be submitted with the petition.

(2) If a request for a hearing is timely filed, or if the Secretary determines that a hearing is advisable, the Secretary will so notify the petitioner and the council. The petitioner, the council, and any other interested party, may appear at the hearing in person or through a representative, and may submit any relevant materials, data, comments, arguments, or exhibits. The Secretary may consolidate two or more hearing requests into a single proceeding.

(3) Final Decision. Following the hearing, or if no hearing is requested, as soon as practicable, the Secretary will decide the matter and serve written notice of the decision on the petitioner and the council. The Secretary's decision will be based on a consideration of all relevant documentation and other evidence submitted, and will constitute the final administrative decision and order of the agency.

§ 270.17 Refunds.

(a) Notwithstanding any other provision of the Act, any person who pays an assessment under the Act may demand and will promptly receive from the council a refund of such assessment, including interest earned. A demand for refund must be made in accordance with procedures in the approved charter and within such time, as will be prescribed by the council and approved by the Secretary. Procedures to provide such a refund must be established before any such assessment may be collected. Such procedures must allow any person to request a refund 90 days or more from such collection, and provide that such refund must be made within 60 days after demand for such refund is made.

(b) Once a refund has been requested by a sector participant and paid by the council, that sector participant may no longer participate in a referendum or other business of the council during the remainder of the assessment rate period. However, if assessments are paid during a future assessment rate period and no refund is requested, that sector participant may again participate in a referendum or other business of the council.

§ 270.18 Dissolution of councils.

If the referendum conducted under section 216 of the Act results in the termination of the council, the council will be dissolved only in accordance with such terms and conditions as approved by the Secretary to ensure that all remaining affairs of the council are concluded on an orderly basis.

Date: December 8, 1988.

James W. Brennan,

Assistant Administrator for Fisheries.

[FR Doc. 88-29249 Filed 12-20-88; 8:45 am]

BILLING CODE 3510-23-M

Notices

Federal Register
Vol. 53, No. 245
Wednesday, December 21, 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

Soil Conservation Service

Finding of No Significant Impact; Choccolocco Creek Watershed, AL

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Choccolocco Creek Watershed, Calhoun, Clay, Cleburne and Talladega Counties, Alabama.

FOR FURTHER INFORMATION CONTACT: Ernest V. Todd, State Conservationist, Soil Conservation Service, 665 Opelika Road, Auburn, Alabama, 36830, telephone (205) 821–8070.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ernest V. Todd, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control, municipal and industrial water supply and watershed protection. The planned works of improvement included fifteen floodwater retarding dams, 52.5 miles of channel work and accelerated technical assistance for land treatment. Ten floodwater retarding structures and 2.1 miles of channel work have been completed. A supplement has been prepared to delete five dams (sites 4, 8, 10, 12 and 18) and 50.4 miles of channel work form the plan. In lieu of the deleted dams and channel work, thirty miles of clearing, snagging and limited sediment removal have been included in the supplemented plan.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ernest V. Todd.

No administrative action implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(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: December 14, 1988.

Ernest V. Todd,

State Conservationist.

[FR Doc. 88–29207 Filed 12–20–88; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Motor Freight Transportation and Warehousing Survey; Determination

In accordance with Title 13, United States Code, sections 131, 182, 224, and 225, we have determined the Census Bureau needs to collect data covering annual operating revenues and expenses for the for-hire trucking and warehousing industries to provide a sound statistical basis for the formation of policy by various governmental agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar motor freight transportation and warehousing surveys conducted since 1985.

The Census Bureau will require a selected sample of trucking and warehousing firms in the United States (with payroll size determining the probability of selection) to report in the 1988 Motor Freight Transportation and Warehousing Survey. The sample will provide, with measurable reliability, national level statistics on operating revenues and expenses for these industries.

We will furnish report forms to the firms covered by this survey and will require their submission within 30 days after receipt. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

We have directed, therefore, that an annual survey be conducted for the purpose of collecting these data.

Dated: December 15, 1988.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 88–29247 Filed 12–20–88; 8:45 am]

BILLING CODE 3510–07–M

Annual Survey of Retail Sales and Inventories; Determination

In accordance with Title 13, United States Code, sections 182, 224, and 225, I have determined that various government agencies need the 1988 annual trade data to provide a sound statistical basis for the formation of policy and that these data also serve a variety of public and business needs. This annual survey is a continuation of similar surveys that we have conducted each year since 1951 (except 1954). It provides, on a comparable classification basis, annual sales, purchases of merchandise, accounts receivable balances, and year-end inventories for 1987 and 1988. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

The Census Bureau will require a selected sample of firms operating retail establishments in the United States (with sales size determining the probability of selection) to report in the 1988 Annual Retail Trade statistics on the specified subjects.

We will furnish report forms to the firms covered by this survey and will require their submission within 30 days after receipt. Copies of the forms are available upon written request to the Director, Bureau of the Census, Washington, DC 20233.

We have directed, therefore, that an annual survey be conducted for the purpose of collecting these data.

Dated: December 15, 1988.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 88-29248 Filed 12-20-88; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

[Docket Nos. 8112-01, 8112-02, 8112-03, 8112-04]

Actions Affecting Export Privileges: Man Chung Tong et al.

Summary

Pursuant to the November 16, 1988 recommended Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is attached hereto and affirmed in principle part by me, Man Chung Tong individually and doing business as Stillwell Development Company, Ltd., Scientific Data Systems, Ltd., and Equipment Rental Company, Ltd. (hereinafter Respondents) all with an address of Flat 2B, Cheers Court, 15 Dianthus Road, Yan Yat Cheuen, Kowloon, Hong Kong, is, and the Respondents are collectively, denied for a period of 20 years all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the regulations.

Discussion

Although I find that the ALJ has correctly decided the instant case, one technical modification and one comment are in order. The technical modification is one to impart clarity to the Order. One page 17 of the ALJ's Order he states that "Such denial of export privileges shall extend to matters which are subject to the Act and Regulations." For reason of clarity, the denial should "extend only to those commodities and technical data which are subject to the Act and Regulations."

The comment pertains to the ALJ's footnote 10. In that footnote the ALJ opines that the instant case is somehow stale, should have been adjudicated with a prior, related case, and that the failure to consolidate somehow relates to an alleged desire on the part of the Department to exaggerate the number of cases it prosecutes. This *dicta* of the ALJ has absolutely nothing to do with his jurisdiction regarding export control violation cases. If anything the *dicta* relates to an obvious bias the ALJ has with respect to the provisions of the Export Administration Act and the Regulations. Although it is always desirable that cases be adjudicated as quickly as possible, so long as a case is brought within the period provided by the applicable statute of limitations (as was the instant case) neither the ALJ nor the Respondent should be heard to complain. If the ALJ is of the personal opinion that the statute of limitations is wrong, he should petition the legislature to change the same. So too, there is no legal premise requiring consolidation of this case with a prior, related one. Finally, the suggestion that the separation of related cases is an effort to exaggerate the number of cases prosecuted by the Department is a direct and unjustified insult to Departmental counsel. Violations of the Export Administration Act and the Regulation are not treated as piecework. The ALJ would be well advised to restrict his comments to matters appropriately within his jurisdiction.

Order

On November 16, 1988, the Administrative Law Judge (ALJ) entered his recommended Decision and Order in the above referenced matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record, and based on the facts of this case, subject to the technical modification below and my rejection of the *dicta* in footnote 10, I affirm the Decision and Order of the ALJ. The modification the the ALJ's Decision and Order is as follows: on page 17, the last sentence of paragraph II should read, "Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and Regulations."

This constitutes final agency action in this matter.

Date: December 16, 1988.

Paul Freedenberg,

Under Secretary for Export Administration.

Decision and Order on Default

Preliminary statement

Appearance for Respondent: Man Chung Tong (pro se), Flat 2B, Cheers Court, 15 Dianthus Road, Yan Yat Cheuen, Kowloon, Hong Kong.

Appearance for Agency: Anthony Hicks, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, 14th and Constitution Avenue NW., Washington, DC 20030.

On May 16, 1988, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Agency), issued a Charging Letter to Man Chung Tong, individually and doing business as Stillwell Development Company, Ltd., Scientific Data Systems, Ltd., and Equipment Rental Company, Ltd. (Respondent), alleging that the Respondent violated the Export Administration Act of 1979 (50 U.S.C. App. 2401-2420), as amended, (the Act), and the Export Administration Regulations (the Regulations) promulgated thereunder.[1] The Charging Letter alleged that the Respondent committed one violation of former § 387.3, eleven violations of former § 387.4 and eleven violations of former § 387.6, for a total of twenty three violations of the Regulations.

On August 17, 1988, three months after the data of the Charging Letter, the undersigned Administrative Law Judge directed Agency Counsel to make a default submission, pursuant to § 388.8 of the Regulations, for failure of the Respondent to answer the Charging Letter.

DEFAULT (a) General

If a timely answer is not filed, the department shall file with the Administrative Law Judge a proposed Order together with the supporting evidence for the allegations in the charging letter. The Administrative Law Judge may require further submissions and shall issue any Order he deems justified by the evidence of record, any Order so issued shall have the same force and effect as an Order issued following the disposition of contested charges.

In accordance with this section, Agency Counsel filed a Motion for Default Judgment, with supporting documentary evidence, on September 16, 1988. A copy of the Motion was also sent to the Respondent and on September 27, 1988 the undersigned issued an Order to Show Cause why a default order should not be entered was sent to the Respondent. No response to the order or answer to the Charging Letter has been filed.

On April 5, 1984, Respondent and William T. Newkirk were charged in a Grand Jury Indictment, entered in the United States District Court for the

[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120, (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418, 102 Stat. 1107 (Aug. 23, 1988).

The Regulations, formerly codified at 15 CFR Parts 368-399, were redesignated as 15 CFR Parts 768-799, effective October 1, 1988 (53 FR 37781, September 28, 1988).

Central District of California, with seventeen counts of conspiring to knowingly export electronic testing and calibration equipment from the United States to the Republic of Hong Kong without first obtaining the required validated export licenses from the Department of Commerce, and with knowingly submitting false statements to the Department (Agency Exh. 2). On or about June 21, 1984, the Respondent pled guilty to one count of conspiracy and one count of illegal export (Agency Exh. 3). On or about August 20, 1984, the Respondent failed to appear for sentencing and is currently a fugitive.[2]

On February 15, 1984, the Respondent was also charged in a Grand Jury Indictment in the Western District of Washington. The Indictment alleged multiple violations of the Act. A Superseding Indictment was subsequently filed on May 9, 1984 (Agency Exh. 27). On July 24, 1984, the Respondent pled guilty to Count II of the Superseding Indictment. On or about September 7, 1984, the Respondent again failed to appear for sentencing.[3]

Facts

The Respondent is alleged to have conspired with William T. Newkirk to bring about acts that violated the Act and the Regulations. The Charging Letter alleges that Respondent placed orders with Newkirk for U.S.-origin electronic equipment wanted by the Respondent's customers in the People's Republic of China and elsewhere. Newkirk purchased the equipment from U.S. manufacturers, took delivery of it, and exported the equipment to Respondent in Hong Kong, either directly from the United States or indirectly through Mexico, knowing that he did not have the requisite export authorization from the Agency. Newkirk effected these exports by knowingly submitting false statements to the Agency on the export documents. After the equipment arrived in Hong Kong, the Respondent resold it to his customers.

The Respondent has admitted that he conspired with Newkirk in this manner by pleading guilty to Count I of the Indictment (Agency Exh. 2, 3).

Respondent thus committed one violation of § 387.3 of the Regulations, by conspiring and acting in concert with Newkirk to bring about the following overt acts.

On or about October 14, 1982, Newkirk unlawfully exported a computer system from the United States through Mexico to the Respondent in Hong Kong without obtaining from the Agency the validated export license that Newkirk and Respondent knew or had reason to know was required by § 372.1(b) of the Regulations. Newkirk obtained the goods by representing to the manufacturer that he had a customer in Mexico, and by preparing a false invoice showing such a sale. Respondent has admitted these facts by pleading guilty to Count I of the Indictment (Agency Exh. 2, 3).

Newkirk exported this computer equipment in furtherance of the conspiracy, therefore these acts are attributable to the Respondent. Therefore Respondent violated § 387.6 of the Regulations for exporting the equipment in violation of § 387.2 of the Regulations.

In pleading guilty to Count I of the Indictment, Respondent admitted that he knew or had reason to know that an export license was required to lawfully ship the computer to Hong Kong and that one had not been obtained. Accordingly, Respondent committed one violation of § 387.4 of the Regulations in that he received the computer in Hong Kong knowing or having reason to know that it had been shipped without an export license and that a violation of the Regulations had thus occurred.

On November 17, 1982, Respondent, doing business as Stillwell Development Company, Ltd., submitted Purchase Order No. ST00051 to Newkirk for the purchase of two spectrum analyzers with options (Agency Exh. 5). On or about November 22, 1982, Newkirk submitted an export license application (A659962) to the Agency to export these spectrum analyzers to Respondent's company, Stillwell Development, in Hong Kong (Agency Exh. 6). On or about January 17, 1983, while the license application was still pending,[4] Newkirk exported two spectrum analyzers from the United States to the Respondent in Hong Kong, without obtaining from the Agency the validated export license Newkirk and Respondent knew or had reason to know was required by § 372.1(b) of the Regulations (Agency Exh. 7). On the Shipper's Export Declaration (SED) filed in connection with this shipment, Newkirk falsely stated that the shipment was authorized under "G–DEST" (Agency Exh. 8).

Newkirk exported these spectrum analyzers contrary to the terms of the Regulations because he exported them without the export license required by § 372.1(b) of the Regulations. This export was made in furtherance of the conspiracy. Thus, Newkirk's acts are attributable to Respondent. Accordingly, Respondent committed one violation of § 387.6 of the Regulations.

Because Newkirk applied for an individual validated license, he knew or had reason to know that an export license was required to lawfully ship the computer to Hong Kong and that one had not been obtained. Newkirk knew or had reason to know that a violation occurred when he forwarded the computer to Respondent without the required validated export license. This export was made in furtherance of the conspiracy. As a co-conspirator, Newkirk's acts are attributable to the Respondent. Thus, in connection with this export, Respondent committed one violation of § 387.4 of the Regulations.

On or about November 11, 1982, Respondent, doing business as Scientific Data Systems, Ltd., submitted Purchase Order No. SDS037 to Newkirk for electronic computer equipment (Agency Exh. 10). On or about November 16, 1982, Newkirk submitted two export license applications (A659118 and A6959955) to the Agency to export that electronic computer equipment to Respondent's company, Scientific Data, in Hong Kong (Agency Exh. 11). While these license applications were still pending,[5] on or about February 26, 1983, Newkirk exported the electronic computer equipment from the United States to Respondent in Hong Kong, without obtaining the validated export license Newkirk and Respondent knew or had reason to know was required by § 372.1(b) of the Regulations (Agency Exh. 12). On the SED filed in connection with the shipment, Newkirk again stated that the shipment was authorized under "G–DEST".

Newkirk exported the computer equipment contrary to the terms of the Regulations because he exported it without the export license required by § 372.1(b) of the Regulations. The export was made in furtherance of the conspiracy. Newkirk's actions are therefore attributable to the Respondent. In connection with this export, the Respondent committed one violation of § 387.6 of the Regulations.

[2] On or about August 21, 1984, William T. Newkirk pled guilty to five of the seventeen counts and was sentenced to two years' imprisonment and fined $50,000 (Agency Exh. 4).

[3] The Charging Letters issued to Newkirk and Respondent by the Agency allege the same violations as the counts to which Newkirk and Respondent pled guilty. Newkirk's guilty plea supports the Agency's version of events (Agency Exh. 4). Newkirk was charged in a separate administrative civil penalty proceeding and was found to have violated the Act and the Regulations (ALJ Decision, July 28, 1988, Order of Under Secretary, August 26, 1988).

[4] This license application was denied by the Agency on May 26, 1983 (Agency Exh. 9).

[5] The license applications were denied by the Agency on May 19, 1983 (Agency Exh. 13).

Because Newkirk applied for individual validated licenses, he knew or had reason to know that an export license was required to lawfully ship the computer equipment to Hong Kong and that it had not been obtained. Accordingly, Newkirk knew or had reason to know that a violation occurred when he forwarded the computer to Respondent without the required validated export license. This export was made in furtherance of the conspiracy. As a co-conspirator, Newkirk's actions are attributable to the Respondent. Accordingly, Respondent violated § 387.4 of the Regulations.

On or about December 13, 1982, Respondent, doing business as Equipment Rental Company, Ltd., submitted Purchase Order No. ER001 to Newkirk for electronic equipment, including oscilloscopes and spectrum analyzers (Agency Exh. 14). On or about January 3, 1983, Newkirk submitted two export license applications (A669213 and A669214) to the Agency to export this equipment to Respondent's company, Equipment Rental, in Hong Kong (Agency Exh. 15). While these license applications were still pending,[6] Newkirk exported the equipment in two shipments from the United States to Hong Kong on or about April 9, 1983 and on or about June 4, 1983, without obtaining from the Agency the validated export licenses Newkirk and Respondent knew or had reason to know were required by § 372.1(b) of the Regulations (Agency Exh. 16, 17) Newkirk effected these exports by stating on the SED's that accompanied each shipment that these shipments were authorized by validated export license A663561, an export license unrelated to these exports (Agency Exh. 18).

In these two separate shipments, Newkirk exported the electronic equipment contrary to the terms of the Regulations because he exported it without the export licenses required by § 372.1(b) of the Regulations. The two exports were made in furtherance of the conspiracy, thus Newkirk's acts are attributable to Respondent. Accordingly, Respondent committed two violations of § 387.6 of the Regulations, one for each unauthorized export.

In addition, because Newkirk applied for validated export licenses, he knew that export licenses were required to lawfully ship the electronic equipment to Hong Kong and they had not been obtained. Newkirk knew or had reason to know that a violation occurred when he forwarded the electronic equipment to Tong without the required validated export licenses. These exports were made in furtherance of the conspiracy, thus Newkirk's acts are attributable to the Respondent. Accordingly, Respondent committed two violations of § 387.4 of the Regulations.

On February 4, 1983, Respondent, doing business as Scientific Data Systems, Ltd., submitted Purchase Order No. SD063 to Newkirk for electronic equipment, including cathode ray oscilloscopes (Agency Exh. 20). On or about February 14, 1983, Newkirk submitted an export license application (A677421) to the Agency to export that electronic equipment to Respondent's company, Scientific Data Systems, in Hong Kong (Agency Exh. 21).[7] While the application was still pending, and after it was denied by the Agency, Newkirk exported the equipment in four shipments, on May 7, May 28, June 25 and July 3, 1983, from the United States to the Respondent in Hong Kong, (Agency Exh. 22–25), wihtout obtaining from the Agency the validated export licenses Newkirk and Respondent knew or had reason to know were required by § 372.1(b) of the Regulations. Newkirk effected these exports by falsely stating on the SED filed in connection with each shipment that validated export license application number A663561 authorized the shipments.[8]

In these four shipments Newkirk exported the electronic equipment contrary to the terms of the Regulations because he exported each shipment without the export licenses required by § 372.1(b) of the Regulations. Each export was made in furtherance of the conspiracy, thus Newkirk's acts are attributable to Respondent. Accordingly, Respondent committed four violations of § 387.6 of the Regulations.

Because Newkirk applied for individual validated licenses he knew or had reason to know that export licenses were required to lawfully ship the electronic equipment to Hong Kong and that they had not been obtained. Accordingly, Newkirk knew or had reason to know that a violation occurred when he forwarded the electronic equipment to Respondent without the required validated licenses. These exports were made in furtherance of the conspiracy and as a co-conspirator Newkirk's acts are attributable to the Respondent. In connection with these exports, Respondent committed four violations of § 387.4 of the Regulations.

On or about October 7, 1982, Newkirk submitted a validated export license application (A648884) to the Agency to ship twenty cathode ray oscilloscopes to a customer in Mexico. On or about June 22, 1983, Newkirk exported from the United States through Mexico to Respondent in Hong Kong two oscilloscopes and two plug-in units on the false representation that export license A648884 authorized the export.[9] The export was made without obtaining the validated export license from the Agency which Newkirk and Respondent knew or had reason to know was required by § 372.1(b) of the Regulations. Respondent has admitted these facts by pleading guilty to Count I of the indictment (Agency Exh. 2).

Newkirk exported the oscilloscopes and plug-in units contrary to the terms of the Regulations because he exported them without the export license required by § 372.1(b) of the regulations. The export was made in furtherance of the conspiracy, thus, Newkirk's acts are attributable to Respondent. Accordingly, Respondent committed one violation of § 387.6 of the Regulations.

Because Newkirk applied for an individual validated license, he clearly knew that an export license was required to lawfully ship the computer to Hong Kong and that one had not been obtained. Newkirk knew or had reason to know that a violation occurred when he forwarded the computer to Respondent without the required validated export license. Moreover, this export was made in furtherance of the conspiracy. As a co-conspirator, Newkirk's acts are attributable to Respondent. Accordingly, Respondent committed one violation of § 387.4 of the Regulations.

On or about August 16, 1983, in a shipment unrelated to the conspiracy, Respondent exported four U.S.-origin cathode ray tubes from the United States through Canada to Hong Kong, without obtaining from the Agency the validated export licenses which Respondent knew or had reason to know were required by § 372.1(b) of the Regulations. Respondent admitted these facts by pleading guilty to Count II of the Superceding Indictment (Agency Exh. 28).

Respondent exported the cathode ray tubes contrary to the terms of the Regulations because he exported them without the export license required by § 372.1(b) of the Regulations.

[6] License application numbers A669213 and A669214 were denied by the Agency on July 29, 1983 (Agency Exh. 19).

[7] License application A677421 was denied by the Agency on May 19, 1983 (Agency Exh. 21).

[8] License application number A663561 does not cover the equipment shipped in these exports (Agency Exh. 26).

[9] License application A648884 related to a different export to Mexico.

Respondent, thus, committed one violation of § 387.6 of the Regulations.

In pleading guilty to Court II of the Superceding Indictment, Respondent admitted that he knew or had reason to know that an export license was required and he exported the cathode ray tubes to Hong Kong from the United States without obtaining that license. Thus, Respondent committed one violation of § 387.4 of the Regulation in that, by exporting the cathode ray tubes to Hong Kong, without the required license, Respondent transported them knowing or having reason to know that a violation of Regulations had occurred.

Conclusion

The exhibits and representations by Agency Counsel and the Respondent, as well as his co-conspirator's guilty pleas fully support the charges made by the Agency in the May 16, 1988 Charging Letter, which alleged that the Respondent knowingly exported electronic testing and calibration equipment from the United States to the Republic of Hong Kong without first obtaining the required validated export licenses from the Agency and knowingly submitted false statements to the Agency.[10] By doing so, the Respondent committed the charged violations of former §§ 387.4, 387.5 and 387.6 of the Regulations.

The pattern of conduct demonstrated by the violations shows a deliberate and willful intent to violate United States export laws and regulations. I find that an Order denying export privileges for 20 years from the date that a final order is entered in this proceeding is warranted and is reasonably necessary to protect the public interest, and to achieve effective enforcement of the Act and the Regulations.

Order

I. For a period of 20 years from the date of the final Agency action, Respondent.

Man Chung Tong, individually and doing business as Stillwell Development Company, Ltd., Scientific Data Systems, Ltd., Equipment Rental Company, Ltd., Flat 2B, Cheers Court, 15 Dianthus Road, Yan Yat Cheuen, Kowloon, Hong Kong.

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation.

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. All outstanding individual validated export licenses in which Respondents appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly.

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(b) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. App. 2412(c)(1)).

Hugh J. Dolan,

Administrative Law Judge.

Date: November 16, 1988.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Avenue NW., Room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985).

[FR Doc. 88-29267 Filed 12-20-88; 8:45 am]
BILLING CODE 3510-DT-M

[10] The Charging Letter in this proceeding was issued almost three months after that directed to William T. Newkirk, et al., Docket No. 81-8104, 81-8105. The Secretarial action in that matter is dated August 26, 1988 and was published at 53 FR 3,3833 (Sept. 1, 1988). There is no explanation for the separation of these two related cases. The two referenced indictments were in 1983 and 1984. From those and other exhibits it appears that the facts were known and evidence gathered over four years ago. I continue to lament the stale status of too many of these proceedings and now add a concern for the exaggeration of the numbers of the few cases presented for adjudication.

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application #88-00015.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to the Ferrous Scrap Export Association. This notice

summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15, CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determinaion may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct:

Export Trade.

1. Products

Carbon steel and iron scrap (currently identified at U.S. Department of Commerce Schedule B numbers 607.0180 through 607.0846 (to be identified at Schedule B numbers 7204.10 and 7204.30 through 7204.50)) ("ferrous scrap").

2. Export Trade Facilitation Services (as they relate to the export of Products)

Consulting, management, international market research, marketing and trade promotion, sales of goods and services, insurance, legal assistance, inspection services, quality surveys, draft surveys, packing, transportation, wharfing and handling, steamship agency services, trade documentation, freight forwarding, storage, foreign exchange, taking title to goods and customs clearance.

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. FSEA and/or one or more of its Members may:

a. Engage in joint negotiation, joint offering, or other joint selling arrangements for the sale of ferrous scrap in Export Markets and allocate sales resulting from such arrangements among the Members;

b. Establish and operate jointly owned subsidiaries or other joint ventures, owned exclusively by Members, to purchase, process and export ferrous scrap to Export Markets and to provide Export Trade Facilitation Service to Members;

c. Establish export prices and terms for the sale of ferrous scrap in Export Markets, and allocate export markets and/or customers among themselves;

d. Jointly refuse to quote prices for ferrous scrap, or to market or sell ferrous scrap, in Export Markets;

e. On a country-by-country basis for the Export Markets, jointly establish and/or negotiate with purchasers regarding specifications for grades of ferrous scrap to be sold in each country;

f. Jointly negotiate for and purchase ferrous scrap or raw materials for ferrous scrap for export from either Members or non-Member Suppliers for resale in Export Markets;

g. Jointly provide and/or jointly negotiate with Suppliers for Export Trade Facilitation Services;

h. Jointly establish, or arrange to have FSEA, one or more of its Members, or Suppliers to act as, exclusive or non-exclusive Export Intermediaries in Export Markets. Any such exclusive Export Intermediary may agree not to represent any other Supplier of ferrous scrap in the relevant country or market, and Members may agree that they will not export independently, either directly or through any other Export Intermediary or other party;

i. Agree that they will export for sale in one or more Export Markets only directly, through other Members, and/or through designated Export Intermediaries;

j. Cooperate in responding to attempted boycotts, refusals to deal, or other unfair trade practices by buyers of ferrous scrap in Export Markets against any Member, including cooperation in seeking relief before the U.S. Departments of Commerce or Justice, the Federal Trade Commission, the Office of the United States Trade Representative, and/or the courts in the United States and/or the courts and administrative agencies of other countries;

k. Meet and exchange information on any of the above subjects, as well as on market strategies and economic and business conditions in Export Markets; on export prices, terms, quality, quantity, source and delivery dates of ferrous scrap available from Members or non-Members for export; on U.S. and foreign legislation and regulations affecting the sale of ferrous scrap in Export Markets; and on FSEA's organization, governance, financial condition, and membership; and

l. Agree that any information obtained pursuant to the Certificate from another Member shall not be provided to any other Supplier of ferrous scrap.

2. FSEA and its Members may prescribe the following conditions with respect to voting rights, membership in, and withdrawal and expulsion from, FSEA:

a. Voting need not be on a one-member/one-vote basis. Initial voting rights shall be: Camden Iron & Metal, Inc., LMC Metals, Michael Schiavone & Sons, Inc., Schiavone-Bonomo Corp., Schnitzer Steel Products Co., Southern Scrap Material Co., Ltd., and Witte-Chase Corporation shall have one vote each; Hugo Neu & Sons, Inc. and Proler International Corp. shall have one vote jointly to be voted by Hugo Neu & Sons, Inc.; Naporano Iron & Metal Co. and NIMCO Shredding Co. shall have one vote jointly to be voted by Naporano Iron & Metal Co. Thereafter, any change in voting rights, shall be conducted under the voting rules then in effect.

b. Additional parties may be admitted to membership upon receiving:

(1) An affirmative vote of two-thirds of FSEA's existing members, and

(2) Unanimous approval of those members conducting export operations from the same Customs Clearance district as the proposed new member. In the event that no member has export operations in the same Customs Clearnace district as the proposed new member. In the event that no member has export operations in the same Customs Clearance district as the proposed new member, unanimous approval must be obtained from those members operating from the adjacent Customs Clearance districts.

Inclusion of each new member under the Certificate shall be subject to the successful application to the Secretary of Commerce to amend the Certificate to

add the proposed new member as a Member.

c. In the event of a change in the control of a member, such member may continue as a member of FSEA only upon receiving the affirmative votes of two-thirds of the other members. This paragraph shall not apply to a family-controlled company in the case of a change in ownership within the family.

d. Any member may be expelled, without cause or notice, by a majority vote of the other members.

e. Any member may withdraw from membership in FSEA by giving thirty (30) days' written notice to the remainiung members. However, the withdrawing member shall remain responsible for commitments made by such member and by FSEA on behalf of such member prior to the effective date of such member's withdrawal.

Members (within the meaning of § 325.2(1) of the Regulations)

Camden Iron & Metal Inc.; Hugo Neu & Sons, Inc.; LMC Meals; Michael Schiavone & Sons, Inc.; Naporano Iron & Metal Co.; NIMCO Shredding Co.; Proler International Corp.; Schiavone-Bonomo Corp.; Schnitzer Steel Products Co.; Southern Scrap Material Co.; Ltd.; and Witte-Chase Corporation.

Definitions

For purposes of the Certificate:

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker for the sale of goods or services to Export Markets, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services;

2. "Supplier" means a person who produces, provides, or sells ferrous scrap and/or Export Trade Facilitation Services, whether a Member or non-Member; and

3. "Member" means a person who has membership in FSEA.

A copy of the certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: December 16, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-29279 Filed 12-20-88; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Preliminary Approval of the Proposed Amendment To Incorporate the 1988 Beach Management Act into the South Carolina Coastal Management Program

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of preliminary approval of amendment.

SUMMARY: The Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA) received a request from the South Carolina Coastal Council to amend the South Carolina Coastal Management Program (SCCMP) by incorporating the South Carolina Beach Management Act which became law in June 1988. The State's request was made pursuant to section 306(g) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1455(g) and the regulations implementing the CZMA at 15 CFR 923.81. The Beach Management Act enlarges the beach/dune critical area, establishes a setback line based on erosion of the shoreline, places strict limits on what may be constructed seaward of that line, requires long-range comprehensive shorefront management plans at the State and local level, and requires disclosure statements regarding erosion conditions in all contracts of sale and deeds of transfer of affected properties.

The Director, OCRM, has reviewed the amendment request and has made the preliminary determination that, if the amendment is approved, the SCCMP will still constitute an approvable program and that the procedural requirements of section 306(c) of the CZMA have been met. The Director has also determined that approval of the proposed change does not constitute a major Federal action having a significant effect on the human environment. Therefore, this action does not require an environmental impact statement pursuant to the National Environmental Policy Act of 1969, as amended.

Copies of the Finding of No Significant Impact, including the supporting Environmental Assessment, and the Preliminary Findings of Approvability can be obtained from the address below. Comments on these documents should be made by January 17, 1989. Address comments to: Mr. William Millhouser, Regional Manager, South Atlantic and Gulf Regions, Office of Ocean and Coastal Resource Management, 1825 Connecticut Avenue, NW., Washington, DC 20235, (202) 673-5138.

(Federal Domestic Assistance Catalogue 11.419 Coastal Zone Management Program Administration.

[FR Doc. 88-29363 Filed 12-20-88; 8:45 am]

BILLING CODE 3510-08-M

National Telecommunications and Information Administration

[Docket No. 81257-8257]

Inquiry on Production Standards for High Definition Television (HDTV)

AGENCY: National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce.

ACTION: Notice of inquiry.

SUMMARY: In 1985 the United States Government decided to support the NHK HDTV production standard in an effort to achieve a single, worldwide standard. Due to the opposition of a number of other governments, however, it is unlikely that a single, worldwide HDTV production standard will be agreed to. In addition, other production standards are now under development and certain questions have been raised concerning the technical feasibility of a single standard. In light of these changed circumstances, NTIA seeks comments on these developments and whether the U.S. Government should continue to support a production standard or standards.

DATES: Interested persons are invited to submit comments on this Notice of Inquiry to: Office of the Chief Counsel, National Telecommunications and Information Administration, U.S. Department of Commerce, Room H4717, 14th and Constitution Avenue, NW., Washington, DC 20230. Comments are due at the above address by 5:00 p.m. on March 1, 1989.

FOR FURTHER INFORMATION CONTACT: Richard M. Firestone, Chief Counsel, National Telecommunications and Information Administration, Department of Commerce, Room H4717, 14th & Constitution Avenue, NW., Washington, DC 20230; (202) 377-1816.

SUPPLEMENTARY INFORMATION: High Definition Television or HDTV is a generic term referring to a new generation of video receivers and production equipment that will provide superior picture clarity as compared to that currently available. HDTV

technology yields video images comparable in quality to images produced using 35 millimeter film and, as such, offers substantial potential for improved efficiency and flexibility in the production and distribution of all types of programming.

The potential for video images to serve as a substitute for film has long been recognized, but until recently, video technology had not been considered an acceptable substitute production medium. Laboratories throughout the world have sought to address this issue, but it was the laboratories of NHK, the Japanese Broadcasting Corporation, that first successfully developed a system. The NHK system uses 1125 lines per frame, 60 fields per second, 2:1 interlaced scanning and a 16 to 9 aspect ratio.

The current television technology used in the United States, known as NTSC, was originally developed by the National Television System Committee for monochrome (black-and-white) transmission around 1940, and has been subsequently enhanced to include color and stereo sound.

In May 1986 the Plenary Assembly of the International Radio Consultative Committee (CCIR)—the organ of the International Telecommunication Union responsible for recommending voluntary technical standards for radiocommunications—met in Dubrovnik, Yugoslavia. Among the things considered at the Plenary Assembly was a recommendation by the Government of Japan to adopt the NHK production standard for HDTV as a worldwide standard.

The U.S. Government supported the adoption of the NHK system as the worldwide HDTV production standard at the Dubrovnik Plenary. A primary reason for taking this position was the desire of the United States to have a single, worldwide production standard. It was hoped that a worldwide HDTV standard, like the internationally accepted 35 millimeter standard for film production, could be established so that there would be compatibility of systems between nations which would ease the transfer of HDTV programming. The Plenary Assembly did not reach agreement on the recommendation, however, and instead agreed to study the matter further and to reconsider the issue at its next plenary session, scheduled for 1990.

Since the Dubrovnik Plenary, it has become evident that a single, worldwide HDTV production standard will not be agreed upon. First, the governments of Western Europe have rejected the NHK system and have sponsored the development of a different system for Europe through the EUREKA 95 Project. While still in the development stage, this system has been demonstrated and appears viable.

Second, other production standards have been proposed recently, including one developed in the United States. At the time that the United States agreed to support the NHK standard, it was the only HDTV production standard that had been proposed.

Finally, questions have been raised about the technical compatibility of HDTV production standards with the electric power supply available in various countries. This concern is based in the cycle rates of the production equipment and the power supply in the locales where production is undertaken. Apparently, when 60 cycle production equipment is used to film with lighting running off a 50 cycle power source, it produces a strobing effect on the video image being recorded. The same should also hold true for any 50 cycle camera shooting in a 60 cycle electric power environment. Attempts can be made to address this problem by rewiring a particular locale to provide a power source with a compatible cycle rate and, conceivably, there could be a software or hardware solution. Until clarified, however, it would seem that this might present an unacceptable limit on the universal acceptance of any one system as a worldwide production standard.

In light of the economic significance of this issue and the upcoming CCIR Plenary meeting, scheduled for May 1990, NTIA seeks information on the significance of these changes and what the U.S. Government position should be on the adoption of an HDTV production standard or standards. Specifically, NTIA seeks comments on the implications of multiple video production standards, the merits of other HDTV production standards under development, whether the U.S. Government should continue to support a production standard or standards, the criteria that should be used in deciding to support a production standard, the relationship between the production standard and the transmission standard for HDTV, and the relationship between production standards and the equipment producers attempting to serve end user markets.

NTIA seeks public comment on these questions and any other information which would assist the Department of Commerce in assessing the United States Government position on this issue for the 1990 meeting of the CCIR. Comments should be submitted to: Office of the Chief Counsel, National Telecommunications and Information Administration, Room H4717, 14th and Constitution Avenue, NW., Washington, DC 20230, by March 1, 1989.

Date: December 16, 1988.

Alfred C. Sikes,

Assistant Secretary for Communications and Information.

[FR Doc. 88-29219 Filed 12-20-88; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

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 Macau

December 16, 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: Diana Solkoff, 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) 343-6495. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral textile agreement between the Governments of the United States and Macau 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 provisons 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 16, 1988.

Commissioner of Customs
Department of the Treasury, Washington, D.C. 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 Textile done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effectd by exchange of notes dated December 28, 1983 and January 9, 1984, as amended and extended, between the Governments of the United States and Macau; 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 Macau 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	Twelve-month restraint limit
200–239, 300–369, 400–469, 600–670 and 800–899, as a group.	76,510,312 square meters equivalent.
Group I	
200–239, 300–369, 600–670 and 800–899, as a group.	73,673,165 square meters equivalent.
Sublevels within Group I	
237	61,000 dozen.
331/831	300,000 dozen pairs.
333/334/335/833/834/835.	155,789 dozen of which not more than 82,063 dozen shall be in Categories 333/335/833/835.
336/836	23,000 dozen.
338	200,553 dozen.
339	840,048 dozen.
340	189,824 dozen.
341	122,433 dozen.
342	39,326 dozen.
345	33,867 dozen.
347/348/847	474,705 dozen.
350/850	18,000 dozen.
351/851	27,000 dozen.
359/859	137,892 kilograms.
631	200,000 dozen pairs.
633/634/635	329,897 dozen.
636	15,453 dozen.
638/639/838	1,027,305 dozen.
640	73,042 dozen.
641/840	125,540 dozen.
642/842	73,140 dozen.
645/646	171,217 dozen.
647/648	345,399 dozen.
649	145,833 dozen.
652,852	160,000 dozen.
659	89,762 kilograms.
670	340,194 kilograms.
845/846	202,005 dozen.
Group II	
400–469, as a group	1,377,743 square meters equivalent.
Sublevels within Group II	
434	1,852 dozen.
442	5,556 dozen.
445/446	74,276 dozen.

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 those 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 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 Macau.

The conversion factors are listed below:

Category	Conversion factor
333/334/335/833/834/835	34.2
333/335,833/835	34.2
359/859	8.5
633/634/635	34.5
638/639,838	12.9
641/840	12.1
652/852	13.4

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 Implementaion of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–29275 Filed 12–20–88; 8:45 am]
BILLING CODE 3510–DR–M

Announcement of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Uruguay

December 16, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: February 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: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: Under the terms of a Memorandum of Understanding dated October 17, 1988, the Governments of the United States and the Republic of Uruguay agreed to establish a limit for wool textile products is Category 410. A formal exchange of diplomatic notes will follow.

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).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 16, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 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 Memorandum of Understanding of October 17, 1988 between the Governments of the United States and the Republic of Uruguay; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of wool apparel products in Category 410, produced or manufactured in Uruguay and exported during the seventeen-month period which begins on February 1, 1989 and extends through June 30, 1990, in excess of the following limit:

Category	Seventeen-month limit
410	3,731,218 square meters of which not more than 2,132,125 square meters shall be in Category 410-A (carded) [1] and not more than 3,435,090 square meters shall be in Category 410-B (combed) [2].

[1] In Category 410-A, only tariff numbers 5111.11.10.00, 5111.11.60.30, 5111.11.60.60, 5111.19.20.00, 5111.19.60.20, 5111.19.60.40, 5111.19.60.60, 5111.19.60.80, 5111.20.60.00, 5111.30.60.00, 5111.90.30.00, 5111.90.60.00, 5212.11.10.10, 5212.12.10.10, 5212.13.10.10, 5212.14.10.10, 5212.15.10.10, 5212.21.10.10, 5212.22.10.10, 5212.23.10.10, 5212.24.10.10, 5212.25.10.10, 5311.00.20.00, 5407.91.05.10, 5407.92.05.10, 5407.93.05.10, 5407.94.05.10, 5408.31.05.10, 5408.32.05.10, 5408.33.05.10, 5408.34.05.10, 5515.13.05.10, 5515.22.05.10, 5515.92.05.10, 5516.31.05.10, 5516.32.05.10, 5516.33.05.10, 5516.34.05.10 and 6301.20.00.20.

[2] In Category 410-B, only tariff numbers 5007.10.60.30, 5007.90.60.30, 5112.11.00.30, 5112.11.00.60, 5112.19.60.10, 5112.19.60.20, 5112.19.60.30, 5112.19.60.40, 5112.19.60.50, 5112.19.60.60, 5112.20.00.00, 5112.30.00.00, 5112.90.60.00, 5112.90.60.10, 5112.90.60.90, 5212.11.10.20, 5212.12.10.20, 5212.13.10.20, 5212.14.10.20, 5212.15.10.20, 5212.21.10.20, 5212.22.10.20, 5212.23.10.20, 5212.24.10.20, 5212.25.10.20, 5309.21.20.00, 5309.29.20.00, 5407.91.05.20, 5407.92.05.20, 5407.93.05.20, 5407.94.05.20, 5408.31.05.20, 5408.32.05.20, 5408.33.05.20, 5408.34.05.20, 5515.13.05.20, 5515.22.05.20, 5515.92.05.20, 5516.31.05.20, 5516.32.05.20, 5516.33.05.20 and 5516.34.05.20.

Imports charged to the category limit for the period February 1, 1988 through January 31, 1989 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The level set forth above is subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and the Republic of Uruguay.

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. 88-29276 Filed 12-20-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Uruguay

December 16, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner on Customs establishing a limit.

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: 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) 3715.

SUPPLEMENTARY INFORMATION: Under the terms of a Memorandum of Understanding dated October 17, 1988, the Governments of the United States and the Republic of Uruguay agreed to establish a limit for cotton textile products in Category 334. A formal exchange of diplomatic notes will follow.

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).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 16, 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 Memorandum of Understanding of October 17, 1988 between the Governments of the United States and the Republic of Uruguay; 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 apparel products in Category 334, produced or manufactured in Uruguay and exported during the six-month period which begins on January 1, 1989 and extends through June 30, 1989, in excess of 41,250 dozen.

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. 88-29277 Filed 12-20-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

December 16, 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: A copy of the current bilateral textile agreement between the Governments of the United States and the Socialist Federal Republic of Yugoslavia 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 16, 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 Cotton, Wool and Man-Made Fiber Textile Agreement of October 26 and 27, 1978, as amended and extended, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia; 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 Yugoslavia and exported during the twelve-month period beginning on January 1, 1989, and extending through December 31, 1989, in excess of the following limits:

Category	12-Mo. restraint limit
340/640	404,954 dozen.
341/641	264,046 dozen.
433	7,978 dozen.
434	8,846 dozen.
435	39,023 dozen.
442	10,967 dozen.
443/643	305,112 numbers of which not more than 104,052 numbers shall be in Category 443.
444	92,064 numbers.
447/448	48,908 dozen of which not more than 29,137 dozen shall be in Category 447 and not more than 29,137 dozen shall be in Category 448.
604–A [1]	305,794 kilograms.
645/646	123,596 dozen.
666	968,347 kilograms.

[1] In Category 604–A, only tariff number 5509.32.00.00.

Imports charged to these category limits 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 provisions of the bilateral agreement of October 26 and 27, 1978, as amended and extended, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia.

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. 88–29278 Filed 12–20–88; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Thursday, 5 January 1989.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 15, 1988.

[FR Doc. 88–29252 Filed 12–20–88; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Low Observable Technology; Advisory Committee Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Low Observable Technology will meet in closed session on January 12–13, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will evaluate low observable technology.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

December 15, 1988.

[FR Doc. 88–29253 Filed 12–20–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

December 14, 1988.

The USAF Scientific Advisory Board Ad Hoc Committe on Science and Technology (S&T) Roadmaps Review will meet on January 10, 1989 from 8:00 a.m. to 5:30 p.m. at the Pentagon, Washington, DC 20330–5430.

The purpose of this meeting is to brief the Assistant Secretary of the Air Force for Acquisition on the Committee's review of the roadmaps for the programs in the Air Force S&T base. 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. 88–29237 Filed 12–20–88; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

December 14, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Munitions Effectiveness will meet on January 17–18, 1989 from 8:00 a.m. to 5:00 p.m. at the Armament Division, Eglin AFB, FL 32542. This meeting was previously announced for 8–10 Nov. 88 and is rescheduled from those dates.

The purposes of this meeting are to assess the changes in the threat over the past ten years and to study how to take full advantage of potential technology improvements in the development and manufacturing of munitions. 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. 88–29238 Filed 12–20–88; 8:45 am]

BILLING CODE 3910–01–M

Privacy Act of 1974; New Record Systems

AGENCY: Department of the Air Force, DOD.

ACTION: Notice of two new systems of records subject to the Privacy Act.

SUMMARY: The Air Force is adding two new record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: This proposed action will be effective without further notice January 23, 1989, unless the Air Force receives comments which results in a contrary determination.

ADDRESS: Send any comments to Ms. Linda G. Adams, SAF/AADA, The Pentagon, Washington, D.C., telephone: 202–694–3431, AUTOVON: 224–3431.

SUPPLEMENTARY INFORMATION: The Air Force published systems of records notices subject to the Privacy Act of 1974 in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22332) May 29, 1985

FR Doc. 85–14122 (50 FR 24672) June 12, 1985

FR Doc. 85–15062 (50 FR 25737) June 21, 1985

FR Doc. 85–26775 (50 FR 46477) November 8, 1985

FR Doc. 85–29261 (50 FR 50337) December 10, 1985

FR Doc. 86–2527 (51 FR 4531) February 5, 1986

FR Doc. 86–4546 (51 FR 7371) March 3, 1986

FR Doc. 86–10044 (51 FR 16735) May 6, 1986

FR Doc. 86–11696 (51 FR 18927) May 23, 1986

FR Doc. 86–25787 (51 FR 41382) November 14, 1986

FR Doc. 86–25788 (51 FR 41402) November 14, 1986

FR Doc. 86–27635 (51 FR 44332) December 9, 1986

FR Doc. 87–8139 (52 FR 11845) April 13, 1987

FR Doc. 88–14507 (53 FR 24354) June 28, 1988

FR Doc. 88–26193 (53 FR 45800) November 14, 1988

FR Doc. 88–28603 (53 FR 50072) December 13, 1988

The Air Force submitted new system reports, as required by 5 U.S.C. 552a(0) of the Privacy Act on December 2, 1988, pursuant to paragraph 4b of Appendix to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 15, 1988.

F060 AF B

System name: F060 AF B—Contractor Flight Operations.

System location: All Army, Navy, Air Force and Defense Logistics Agency activities who approve contractor aircraft flight and ground operations procedures or utilize contractor personnel who operate aircraft for the government.

Categories of individuals covered by the system: All contractor personnel who operate aircraft for the Army, Navy, Air Force, or Defense Logistic Agency for which the government assumes some risk of loss or damage. It covers both flight crewmember and noncrewmember personnel designated by a contractor to conduct flights, perform functions while the Aircraft is in flight, or perform ground operations in support of such flights.

Categories of records in the system: Name; SSN; home address and telephone number; DOB security clearance data; education; military service data; flight qualification, proficiency, training, and experience records; standardization and evaluation data; safety and mishap records; medical and physiological data; and, similar data.

Authority for maintaining the system: 10 U.S.C. 8013, 44 U.S.C. 3101, and joint regulation AFR 55–22/AR 95–20/ NAVAIRINST 3710. 1C/DLAR 8210.1 and Executive Order 9397.

Purpose(s): Used to monitor and manage individual contractor flight and ground personnel records.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Records from this system may be used for any of the blanket routine uses published by the Air Force.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the systems:

Storage: Maintained in file folders, notebooks, computers and computer output products.

Retrievability: Filed by name or SSN.

Safeguards: Records are accessed by custodian of the records or by persons responsible for servicing the record system in performance of their actual duties who are properly screened and cleared for need to know. Records are stored in locked cabinets, and rooms are controlled by personnel screening and computer software.

Retention and disposal: Records are maintained in the system until contract termination, at which time they will be destroyed if no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Air Force: HQ AFSC/TEO, Andrews AFB DC 20334–5000. Army: DALO–AV, Washington, DC 20330–0505. Navy: NAVAIRSYSCOM (Air 119), Washington, DC 20361. DLA: HQ DLA–DQSO–S, 805 Walker Street, Marietta GA 30060–2789.

NOTIFICATION PROCEDURE:

Request from individuals should be addressed to the system manager or the system location where the flight certification is recorded. Individuals will be asked to provide name, social security number, or both, to facilitate access.

RECORD ACCESS PROCEDURES:

Written requests should be notarized and addressed to the system manager or

to the system location where the flight certification is recorded. For personal visists, the individual may be asked to show a valid identification card, a driver's license, or some similar proof of identity.

CONTESTING RECORDS PROCEDURES:

The rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the system manager and are published in Air Force Regulation 12–35 (32 CFR 806b).

RECORD SOURCE CATEGORIES:

Information is provided by the individual or from training, evaluation, and examination records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F110 JA E

SYSTEM NAME:

F110 JA E—Air Force Reserve Judge Advocate Personal Data

SYSTEM LOCATION:

Headquarters United States Air Force, Office of the Judge Advocate General, Washington, DC 20330; at the office of the staff judge advocate at major commands and subordinate units, down to and including Air Force installations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Reserve Judge Advocates (JAGs).

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal and professional background information pertaining to individual JAGs.

AUTHORITY FOR MAINTAINING THE SYSTEM:

10 USC 8013, Secretary of the Air Force.

PURPOSE(S):

To verify training completion dates and personal and professional data used to prepare the JAG's Officer Effectiveness Report.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records are accessed by the custodian of the record system and by persons responsible for servicing the record system in performance of their official duties.

RETENTION AND DISPOSAL:

Retained in office files until reassignment or separation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters United States Air Force, Washington, D.C. 20330–5120.

NOTIFICATION PROCEDURE:

Request from individuals should be addressed to the system manager.

RECORD ACCESS PROCEDURES:

Individuals can obtain assistance in gaining access from the System Manager.

CONTESTING RECORDS PROCEDURES:

The Air Force rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are located in Air Force Regulation 12–35 (32 CFR 806b).

RECORD SOURCE CATEGORIES:

Information supplied by the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88–29254 Filed 12–20–88; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

[Docket Nos. CP89–373–000, et al.]

Federal Energy Regulatory Commission

Questar Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Questar Pipeline Company

December 14, 1988.

[Docket No. CP89–373–000]

Take notice that on December 12, 1988, Questar Pipeline Company (Questar Pipeline), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP89–373–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Ampolex (Texas) Inc. (Ampolex), under the blanket certificate issued in Docket No. CP88–650–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar Pipeline states that pursuant to a transportation agreement dated November 17, 1988, under its Rate Schedule T–2, it proposes to transport up to 600 MMBtu per day equivalent of natural gas for Ampolex from the Dove Creek Plant Outlet to an interconnection with Northwest Pipeline Corporation, both delivery points being located in Dolores County, Colorado.

Questar Pipeline further states that the average daily and annual quantities would be equivalent to 600 MMBtu and 219,000 MMBtu, respectively. Service commenced December 4, 1988, under the provisions of § 284.223(a) as reported in Docket No. ST89–1223 (filed December 12, 1988).

Comment date: January 30, 1988, in accordance with Standard Paragraph G at the end of the notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP89–390–000]

December 14, 1988.

Take notice that on December 13, 1988, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–390–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for PSI, Inc. (PSI), a marketer, under the blanket certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated October 24, 1988, under its Rate Schedule IT, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for PSI from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A". Tennessee states that it would receive the gas at an existing point on its system located in the State of Louisiana, and that it would transport and redeliver the gas to various delivery points off Tennessee's system interconnecting with National Fuel Gas

Supply, located in the states of New York and Pennsylvania. Tennessee states that deliveries would also be made to storage facilities located at Hamburg, Erie County, New York, and at Hebron, Potter County, Pennsylvania.

Tennessee advises that service under § 284.223(a) commenced November 1, 1988, as reported in Docket No. ST89–1079 (filed December 1, 1988). Tennessee further advises that it would transport 50,000 dt on an average day and 18,250,000 dt annually.

Comment date: January 30, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP89–384–000]

December 14, 1988.

Take notice that on December 12, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–384–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Cabot Energy Marketing Company (Cabot), a marketer, under the blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated July 19, 1988, under its Rate Schedule ITS, it proposes to transport for Cabot up to 50,000 MMBtu per day equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS). Natural states that it would receive the gas at various existing points in Texas and New Mexico and that it would transport and redeliver the gas at a Cabot Pipeline Corporation interconnection in Lea County, New Mexico. Natural advises that the gas ultimately would be consumed in the states of Texas, New Mexico, and California.

Natural advises that service under § 284.223(a) commenced October 21, 1988, as reported in Docket No. ST89–1239 (filed on December 12, 1988). Natural further advises that it would transport 5,000 MMBtu on an average day and 1,825,000 MMBtu annually.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Gas Transmission Corporation

[Docket No. CP89–383–000]

December 15, 1988.

Take notice that on December 12, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–383–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Total Minatome Corporation (Total Minatome) under Texas Gas' blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas proposes, pursuant to a gas transportation agreement dated October 10, 1988, to transport on a peak day up to 50,000 MMBtu per day equivalent of natural gas for Total Minatome, with an estimated average daily quantity of 10,000 MMBtu equivalent of natural gas. Texas Gas states that, on an annual basis, it could transport up to 18,250,000 MMBtu equivalent of natural gas. It is stated that the ultimate consumer of the gas is Providence Gas Company. It is stated further that transportation service for Total Minatome commenced October 19, 1988, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–751. Texas Gas states that the transportation service is being rendered through the use of Texas Gas' existing facilities.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP89–355–000]

December 15, 1988.

Take notice that on December 8, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–355–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide a transportation service for Western Massachusetts Electric Company (Western Mass), an end-user, under Applicant's blanket certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant proposes, pursuant to a transportation agreement dated October 20, 1988, to transport natural gas for Western Mass from points of receipt located in offshore Louisiana and the States of Louisiana, Texas, New York and New Jersey. Applicant states that the various locations of the ultimate delivery points for the gas are the States of Connecticut, Massachusetts, New Hampshire, New Jersey and Pennsylvania. The Applicant states further that the maximum daily quantity is 250,000 dekatherms (dt) equivalent of natural gas and the annual quantity is 30,000,000 dt equivalent of natural gas. Applicant states that service under § 284.223(a) commenced October 25, 1988, as reported in Docket No. ST89–810 (filed November 18, 1988).

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Trunkline Gas Company

[Docket No. CP89–376–000]

December 15, 1988.

Take notice that on December 12, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–376–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act, all as more fully set out in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for Conoco, Inc. (Conoco), a shipper and marketer of natural gas and Agent for E.I. du Pont de Nemours & Company, Inc. (du Pont) pursuant to a transportation agreement dated October 12, 1988. Trunkline explains that service commenced November 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–0924. Trunkline further explains that the peak day quantity would be 1,500 dekatherms, the average daily quantity would be 500 dekatherms, and that the annual quantity would be 182,500 dekatherms. Trunkline explains that it would receive natural gas for Conoco's account at various existing points of receipt on its system. Trunkline states that it would transport and redeliver the natural gas to Northern Indiana Public Service Company in Marshall, Pulaski, Elkhart, and Jasper Counties, Indiana.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-349-000]

December 15, 1988.

Take notice that on December 7, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-349-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations to transport natural gas on behalf of Tejas Power Corporation, a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000, all as more fully set forth in the application on file with the Commission and open to public inspection.

Pursuant to a Transportation Service Agreement dated October 11, 1988, Northern proposes to transport up to 20,000 MMBtu per day for Tejas Power Corporation, through existing facilities. Construction of facilities will not be required to provide the proposed service.

Nothern states that service commenced on October 11, 1988, under the 120-day automatic authorization provisions of § 284.223(a), as reported in Docket No. ST89-372.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Trunkline Gas Company

[Docket No. CP89-375-000]

December 15, 1988.

Take notice that on December 12, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642 filed in Docket No. CP89-375-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for American Central Gas Marketing Company (American Central), a marketer, pursuant to a transportation agreement dated September 14, 1988. Trunkline explains that service commenced November 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-925. Trunkline further explains that the peak day quantity would be 150,000 dekatherms, the average daily quantity would be 20,000 dekatherms, and that the annual quantity would be 7,300,000 dekatherms. Trunkline explains that it would receive natural gas for American Central's account at points of receipt in Illinois, Tennesseee, Louisiana, Texas, and offshore Louisiana. Trunkline states that it would transport and redeliver the natural gas to Consumers Power Company in Elkhart, Indiana.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corporation

[Docket No. CP89-379-000]

December 15, 1988.

Take notice that on December 12, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-379-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Total Minatome Corporation (Total Minatome), under the blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 200,000 MMBtu of natural gas for Total Minatome, with an estimated average daily quantity of 40,000 MMBtu. On an annual basis, Texas Gas could transport up to 73,000,000 MMBtu. The ultimate consumer of the gas has been identified by Total Minatome as Wisconsin Natural Gas Company.

Transportation service for Total Minatome commenced October 19, 1988, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-743.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Trunkline Gas Company

[Docket No. CP89-374-000]

December 15, 1988.

Take notice that on December 12, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-374-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas for Transtate Gas Service Company (Transtate), a marketer, pursuant to Trunkline's blanket certificate issued in Docket No. CP86-586-000 and section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Trunkline requests authority to transport up to 30,000 dt equivalent of natural gas per day on an interruptible basis on behalf of Transtate pursuant to a transportation agreement dated August 25, 1988, between Trunkline and Transtate. Trunkline states that the transportation agreement provides for Trunkline to receive gas from various existing points of receipt on its system in Illinois, Offshore Louisiana, onshore Louisiana, and Texas and to redeliver the gas less fuel and unaccounted for line loss, to Northern Indiana Public Service Company in Marshall, Pulaski, Elkhart, and Jasper Counties in Indiana.

Trunkline indicates it would provide the service for a primary term of one month from the date of initial transportation and continue to provide the service on a month-to-month basis until terminated by either party upon at least 30 days prior notice to the other. Trunkline states that it would charge the rates and abide by the terms and conditions of its Rate Schedule PT.

It is indicated that the estimated maximum daily volume, average volume, and annual volumes would be 30,000 dt equivalent of natural gas, 30,000 dt equivalent of natural gas, 10,950,000 dt equivalent of natural gas, respectively. Trunkline states it commenced a 120-day transportation service for Transtate on November 1, 1988, as reported in Docket No. ST89-940. It is also indicated that Trunkline would use existing facilities to implement the service.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Tennessee Gas Pipeline Company

[Docket No. CP89-391-000]

December 15, 1988.

Take notice that on December 13, 1988, Tennessee Gas Pipeline Company (Tennessee) P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP89-391-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act for

Reliance Gas Marketing Company (Reliance), all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas on an interruptible basis for Reliance, a marketer. Tennessee explains that service commenced November 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1070. Tennessee further explains that the peak day quantity would be 50,000 dekatherms, the average daily quantity would be 50,000 dekatherms, and the annual quantity would be 18,250,000 dekatherms. Tennessee explains that it would receive natural gas for Reliance's account at various points in offshore Louisiana and the states of Louisiana, Alabama, Mississippi, and Texas. Tennessee further explains that, it would redeliver natural gas for Reliance's account to CNG Transmission Company at: (1) Broadrun-Cornwell, Kanawha County, West Virginia, (2) Harrison Potter County, Pennsylvania, and (3) Ellisburg, Potter County, Pennsylvania, and also to Delta Natural Gas Company in Madison County, Kentucky. Tennessee states that the ultimate delivery points of the gas are located in Kentucky, West Virginia, and Pennsylvania.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Williams Natural Gas Company

[Docket No. CP89–388–000]

December 15, 1988.

Take notice that on December 12, 1988, Williams Natural Gas Company (Williams) P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–388–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Kansas Power & Light Company (KPL), under its blanket authorization issued in Docket No. CP89–388–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams would perform the proposed interruptible transportation service for KPL, a local distribution company, pursuant to an FTS transportation service agreement dated November 1, 1988 (Reference No. TR–A0022). The term of the transportation agreement is from the date of execution and shall continue in full force and effect until January 1, 1993 and shall be considered as renewed and extended beyond such original term for additional periods of one year each unless either party gives the other written notice at least ninety days prior to the expiration date of the original or any succeeding or extended term of its intention to terminate the service agreement on that date. Williams proposes to transport on a peak day up to 16,490 MMBtu per day; on an average day up to 16,490 MMBtu; and on an annual basis 6,018,850 MMBtu of natural gas for KPL. It is stated that KPL would pay Williams for all service rendered under the transportation agreement in accordance with Williams' Rate Schedule FTS, and/or any other applicable or superseding rate schedule(s) as filed with the FERC. Williams would receive the volumes from various receipt points in Kansas, Oklahoma, Texas and Wyoming for transportation to various delivery points on Williams' pipeline system located in Kansas.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Williams commenced such self-implementing service on November 1, 1988, as reported in Docket No. ST89–1102–000.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Texas Gas Transmission Corporation

[Docket No. CP89–393–000]

December 15, 1988.

Take notice that on December 13, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–393–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Ford Motor Company—Lorain Assembly Plant (Ford Motor-Lorain), under the blanket certificate issued in Docket No. CP89–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated October 6, 1988, under its Rate Schedule T, it proposes to transport up to 6,000 MMBtu per day equivalent of natural gas for Ford Motor-Lorain from points of receipt listed in Exhibit "B" of the agreement to delivery points listed in Exhibit "C", which transportation service involves interconnections between Texas Gas and various transporters.

Texas Gas advises that service under § 284.223(a) commenced October 21, 1988, as reported in Docket No. ST89–768. Texas Gas further advises that it would transport 5,000 MMBtu on an average day and 2,190,000 MMBtu annually.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Texas Gas Transmission Corporation

[Docket No. CP89–397–000]

December 15, 1988.

Take notice that on December 13, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–397–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Ford Motor Company—Norfolk Assembly Plant (Ford Motor-Norfolk), under the blanket certificate issued in Docket No. CP89–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated October 6, 1988, under its Rate Schedule T, it proposes to transport up to 6,000 MMBtu per day equivalent of natural gas for Ford Motor-Norfolk from points of receipt listed in Exhibit "B" of the agreement to delivery points listed in Exhibit "C," which transportation service involves interconnections between Texas Gas and various transporters.

Texas Gas advises that service under § 284.223(a) commenced October 21, 1988, as reported in Docket No. ST89–769. Texas Gas further advises that it would transport 2,000 MMBtu on an average day and 2,190,000 MMBtu annually.

Comment date: January 30, 1988, in accordance with Standard Paragraph G at the end of the notice.

15. Texas Gas Transmission Corporation

[Docket No. CP89–395–000]

December 15, 1988.

Take notice that on December 13, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301 filed in Docket No. CP89–395–000 a request pursuant to § 157.205 of the Commission's Regulations under the

Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Ford Motor Company-Sandusky Plastics Plant (Ford Motor-Sandusky), under the blanket certificate issued in Docket No CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated October 5, 1988, under its Rate Schedule T, it proposes to transport up to 2,500 MMBtu per day equivalent of natural gas for Ford Motor-Sandusky from points of receipt listed in Exhibit "B" of the agreement to delivery points listed in Exhibit "C," which transportation service involves interconnections between Texas Gas and various transporters.

Texas Gas advises that service under § 284.223(a) commenced October 21, 1988, as reported in Docket No. ST89-766. Texas Gas further advises that it would transport 2,300 MMBtu on an average day and 912,500 MMBtu annually.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Williams Natural Gas Company

[Docket No. CP89-399-000]

December 16, 1988.

Take notice that on December 13, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-399-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Conoco, Inc. (Conoco), a producer, under the blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport on a firm basis for Conoco up to 500 MMBtu of natural gas on a peak day, approximately 200 MMBtu on an average day, and 182,500 MMBtu on an annual basis. Williams states that it would transport this gas from various receipt points in Oklahoma and Texas to various delivery points on Williams' system in Kansas. Williams explains that service commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-1103-000.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. United Gas Pipe Line Company

[Docket No. CP89-370-000]

December 16, 1988.

Take notice that on December 9, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-370-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to provide interruptible transportation service on behalf of Santa Fe International Corp., a producer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that, pursuant to an interruptible gas transportation agreement dated October 12, 1988, it proposes to transport a maximum daily quantity of 25,750 MMBtu of natural gas from a single point of receipt located in Vermilion Parish Louisiana to nine (9) points of delivery located in Quachita, LaSalle, Rapides and St. Landry Parishes Louisiana. The average daily quantity transported is expected to equal the maximum daily quantity transported and based thereon, the annual transportation volume is expected to be 9,398,750 MMBtu. United states that the service commenced November 10, 1988, as reported in Docket No. ST89-938-000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Texas Gas Transmission Corporation

[Docket No. CP89-381-000]

December 16, 1988.

Take notice that on December 12, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-381-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Total Minatome Corporation (Total Minatome) under the blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 25,000 MMBtu of natural gas for Total Minatome, with an estimated average daily quantity of 20,000 MMBtu. On an annual basis, Texas Gas could transport up to 9,125,000 MMBtu. The ultimate consumer of the gas has been identified by Total Minatome as Louisville Gas and Electric Company.

Transportation service for Total Minatome commenced October 21, 1988, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-749-000.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Williams Natural Gas Company

[Docket No. CP89-401-000]

December 16, 1988.

Take notice that on December 13, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-401-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Associated Natural Gas, Inc. (Associated), a marketer, under the blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport on a firm basis for Associated up to 300 MMBtu of natural gas on a peak day, approximately 300 MMBtu on an average day, and 109,500 MMBtu on an annual basis. Williams states that it would transport this gas from various receipt points in Colorado, Kansas, Oklahoma and Wyoming to various delivery points on Williams' system in Kansas. Williams explains that service commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-961-000.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-357-000]

December 16, 1988.

Take notice that on December 8, 1988, Northern Natural Gas Company Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-357-000 a request pursuant to § 284.223 (18 CFR 284.223) of the

Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for Texaco, Inc. (Texaco) under Northern's blanket transportation certificate authorization which was issued by Commission order on December 22, 1986 in Docket No. CP86-435-000, 37 FERC 61,268 (1986), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 60,000 MMBtu of natural gas equivalent per day on behalf of Texaco pursuant to a transportation agreement dated November 1, 1988. Northern would receive the gas at various points in the state of Texas, and redeliver the gas at various points in Texas.

Northern states further that average day and annual deliveries would be 45,000 MMBtu and 21,900,000 MMBtu, respectively. The interruptible transportation commenced on November 1, 1988, pursuant to § 284.223(c) of the Commission's regulations as reported in Docket No. ST89-1143-000 on December 5, 1988.

Comment date: January 30, 1988, in accordance with Standard Paragraph G at the end of the notice.

21. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-394-000]

December 19, 1988.

Take notice that on November 11, 1988, Transcontinental Gas Pipe Line Corporation (Transco) Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-394-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Kogas, Inc. (Kogas), under its blanket authorization issued in Docket No. CP88-328-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco would perform the proposed interruptible transportation service for Kogas, pursuant to an interruptible transportation service agreement dated November 1, 1988. The term of the transportation agreement is from the date of the contract and shall continue for a primary term ending December 1, 1988, and shall continue thereafter unless cancelled by thirty days prior notice by either party. Transco proposes to transport on a peak day up to 583,000 Dekatherms (dt) per day; on an average day 30,000 dt; and on an annual basis 10,950,000 dt of natural gas for Kogas. Transco further states that consistent with its Rate Schedule IT, Transco may agree to accept for transportation additional quantities of gas. Transco proposes to receive the subject gas at High Island Block A-283, Offshore Texas and deliver the gas at an existing point of interconnection between Transco and Tennessee Gas Pipeline Company at Cameron Parish, Louisiana. Transco avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Transco commenced such self-implementing service on November 11, 1988, as reported in Docket No. ST89-1114-000.

Comment date: February 2, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. Texas Gas Transmission Corporation

[Docket No. CP89-380-000]

December 19, 1988.

Take notice that on December 12, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-380-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Total Minatome Corporation (Total Minatome), with Louisville Gas and Electric Company identified as the ultimate consumer of the gas, under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 100,000 MMBtu equivalent of natural gas on a peak day for Total Minatome's account, 70,000 MMBtu equivalent on an average day and 36,500,000 MMBtu equivalent on an annual basis. It is stated that Texas Gas would receive the gas for Total Minatome's account at various existing receipt points on Texas Gas' system offshores Louisiana and that Texas Gas would deliver equivalent volumes for Total Minatome's account at an existing interconnection between Texas Gas and Bluewater Pipeline System offshore Louisiana. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced October 21, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-748.

Comment date: February 2, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. Texas Gas Transmission Corporation

[Docket No. CP89-382-000]

December 19, 1988.

Take notice that on December 12, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-380-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Total Minatome Corporation (Total Minatome), with Louisville Gas and Electric Company identified as the ultimate consumer of the gas, under Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 25,000 MMBtu equivalent of natural gas on a peak day for Total Minatome 3,000 MMBtu equivalent on an average day and 9,125,000 MMBtu equivalent on an annual basis. It is stated that Texas Gas would receive the gas for Total Minatome's account at an existing receipt point on Texas Gas' system in the West Cameron area, offshores Louisiana and that Texas Gas would deliver equivalent volumes for Total Minatome's account at an existing interconnection between Texas Gas and Texas Eastern Transmission Corporation, also in the West Cameron area, offshore Louisiana. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced October 20, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-750.

Comment date: February 2, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to

§ 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest if filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29280 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-354-000, et al.]

Tennessee Gas Pipeline Co. et al.; Natural Gas Certification Filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP89-354-000]

December 12, 1988.

Take notice that on December 8, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-354-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Energy Marketing Services, Inc. (Energy Marketing), a marketer, under the blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated October 14, 1988, as amended November 18, 1988, under its Rate Schedule IT, it proposes to transport up to 5,000 dekatherms (dt) per day equivalent of natural gas for Energy Marketing from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A." Tennessee states that it would receive the gas at existing points on its system located in the State of Louisiana, and that it would transport and redeliver the gas to various delivery points off Tennessee's system, said points being in West Virginia, Pennsylvania, and Ohio.

Tennessee advises that service under § 284.223(a) commenced October 28, 1988, as reported in Docket No. ST89-868 (filed November 23, 1988). Tennessee further advises that it would transport 5,000 dt on a average day and 1,825,000 dt annually.

Comment dated: January 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. El Paso Natural Gas Company

[Docket No. CP84-718-002]

December 13, 1988.

Take notice that on November 16, 1988, El Paso Natural Gas Company (Petitioner), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP84-718-002 a petition to amend the order issued October 11, 1985, in Docket No. CP84-718-000 pursuant to section 7(c) of the Natural Gas Act to authorize the use of certain existing facilities as additional receipt points under the gas transportation agreement dated September 7, 1984, as amended, between Petitioner and Cabot Gas Supply Corporation (Cabot), successor-in interest to Westar Transmission Company, as well as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that the October 11, 1985, order authorized it to receive gas at two points from Cabot in Winkler and Yoakum Counties, Texas and deliver, by displacement, equivalent volumes to Cabot at various delivery points along Petitioner's Dumas-Plains pipeline in Texas.

Petitioner asserts that Cabot has acquired additional volumes of gas in New Mexico, Oklahoma, and Texas and has requested Petitioner to add additional receipt points under the existing transportation agreement to make this gas available to Cabot and to provide Cabot with greater operational flexibility.

Petitioner states that the proposed additional receipt points would be located in Lea County, New Mexico; Roger Mills and Washita Counties, Oklahoma; and Reeves, Gray, Moore, Pecos, Ward, Yoakum and Winkler Counties, Texas. Petitioner further states that the proposed receipt points would use existing facilities and that no additional facilities would be required.

Petitioner states that for mainline transportation it would charge Cabot its "Mainline Transportation Charge—Texas" rates, for any gathering and/or dehydration it would charge Cabot its "Production Area Charge—Field Gathering" and/or "Production Area Charge—Dehydration Only" rate and for back haul transportation it would charge Cabot its "Back Haul Charge—Texas" rate, as such rates are set forth in Sheet No. 1-D.2 of Petitioner's FERC Gas Tariff, Third Revised Volume No. 2.

Comment dated: January 13, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Midwestern Gas Transmission Company

[Docket No. CP89-341-000]

December 13, 1988.

Take notice that on December 6, 1988, Midwestern Gas Transmission Company (Midwestern) 1010 Milam, Houston, Texas 77002, filed in Docket No. CP89-341-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 400,000 Dt per day of natural gas on an interruptible basis for Tennessee Gas Pipeline Company (Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Midwestern states that it would receive gas at the United States-Canadian border at Emerson, Manitoba and redeliver gas to Tennessee at the points specified in the Gas Transportation Agreement, all of which involves service on Midwestern's northern system.

Midwestern states that Tennessee would pay a rate equal to the rate set forth in Midwestern's Rate Schedule IT-2 and that Tennessee would deliver quantities of gas at Emerson, Manitoba on each day for Midwestern's fuel and use requirements associated with the transportation.

Midwestern states in Tennessee will need to obtain necessary authorizations to import gas from Canada and the Canadian suppliers will need to obtain the necessary authorizations to export gas from Canada.

Further, Midwestern states that the proposed transportation service would benefit Tennessee by enabling it to meet existing market requirements and anticipated growth plus the service would provide Tennessee access to alternate sources of gas supplies to meet its requirements.

Comment date: January 3, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Northwest Pipeline Corporation

[Docket No. CP89-312-000]

December 13, 1988.

Take notice that on November 30, 1988, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-312-000 an application pursuant to section 7(b) of the Natural Gas Act for

permission and approval to abandon natural gas sales service, under Rate Schedules ODL–1, DS–1, and I–1 to be effective October 31, 1989, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states it is presently authorized to render firm gas sales service to its customers under Rate Schedules ODL–1 and DS–1 totaling 12,327,095 therms per day. Northwest also states that it offered all its customers the opportunity, pursuant to § 284.10(c)(3)(ii) of the Commission's Regulations, to convert an unlimited portion of firm sales contract demand to firm transportation service. A majority of Northwest's customers elected to convert a substantial portion of their firm purchase obligations. The new levels of purchases are shown in the following listing:

Firm Sales Service Obligations Upon Approval of Pending Abandonments [1]

Customer name	Contract Demand. (therms/ day)
Rate Schedule ODL–1:	
Cascade Natural Gas	616,000
CP National	70,000
Greeley Gas	53,225
Intermountain Gas	1,000
Northwest Natural	60,000
Southwest Gas	200,000
Washington Natural Gas	1,500,000
Washington Water Power	600,000
Total ODL–1	3,100,225
Rate Schedule DS–1:	
City of Buckley, Wa.	24,685
City of Ellensburg, Wa.	45,000
City of Enumclaw, Wa	25,715
Rocky Mountain Natural Gas	8,925
Utah Gas Service	12,870
Western Gas Supply	36,445
Wyoming Industrial Gas	13,750
Total DS–1	167,390
Total ODL–1 and DS–1	3,267,615

Northwest indicates that its firm sales contract demand under Rate Schedules ODL–1 and DS–1 upon approval of the pending partial abandonments will have declined by 73 percent to a level of 3,267,615 therms per day as a result of the conversions to firm transportation service. Each of the services under these rate schedules provides for a primary term continuing until October 1, 1989, and from year to year thereafter, subject to termination upon twelve months prior written notice by either party. Northwest stated that on October 31, 1988, it served notice on each of its Rate Schedule ODL–1 and DS–1 customers that the existing sales agreements would be terminated, pursuant to the terms of the contracts, on October 31, 1989.

Northwest indicates that it does not propose to abandon any of its pipeline facilities as a result of the instant request to abandon existing gas sales services.

Pursuant to 18 CFR 284.10(d)(2) the exercise of the customers' option to convert constitutes consent to the proposed abandonment.

Comment date: January 3, 1989, in accordance with Standard Paragraph F at the end of this notice.

[1] Northwest filed in Docket Nos. CP88–611–000 *et. al.* requests for partial abandonment of its firm sales obligations to these cutomers.

5. Panhandle Eastern Pipe Line Company

[Docket No. CP89–324–000]

December 13, 1988.

Take notice that on December 1, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP89–324–000, a request pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the total sales service to East Ohio Gas Company (East Ohio), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that East Ohio's gas sales contract expired October 31, 1988, that East Ohio formally confirmed that it no longer desires sales service from Panhandle after expiration of the contract; and that East Ohio requests firm transportation service from Panhandle as a replacement for the expired sales service. It is further stated that Panhandle and East Ohio have agreed to replace 100% of East Ohio's sales service with the equivalent quantity of firm transportation and to continue to utilize the Maumee, Ohio delivery point for the receipt of both firm and interruptible transportation volumes. Panhandle explains that pursuant to section 311 of the Natural Gas Act, firm transportation is currently being performed under its Rate Schedule PT-Firm.

Specifically, Panhandle would abandon the contract demand (CD) of 185,000 Mcf per day of natural gas sold to East Ohio, which was served under Panhandle's Rate Schedule LS–1.

Pursuant to 18 CFR 284.10(d)(2) the exercise of the customer's option to convert constitutes consent to the proposed abandonment.

Comment date: January 3, 1989, in accordance with Standard Paragraph F at the end of this notice.

6. Northwest Pipeline Corporation

[Docket No. CP89–326–000]

December 13, 1988.

Take notice that on December 1, 1988, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–326–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon its Rate Schedule DS–1, natural gas sales service to Wyoming Industrial Gas Company (Wyoming Industrial), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest was issued a blanket transportation certificate, pursuant to Part 284 of the Commission's Regulations, on January 19, 1988, in Docket No. CP86–578–000. On June 10, 1988, pursuant to § 284.10(c)(3)((ii), Northwest offered its firm sales customers the opportunity to convert an unlimited portion of their firm sales contract demand to firm transportation service. By letter dated October 12, 1988, Wyoming Industrial exercised the option by converting 50 percent of its firm sales service of 27,500 therms of gas per day under Northwest's Rate Schedule DS–1 to firm transportation service of 13,750 therms of gas per day under Northwest's Rate Schedule TF–1. Northwest also requests that permission and approval for the subject abandonment be made effective November 1, 1988, to correspond to the effective date of the new firm DS–1 service agreement and transportation agreement.

Northwest does not propose to abandon any of its pipeline facilities.

Pursuant to 18 CFR 284.10(d)(2) the exercise of the customers' option to convert constitutes consent to the proposed abandonment.

Comment date: January 3, 1989, in accordance with Standard Paragraph F at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP89–334–000]

December 13, 1988.

Take notice that on December 5, 1988, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP89–334–000 a request pursuant to §§ 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.212) for

authorization to install and operate eight (8) sales taps and an additional point of delivery to Mississippi Valley Gas Company (MVG), an existing customer, under Southern's blanket certificate issued in Docket No. CP82–406–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that it would install and operate the sales taps as part of its pipeline system. Southern further states that the sales taps would be located at various locations on its 6-inch Northern Meridian Line in Winston and Kemper Counties, Mississippi and would be used to service certain end-use customers on behalf of MVG. MVG also advises that it proposes to construct, install and operate the additional point of delivery in Adams County, Mississippi, so that MVG may service new residential customers.

Southern states that the total volumes to be delivered to MVG after the installation of the proposed facilities would not exceed the total volumes authorized prior to the installation of the point of delivery or the sales taps and therefore, the activities are not prohibited by any existing tariff of Southern. Southern also states that it has sufficient capacity to accomplish the proposed deliveries without detriment to its other customers, and that the proposal would have a *de minimis* impact on peak day and annual deliveries. Finally, Southern advises that MVG has agreed to reimburse it for the cost to construct and install the eight sales taps and the new point of delivery which is estimated to be $5,440.00 and $11,700, respectively.

Comment date: January 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Tennessee Gas Pipeline Company

[Docket No. CP89–361–000]

December 13, 1988.

Take notice that on December 8, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–361–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205 for authorization to add a new delivery point under a transportation service presently being provided by Tennessee for Granite State Gas Transmission, Inc. (Granite State), under the certificate issued in Docket No. CP82–413–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that by order issued July 24, 1987, in Docket No. CP81–296–008 Tennessee was authorized to transport up to 12,500 Mcf of natural gas per day for Granite State. It is stated that delivery of gas is presently made by Tennessee at three delivery points, with total daily deliveries limited to 12,587 dekatherms and with limits on daily deliveries at each delivery point as follows:

Delivery point	Daily quantity limits (Dekatherms)
(1) Northampton	2,050
(2) Lawrence	9,481
(3) Pleasant Street	1,282

Tennessee states that Granite State has requested Tennessee to provide an additional delivery point at Agawam, Massachusetts, with daily deliveries not to exceed 6,500 dekatherms. It is also stated that the addition of Agawam as a delivery point will not change the existing delivery points and maximum daily quantities or the total daily volume of 12,587 dekatherms.

Tennessee states that the Agawam delivery point on Tennessee's system is downstream of the Northampton delivery point and upstream of the Lawrence and Pleasant Street delivery points. Tennessee states that it is able and willing to deliver the requested daily volume of 6,500 dekatherms at the Agawam delivery point on condition that total daily deliveries of gas transported by Tennessee at the three delivery points of Lawrence, Pleasant Street and Agawam shall not exceed 10,763 dekatherms.

It is further stated that Tennessee is presently authorized to serve Granite State a daily contract quantity of 83,921 Mcf under Tennessee's CD–6 Rate Schedule. It is stated that up to 41,040 dekatherms per day are to be delivered at Agawan under such sales authorization. Tennessee states that no additional facilities are needed by Tennessee or Granite State to effect delivery of a total of 47,540 dekatherms per day at Agawam.

Comment date: January 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Texas Gas Transmission Corporation

[Docket No. CP89–59–001]

December 14, 1988.

Take notice that on December 7, 1988, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP89–59–001, an Amendment to its Application filed in Docket No. CP89–59–000 pursuant to sections 7 (b) and (c) of the Natural Gas Act requesting authority to increase the Contract Demands of certain firm sales customers and decrease the Contract Demands of certain firm sales customers, all as more fully set forth in the Amendment which is on file with the Commission and open to public inspection.

Texas Gas states that the Amendment is being filed to reflect renominated service levels which its firm sales customers were allowed to submit in conjunction with Texas Gas's current rate case in Docket No. RP88–115–000. Texas Gas, it is said, offered its customers this opportunity based on discussions concerning the offering of the standby service proposed in Texas Gas Docket No. CP80–31–000 at a 100 percent level as opposed to the 50 percent level described in that application.

It is stated that the renominated service levels include both increases and decreases in various customers' Contract Demands. Texas Gas has indicated in the filing the extent to which any decreases in Contract Demand involve conversions to firm transportation service.

All requested increases in Contract Demand, Texas Gas states, can be implemented without the addition of any facilities or the diminution in service to any other customer.

Any new service agreement executed by affected customers after the granting of authority in this docket would, according the Texas Gas, still be considered an "eligible firm sales service agreement" within the meaning of § 284.10 of the Commission's Regulations.

Pursuant to 18 CFR 294.10(d)(2) the exercise of the customer's option to convert constitutes consent to the proposed abandoment.

Comment date: January 4, 1988, in accordance with Standard Paragraph F at the end of the notice.

10. Panhandle Eastern Pipe Line Company

[Docket No. CP89–377–000]

December 13, 1988.

Take notice that on December 12, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–377–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for Columbia Gas of Ohio, Inc. (Columbia Gas), a local

distribution company, under the blanket certificate issued in Docket No. CP86–585–000 on November 20, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated October 1, 1988, under its Rate Schedule PT, it proposed to transport up to 20,000 dekatherms (dt) per day equivalent of natural gas for Columbia Gas from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service may involve interconnections between Panhandle and various transporters. Panhandle states that it would receive the gas at various existing points on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, to Columbia Gas in Lucas County, Ohio.

Panhandle advises that service under § 284.223(a) commended on October 1, 1988, as reported in Docket No. ST89–1112. Panhandle further advises that it would transport 20,000 dt on an average day and 7,300,000 dt annually.

Comment date: January 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. United Gas Pipe Line Company

[Docket No. CP89–371–000]

December 14, 1988.

Take notice that on December 9, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89–371–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas on an interruptible basis for Sun Operating Limited Partnership (Sun). United explains that service commenced November 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–939. United explains that the peak day quantity would be 61,800 MMBtu, the average daily quantity would be 61,800 MMBtu, and that the annual quantity would be 22,557,000 MMBtu. United explains that it would receive natural gas for Sun's account at existing interconnections in the states of Texas and Louisiana. United states that it would redeliver the gas for Sun's account at existing interconnections in the states of Louisiana, Alabama, Florida, and Mississippi.

Comment date: January 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. North Penn Gas Company

[Docket No. CP89–360–000]

December 14, 1988.

Take notice that on December 8, 1988, North Penn Gas Company (North Penn), 76–80 Mill Street, Port Allegany, Pennsylvania 16743, filed in Docket No. CP89–360–000 an application for a blanket certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations. North Penn seeks authorization to engage in any of the routine activities specified in §§ 157.208 through 157.218 of the Commission's Regulations including permission and approval to abandon, as may be amended from time to time, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: January 4, 1988, in accordance with Standard Paragraph F at the end of this notice.

13. Williston Basin Interstate Pipeline Company

[Docket No. CP89–302–000]

December 14, 1988.

Take notice that on November 29, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP89–302–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the establishment of new Annual Entitlement Quantities (AEQ) and Maximum Daily Quantities (MDQ) for sales services performed pursuant to its FERC Gas Tariff, First Revised Volume No. 1, Rate Schedules G–1 and SGS–1. Additionally, Williston Basin proposes the establishment of an Authorized Overrun Service (AOS) to be made part of its FERC Gas Tariff, First Revised Volume No. 1. Finally, pre-granted abandonment authority is requested with respect to the abandonment of Williston Basin's certified firm sales obligations to customers converting from firm sales to firm transportation pursuant to § 284.10 of the Commission's Regulations in order to reduce its certificated firm sales service by an amount equivalent to the amount of sales service converted, effective on the same date on which the conversions are effective, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. An effective date of January 1, 1989, is requested.

Williston Basin states that the new AEQ and MDQ quantities are those nominated by the following customers: Montana-Dakota Utilities Co. (Montana-Dakota), Wyoming Gas Company (Wyoming Gas), Frannie-Deaver Utilities (Frannie-Deaver) and Northern Utilities (Northern). It is stated that in accordance with new Rate Schedule G–1 service agreements dated June 23, 1988, Montana-Dakota has requested an AEQ of 31,300,000 Mcf and an MDQ of 275,485 Mcf, and Wyoming Gas has requested an AEQ of 700,000 Mcf and an MDQ of 8,254 Mcf. Additionally, Williston Basin states that under the new G–1 service agreements, Montana-Dakota and Wyoming Gas were allowed the opportunity to exercise their rights under § 284.10 of the Commission's Regulations to convert up to 15 percent of their firm sales requirements to firm transportation effective January 1, 1989. It is stated that both Montana-Dakota and Wyoming Gas have elected to convert the full 15 percent of their nominated AEQ's and approximately 4.7 and 3.5 percent, respectively of their nominated MDQ's to firm transportation. It is further stated that effective January 1, 1989, Montana-Dakota will have a new AEQ level of 26,605,000 Mcf and a MDQ level of 262,622 Mcf; Wyoming Gas will have a new AEQ level of 595,000 Mcf and an MDQ level of 7,966 Mcf.

Williston Basin also requests certification of the AEQ's and MDQ's of its two small general service customers currently receiving service under Rate Schedule SGS–1, Northern and Frannie-Deaver. It is averred that the executed service agreement with Northern specifies an AEQ level of 16,990 Mcf and and MDQ level of 280 Mcf, and that the agreement with Frannie-Deaver specifies an AEQ level of 7,200 Mcf and an MDQ level of 200 Mcf. These customers, according to Williston Basin, have not yet requested any conversion of their sales service to transportation.

Williston Basin also requests authority to incorporate an AOS in its Rate Schedules G–1 and SGS–1 so as to allow the provisions of interruptible sales service over and above the unconverted sales MDQ's and AEQ's requested herein, or those which may be applicable from time to time in the future as a result of additional conversions of sales service to firm

transportation. It is stated that upon implementation of the AOS service, customers with executed agreements under Rate Schedules G–1 and SGS–1 would have the availability of an interruptible service whenever Williston Basin determines that it has enough capacity available on its system to provide the AOS service.

Comment date: January 4, 1989, in accordance with Standard Paragraph F at the end of this notice.

14. Williams Natural Gas Company

[Docket No. CP89–331–000]

December 14, 1988.

Take notice that on December 2, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–331–000 pursuant to Section 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by reclaim regulating, measuring and appurtenant facilities serving Strauss Grain Company, Inc. (Strauss) in Neosho County, Kansas, and the transportation of gas through these facilities, under the blanket certificate issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that Strauss has requested that the facilities be reclaimed. The total cost of the abandonment is approximately $790 with an estimated salvage of $60.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–358–000]

December 14, 1988.

Take notice that on December 8, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–358–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service for Apache Corporation (Apache), a producer, under the blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated October 31, 1988, under its Rate Schedule IT–1, it proposes to transport up to 10,000 MMBtu per day equivalent of natural gas for Apache "A" of the agreement to numerous redelivery points, also listed in Appendix "A". The subject transportation service involves interconnections between Northern and various transporters.

Northern further states that the average daily and annual quantities would be equivalent to 7,500 MMBtu and 3,650,000 MMBtu, repectively. Service commenced October 31, 1988, under the provisions of Section 284.223(a) as reported in Docket No. ST89–835 (filed November 21, 1988).

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Natural Gas Pipeline Company of America

[Docket No. CP89–365–000]

December 14, 1988.

Take notice that on December 9, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–365–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Fina Oil and Chemcial Company (Fina), a producer, under the blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated September 22, 1988, under its Rate Schedule ITS, it proposes to transport for Fina up to 30,000 MMBtu per day equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS). Natural states that it would receive the gas at an UTOS/Cameron delivery point and that it would transport and redeliver the gas for Fina's account to United Gas Pipe Line Company at an existing interconnection near the outlet of Texaco's Henry Plant in Vermilion Parish, Louisiana. Natural advises that the gas ultimately would be consumed in Georgia.

Natural advises that service under 284.223(a) commenced October 8, 1988, as reported in Docket No. ST89–1203 (filed on December 9, 1988). Natural further advises that it would transport 15,000 MMBtu on an average day and 5,750,000 MMBtu annually.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn

within 30 days after the time allowed for filing a protest, ath instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29281 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-1-1-000]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 16, 1988.

Take notice that on December 12, 1988, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing First Revised Sheet No. 4A to its FERC Gas Tariff, First Revised Volume No. 1. Such tariff sheet is proposed to become effective January 1, 1989.

Alabama-Tennessee states that the purpose of the filing is to adjust its currently effective take-or-pay surcharge rates to its customers to reflect increases in the amount being billed to it by Tennessee Gas Pipeline. Alabama-Tennessee further states that such filing is being made pursuant to § 26.1(a) of its tariff.

Alabama-Tennessee is amortizing the increased take-or-pay costs over a thirty-six (36) month period. According to Alabama-Tennessee, that is the maximum amortization period allowed by this Commission in FERC Docket No. RP88-191.

Alabama-Tennessee has also submitted Alternate First Revised Sheet No. 4A, which is proposed to become effective on January 1, 1989. According to Alabama-Tennessee, such tariff sheet is being submitted to maintain the status quo should the Commission defer action on the primary tariff sheet pending a final order on its August 9, 1988 compliance filing.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory 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 Rule 211 or Rule 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 23, 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 to the proceeding 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. 88-29282 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-2-32-000]

Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff

December 15, 1988.

Take notice that on December 12, 1988, Colorado Interstate Gas Company ("CIG") submitted for filing various tariff sheets in its FERC Gas Tariff Original Volume No. 1, Second Revised Volume No. 1-A, and Original Volume No. 2 which reflect, as appropriate, the 1.51 cents per Mcf Gas Research Institute (GRI) charge approved for calendar year 1989 pursuant to Federal Energy Regulatory Commission (Commission) Opinion No. 320 in Docket No. RP88-182-000. Since the GRI charge approved in Opinion No. 320 is the same as that presently in effect, there is no rate change.

CIG requested that it be granted any such waiver as the Commission may deem necessary for such affected tariff sheets to be placed into effect on January 1, 1989.

Copies of this filing are being 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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 22, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29283 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-1-32-001]

Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff

December 15, 1988.

Take notice that on December 9, 1988, Colorado Interstate Gas Company ("CIG") submitted for filing Substitute Second Revised Sheet No. 4 of CIG's Second Revised Volume No. 1-A tariff to correct for an omission of the Balancing Penalty Charge reference and related footnotes on this sheet which was filed by CIG on August 31, 1988. The omitted references were included in tariff sheets approved by the Commission on November 1, 1988 in Docket No. CP86-589, et al.

CIG submits for filing six copies of Substitute Second Revised Sheet No. 4 to its Second Revised Volume No. 1-A tariff to reflect the above correction, to be effective October 1, 1988.

Copies of this filing are being 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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 22, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29284 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-2-16-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

December 16, 1988.

Take notice that on December 9, 1988, National Fuel Gas Supply Corporation

("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 71–A, page 1 of 2
Second Revised Sheet No. 71–A, page 2 of 2
Second Revised Sheet No. 71–B, page 1 of 2
Second Revised Sheet No. 71–B, page 2 of 2
First Revised Sheet No. 71–D
Second Revised Sheet No. 72–A, page 1 of 4
Second Revised Sheet No. 72–A, page 2 of 4
Second Revised Sheet No. 72–A, page 3 of 4
Second Revised Sheet No. 72–A, page 4 of 4
Second Revised Sheet No. 72–B, page 1 of 3
Second Revised Sheet No. 72–B, page 2 of 3
Second Revised Sheet No. 72–B, page 3 of 3
Second Revised Sheet No. 72–D

National states that the purpose of this filing is to update the amount of take-or-pay charges approved by the Federal Energy Regulatory Commission to be billed to National by its pipeline-suppliers and to be recovered by National by operation of Section 20 of the General Terms and Conditions to National's FERC Gas Tariff, First Revised Volume No. 1. National further states that its pipeline-suppliers which have received approval to flow-through additional take-or-pay charges to National are: Columbia Gas Transmission Corporation, CNG Transmission Corporation and Tennessee Gas Pipeline Company.

Copies of National's filing were served on National's jurisdiction customers and on the 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 Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 23, 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. 88–29285 Filed 12–20–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–117–005]

Northern Natural Gas Co.; Division of Enron Corp.; Compliance With Order Nos. 483 and 483–A

December 16, 1988.

Take notice that on December 12, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing, as part of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume 1 Tariff) and Original Volume No. 2 (Volume 2 Tariff), the following tariff sheets:

Third Revised Volume No. 1

Seventh Revised Sheet No. 65
Substitute Fifth Revised Sheet No. 66
Substitute Seventh Revised Sheet No. 67
Substitute Sixth Revised Sheet No. 68
Substitute Ninth Revised Sheet No. 69
Substitute First Revised Sheet No. 69a
Substitute Eighth Revised Sheet No. 70
Substitute Fourth Revised Sheet No. 70a
Third Revised Sheet No. 70b
Substitute Fifth Revised Sheet No. 70c

Original Volume No. 2

Substitute Fifth Revised Sheet No. 1d
Substitute Fifth Revised Sheet No. 1e
Substitute Sixth Revised Sheet No. 1f
Substitute Eighth Revised Sheet No. 1g
Substitute Sixth Revised Sheet No. 1h
Substitute Sixth Revised Sheet No. 1i
Substitute Second Revised Sheet No. 1i.1
Fifth Revised Sheet No. 1i.2
First Substitute Original Sheet No. 1i.2a

Such revised tariff sheets are required in compliance with the Letter Orders dated September 29, 1988, and November 18, 1988, respectively, in order that Northern's tariff will be in conformance with Order Nos. 483 and 483–A.

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, 385.214). All such motions or protests should be filed on or before December 23, 1988. Protests will be considered by the Commisson 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 ot intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29286 Filed 12–20–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–266–001, RP88–181–006 and TA89–1–6–001]

Sea Robin Pipeline Co.; Tariff Filings

December 15, 1988.

Take notice that on December 12, 1988, Sea Robin Pipeline Company (Sea Robin) in accordance with the Commission's order of October 28, 1988, in Docket No. RP88–266 and the Secretary's Letter Order of December 1, 1988, in Docket No. RP88–181–003, *et al.* and TA89–1–6–000, submitted revised tariff sheets.

In Docket No. RP88–181–006, in compliance with the Letter Order of Dec. 1, 1988, Sea Robin has classified Other Gas Supply Expenses in Account No. 813 to the commodity component of its sales rate. The FTS reservation fee has been corrected as required by the December 1, 1988 Letter Order. These changes are to be effective July 1, 1988.

In Docket No. RP88–266–001, Sea Robin has included an Authorized Overrun Rate applicable to takes in excess of D–2 nominated volumes but less than contract quantities and included an addition to its General Terms and Conditions which includes terms and conditions applicable to the provision of the Authorized Overrun Rate. Sea Robin's filing also reflects the 100% load factor rate for unauthorized takes in excess of 100% of D–2 nominations but less than 102% of D–2 nominations. These changes are to be effective Oct. 1, 1988.

As a result of the tariff filings required by the December 1, 1988 Letter Order, Sea Robin's base tariff rates are being revised in Docket No. TA89–1–6–001, effective January 1, 1989.

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 N.E., Washington, DC 20426 in accordance with §§ 385.214 and 385.211 of the Commission's Regulations. All such motions to intervene or protest should be filed on or before December 22, 1988.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to

become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29287 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-81-009]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 16, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 12, 1988 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Proposed to be Effective July 19, 1988

Revised First Revised Sheet No. 330
Revised Second Revised Sheet No. 331

Proposed to be Effective October 13, 1988

Second Substitute Revised Second Revised Sheet No. 330
Second Substitute Revised Original Sheet No. 330A
Substitute Revised Third Revised Sheet No. 501
Substitute Revised Third Revised Sheet No. 513

Proposed to be Effective February 1, 1989

Third Revised Sheet No. 331
Original Sheet No. 331A

Texas Eastern states that this filing makes the revisions to Texas Eastern's March 22, 1988 tariff filing as required by the Commission's July 19 and November 25, 1988 Orders issued in Docket Nos. RP88-81-002 *et al.*, and RP88-81-003 respectively.

In purported compliance with the July 19 and November 25, 1988 Orders, Texas Eastern has made the following tariff changes:

(1) In section 3.2 of Rate Schedule IT-1 on Revised First Revised Sheet No. 330 and Revised Second Revised Sheet No. 331, the requirement that shippers tender gas at every receipt point within 30 days or lose that receipt point has been deleted as of July 19, 1988, the effective date determined by the Commission in Texas Eastern's Docket No. RP88-81-008.

(2) Section 3.3 of Rate Schedule IT-1 on Third Revised Sheet No. 331 has been added to provide for a consistent policy for both Rate Schedules FT-1 and IT-1 regarding requests for amendments to existing transportation agreements to add new receipt points. Texas Eastern proposes to implement this provision on Feb. 1, 1989.

(3) Language has been deleted in the certification forms for Intrastate Pipelines on Substitute Revised Third Revised Sheet Nos. 501 and 513 which required Intrastate Pipelines to certify that in the event they took title to the gas to be transported by Texas Eastern, they would not sell that gas in a sale for resale for ultimate consumption outside of the state in which it was authorized to do business. Texas Eastern proposes to implement these tariff sheets on October 13, 1988, the effective date of the tariff sheets that are being substituted. Second Substitute Revised Second Revised Sheet No. 330 is being filed solely to reflect the correct supersession.

As required by the November 29 Order, Texas Eastern has removed from the tariffs proposed to be effective July 19 changes associated with Texas Eastern's July 14, 1988 tariff filing, made pursuant to Order No. 497, issued June 1, 1988, which was rejected by the Commission in an order dated August 12, 1988 in Docket No. RP88-216. The tariff sheets proposed to be effective October 13, 1988 and February 1, 1989 reflect the tariff filing made by Texas Eastern on September 12 1988, as supplemented on September 23, 1988, pursuant to Order No. 497 which was approved by the Commission in an order dated October 12, 1988 in Docket Nos. MT88-9-000 and MT88-9-001. Said filings (1) deleted the

The tariff sheets are proposed to be effective as of the dates listed above.

Copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions, all parties of record in Docket No. RP88-81 and all current Rate Schedule IT-1 shippers.

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. All such motions or protests should be filed on or before December 23, 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. 88-29288 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-11-001]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

December 15, 1988.

Take Notice that on December 9, 1988, United Pipe Line Company (United) tendered for filing the following tariff sheets:

Original Volume 1

Substitute Eighty-Fourth Revised Sheet No. 4
Substitute Third Revised Sheet No. 4.1

The proposed effective date of the above referenced tariff sheets in this docket is January 1, 1989. The above referenced tariff sheets are being filed pursuant to §§ 154.304 and 154.308 of the Commission's regulations to reflect the changes in the purchased gas cost adjustment provisions contained in section 19 of United's FERC Gas Tariff, First Revised Volume No. 1.

United states that these tariff sheets are being filed to amend United's November 30, 1988 filing. These sheets reflect a surcharge of 12.63¢ (to be effective January 1, 1989), a decrease of 3.95¢ from United's November 30, 1988 filing. Therefore, gas cost, reflecting both the current adjustment and surcharge, shows a 5.33¢ reduction from the currently billed rates.

United also submits with this filing Schedule D1, Text 01 workpapers as support in the establishment of the revised surcharge amount.

United states that the revised tariff sheets and supporting data are being mailed to its jurisdictional sales customers and to 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 such accordance with § 385.214 and 385.211 of the Commission's regulations. All such petitions of protest should be filed on or before December 22, 1988.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to

Intervene. Copies of this filing are on file with the Commssion and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29289 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2514 Virginia]

Appalachian Power Co.; Intent to File an Application For a New License

December 14, 1988.

Take notice that on November 8, 1988, Appalachian Power Company, the existing licensee for the Byllesby and Buck Hydroelectric Project No. 2514, 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. 2514 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the New River in Carroll County, Virginia. The Byllesby Unit principal works include a 47-foot-high, 528-foot-long concrete dam at crest elevation 2,071 feet m.s.1.; a reservoir of 260 acres; and a powerhouse with installed capacity of 21, 600 kW. The Buck Unit includes a 44.4-foot-high, 352-foot-long concrete dam at 2,007 feet m.s.l.; a reservoir of 70 acres; and a powerhouse with installed capacity of 8,505 kW. Each unit has a transmission line connection and appurtenances.

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. 88-29209 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-211-000, et al.]

CNG Transmission Corp.; Informal Settlement Conference

December 14, 1988.

Take notice that an informal settlement conference will be convened in the above proceeding on Thursday, January 5, 1989, at 10:00 a.m. at the office of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(c), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission regulations (18 CFR 385.214).

For additional information, contact Marvin T. Griff (202) 357-5248 or Marsha L. Gransee (202) 357-5738.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29211 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-259-006]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

December 14, 1988.

Take notice that Northern Natural Gas Company, Division of Enron Corp. on December 9, 1988 tendered for filing proposed changes in its FERC Gas Tariff.

Northern states that this filing is being made to comply with the provisions of the Commission's Order issued October 26, 1988, in the instant proceeding. That Order required Northern to obtain D-2 nominations from its customers and to refile tariff sheets reflecting such nominations. Based upon the customer nominations received, Northern is proposing a D-2 rate of $.2452 effective October 27, 1988.

Copies of the filing were served upon all of Northern's customers and interested State Regulatory Commissions as well as all parties of record to the instant proceeding.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such Motions or Protests should be filed on or before December 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protests and 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29210 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

Southwestern Power Administration

Federal Hydroelectric Power—Intent To Allocate Power, W.D. Mayo Project

AGENCY: Department of Energy, Southwestern Power Administration.

ACTION: Notice of intent to allocate power from the proposed W.D. Mayo Hydroelectric Power Project in Oklahoma to the Oklahoma Municipal Power Authority and other preference entities.

SUMMARY: Section 1117 of Pub. L. No. 99-662 authorizes the Cherokee Nation of Oklahoma (CN) to design and construct hydroelectric generating facilities at the existing W.D. Mayo Lock and Dam No. 14 (W.D. Mayo) on the McClellan-Kerr Arkansas River Navigation System in Oklahoma. Pub. L. 99-662 also authorizes the Southwestern Power Administration (SWPA) to market excess power produced by the proposed project and to reimburse CN for the costs it incurs in designing and constructing the facilities.

In order to complete the proposed subject at the lowest possible cost, CN has entered into a preliminary agreement with the Oklahoma Municipal Power Authority (OMPA). In accordance with the terms of the preliminary agreement, OMPA will act as CN's financier and agent to oversee the completion of the project. In consideration for providing these services, OMPA seeks an allocation of power from SWPA. In keeping with the intent of the SWPA Power Allocation Policy published in volume 52 of the **Federal Register** at 29881 of August 12, 1987, SWPA herewith gives notice of its intent to allocate power made available as a result of the construction of the proposed hydroelectric power project at W.D. Mayo. OMPA, as a preference entity, will be allocated the equivalent of fifty percent (50%) of the marketable power from the proposed project with 1,200 hours per kilowatt per year of firm energy and a proportionate share of SWPA's discretionary energy for a term of 50 years with the remaining power and energy from the project to be

allocated in accordance with SWPA's Power Allocation Policy, conditioned upon the following: (1) CN and OMPA finalize an agreement authorizing OMPA to act as agent for the CN; (2) All the terms and conditions of section 1117 of Pub. L. 99–662 are successfully achieved; (3) OMPA complies with all of the provisions of its agreement with the CN; and (4) The project is successfully completed and transferred to the United States. Copies of the following proposed power allocation will be mailed to all SWPA customers and other interested parties for comments. After consideration of all comments, a tentative power allocation will be published in the **Federal Register**. The final power allocation will be made if these conditions are completed. A more detailed description of the project is set forth below.

DATES: Questions and/or comments regarding the proposed action must be submitted by January 23, 1989 to Francis R. Gajan, Director of Power Marketing, Southwestern Power Administration, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Mr. Gajan at the above address.

SUPPLEMENTARY INFORMATION: The McClellan-Kerr Arkansas River Navigation System was constructed and is owned and operated by the U.S. Army Corps of Engineers (Corps). W.D. Mayo was authorized for navigation by the River and Harbor Act, approved July 24, 1946. The lock and dam began operation in December 1970 and provides up to 22 feet of lift for the system.

Section 1117 of Pub. L. 99–662 authorizes the CN to design and construct the hydroelectric power facilities at W.D. Mayo, generally as described in the report of the Chief of Engineers dated December 23, 1981. When constructed, the facilities will have an installed generating capacity of approximately 32,900 kilowatts (kW), with marketable capacity of 30,000 kW and will produce an average of 138,000,000 kilowatt-hours of energy annually. The Corps will approve the design, inspect the construction, and own and operate the facilities after the proposed project is completed and accepted. No Federal funds will be used in the design and construction of the project.

In accordance with section 1117 of Pub. L. 99–662, SWPA will market the excess power produced as a result of the construction of the proposed project. Revenues from the sale of power produced by the generating facilities of the interconnected system of reservoirs operated by the Corps and marketed by SWPA will be used to repay the following: (1) Costs incurred by CN for the design and construction of the project; (2) costs incurred by the Corps for the annual operation, maintenance, and major replacements (OM&R) of the hydroelectric facilities; (3) costs incurred from capital expenditures and OM&R costs for transmission and switching facilities; and (4) to pay the CN a reasonable royalty.

As agent of the CN, OMPA will negotiate with the Corps and SWPA to develop a series of agreements for the development of the proposed project, provide all the funds required for the completion of the proposed project, design the project in consultation with the Corps, take competitive bid packages for the acquisition of equipment and construction, and be responsible for the schedule of construction. In consideration for its role to finance and construct the project on behalf of the CN, OMPA seeks the allocation described above at SWPA system rates.

Issued at Tulsa, Oklahoma, on December 8, 1988.

J.M. Shafer,

Administrator, Southwestern Power Administration.

Proposed Power Allocation For Marketable Power From W.D. Mayo Hydroelectric Power Project

The Administrator of the Southwestern Power Administration (SWPA) proposes to allocate the proposed 30,000 kW of marketable power from the W.D. Mayo Hydroelectric Power Project in accordance with the terms of this notice, section 5 of the Flood Control Act of 1944 (16 U.S.C. 8255), and the SWPA Power Allocation Policy.

A 15,000 kW allocation will be made to OMPA in accordance with the intent of Section II, Part A, paragraph 3 of the Power Allocation Policy, and a 15,000 kW allocation will be made under Section I as referenced in Section II, Part A, paragraph 3 of the Power Allocation Policy as shown in Table A after the project is completed by the CN and accepted by the United States.

TABLE A.—ALLOCATION OF NEW RESOURCES TO EXISTING CUSTOMERS, PROJECT: W.D. MAYO, MARKETABLE CAPACITY (KW) = 15,000; PERCENT SET ASIDE FOR NEW CUSTOMERS 10; EQUALIZATION ADJUSTMENT (PERCENT) 10

State	Current load (KW)	Percent system total load	State's share of project (KW)	Customer	Current load (KW)	Percent of State load	Customer's share of project (KW)	Customer's allocation (KW)
Arkansas	1,150,220	13.002	1,950					
Equalization adjustment			−212	New Customers	0	10.000	195	174
Adjusted State share			1,738	Augusta	3,700	0.290	6	5
				Bentonville	30,200	2.363	46	41
				Clarksville	22,449	1.757	34	31
				Jonesboro	109,200	8.544	167	149
				Paragould	52,900	4.139	81	72
				Paris	9,771	0.765	15	13
				Piggott	8,000	0.626	12	11
				AECC	914,000	71.517	1,395	1,243
				Subtotal	1,150,220	100.001	1,951	1,739
Kansas	1,052,896	11.902	1,785					
Equalization adjustment			179	New Customers	0	10.000	179	196
Adjusted State share			1,964	Anthony	8,300	0.709	13	14
				Coffeyville	35,000	2.992	53	59
				Kansas City	403,000	34.448	615	676
				KMEA:				
				Augusta	15,961	1.364	24	27
				Baldwin City	3,921	0.335	6	7
				Chanute	24,600	2.103	38	41
				Clay Center	10,950	0.936	17	18
				Colby	11,070	0.946	17	19

TABLE A.—ALLOCATION OF NEW RESOURCES TO EXISTING CUSTOMERS, PROJECT: W.D. MAYO, MARKETABLE CAPACITY (KW) = 15,000; PERCENT SET ASIDE FOR NEW CUSTOMERS 10; EQUALIZATION ADJUSTMENT (PERCENT) 10—Continued

State	Current load (KW)	Percent system total load	State's share of project (KW)	Customer	Current load (KW)	Percent of State load	Customer's share of project (KW)	Customer's allocation (KW)
				Garnett	6,300	0.539	10	11
				Herrington	5,050	0.432	8	8
				Holton	7,250	0.620	11	12
				Horton	2,968	0.254	5	5
				Iola	17,634	1.507	27	30
				LaCrosse	3,659	0.313	6	6
				Lindsborg	5,766	0.493	9	10
				Mulvane	7,500	0.641	11	13
				Neodesha	8,100	0.692	12	14
				Norton	7,550	0.645	12	13
				Oakley	5,540	0.474	8	9
				Oberlin	5,600	0.479	9	9
				Osawatomie	6,578	0.562	10	11
				Ottawa	20,400	1.744	31	34
				St. Francis	2,950	0.252	4	5
				Sharon Spring	1,580	0.135	2	3
				Wamego	8,001	0.684	12	13
				Wellington	21,600	1.846	33	36
				Winfield	40,200	3.436	61	67
				KEPCo	328,500	28.080	501	551
				Kaw Valley	18,349	1.568	28	31
				Nemaha-Marshal	9,019	0.771	14	15
				Subtotal	1,052,896	100.000	1,786	1,963
Louisiana	1,839,300	20.791	3,119					
Equalization adjustment			312	New Customers	0	10.000	312	343
Adjusted State share			3,430	Lafayette	268,000	13.114	409	450
				Natchitoches	34,000	1.664	52	57
				LEPA:				
				Alexandria	137,000	6.704	209	230
				Houma	56,000	2.740	85	94
				Jonesville	6,000	0.294	9	10
				Minden	30,000	1.468	46	50
				Morgan City	42,000	2.055	64	71
				Plaquemine	20,000	0.979	31	34
				Rayne	16,000	0.783	24	27
				Ruston	45,000	2.202	69	76
				Vidalia	11,300	0.553	17	19
				Winnfield	14,000	0.685	21	24
				Cajun	1,160,000	56.761	1,770	1,947
				Subtotal	1,839,300	100.002	3,118	3,432
Missouri	2,332,809	26.369	3,955					
Equalization adjustment			−430	New Customers	0	10.000	396	353
Adjusted State share			3,526	Carthage	35,300	1.362	54	48
				Fulton	19,760	0.762	30	27
				Herman	7,500	0.289	11	10
				Higginsville	9,400	0.363	14	13
				Kennett	25,389	0.980	39	35
				Lamar	12,560	0.485	19	17
				Malden	13,500	0.521	21	18
				New Madrid	6,900	0.266	11	9
				Nixa	5,800	0.224	9	8
				Poplar Bluff	45,600	1.759	70	62
				Sikeston	48,400	1.867	74	66
				Springfield	424,000	16.358	647	577
				Thaver	1,800	0.069	3	2
				West Plains	23,900	0.922	36	33
				AECI	1,653,000	63.773	2,522	2,249
				Subtotal	2,332,809	100.000	3,956	3,527
Oklahoma	758,166	8.570	1,286					
Equalization adjustment			−140	New Customers	0	10.000	129	115
Adjusted State share			1,146	Comanche	3,911	0.464	6	5
				Copan	1,472	0.175	2	2
				Duncan	36,840	4.373	56	50
				Eldorado	1,079	0.128	2	1
				Goltry	691	0.082	1	1
				Granite	1,941	0.230	3	3
				Hominy	6,371	0.756	10	9
				Lexington	2,741	0.325	4	4
				Manitou	336	0.040	1	0
				Olustee	928	0.110	1	1
				Purcell	11,508	1.366	18	16
				Ryan	1,785	0.212	3	2

TABLE A.—ALLOCATION OF NEW RESOURCES TO EXISTING CUSTOMERS, PROJECT: W.D. MAYO, MARKETABLE CAPACITY (KW) = 15,000; PERCENT SET ASIDE FOR NEW CUSTOMERS 10; EQUALIZATION ADJUSTMENT (PERCENT) 10—Continued

State	Current load (KW)	Percent system total load	State's share of project (KW)	Customer	Current load (KW)	Percent of State load	Customer's share of project (KW)	Customer's allocation (KW)
				Skiatook	9,784	1.161	15	13
				Spiro	3,216	0.382	5	4
				Walters	5,149	0.611	8	7
				Watumka	3,016	0.358	5	4
				Yale	2,594	0.308	4	4
				Fort Sill	33,508	3.978	51	46
				Vance AFB	6,286	0.746	10	9
				McAlester Army	3,010	0.357	5	4
				WFEC	622,000	73.836	949	846
				Subtotal	758,166	99.998	1,288	1,146
Texas	1,713,340	19,367	2,905					
Equalization adjustment			291	New Customers	0	10.000	291	320
Adjusted State share			3,196	Rayburn Contry	299,000	15.706	456	502
				Tex-La of Tx	181,000	9.508	276	304
				NTEC	383,500	20.145	585	644
				Brazos	849,840	44.641	1,297	1,427
				Subtotal	1,713,340	100.000	2,905	3,197
Total customer Load (KW)	8,846,731	100.000			8,846,731			15,004

[FR Doc. 88-29296 Filed 12-20-88; 8:45 am]
BILLING CODE 6450-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 202-010776-39.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner System, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Lines, Inc.
Sea-Land Service, Inc.

Synopsis: The proposed modification would further clarify when service charges can be deducted for monies collected by the Agreement for the members.

By Order of the Federal Maritime Commission.

Dated: December 16, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-29222 Filed 12-20-88; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200198.

Title: Port of Houston Authority Terminal Agreement.

Parties:

Port of Houston Authority of Harris County, Texas Schroder Marine Terminal, Inc. (Schroder)

Filing Party: Algenita Scott Davis, Counsel, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252-2562.

Synopsis: The agreement provides that Schroder will perform or have performed public marine terminal services, including freight handling and cargo loading/unloading, at the Port's wharves and transit sheds Number 42. The term of the agreement expires December 31, 1990.

By Order of the Federal Maritime Commission.

Dated December 16, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-29223 Filed 12-20-88; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–002161–005.

Title: Port of Seattle Terminal Agreement.

Parties:

Port of Seattle

Cargill, Incorporated

Synopsis: The agreement provides for a renewal of the basic lease agreement for a period of five years. The agreement also increases the rental and modifies the lease provisions relating to the assessment of dockage and clean air charges.

Agreement No.: 224–200199.

Title: City of Long Beach Preferential Assignment Agreement.

Parties:

City of Long Beach

Copper/T. Smith Stevedoring Co., Inc.

Synopsis: The agreement provides for the City to grant Assignee a nonexclusive preferential assignment of the wharf and contiguous wharf premises, together with improvements located at Berths 204–205, Pier F and water area adjacent thereto required for the berthing of vessels. The term of the Agreement shall commence on January 1, 1989 and terminate on December 31, 1998.

Agreement No.: 224–003158–004.

Title: The Port Authority of New York and New Jersey Terminal Agreement.

Parties:

The Port Authority of New York and New Jersey

Ecuadorian Line, Inc. (EL)

Synopsis: The agreement provides for EL's lease of Shed No. 138, its annex, Berths 2 and 4 and adjacent upland improvements and modifications of a building, and the termination of adjacent premises including Berth 6. The term of Agreement No. 224–003158 is extended to February 29, 1996.

By Order of the Federal Maritime Commission.

Dated: December 16, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–29224 Filed 12–20–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Winter—Park Bancshares, Inc., et al., Applications to Engage de nova in Permissible Nonbanking Activities; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88–28547) published at page 50097 of the issue for Tuesday, December 13, 1988.

Under the Federal Reserve Bank of San Francisco, the entry for The Mitsubishi Bank, Limited, Tokyo, Japan, is amended to read as follows:

1. *The Mitsubishi Bank, Limited,* Tokyo, Japan; to engage *de novo* through its subsidiary, MBL Futures, Inc., Chicago, Illinois, in acting as a futures commission merchant for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts for bullion, foreign exchange, government securities, and certificates of deposit and other money market instruments that a bank may buy or sell in the cash market for its own account pursuant to § 225.25(b)(18) of the Board's Regulation Y.

Comments on this application must be received by January 3, 1989.

Board of Governors of the Federal Reserve System, December 15, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–29212 Filed 12–20–88; 8:45 am]

BILLING CODE 6210–01–M

PNC Financial Corp.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88–28435) published at page 4992 of the issue for Monday, December 12, 1988.

Under the Federal Reserve Bank of Cleveland, the entry for PNC Financial Corp. is amended to read as follows:

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *PNC Financial Corp.*, Pittsburgh, Pennsylvania; to acquire 100 percent of the voting shares of Bank of Delaware Corporation, Wilmington, Delaware, and thereby indirectly acquire Bank of Delaware, Wilmington, Delaware.

In connection with this application, New Financial Corp, Wilmington, Delaware; has applied to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Delaware Corporation, Wilmington, Delaware, and thereby indirectly acquire Bank of Delaware, Wilmington, Delaware.

In connection with these applications, Applicants have also applied to acquire nonbank subsidiaries of Bank of Delaware Corporation, Wilmington, Delaware: Del Vest, Inc., Wilmington, Delaware—a Delaware Corporation which provides portfolio investment advisory services for institutional and individual customers pursuant to § 225.25(b)(4) of the Board's Regulation Y; Christine Life Insurance Company, Wilmington, Delaware—an Arizona Corporation which underwrites, as reinsurer, credit life, disability, accident, and health insurance policies written in conjunction with loans made by Bank of Delaware pursuant to § 225.25(b)(8) of the Board's Regulation Y. Applicants have also applied to acquire the following subsidiaries of the Bank of Delaware; Christina Brokerage Services, Inc., Wilmington, Delaware, which engages in discount securities brokerage services for retail customers; Millsboro Insurance Agency, Inc., Wilmington, Delaware, which sells physical and damage insurance policies on an agency basis in connection with mobile home loans made by Bank of Delaware; Roney-Richards, Inc., Wilmington, Delaware, to sells, on an agency basis, credit life and disability insurance to consumers in connection with direct loans made by Bank of Delaware; Marand Corporation, Wilmington, Delaware, which owns land for the benefit of Bank of Delaware; and Christina Ventures, Inc., Wilmington, Delaware, a partner with Tatten Developers, A Delaware Partnership formed to acquire, construct and own a multi-story office project, of which Bank of Delaware now occupies a substantial portion.

Comments on this application must be received by January 3, 1989.

Board of Governors of the Federal Reserve System, December 15, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–29213 Filed 12–20–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Meeting of Advisory Committee for Elimination of Tuberculosis

ACTION: Notice of meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: Advisory Committee for Elimination of Tuberculosis (ACET)

Time and Date: 8:00 a.m.–4:30 p.m.—January 24, 1989; 8:00 a.m.–2:30 p.m.—January 25, 1989.

Place: Salon D & E, Lanier Plaza Conference Center, 418 Armour Drive, NE., Atlanta, Georgia 30324.

Status: Open.

Purpose: This Committee advises and makes recommendations to the Secretary, Department of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for eliminating tuberculosis. Specifically, the Committee makes recommendations regarding policies, strategies, objectives, and priorities, addresses the development of new technologies and their subsequent application, and reviews progress toward elimination.

Matters to be Discussed: Tuberculosis control among the foreign-born. Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Dixie E. Snider, Jr., M.D., Director, Division of Tuberculosis Control, and Executive Secretary, ACET, Center for Prevention Services, CDC, 1600 Clifton Road, NE., Mailstop E–10, Atlanta, Georgia 30333, Telephones: FTS: 236–2501; Commercial: 404/639–2501.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88–29218 Filed 12–20–88; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 88N–0432]

Animal Drug Export; Melatonin Implants for Mink

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Wildlife Laboratories, Inc., has filed an application requesting approval for the export of the animal drug Melatonin Implants for Mink to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of animal drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Beverly E. Bartolomeo, Center for Veterinary Medicine (HFVM142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2855.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Wildlife Laboratories, Inc., P.O. Box 8983, Fort Collins, CO 80525, has filed an application requesting approval for the export of the amimal drug Melatonin Implants for Mink to Canada. The drug is intended to accelerate the fur priming cycle in mink. The application was received and filed in the Center for Veterinary Medicine on December 13, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and indentified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by January 21, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: December 13, 1988.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 88–29216 Filed 12–20–88; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[BPO–74–FN]

Medicare Program; Data, Standards and Methodology Used To Establish Budgets for Fiscal Intermediaries and Carriers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This notice announces that we are adopting as final without revision previously published proposed data, standards and methodology to establish fiscal intermediary and carrier budgets for the fiscal year beginning October 1, 1988.

EFFECTIVE DATE: December 19, 1988.

SUPPLEMENTARY INFORMATION: On September 20, 1988, we published a proposed notice in the **Federal Register** at 53 FR 36496 that described data, standards and methodology we proposed to use to establish fiscal intermediary and carrier budgets for fiscal year, 1989, which began October 1, 1988. The notice implements section 4035(a) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), which requires us to publish for public comment in the **Federal Register** the data, standards and methodology we intend to use to establish budgets at least 90 days before we propose to use them. We did not receive any comments on the proposed notice. Therefore, we are adopting as final the data, standards and methodology as proposed.

Sec. 1102, 1816, 1842 and 1871 of the Social Security Act (42 U.S.C. 1302, 13595h, 1395u, and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 13773, Medicare-Hospital)

Dated: December 6, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-29245 Filed 12-20-88; 8:45 am]

BILLING CODE 4120-03-M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 2-Amino-4-Nitrophenol

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of 2-amino-4-nitrophenol, an intermediate in the manufacture of C.I. Mordant Brown 33 and C.I. Mordant Brown 1, which are used for dyeing leather, nylon, silk, wool and fur. It is also used in semipermanent hair dyes to produce gold-blond shades.

Two-year toxicology and carcinogenesis studies of 2-amino-4-nitrophenol were conducted by administering the chemical in corn oil by gavage to groups of 50 F344/N rats of each sex and 50 B6C3F$_1$ mice of each sex at doses of 0, 125, or 250 mg/kg, 5 days per week.

Under the conditions of these 2-year gavage studies, there was some evidence of carcinogenic activity [1] of 2-amino-4-nitrophenol for male F344/N rats, as shown by increased incidences of renal cortical (tubular cell) adenomas. The incidences of renal tubular cell hyperplasia were also increased in male rats exposed to 2-amino-4-nitrophenol. The survival of male rats that received 2-amino-4-nitrophenol was reduced compared with survival of vehicle control male rats. There was no evidence of carcinogenic activity of 2-amino-4-nitrophenol for female F344/N rats or for male or female B6C3F$_1$ mice that received 125 or 250 mg/kg per day.

The study scientist for these studies is Dr. Richard D. Irwin. Questions or comments about the contents of this Technical Report should be directed to Dr. Irwin at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3340; FTS: 629-3340.

Copies of *Toxicology and Carcinogenesis Studies of 2-Amino-4-Nitrophenol in F344/N Rats and B6C3F$_1$ Mice (Gavage Studies)* (TR 339) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709, telephone: (919) 541-3991; FTS: 629-3991.

Dated: December 15, 1988.

David P. Rall,

Director.

[FR Doc. 88-29217 Filed 12-20-88; 8:45 am]

BILLING CODE 4140-01-M

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence of carcinogenicity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that cannot be evaluated because of major flaws ("inadequate study").

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1906]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing, an information collection package with respect to the Section 8 Moderate Rehabilitation Program for Single Room Occupancy (SRO) Dwellings for Homeless Individuals—Notice of Fund Availability under Subtitle E of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987).

The information collection requirements in this package are the result of amendments to the SRO Program contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100-628 (approved November 7, 1988). Under section 485 of the 1988 McKinney Act, the Department has 60 days from the date of statutory enactment (i.e., by January 6, 1989) in which to publish a notice implementing the new provisions. In order to meet this statutory deadline, the Department has requested OMB to complete its paperwork review of the SRO Notice of Fund Availability by December 28, 1988. Any control number issued by OMB to cover this emergency situation would be valid for no more than 90 days.

To ensure that the public has an adequate opportunity to comment on these information collection requirements, HUD also intends to submit the SRO Notice to OMB for regular paperwork review. The public will then have an additional 60 day period in which to comment on the paperwork requirements.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: December 15, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Section 8 Moderate Rehabilitation—Single Room Occupancy Program (FR–2539)

Office: Housing

Description of the Need for the Information and Its Proposed Use: The purpose of the information request is to assist HUD in selecting applicants who meet program requirements. HUD will use the information to fund applications from public housing agencies which best demonstrate a need for the assistance and the ability to undertake and carry out the program.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions

Frequency of Submission: On Occasion

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	100		1		25		2,500

Total Estimated Burden Hours: 2,500

Status: Extension

Contact: Alfonso M. Bell, HUD, (202) 755–6650; John Allison, OMB, (202) 395–6880

Date: December 15, 1988.

[FR Doc. 88–29250 Filed 12–20–88; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–88–1907]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing, an information collection package with respect to the Emergency Shelter Grants (ESG) program under Subtitle B of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987).

The information collection requirements in this package are the result of amendments to the ESG program contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100–628 (approved November 7, 1988). Under section 485 of the 1988 McKinney Act, the Department has 60 days from the date of statutory enactment (i.e., by January 6, 1989) in which to publish a notice implementing the new provisions. In order to meet this statutory deadline, the Department has requested OMB to complete its paperwork review of the ESG Notice by December 28, 1988. Any control number issued by OMB to cover this emergency situation would be valid for no more than 90 days.

To ensure that the public has an adequate opportunity to comment on these information collection requirements, HUD also intends to submit the ESG Notice to OMB for regular paperwork review. The public will then have an additional 60 days in which to comment on the paperwork requirement.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently infomation submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: December 15, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Emergency Shelter Grants Program (FR–2562)

Office: Community Planning and Development

Description of the Need for the Information and Its Proposed Use: This program provides grants to cities, counties, states, and territories for the following eligible activities relating to emergency shelter for the homeless: renovation, rehabilitation, or conversion of buildings; supportive services; and maintenance, operation (other than staff), insurance, utilities, furnishings, and homeless prevention. Information collected will be used to ensure grantees comply with the program's statutory and regulatory requirements.

Form Number: SF–269, SF–424, HUD–7015.15, and certifications

Respondents: State or Local Governments and Non-Profit Institutions

Frequency of Submission: On Occasion and Annually

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	375		1		16		6,000
Initial Reports	375		1		12		4,500
Annual Reports	375		1		12		4,500
Waiver Reports	25		1		4		100
Environmental Submission to HUD by Local Governments Funded by HUD	325		1		.4		130
Recordkeeping by Local Governments Funded by HUD	325		1		30		9,750
Environmental Submission to by Local Governments Funded by States	300		1		.4		120
Recordkeeping by Local Governments Funded by States	300		1		30		9,000
Environmental Submission from States to HUD for Nonprofit Funded by States	200		1		.4		80
Recordkeeping by States for Nonprofits Funded by States	50		1		8		400
Local Governments Certification to States for Nonprofits Seeking Funding from States	200		1		.25		50
Local Government Site Change Certification to HUD	25		1		.25		6.25

Total Estimated Burden Hours: 34,636
Status: Revision
Contact: James R. Broughman, HUD (202) 755–5977; John Allison, OMB, (202) 395–6880.

Date: December 15, 1988.

[FR Doc. 88–29251 Filed 12–20–88; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Amendments to Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise seven notices describing systems of records maintained which are subject to the requirements of section 3 of the Act. All seven of the notices are being amended to add a new compatible routine use to each notice providing for the disclosure of debtor information to the Internal Revenue Service (IRS) for the purpose of collecting debts owed to the Federal government through the offset of tax refunds. These changes are being made pursuant to the provisions of 26 CFR 301.6402–6T (offset of past-due legally enforceable debt against overpayment (temporary)), 5 U.S.C. 5514 (installment deduction from federal salary for indebtedness to the United States, including procedures for contesting debt), 26 U.S.C. 6103 (confidentiality and disclosure of returns and return information), 26 U.S.C. 6402 (authority to make credits or refunds including collection of debts owed to Federal agencies), 31 U.S.C. 3701 (definitions and application for chapter on claims), 31 U.S.C. 3716 (administrative offset procedures), and 31 U.S.C. 3720A (reduction of tax refund by amounts of debt).

Also, four of the notices (WBR–2, USGS–3, NPS–4, and NPS–17) are being amended to revise the existing routine disclosure statement for litigation purposes to incorporate the clarification on such disclosures prescribed by the Office of Mangement and Budget in its supplementary guidelines dated May 24, 1985, for implementing the Privacy Act.

The changes being made are as follows:

1. The system of records notice titled "Payroll, Attendance, Retirement, and Leave Records—Interior, Office of the Secretary–85," published in the **Federal Register** on November 3, 1986 (51 FR 39918), describing employee payroll records maintained by the Department is amended by adding a new routine use disclosure (21) to read as follows:

Interior/OS–85

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(21) To disclose debtor information to the IRS, or another Federal agency or its contractor solely to aggregate information for the IRS, to collect debts owed to the Federal government through the offset of tax refunds.

* * * * *

2. The system of records notice titled "Accounts Receivable—Interior, Office of the Secretary–86," published in the **Federal Register** on July 15, 1986 (51 FR 25613), describing accounting records maintained by the Office of the Secretary is amended by adding a new routine use disclosure (5) to read as follows:

Interior/OS–86

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(5) To disclose debtor information to the IRS, or another Federal agency or its contractor solely to aggregate information for the IRS, to collect debts owed to the Federal government through the offset of tax refunds.

* * * * *

3. The system of records notice titled "Accounts Receivable—Interior, Reclamation–2," published in the **Federal Register** on September 27, 1984 (49 FR 38194), describing accounting records maintained by the Bureau of Reclamation is amended by revising existing routine use (1) and adding a new routine use disclosure (7) to read as follows:

INTERIOR-WBR–2

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled;

* * * * *

(7) To disclose debtor information to the IRS, or another Federal agency or its contractor solely to aggregate information for the IRS, to collect debts

owed to the Federal government through the offset of tax refunds.

* * * * *

4. The system of records notice titled "Accounts Receivable—Interior, GS–3," published in the **Federal Register** on July 5, 1985 (50 FR 27693), describing accounting records maintained by the Geological Survey is amended by revising existing routine use (2) and adding a new routine use disclosure (7) to read as follows:

INTERIOR/USGS–3

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(2) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled;

* * * * *

(7) To disclose debtor information to the IRS, or another Federal agency or its contractor solely to aggregate information for the IRS, to collect debts owed to the Federal government through the offset of tax refunds.

* * * * *

5. The system of records notice titled "Advanced Budget/Accounting Control and Information System (ABACIS)—Interior, MMS–8)," published in the **Federal Register** on March 10, 1987 (52 FR 7322), describing accounting records maintained by the Minerals Management Service is amended by adding a new routine use disclosure (9) to read as follows:

INTERIOR/MMS–8

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(9) To disclose debtor information to the IRS, or another Federal agency or its contractor solely to aggregate information for the IRS, to collect debts owed to the Federal government through the offset of tax refunds.

* * * * *

6. The system of records notice titled "Travel Records—Interior, NPS–4," published in the **Federal Register** on November 10, 1983 (48 FR 51698), describing employee travel records maintained by the National Park Service is amended by revising existing routine use (1) and adding new routine use (3) to read as follows:

INTERIOR/NPS–4

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled;

* * * * *

(7) To disclose debtor information to the IRS, or another Federal agency or its contractor solely to aggregate information for the IRS, to collect debts owed to the Federal government through the offset of tax refunds.

* * * * *

7. The system of records notice titled "Employee Financial Irregularities—Interior, NPS–17," published in the **Federal Register** on November 10, 1983 (48 FR 51702), describing employee records maintained by the National Park Service is amended by revising existing routine use (1) and adding new routine use (3) to read as follows:

INTERIOR/NPS–17

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled;

* * * * *

(3) To disclose debtor information to the IRS, or another Federal agency or its contractor solely to aggregate information for the IRS, to collect debts owed to the Federal government through the offset of tax refunds.

* * * * *

5. U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. Therefore, written comments on these proposed changes can be addressed to the Department Privacy Act Officer, Office of the Secretary (PMI), Room 2242, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240. Comments received within 30 days of publication in the **Federal Register** will be considered. The changes shall be effective as proposed without further notice at the end of the comment period, unless comments are received which would require a contrary determination.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

Date: December 16, 1988.

[FR Doc. 88–29264 Filed 12–20–88; 8:45 am]

BILLING CODE 4310–RK–M

Bureau of Land Management

[AA–660–09–4120–02]

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 Management 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 phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340.

Title: Fees, Rentals, and Royalties (43 CFR Part 3470).

Abstract: The final rulemaking amending subpart 3473 of Title 43 of the Code of Federal Regulations requires that the underground royalty for all new and readjusted underground Federal coal leases be set at a flat rate of 5 percent of the value of the coal removed from the lease. This regulation will be available upon application for leases

previously issued at, or readjusted to, a rate above 5 percent and to leases with readjustments under appeal. Information requirements for the application in the regulation are acceptable in any form which meets the specifications of the rulemaking. In general, a letter is the expected form of application. The obligation to respond is required to obtain a benefit.

This information collection requirement package includes no information collections which were previously assigned clearance numbers by the Office of Management and Budget. Failure to collect the information would result in a decrease in the effectiveness of the program in meeting policy and statutory objectives.

Frequency: On occasion.

Description of Respondents: Coal lessees with underground coal reserves who apply for an amendment of the royalty lease term.

Annual Responses: 250.

Annual Burden Hours: 1,000.

Bureau Clearance Officer: Rick Iovaine (202) 653-8853.

Dated: December 14, 1988.

Robert H. Lawton,

Assistant Director, Energy & Mineral Resources.

[FR Doc. 88-29234 Filed 12-20-88; 8:45 am]

BILLING CODE 4310-84-M

[UT-020-09-4331-08]

Amendment of Four Decisions of the Box Elder Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment of four decisions of the Box Elder Resource Management Plan.

SUMMARY: The Bureau of Land Management proposes to amend four decisions in the Box Elder Resource Management Plan (RMP), Bear River Resource Area, Salt Lake District, Utah. The amendments are necessitated by the requirements of a recently developed management plan for the Central Pacific Railroad Grade Area of Critical Environmental Concern (ACEC).

Amendment 1—Areas of Critical Environmental Concern Decision 1—The first line of the existing decision reads: "Designate approximately 250 acres of the * * *". This shall be changed to read: "Designate a 400 foot corridor (200 feet on either side of grade centerline), including about 1735 acres, of public land along 35.77 miles of the * * *," the remainder of the original decision remains unchanged. At the end of the original decision an added statement, identified as (5) shall be included and will read as follows: "(5) Any areas within the 400 foot railroad grade corridor that are not presently public land but which BLM may acquire title to or administer through a cooperative agreement in the future will be managed under the prescriptions applied to the existing ACEC area."

Rationale: The size of the ACEC needs to be increased from approximately 250 acres to approximately 1770 acres in order to include many historic features within or adjacent to the grade that would not be included under the 250 acre limitation.

Amendment 2—Recreation Program Decision 1—The present decision is proposed to be amended as follows: Area open to motorized vehicle use would decrease from 999,634 acres to 997,949 acres.

Area limited for motorized vehicle use would increase from 12,160 acres to 13,845 acres.

Area closed to motorized vehicle use would remain at 0 acres.

Rationale: In order to preserve the integrity of the railroad grade as an area of critical environmental concern (ACEC), ORVs should not be allowed to operate off of existing road on the railroad grade nor off of roads or trails which are located within 200 feet of the grade. The amended RMP would call for a limited ORV designation, which restricts use to existing roads and trails on 1,735 acres of area. The total area open to motorized vehicle use would change from 999,634 acres to 997,949 acres, a decrease of 1,685 acres. Total area limited for motorized vehicle use would change from 12,160 acres to 13,845 acres, an increase of 1,685 acres. As part of the total limited acreage, the Central Pacific Railroad Grade and Adjacent Sites would increase from 250 acres to 1,735 acres. Closed acreage would remain at 0 (zero) acres.

Amendment 3—Visual Resources Program decision 1—Change acreages within VRM Classes II, III, and IV. Add all public land within a mile-wide corridor (one-half mile on either side of grade centerline) of the Central Pacific Railroad Grade to the VRM II Class. The total acreage will increase from the present 10,930 acres to 33,823 acres. Add all remaining public lands in the viewshed (that area visible from the grade) to VRM Class III. This will change the total area of Class III land from 73,581 acres to 240,128 acres. VRM Class IV acreage will change from 927,283 acres to 737,893 acres. VRM Class I acreage would remain at 0 (zero) acres.

Rationale: In order to preserve the historic character of the grade, and the unobstructed expansive panoramas virtually unchanged from the early railroading days, it is necessary to implement protective management of this visual resource. Class II calls for a retention of the existing landscape, meaning that changes must not call attention to themselves, but must repeat the basic elements of form, line, color and texture characteristic of that landscape. Class III allows changes to be visible, but not dominant, in the landscape. A map of the Class II and III areas added as a result of this amendment are shown on the attached map.

Amendment 4—Change acreages included in Category 1 and 2 of the Fluid Minerals Leasing Categories—Category 1 (open for leasing), will change from 800,732 acres to 611,292 acres. Category 2 (open with special stipulations) will increase from 213,726 acres to 403,189 acres.

Rationale: In order to be consistent with changes in VRM Class II and III areas (see amendment 3, above) and with the management plan that has been developed for the Central Pacific Railroad Grade ACEC the additional fluid mineral lease acreage in Category 2 is necessary. Stipulation (4) of the existing fluid mineral decision applies to this additional acreage. The acreage total stated in (4) will be increased from 84,511 acres to 273,951 acres. Any other stipulations stated in the existing decision that may apply to the lands added to Category 2 will also be in effect.

FOR FURTHER INFORMATION CONTACT: Dennis E. Oaks or Shelley J. Smith, Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 524-5348.

James M. Parker,

Utah State Director

[FR Doc. 88-29233 Filed 12-20-88; 8:45 am]

BILLING CODE 4310-DQ-M

[CA 22882]

Realty Action, Sale of Public Lands; Siskiyou County, CA

SUMMARY: The following described public lands have been examined and through the development of land use planning decisions based upon public input, resource considerations, regulations, and Bureau policies, it has been determined that the proposed sale of these parcels is consistent with the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, and

approved Redding Resource Area Land Use Plans.

T. 43 N., R. 6 W., M.D.B. & M.
Sec. 30, Lots 1, 2, 3 and 4
(containing 49.69 acres)

Upon publication of this Notice of Realty Action in the **Federal Register**, the public lands described are hereby segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect shall terminate upon issuance of the patent, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

Direct sale methodology will be pursuant to FLPMA and existing policy, laws, and regulations pertaining to disposal of public lands, (43 CFR 2710.0-6(c)(4)).

The proposed purchaser is: Mr. Glenn Penisten, 3173 Alexis Drive, Palo Alto, California 94304. In no case shall these lands be sold for less than the appraised fair market value of $5,000. This value was determined by an appraisal performed by a Federal appraiser using the principles contained in the Uniform Appraisal Standards for Federal Land Acquisitions.

The mineral interests are being offered by a $50.00 non-refundable filing fee (43 CFR 2720.1-2(c)).

Sale terms and conditions are as follows:

A. Reservation to the United States—There are hereby excepted from these land patents and reserved to the United States the following:

A right-of-way on the property for ditches or canals, constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

B. Rights of the Third Parties—the conveyance made by this land patent is subject to all valid existing rights, including the following:

1. Those rights for distribution line purposes as have been granted to Pacific Power and Light Company, by Permit #CA 9035, under the Act of October 21, 1976, (43 U.S.C. 1761)

2. Those rights for access road purposes as have been granted in perpetuity to John H. And Mary Linville by Permit #CA 14737, under the Act of October 21, 1976 (43 U.S.C. 1761)

3. Those rights for access road purposes as have been granted in perpetuity to Kenneth D. and Rose M. Cochran, by Permit #CA 16493, under the Act of October 21, 1976, (43 U.S.C. 1761).

C. The proposed purchaser must be a United States citizen or a corporation authorized to own real property in the State of California.

Detailed information concerning the sale, including the environmental assessment and land report are available for review at the Redding Resource Area Office, 355 Hemsted Drive, Redding, California 96002.

DATES: For a period of 45 days from the date of publication in the **Federal Register**, interested parties may submit comments to the Area Manager, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96002. Comments will be evaluated by the State Director, who may vacate or modify this Realty Action and issue a final determination. In the absence of any action taken by the State Director, this Realty Action will become the final determination of the Land Management.

FOR FURTHER INFORMATION CONTACT: Mark T. Morse, (916) 246-5325.

Date: November 30, 1988.

Mark T. Morse,

Area Manager.

[FR Doc. 88-29235 Filed 12-20-88; 8:45 am]

BILLING CODE 4310-40-M

INTERNATIONAL TRADE COMMMISSION

[Investigation No. 731-TA-388 (Final)]

All-Terrain Vehicles From Japan

AGENCY: United States International Trade Commission.

ACTION: Change of the hearing date and of the date prehearing briefs are due in the subject investigation.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Judith C. Zeck (202-252-1999), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contracting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION: On October 26, 1988, the commission instituted the subject investigation and established a schedule for its conduct (53 FR 43275, October 26, 1988). On December 1, 1988, the Commission voted to change the date of the hearing. The hearing is now scheduled for January 26, 1989, beginning at 9:30 a.m., at the U.S. International Trade Commission Building, 500 E Street SW., Washington DC., and the prehearing briefs are now due on January 23, 1989.

For further information concerning this investigation see the Commission's notice of investigation cited above the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201.

Authority: This investigation is being conducted under authority of the Tariff Acf of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: December 12, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-29292 Filed 12-20-88; 8:45 am]

BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-423 (Preliminary)]

Generic Cephalexin Capsules From Canada

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Canada of generic cephalexin capsules, provided for in item 411.76 of the Tariff Schedules of the United States (subheading 3004.20.00 of the Harmonized Tariff Schedule of the United States), that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On October 27, 1988, a petition was filed with the Commission and the Department of Commerce by Biocraft Laboratories, Inc., Elmwood Park, NJ, alleging that an industry in the United States is materially injured by reason of

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Acting Chairman Brunsdale and Commissioner Cass determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of generic cephalexin capsules that are alleged to be sold in the United States at less than fair value.

LTFV imports of generic cephalexin capsules from Canada. Accordingly, effective October 27, 1988, the Commission instituted preliminary antidumping investigation No. 731-TA-423 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of November 4, 1988 (53 FR 44676). The conference was held in Washington, DC, on November 16, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 12, 1988. The views of the Commission are contained in USITC Publication 2143 (December 1988), entitled "Generic Cephalexin Capsules from Canada: Determination of the Commission in Investigation No. 731-TA-423 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: December 14, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-29293 Filed 12-20-88; 8:45 am]

BILLING CODE 7020-02-M

[332-267]

The Effects of Greater Economic Integration Within the European Community on the United States

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on October 13, 1988 of a request from the Committee on Ways and Means of the United States House of Representatives and the Committee on Finance of the United States Senate, the Commission instituted investigation No. 332-267 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide objective factual information on the EC single market and a comprehensive analysis of its potential economic consequences for the United States. The Committee requested that the Commission investigation focus in particular on the following:

1. The anticipated changes in laws, regulations, policies, and practices of the EC and individual member states that may affect U.S. exports to the EC and U.S. investment and business operating conditions in Europe, such as changes in customs requirements and procedures, government procurement practices, investment policies, service directives, and tax systems. The Committees requested that the analysis include consideration of the relationship and differences between policies and principles, such as sectoral reciprocity, proposed for the EC single market and current EC or member state obligations and commitments under bilateral or multilateral agreements and codes to which the United States is a party.

2. The likely impact of such changes on major sectors of U.S. exports to the EC, such as agricultural trade and telecommunications.

3. An assessment of whether particular elements of the single market may be trade liberalizing or trade discriminatory with respect to third countries, particularly the United States.

4. The relationship and possible impact of the single market exercise on the Uruguay Round of GATT multilateral trade negotiations.

The Committees requested that the Commission provide the requested information and analysis to the extent feasible in an initial report by July 15, 1989, with follow up reports as necessary.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: For information on other than the legal aspects of the investigation contact either Mr. John J. Gersic at 202-252-1342, or Mr. David R. Konkel at 202-252-1451.

For information on legal aspects of the investigation contact Mr. William W. Gearhart at 202-252-1091.

PUBLIC HEARING: A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on April 11, 1989, and continuing as required on April 12, 1989. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, not later than 5:00 p.m., March 28, 1989. Post-hearing briefs may be submitted no later than April 26, 1989.

WRITTEN SUBMISSIONS: In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on April 26, 1989. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202)-252-1810.

By order of the Commission.

Issued: December 15, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-29291 Filed 12-20-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-279]

Certain Plastic Light Duty Screw Anchors; Commission Determination Not To Review Initial Determination and Schedule for Filing of Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) finding a violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. The parties to the investigation, interested government agencies, and interested members of the public are requested to file written submissions on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Mitchell W. Dale, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1087.

SUPPLEMENTARY INFORMATION: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53(h) and 210.58(a) of the Commission's Interim

Rules of Practice and Procedure (53 FR 33043, 33070 and 33072, Aug. 29, 1988).

On October 27, 1988, the presiding administrative law judge (ALJ) issued an ID finding a violation of section 337 in the unauthorized importation and sale of certain plastic light duty screw anchors with the threat to injure substantially an industry in the United States. No petitions for review of the ID or Government comments regarding the ID were received.

Having examined the record, the Commission has concluded that the ID does not warrant review.

Since the Commission has found that a violation of section 337 has occurred, the Commission may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of relief, if any, which should be ordered.

If the Commission concludes that relief is appropriate, it must also consider the effect of that relief upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submission concerning the effect, if any, that granting relief would have on the enumerated public interest factors.

If the Commission orders relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond which should be imposed.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The parties' written submissions on the issues of remedy, the public interest, and bonding must be filed no later than the close of business on December 29, 1988. Reply submissions on these issues must be filed no later than January 5, 1989. Written submissions addressing the issues of remedy, the public interest, and bonding may also be filed by members of the public and Government agencies and departments. Such submissions must be filed no later than the close of business on January 5, 1989. No further submissions will be permitted.

COMMISSION HEARING: The Commission does not plan to hold a public hearing in connection with final disposition of this matter.

ADDITIONAL INFORMATION: Persons filing written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before any deadlines stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the investigation. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the **Federal Register** on January 27, 1988 (53 FR 2298).

Copies of the nonconfidential version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: December 14, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–29294 Filed 12–20–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–285]

Certain Chemiluminescent Compositions and Components Thereof and Methods of Using the Same; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Luc Noel.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. S1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on December 13, 1988.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone 202–252–1805.

Issued: December 19, 1988.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–29436 Filed 12–20–88; 10:11 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–282]

Certain Venetian Blind Components; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: A. J. Boyd Industries, Inc. (Boyd), Vogue Hardware Products and W & P Company Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. S1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on December 8, 1988.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–252–1805.

Issued: December 19, 1988.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–29437 Filed 12–20–88; 10:06 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Lodging a Consent Decree; Channel Industries Gas Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 2, 1988 a proposed Consent Decree in *United States v. Channel Industries Gas Company*, Civil Action No. G–88–416, was lodged with the United States District Court for the Southern District of Texas.

The Complaint filed by the United States alleged that the defendants had violated the Prevention of Significant Deterioration ("PSD") regulatons 40 CFR 52 et seq., and the Clean Air Act, 42 U.S.C. 7412, and requested injunctive relief and the imposition of civil penalties. The proposed Consent Decree requires the defendant to withdraw its PSD permit application, and to pay for a Texas Air Control Board permit of its Solar Century gas turbine at Station No. 809 in Bay City, Texas, which will limit the Nitrogen Oxide emissions from the turbine to 39 tons per year. In addition, the decree requires Channel to pay a total civil penalty of $100,000.00.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Divison, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Channel Industries Gas Company*, DOJ# Ref. 90–5–2–1–1240. The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Texas, Courthouse & Federal Building, 515 Rusk Avenue, 3rd Floor, Houston, Texas, 77002. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Divison.

[FR Doc. 88–27808 Filed 12–20–88; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Carl E. Darby, M.D., Revocation of Registration

On August 31, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Carl E. Darby, M.D. (Respondent) of 1420 Marilyn Drive, Ogden, Utah, proposing to revoke his DEA Certificate of Registration, AD3130717 as a practitioner under 21 U.S.C. 823(f), and to deny any pending applications for renewal of the registration. The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

On November 11, 1988, Respondent, proceeding pro se, waived his opportunity for a hearing and submitted a written statement on the issues raised by the Order to Show Cause. Based upon the waiver of hearing in this matter, the Administrator of the Drug Enforcement Administration enters this final order based upon the investigative file and the written statement submitted by Respondent. See 21 CFR 1301.54(c), 1301.54(d) and 1301.54(e).

The Administrator finds that Respondent is currently licensed to practice as a physician in the State of Utah. On November 13, 1984, an Investigator with the Utah State Department of Business Regulation received information that Respondent was over-prescribing Desoxyn and Dexedrine, both Schedule II controlled substances. A check of local pharmacies revealed that Respondent issued numerous prescriptions for Desoxyn and Dexedrine to "Reedus Davis." When the Utah State Investigator interviewed Respondent, he admitted writing all of

the prescriptions issued to Reedus Davis. Respondent stated that Ms. Davis was his sister, and that a few years ago she had requested that Respondent send her some drugs. Pursuant to this request, Respondent started writing prescriptions for Desoxyn and Dexedrine 5mg. tablets, part of which he would send to his sister in Texas, and part of which he would consume himself. Respondent also told the Utah State Investigator that he had written prescriptions for his wife, for Librium and Dalmane, both Schedule IV controlled substances, which she used every day.

As a result of this investigation, on October 21, 1985, the Utah Department of Business Regulation, Division of Professional Licensing, revoked Respondent's Schedule II controlled substance license. Pursuant to the Department's order, Respondent retained his license to prescribe Schedule III through V controlled substances on a probationary basis. Respondent also entered into an agreement with the Department under which he was prohibited from prescribing controlled substances to himself or any family member.

The Administrator finds that on June 13, 1986, Respondent submitted a renewal application requesting his DEA registration be renewed in Schedules II through V. On this application, Respondent stated that he was licensed to handle controlled substances in the schedules for which he was applying under Utah State law, when in fact, he was not.

A second renewal application was submitted to DEA by respondent on May 20, 1987, also requesting authorization to handle controlled substances in Schedules II through IV. Respondent again stated on this application that he was licensed to handle Schedule II controlled substances in the State of Utah, when in fact, he was not. By application dated May 11, 1988, Respondent again seeks to renew his DEA registration in Schedules II through V.

The Administrator finds that Respondent cannot be entrusted with a DEA registration. Respondent falsified his renewal applications in order to obtain registration in Schedules II and IIN, with full knowledge of the State of Utah's revocation of his Schedule II privileges. This constitutes material falsification under 21 U.S.C. 824(a)(1), an independent ground for revocation or denial of a DEA registration. Since DEA must rely on the truthfulness of information supplied by applicants in registering to handle controlled substances, falsification cannot be tolerated.

In his written statement, Respondent states that to his knowledge, the only restriction placed on his Schedule II privileges was an agreement that he would not prescribe diet pills. The Administrator does not find Respondent's argument persuasive. The Utah State order does not even mention diet pills. The Utah State order completely and clearly revoked Respondent's license to prescribe all Schedule II controlled substances, a fact that should have been well known to Respondent when he executed his first renewal application less then eight months after the state action.

In view of all the foregoing, Respondent's overprescribing of dangerous controlled substances, the revocation of Schedule II privileges of Respondent's state controlled substance license, and his falsification of his applications for DEA registration, the Administrator determines that the continued registration of Respondent is inconsistent with the public interest. 21 U.S.C. 824(a)(4). Respondent cannot be entrusted to handle controlled substances in a lawful and responsible manner. His registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration AD3130717, previously issued to Carl E. Darby, M.D., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective January 23, 1989.

John C. Lawn,

Administrator.

Dated: December 15, 1988.

[FR Doc. 88-29221 Filed 12-20-88; 8:45 am]

BILLING CODE 4410-09-M

Benjamin Wailes, M.D., Revocation of Registration

On September 14, 1988, the Deputy Assistant Administrator, Office of Diverson Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Benjamin Wailes, M.D., 1501 David Whitney Building, 1553 Woodward Street, Detroit, Michigan 48226, proposing to revoke his DEA Certificate of Registration AW9672305, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that the continued registration of Dr. Wailes is inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

The Order to Show Cause was initially sent to Dr. Wailes by registered mail, but was returned to DEA unclaimed. On November 1, 1988, the Order to Show Cause was personally served on Dr. Wailes' receptionist at his medical office. More than thirty days have passed since the Order to Show Cause was received by Dr. Wailes and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Benjamin Wailes, M.D. is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based upon the investigative file. 21 CFR 1301.57.

The Administrator finds that during the course of an investigation of a local pharmacy, DEA investigators noted an excessive number of prescriptions for controlled substances issued by Dr. Wailes. A review of Dr. Wailes' controlled substance prescribing practices revealed that he continuously prescribed controlled substances for individuals who did not exhibit a legitimate medical need for the type and quantity of controlled substances prescribed. Dr. Wailes often prescribed these drugs to individuals even though he knew they had drug and/or alcohol abuse problems. Finally, the review of Dr. Wailes' prescribing practices revealed that Dr. Wailes prescribed controlled substances to individuals even though he knew that these individuals were going to sell the drugs or give them to other individuals.

An associate professor of medicine at Wayne State University School of Medicine also reviewed Dr. Wailes' controlled substance prescribing practices. In the professor's opinion, Dr. Wailes exceeded the scope of medical practice standards in his prescribing of narcotics and controlled substances. The professor was specifically concenred about the fact that Dr. Wailes prescribed controlled substances for many of his "patients" knowing that they had a history of narcotic or alcohol abuse or of selling or sharing drugs.

The Administrator has considered the factors listed in 21 U.S.C. 823(f) and concludes that the continued registration of Dr. Wailes is inconsistent with the public interest. No evidence of explanation or mitigating circumstances has been offered by Dr. Wailes. Therefore, the Administrator concludes that Dr. Wailes' registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AW9672305, previously issued to Benjamin Wailes, M.D., be, and it hereby is, revoked. The Administrator further orders that any applications submitted by Benjamin Wailes, M.D. for registration as a practitioner under 21 U.S.C. 823(f), be, and they hereby are, denied. This order is effective January 23, 1989.

John C. Lawn,

Administrator.

Dated: December 15, 1988.

[FR Doc. 88-29220 Filed 12-20-88; 8:45 am]

BILLING CODE 4410-09-M

Federal Bureau of Prisons

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Institution, Pekin, IL

AGENCY: Federal Bureau of Prisons, Department of Justice.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. Proposed Action: The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new federal correctional institution with an adjacent satellite prison camp is needed in its system. A 250 acre tract of land bounded by State Route 29 to the west, VFW Road to the south, Central Illinois railroad tracks to the east and extending north in the direction of Koch Street. The proposal calls for the construction of facilities to house approximately 650 inmates in a medium security facility and 250 inmates in a minimum facility.

Approximately 30% of the 250 acres would be used for road access, inmates housing, administration, and program spaces and services and support facilities. In addition, exercise areas would be included in the needed acreage.

2. In the process of evaluating the tract of land, several aspects will receive a detailed examination including: Utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

3. Alternatives: In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

4. Scoping Process: During the preparation of the DEIS there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a locaton convenient to the citizens of Pekin. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings have already been held and will be continued by representatives of the Bureau of Prisons with interested community leaders and officials.

5. DEIS Preparation. Public notice will be given concerning the availability of the DEIS for public review and comment.

6. Address: Questions concerning the proposed action and the DEIS can be answered by: Patricia Sledge, Site Acquisition Coordinator, U.S. Bureau of Prisons, 320 First Street NW., Washington, DC 20534, Telephone: (202) 272-6534.

Dated: December 9, 1988.

William J. Patrick,

Chief, Facilities Development & Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 88-29225 Filed 12-20-88; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-88-222-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, 301 North Memorial Drive, P.O. Box 373, St. Louis, Missouri 63166 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Sinclair Underground Mine (I.D. No. 15-07116) located in Muhlenburg County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that seals in return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to a rock fall the seals in the main south section of the mine cannot be examined. To reseal the area at this time would place miners in great danger.

3. As an alternate method, petitioner proposes that—

(a) Methane and oxygen would be monitored weekly by a certified person, in a crosscut 20 feet from the seal in front of the fall. Alternatively, the operator would maintain a continuous monitoring system with an audible warning device set to activate when methane is detected at 1 percent and low oxygen at 18 percent; and

(b) The operator would maintain an air current passing through the crosscut and going to the main return air shaft.

4. Petitioner states that proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 23, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: December 15, 1988.

[FR Doc. 88-29266 Filed 12-20-88; 8:45 am]

BILLING CODE 4510-43-M

LIBRARY OF CONGRESS

American Folklife Center Board of Trustees Meeting

AGENCY: Library of Congress.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Board of Trustees of the American Folklife Center. This notice also describes the functions of the Center. Notice of this meeting is required in accordance with Pub. L. 94-463.

DATE: January 13, 1989, 9:30 a.m. to 4:30 p.m.

ADDRESS: Whittal Pavilion, Jefferson Building, Library of Congress, 10 First Street SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond L. Dockstader, Deputy Director, American Folklife Center, Washington, DC 20540.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Raymond Dockstader at (202) 287-6590.

The American Folklife Center was created by the U.S. Congress with passage of Pub. L. 94–201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditional of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out its mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Dated: December 13, 1988.

Donald C. Curran,

Acting Associate Librarian for Management.

[FR Doc. 88–29232 Filed 12–20–88; 8:45 am]

BILLING CODE 1410–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–312]

Sacramento Muncipal Utility District Rancho Seco Nuclear Generating Station; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a Petition dated August 3, 1988, filed by Ms. Barbara Moller (Petitioner). The Petitioner requested that the Nuclear Regulatory Commission (NRC) immediately test for drug use all individuals working at, or having access to, the Rancho Seco Nuclear Generating Station (Rancho Seco). The Petitioner also requested NRC to require the operators of Rancho Seco, the Sacramento Municipal Utility District (SMUD), to implement a mandatory periodic drug testing program at Rancho Seco.

Ms. Moller's Petition was based on allegations that (1) cocaine was found on the Rancho Seco site; (2) subsequently, nine persons were tested for drug use at Rancho Seco; (3) this testing was inadequate to find the party in illegal possession of cocaine; accordingly, (4) illegal drug use at Rancho Seco poses a danger to public health and safety.

The Director has determined that the Petitioner's request should be denied for the reasons set forth in the "Director's Decision Pursuant to 10 CFR 2.206" (DD–88–20), which is available for inspection and copying in the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the local Public Document Room for the Rancho Seco Nuclear Generating Station at the Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

A copy of the Decision will be filed with the Secretary of the Commission for review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the Decision will become the final action fo the Commission twenty-five (25) days after issuance unless the Commission on its own motion institutes review of the Decision within that time.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland this 14th day of December, 1988.

[FR Doc. 88–29274 Filed 12–20–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26358; File No. SR–NYSE–88–28]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

The New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted on September 29, 1988, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder [2] that establishes debt securities listing guidelines, adopted from current listing requirements, and incorporates the standards into section 1 of the NYSE *Listed Company Manual* (*"Manual."*).

Notice of the proposal together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Rel. No. 34–26204, October 20, 1988) and by publication in the Federal Register (53 FR 43311). No comments were received in connection with the proposal.

According to the Exchange, the provisions affecting listing standards for domestic and non-domestic debt securities currently are found in various sections of the *Manual.*[3] Consequently, the task of ascertaining Exchange policy in this area is somewhat cumbersome due to the disjointed manner in which debt securities listing provisions appear in the *Manual.*

The proposed rule change is designed to address this problem. Under the proposal, § 102.00 (Domestic Companies) of the *Manual* would be expanded to include, among other things, provisions covering aggregate market value of initial debt listings, interest coverage requirements, a distribution policy, and a requirement that common stock underlying listed convertible bonds must also be listed. Section 103.00 would be similarly amended to include identical requirements governing the listing of debt securities for non-U.S. companies. Accordingly, section 1 of the *Manual* will provide issuers with a general overview of Exchange policy for the listing of debt securities.

After careful review, the Commission has determined that the NYSE proposal to amend its *Listed Company Manual* is reasonable. In particular, the Commission believes that the proposed rule will facilitate the review of Exchange requirements for the listing of debt securities by enabling issuers to review the listing guidelines in one specific section of the *Manual.* Further, we note that the proposed amendment does not alter any existing requirements for debt securities listings, but rather summarizes, incorporates, and codifies into section 1 of the *Manual* current provisions and policies governing the listing of these securities. Accordingly, the Commission believes that the proposal should be approved as submitted and finds therefore that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6, and the rules and regulations thereunder.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In addition to these provisions, we note that the Exchange has a longstanding practice involving the aggregate market value of initial debt listings adopted pursuant to § 703.06 of the *Manual.* That Section provides that a debt security issue will be eligible for listing on the NYSE if it is of "sufficient size and distribution to warrant trading in the Exchange market system." Although the Section does not establish a minimum size or distribution requirement, the Exchange currently employs a $5,000,000 minimum aggregate market value requirement when reviewing issuer applications to list debt securities. Accordingly, if the aggregate market value of an initial debt listing is below the minimum threshold requirement, the listing application generally is rejected. This internal, quantitative requirement is currently an unpublished policy of the Exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and is, hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 14, 1988.

[FR Doc. 88-29226 Filed 12-20-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16693; 811-3900]

Oppenheimer Challenger Fund; Application for Deregistration

December 14, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Oppenheimer Challenger Fund ("Applicant").

Relevant 1940 Act Sections: Deregistration under Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company subject to the 1940 Act.

Filing Date: The application on Form N-8f was filed on October 11, 1988, and an amendment was filed on December 12, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on January 9, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Applicant: Oppenheimer Challenger Fund: Two World Trade Center, New York, New York 10048-0669.

FOR FURTHER INFORMATION CONTACT: Bibb L. Strench, Staff Attorney, (202) 272-2856 or Karen L. Skidmore Branch Chief, (202) 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; proper terms are those defined in the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Applicant, a Massachusetts business trust, is registered under the 1940 Act as a open-end, non-diversified management investment company. Applicant initially organized as a Maryland corporation on September 1, 1983 under the name "Oppenheimer Retirement Fund, Inc.," and reorganized to a Massachusetts business trust pursuant to a Declaration of Trust dated January 7, 1986. In connection with the reorganization to a business trust, Articles of Transfer were filed January 31, 1986 with the Maryland State Department of Assessments and Taxation. Applicant filed its Articles of Dissolution in Maryland on April 6, 1987.

2. On November 7, 1983, Applicant filed a Notification of Registration pursuant to section 8(b) of the 1940 Act on Form N-8A and filed a registration statement under the 1940 Act on Form N-1A. The registration statement became effective on January 5, 1984. Applicant also registered under the Securities Act of 1933 an indefinite number of shares of common stock. Applicant's initial public offering commenced January 5, 1984.

3. At a meeting on December 3, 1987, the Board of Trustees of the Applicant unanimously adopted and recommended to the shareholders of Applicant that they approve a series of transactions pursuant to a plan of reorganization whereby Oppenheimer OTC Fund ("OTC Fund") would acquire all of the assets of Applicant in exchange for shares of OTC Fund. Challenger and OTC have similar investment objectives and policies. In reaching the decision, the Board noted the disparity in net assets between the two funds, Applicant having approximately $2.6 million in net assets and OTC Fund having approximately $25.3 million in net assets. Because Applicant does not have the economies of scale enjoyed by a larger fund, its expenses had increased markedly in relation to average net assets. That situation was expected to worsen as the number of outstanding shares of Applicant diminished. Challenger's Board had determined that the reorganization would not result in a direct or indirect increase in the management fee, even though OTC has a Distribution Plan pursuant to Rule 12b-1 of the Act and Challenger does not.

4. On January 4, 1988, an OTC Fund prospectus and a proxy statement from Applicant, declared effective by the Commission on January 4, 1988, was mailed to shareholders of Applicant in connection with the solicitation by Applicant's Board of Trustees for purposes of voting on the proposed reorganization. On January 21, 1988, a Special Meeting of Shareholders of the Applicant was held at which a majority of shareholders approved the reorganization.

5. As of January 31, 1988, Applicant's aggregate net assets were $848,633. On that date, all of Applicants' net assets (including all portfolio securities, were transferred OTC Fund pursuant to a reorganization in exchange for 55,763 shares of OTC Fund which resulted in OTC Fund adding to its gross assets all of the assets (net of any liability for portfolio securities purchased but not settled) of Applicant and Applicant's shareholders owning shares of OTC Fund. In essence, a shareholder of Applicant who voted his shares in favor of the reorganization elected to redeem his shares at net asset value per share and reinvest the proceeds in shares of OTC Fund at no sales charge and without recognition of taxable gain or loss. No gain or loss or taxable income was recognized by either Applicant or OTC Fund. The cost basis and holding period of the shares of each shareholder of Applicant carried over to the shares of OTC Fund which each shareholder acquired; and the holding period and cost basis of Applicant for its assets transferred to OTC Fund carried over to OTC Fund. No brokerage commissions were paid in the exchange.

6. The expenses associated with carrying out the reorganization totaled $1,900, consisting of $500 for the deregistration of Applicant and $1,400 in other fees, including legal, accounting, printing, transfer agency, filing and proxy solicitations. Applicant's liabilities, which consisted primarily of an anticipated tax obligation (see below), accrued but unpaid normal operating expenses (excluding the cost of any portfolio securities purchased but not yet settled), and the amount, if any, required to satisfy any properly submitted unpaid redemption requests were accrued or paid by Applicant in the ordinary course of business on or prior to the effectiveness of the reorganization. Failure to qualify as a RIC resulted in a $1,200 tax liability (accrued and paid by Challenger), which was subsequently refunded as a result

of Challenger's ordinary loss incurred during the same period.

7. As of the time of filing the application, Applicant had no security holders. No assets have been retained by Applicant and no liabilities remain outstanding. Applicant is not a party to any litigation or administrative proceedings. It is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

8. Applicant is current on its required filings, including its N–SAR filing.

9. Applicant will notify the proper Massachusetts authorities of its dissolution and deregistration as an investment company if this Order is granted.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–29227 Filed 12–20–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24775; 70–6688]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 15, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 10, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Fuels, Inc., et al. (70–6688)

Columbia Fuels, Inc. ("Columbia"), and its parent company Alabama Power Company ("Alabama"), both located at 600 North 18th Street, Birmingham, Alabama 35291, indirect and direct subsidiaries, respectively, of The Southern Company, a registered holding company, have filed a post-effective amendment to their application-declaration pursuant to Sections 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By prior Commission orders (HCAR Nos. 22786, 23047 and 24468, December 20, 1982, August 31, 1983, and September 30, 1987, respectively), Columbia was authorized, among other things, to enter into a $100 million note-issuing credit agreement with Bank of America ("Bank") for a line of credit to be used to finance the purchase of nuclear fuel, which will be leased by Alabama under a related fuel lease agreement ("Lease"). This particular credit arrangement, together with an additional arrangement with Credit Suisse, provides aggregate credit available to Columbia for nuclear fuel financing of up to $150 million. Columbia now proposes to enter into an amended agreement ("Agreement") with the Bank to provide for the issuance and sale of commercial paper, in addition to the previously authorized notes, for nuclear fuel financing and to eliminate the finance bill financing option under the current agreement. The line of credit available to Columbia from the Bank will remain at $100 million and the aggregate credit limit of $150 million available to Columbia for nuclear fuel financing will remain unchanged.

Under the proposed commercial paper ("Paper") option of the Agreement, the Paper of Columbia will be offered for sale by the Bank, acting as dealer, to its customers in the form of promissory notes of Columbia with varying maturities not to exceed 270 days. Actual maturities will be determined by market conditions and the effective interest costs to Columbia at the time of issuance.

The basic cost to Columbia under this option will be the market rate at the time of issuance for such Paper, plus a dealer fee, expected to be not greater than ⅛ of 1% per annum. Costs to be paid to the Bank under this option will include a commitment fee of ⅛ of 1% per annum on the total credit commitment of $100 million, less the sum of the aggregate outstanding credits realized under the direct borrowing option ("Loans"). The Paper obligations will be paid when due by Columbia. Loans will continue to be evidenced by notes ("Notes"), on the same terms and conditions as previously approved.

As required by the Lease, Alabama will be unconditionally obligated to pay to Columbia, or the person designated by Columbia, any and all amounts requested by Columbia to satisfy all scheduled payments of (i) principal or interest on any Notes, (ii) the face amount of any Paper, and (iii) fees, indemnities or other obligations of Columbia pursuant to the Agreement. A Depositary, as selected by Columbia, will conduct all transactions as to the application of funds and will hold a security interest in the nuclear fuel, as trustee for the holders of the outstanding Paper and Notes, and in all rights, title, and interest as held by Columbia in the Lease. This security interest held by the trustee shall rank *pari passu* with the security interest of the Bank granted by Columbia pursuant to the provisions of the various agreements.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–29228 Filed 12–20–88; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Modifying Sugar Import Quota Allocation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice modifies for the remainder of 1988 the allocation provisions which are presently applicable to sugar import quotas.

EFFECTIVE DATE: December 21, 1988.

FOR FURTHER INFORMATION CONTACT: Ellen Terpstra, (202) 395–5006.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 4941 of May 5, 1982 (47 FR 19661), modified the quotas on the importation into the United States of sugars, sirups and molasses provided for in items 155.20 and 155.30 of the Tariff Schedules of the United States (TSUS) and allocated the quotas on a country-by-country basis. Under this system, sugar from an individual country enters the United States and is counted against that country's quota on a first-come-first-served basis. If the quota allocation is filled for that quota period, the sugar may be entered into warehouse under bond and later

withdrawn from warehouse for consumption in a subsequent quota period. The quota periods are established on an annual basis.

Proclamation 4941 also authorizes the U.S. Trade Representative, after appropriate consultations with the Department of Agriculture and the Department of State, to make certain modifications in the sugar import quota systems if such modifications are appropriate to give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

After appropriate consultations between the Office of the United States Trade Representative and the Departments of Agriculture and State, the United States Trade Representative has determined that certain modifications in the import quota system are appropriate and give due consideration to such interests. Accordingly, the country-by-country quota allocations are modified as follows:

—Having declared a shortfall of 11,676 short tons, raw value [STRV], Guyana's quota for 1988 is reduced to 374 STRV.

—The shortfall of 11,676 STRV is reallocated as follows:

Belize	5646.5	STRV
Jamaica	5646.5	STRV
Trinidad and Tabago	383.0	STRV

This notice is effective the day following the day of filing. The allocations made herein are in addition to the 1988 annual allocation for these countries. Reallocated sugar must be entered or withdrawn from warehouse for consumption on or before December 31, 1988.

I have determined that the above allocations are appropriate to give due consideration to the interests of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 88-29395 Filed 12-20-88; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88-098]

AGENCY: Coast Guard, DOT.

ACTION: Notice of Changes to Inland Rules.

SUMMARY: On September 28, 1988, the President signed Pub. L. 100-448 which included several technical amendments to Rules 3(g)(v), 27(b), and 27(f) of the Inland Navigation Rules to make them consistent with the International Rules. The Coast Guard publishes the full text of the International and Inland Rules in "Navigation Rules, International-Inland" (COMDTINST M16672.2A) which will be revised at the next scheduled publication. To facilitate ready access to the revised rules in the interim, this notice sets forth the modified text of Rules 3(g)(v), 27(b), and 27(f).

EFFECTIVE DATE: September 28, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Palmer, Office or Navigation Safety and Waterway Services, U.S. Coast Guard, (G-NSR-3), 2100 Second Street SW., Washington DC, 20593-0001. Telephone (202) 267-0343.

SUPPLEMENTARY INFORMATION: The technical amendments in Pub. L. 100-448 make minor changes to the wording of the Inland Rules to conform with the wording of the International Rules. The word "mineclearance" replaces the word "minesweeping" in Inland Rules 3 and 27. Also, in Rule 27, the lights or shapes on a mineclearance vessel now warn mariners that it is not safe to navigate within 1000 meters of the mineclearance vessel. To effect these changes, Inland Rules 3 and 27 have been revised to read as follows:.

1. Rule 3, Paragraph (g)(v) of Inland Navigation Rules, has been revised to read:

(v) a vessel engaged in mineclearance operations; and

2. Rule 27, Paragraph (b) of Inland Navigation Rules, has been revised to read:

(b) Vessels restricted in their ability to maneuver

A vessel restricted in her ability to maneuver, except a vessel engaged in mineclearance operations, shall exhibit:

3. Rule 27, Paragraph (f) of Inland Navigation Rules has, been revised to read:

(f) Vessels engaged in mineclearance operations

A vessel engaged in mineclearance operations shall, in addition to the lights prescribed for a power-driven vessel in Rule 23 or to the lights or shape prescribed for a vessel at anchor in Rule 30, as appropriate, exhibit three all-round green lights or three balls. One of these lights or shapes shall be exhibited near the foremast head and one at each end of the foreyard. These lights or shapes indicate that it is dangerous for another vessel to approach within 1,000 meters of the mineclearance vessel.

Mariners and affected parties are urged to note these changes and to update personal copies of the Navigation Rules booklet.

Dated: December 9, 1988.

R. T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88-29173 Filed 12-20-88; 8:45 am]

BILLING CODE 491-014-M

Federal Highway Administration

Environmental Impact Statements: Chatham County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Chatham County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth L. Bellamy, Division Administrator, Federal Highway Administration, 4505 Falls of the Neuse Road, Suite 470, Raleigh, North Carolina 27609, Telephone (919) 790-2950.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) for the proposed improvement of US 64 from the end of the four-lane divided roadway section over Jordan Lake to SR 1515 west of Pittsboro. The proposed action consists of the addition of two lanes adjacent to the existing roadway from the end of the four-lane section crossing Jordan Lake to some point west of the Haw River. From this point a multilane, divided, partially controlled-access facility will be constructed on new location to bypass Pittsboro. The proposed project is needed to serve traffic demand in the area and to relieve the congestion, delay, and inconvenience currently being experienced along existing US 64 from Raleigh to Asheboro and along existing US 15-501 from Chapel Hill to Sanford.

Alternatives under consideration include (1) the "nobuild", (2) improving existing US 64 without the construction of a bypass, and (3) improving existing US 64 with the construction of a bypass.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State, and local agencies. Public meetings and meetings with local officials will be held in the

project area.A public hearing will also be held. Information on the time and location of the public meeting and public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To insure that the full range of issues relating to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20, 205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program)

Issued on: December 13, 1988.

J. Max Tate,

District Engineer, FHWA, Raleigh, North Carolina.

[FR Doc. 88–29231 Filed 12–20–88; 8:45 am]

BILLING CODE 4910–22–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 245
Wednesday, December 21, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Change in Meeting Scheduled December 20, 1988

December 16, 1988.

TIME AND DATE: 10:00 a.m., Tuesday, December 20, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following item has been postponed to a later date:

2. *Secretary of Labor and UMWA v. Mid-Continent Resources, Inc., and American Mining Congress,* Docket No. WEST 87-88. (Issues include consideration of pending motions.)

It was determined by the Commissioners that this item should be heard at a later date.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5620/ (202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88-29381 Filed 12-19-88; 3:52 pm]

BILLING CODE 6735-01-M

NATIONAL LABOR RELATIONS BOARD

Hearing

TIME AND DATE: 9:00 a.m., Thursday, December 8, 1988.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. S552b(c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254-9430.

Dated: Washington, DC., December 16, 1988.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 88-29349 Filed 12-19-88; 2:56 pm]

BILLING CODE 7445-01-M

federal register

Wednesday
December 21, 1988

Part II

National Aeronautics and Space Administration

48 CFR Part 1804 et al
Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement; Final Rule

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1807, 1808, 1809, 1810, 1812, 1813, 1814, 1815, 1816, 1817, 1819, 1823, 1825, 1827, 1828, 1833, 1836, 1837, 1842, 1848, and 1852

[NASA FAR Supplement Directive 85-13]

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes implementing higher level issuances and other changes dealing with NASA internal or administrative matters.

EFFECTIVE DATE: December 31, 1988.

FOR FURTHER INFORMATION CONTACT: W. A. Greene, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 10546, Telephone: (202) 453-8923.

SUPPLEMENTARY INFORMATION:

Background

The major changes involve: (1) 8(a) contracting, (2) protest documentation, (3) value engineering, and (4) publication of several clauses and provisions originated by NASA centers for local use, but now authorized for agencywide use. Typographical and editorial changes to improve readability and conformance with FAR drafting conventions have been made. Substantive meanings have not been altered; however, entire textual segments have been reprinted when such changes are both numerous and scattered through the rule.

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The regulation imposes no burdens on the public within the ambit of the Paper Work Reduction Work Act, as implemented at 5 CFR Part 1320.

List of Subjects in 48 CFR Parts 1804, 1807, 1808, 1809, 1810, 1812, 1813, 1814, 1815, 1816, 1817, 1819, 1823, 1825, 1827, 1828, 1833, 1836, 1837, 1842, 1848, and 1852

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Parts 1804, 1807, 1808, 1809, 1810, 1812, 1813, 1814, 1815, 1816, 1817, 1819, 1823, 1825, 1827, 1828, 1833, 1836, 1837, 1842, 1848, and 1852 continues to read as follows:

PART 1804—ADMINISTRATIVE MATTERS

2. Part 1804 is amended as set forth below:

a. In Subpart 1804.1, 1804.103 is revised to read as follows:

1804.103 Contract clause.

The contracting officer shall include the clauses at FAR 52.204-1, Approval of Contract, and 1852.204-74, Approval Official, in solicitations, contracts, and supplemental agreements subject to Master Buy Plan procedures (see 1807.7102). In the clause at 1852.204-74, insert either the "NASA Assistant Administrator for Procurement" if the procurement has been selected for Headquarters approval of the contract under the Master Buy Plan procedures, or insert the "Procurement Officer" if the procurement has not been so selected.

b. In Subpart 1804.4, 1804.404-70 is added to read as follows:

1804.404-70 Contract clause.

The Contracting Officer shall insert the clause at 1852.204-75, Security Classification Requirements, in solicitations and contracts if work to be performed will require security clearances. Insert the security clearance level applicable to the particular procurement. Include in the solicitation and contract a properly executed DD Form 254, Contract Security Classification, in accordance with NMI 1650.1. For contracts, delete the last sentence. This clause may be modified to add instructions for obtaining security clearances and access to security areas that are applicable to the particular procurement and installation.

1804.676 [Amended]

c. In 1804.676, the words "Headquarters Procurement Management Division (Code HM)." are removed, and the words "Educational Affairs Division, University Programs Office, NASA Headquarters (Code XEU)." are added in their place.

Subpart 1804.74 [Removed]

d. Subpart 1804.74 is removed.

PART 1807—ACQUISITION PLANNING

3. Subpart 1807.70 is amended by revising its title to read as follows:

Subpart 1807.70—Solicitation Provision

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

4. Part 1808 is amended by adding 1808.002-76 to read as follows:

1808.002-76 Contract clause.

The contracting officer shall insert the clause at 1852.208-83 in all solicitations and contracts requiring the procurement of helium.

1808.304-572 [Amended]

5. In 1808.304-572, in paragraphs (a)(2)(ii) and (a)(4), the reference "1852.208-7009" is revised to read "1852.208-77" in both instances.

1808.305 [Amended]

6. In 1808.305, the references "1852.208-7003" and "1852.208-7008" are revised to read "1852.208-71" and "1852.208-76," respectively.

1808.309 [Amended]

8. In 1808.309, paragraphs (a) through (i), the references "1852.208-7002," "1852.208-7003," "1852.208-7008," "1852.208-7004," "1852.208-7005," "1852.208-7006," "1852.208-7007," "1852.208-7009," "1852.208-7010," and "1852.208-7011," are revised to read "1852.208-70," "1852.208-71," "1852.208-76," "1852.208-72," "1852.208-73," "1852.208-74," "1852.208-75," "1852.208-77," "1852.208-78," and "1852.208-79," respectively.

9. Subpart 1808.8 is amended by adding 1808.870 to read as follows:

1808.870 Contract clause.

The contracting officer shall insert the clause at 1852.208-81, Printing and Duplicating, in solicitations and contracts where there is any requirement for significant printing and/or reproduction. Printing in excess of that described in paragraph (c) of the

clause constitutes significant printing and/or reproduction.

PART 1809—CONTRACTOR QUALIFICATIONS

10. Part 1809 is amended by adding Subpart 1809.6, consisting of 1809.670, to read as follows:

Subpart 1809.6—Contractor Term Arrangements

1809.670 Contract clause.

The contracting officer shall insert the clause at 1852.209–72, Composition of the Contractor, in all construction invitations for bid and resulting contracts. The clause may be used in other solicitations and contracts to clarify a contractor team arrangement where the prime contractor consists of more than one legal entity, such as a joint venture.

PART 1810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

11. Part 1810 is amended by revising 1810.011 and adding 1810.011–70, to read as follows:

1810.011 Solicitation provisions and contract clauses.

1810.011–70 NASA solicitation provisions and contract clauses.

(a) When a "brand-name-or-equal" purchase description is used, the contracting officer shall insert in the solicitation the provision at 1852.210–70, Brand Name or Equal.

(b) The contracting officer shall insert the provision at 1852.210–71, Descriptive Literature for Used Material, in solicitations containing FAR clause 52.210–6, Listing of Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property. Insert the information needed to make a determination that the items to be furnished can reasonably be expected to conform to the requirements of the solicitation.

(c) The contracting officer may insert a clause substantially as stated in 1852.210–72, Supplies and/or Services to be Furnished, in all solicitations and contracts to indicate the items to be delivered. Insert the item number, description of the supplies (see FAR 2.101 for definition) and/or services to be furnished, quantities to be furnished, unit and unit price (if applicable), and total dollar amount. The column headings may be modified for what is being acquired and for the type of contract.

(d) The contracting officer shall insert a clause substantially as stated at 1852.210–75, Packaging and Marking, in solicitations and contracts where the packaging and marking requirements of NASA Handbook 6000.1 and/or MIL–STD–2073 are appropriate. Insert the applicable information for the particular procurement. Substitute Alternate I for paragraphs (a), (b), (c), and (d) of the basic clause if commercial packing and marking practices are to be used. Add Alternate II if space flight item(s) are to be delivered.

PART 1812—CONTRACT DELIVERY OR PERFORMANCE

12. Subpart 1812.1 is amended by adding in 1812.104–70 paragraphs (d) and (e) to read as follows:

1812.104–70 Additional clauses.

* * * * *

(d) The contracting officer may insert a clause substantially as stated at 1852.212–73, Delivery Schedule, in solicitations and contracts if the Government requires delivery of items on specific dates during the contract. Insert the item description, quantity of items to be furnished, delivery dates, and shipping addresses applicable to the particular procurement.

(e) The contracting officer may insert a clause substantially as stated at 1852.212–74, Period of Performance, in term contracts to specify the time during which contract performance will take place. Insert the period of performance dates applicable to the particular procurement.

PART 1813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

13. Subpart 1813.2 is amended by revising 1813.205 to read as follows:

1813.205 Review procedures.

The procurement officer shall ensure that all BPA files are reviewed at least annually to ascertain that appropriate procedures are being followed and that prices obtained are fair and reasonable.

PART 1814—SEALED BIDDING

14. Subpart 1814.2 is amended by adding 1814.201–6 and 1814.201–670, to read as follows:

1814.201–6 Solicitation provisions.

1814.201–670 NASA solicitation provisions.

(a) The contracting officer shall insert the provision at 1852.214–70, Caution to Offerors Furnishing Descriptive Literature, in invitations for bids. See FAR 52.214–21, Descriptive Literature.

(b) The contracting officer shall insert the provision at 1852.214–71, Grouping for Aggregate Award, in invitations for bid, except for construction, and competitive requests for proposals when conditions of inspection, installation performance, or location under multiple awards for certain items or groupings of certain items is impracticable. See 1814.201–5 (a) and (b) and FAR 52.214–10 and 52.215–16. Insert the item numbers and/or descriptions applicable for the particular procurement.

(c) The contracting officer shall insert the provision at 1852.214–72, Full Quantities, in invitations for bid, except for construction, and competitive requests for proposals when it is in the Govenment's best interest not to make award for less than the full quantities solicited. See FAR 52.214–10 and 52.215–16.

(d) For conducting pre-bid conferences, see 1815.407–70(f).

PART 1815—CONTRACTING BY NEGOTIATION

1815.106 and 1815.106–2 [Removed]

15. In Subpart 1815.1, 1815.106 and 1815.106–2 are removed.

16. Subpart 1815.4 is amended as set forth below:

a. Section 1815.406–2 is added, and 1815.406–4 and 1815.406–5 are revised to read as follows:

1815.406–2 Part I—The Schedule.

Section C, Description/specifications/work statement.

(a) In source evaluation board procurements, when detailed program or project support plans will be required as part of the offeror's proposal but will not be important discriminators in the evaluation process and cover only technical or management support to the primary product or service being offered, describe the requirements for those plans in separate appendices to the statement of work (see 1815.406–70(a)(7)).

(b) In solicitations for cost-reimbursement support services contracts requiring price quotations, include available data regarding the quantity and quality of supplies and services required, set forth in terms of work hours of identifiable categories of labor, including experience and related qualifications, and in terms of quantities of supplies, all exclusive of costs (see 1815.406–70(b)(8)).

1815.406–4 Part III—List of documents, exhibits, and other attachments.

Section J. List of attachments. List here all the documents, exhibits, and other attachments making up the

solicitation package; give form number, name, date, and number of pages for each document; give type and identifier (for example, "Exhibit A"), name, and number of pages for each exhibit, appendix, or other attachment (for example: work frequency schedules, work breakdown structures, work statements, specifications, special requirements, or other documents too lengthy to be conveniently written into the solicitation proper).

1815.406-5 Part IV—Representations and Instructions.

(a) Section K, Representations, certifications, and other statements of offerors or quoters. See 1845.104(b).

(b) Section L, Instructions, conditions, and notices to offerors or quoters.

(1) State if the selected contractor will require access to classified information (see NMI 1650.1, Industrial Security Policies and Procedures).

(2) Indicate the method and format of price quotation desired (fixed-price or cost-reimbursement, if known at the time), including a reference to the necessity for cost or price breakdown.

(3) Describe the information required to support proposed prices; e.g., subcontract structure, purchasing system, royalty, and cost or price information (see FAR Subparts 15.7 and 15.8, and FAR Part 44).

(4) Include instructions for disposing of drawings and specifications supplied with the solicitation.

(5) Include a statement of information required to facilitate evaluation of technical and financial capabilities and a statement covering special technical capabilities any contractors must possess.

(6) Include an instruction reflecting desirability of a separation between the offeror's business management proposal and technical proposal. For evaluation purposes, separate proposals, if time permits, should be received; therefore the format should be flexible enough to permit separate requirements (see 1815.406-70).

(7) State that the solicitation does not commit the Government to pay any cost incurred in submitting the offer or in making necessary studies or designs for its preparation, nor to contract for services or supplies.

(8) Include a statement that "PROPOSALS MUST SET FORTH FULL, ACCURATE, AND COMPLETE INFORMATION AS REQUIRED BY THE SOLICITATION (INCLUDING ATTACHMENTS). THE PENALTY FOR MAKING FALSE STATEMENTS IN PROPOSALS IS PRESCRIBED IN 18 U.S.C. 1001."

b. In 1815.407-70, paragraphs (c) through (i) are added to read as follows:

1815.407-70 NASA solicitation provisions.

* * * * *

(c) The contracting officer may insert a provision substantially as stated at 1852.215-74, Alternate Proposals, in competitive requests for proposals if receipt of alternate proposals would benefit the Government. See FAR 52.215-13(d).

(d) In accordance with 1815.406-5(b)(7), the contracting officer shall insert the provision at 1852.215-75, Expenses Related to Offeror Submissions, in all requests for proposals.

(e) In accordance with 1815.406-5(b)(8), the contracting officer shall insert the provision at 1852.215-76, False Statements, in all requests for proposals to advise offerors of the penalty for making false statements in proposals.

(f) The contracting officer shall insert the provision at 1852.215-77, Preproposal/Pre-bid Conference, in competitive requests for proposals and invitations for bids where the Government intends to conduct a preproposal or pre-bid conference. Insert the appropriate specific information relating to the conference. Supplemental information, such as an agenda summary and whether a tour is included, may be identified in "Other Information."

(g) The contracting officer shall insert the provision at 1852.215-80, Disposal of Unsuccessful Proposals, in competitive requests for proposals.

(h) For grouping items in the solicitation in contemplation of an aggregate award, see 1814.201-670(b).

(i) For requiring full quantities to be proposed, see 1814.201-670(c).

17. Subpart 1815.7 is amended by adding 1815.708 and 1815.708-70 to read as follows:

1815.708 Contract clause.

1815.708-70 NASA contract clause.

(a) The contracting officer shall insert the provision at 1852.215-78, Make-or-Buy Program Requirements, in solicitations requiring make-or-buy programs as provided in FAR 15.703. This provision shall be used in conjunction with the clause at FAR 52.215-21, Changes or Additions to Make-or-Buy Program. The contracting officer may add an additional paragraph(s) identifying any other information required in order to evaluate the program.

(b) The contracting officer shall insert the clause at 1852.215-79, Price Adjustment for "Make-or-Buy" Changes, in contracts that include FAR 52.215-21 with its Alternate I or II. Insert in the appropriate columns the items that will be subject to a reduction in the contract value.

18. Subpart 1815.10 is amended by revising its title to read as follows:

Subpart 1815.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

PART 1816—TYPES OF CONTRACTS

19. Subpart 1816.2 is amended as set forth below:

a. Sections 1816.202 and 1816.202-70 are added to read as follows:

1816.202 Firm-fixed-price contracts.

1816.202-70 NASA contract clause.

The contracting officer shall insert the clause at 1852.216-78, Firm Fixed Price, in firm-fixed-price solicitations and contracts. Insert the appropriate amount in the resulting contract.

1816.203-4 [Amended]

b. In 1816.203-4, introductory paragraph (a), the references "1852.216-7001" and "-7002" are revised to read "1852.216-70" and "-71," respectively.

c. In 1816.203-4, paragraphs (a)(1) and (a)(2), the references "1852.216-7001" and "1852.216-7002" are revised to read "1852.216-70" and "1852.216-71," respectively.

d. In 1816.203-4, paragraph (g), the reference "1852.216-7003" is revised to read "1852.216-72."

e. Sections 1816.207 and 1816.207-70 are added to read as follows:

1816.207 Firm-fixed-price, level-of-effort term contracts.

1816.207-70 NASA contract clause.

(a) The contracting officer shall insert a clause substantially as stated at 1852.216-79, Level-of-Effort (Fixed-Price), in fixed-price term solicitations and contracts. Insert the minimum direct labor hours, the labor categories and associated direct labor hours, and a formula or dollar amount as the rate(s) at which the fixed price may be reduced if the minimum direct labor hours have not been provided. If it is in the Government's interest, the labor category information may be simplified (e.g., "engineering" or "drafting") for smaller, less complex procurements.

(b) For task ordering procedures for firm-fixed-price, level-of-effort term contracts, see 1816.307-70 (d) and (e).

20. Subpart 1816.3 is amended by revising 1816.307 and 1816.307-70 to read as follows:

1816.307 Contract clauses.

(a) In solicitations and contracts containing the clause at FAR 52.216–8, Fixed Fee, or FAR 52.216–10, Incentive Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

(b) In subdivision (h)(2)(ii)(B) of the Allowable Cost and Payment clause at FAR 52.216–7, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (d) of the clause at FAR 52.215–1, Examination of Records by Comptroller General.

(c) In subdivision (g)(2)(ii) of the Allowable Cost and Payment—Facilities clause at FAR 52.216–13, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (d) of the clause at FAR 52.215–1, Examination of Records by Comptroller General.

1816.307–70 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.216–73, Estimated Cost and Cost Sharing, in each contract in which costs are shared by the contractor pursuant to 1816.303.

(b) The contracting officer may insert the clause at 1852.216–74, Estimated Cost and Fixed Fee, in cost-plus-fixed-fee contracts. Modifications to the clause are authorized.

(c) The contracting officer may insert the clause at 1852.216–75, Payment of Fixed Fee, in cost-plus-fixed contracts. Modifications to the clause are authorized.

(d) The contracting officer may insert a clause substantially as stated at 1852.216–80, Task Ordering Procedure, for level-of-effort term solicitations and contracts where (1) the Government desires to control and direct the contractual effort through the issuance of task orders and (2) the statement of work is conducive to issuance of task orders by the Government. This clause is applicable to both fixed-price and cost type term contracts. The contracting officer may modify, where appropriate, the contractor's task plan submission period.

(e) The contracting officer shall use the clause at 1852.216–80 with its Alternate I, which deletes the requirement for contractor task plans, if (1) direction in the task order is sufficiently defined, (2) submission of a contractor task plan would serve no useful purpose in clarifying the work to be performed, (3) the task order authorizes commencement of work on a particular date, and (4) the contractor acknowledges in writing that it will proceed with work in accordance with the task order.

(f) The contracting officer shall insert the clause at 1852.216–81, Estimated Cost, in cost no-fee contracts that are not cost sharing or facilities contracts. Insert the total estimated cost (value) of the contract.

(g) The contracting officer shall insert a clause substantially as stated at 1852.216–82, Level-of-Effort (Cost), in cost-plus-fixed-fee term solicitations and contracts. Insert the minimum and maximum percentages of direct labor hours, the labor categories and associated direct labor hours, and total direct labor hours. If it is in the Government's interest, the labor category information may be simplified (e.g., "engineering" or "drafting") for smaller, less complex procurements.

(h) The contracting officer may insert a clause substantially as stated at 1852.232–87, Submission of Vouchers for Payment, in cost-reimbursement solicitations and contracts. Insert the contract number and mailing addresses for submission of vouchers.

21. Subpart 1816.4 is amended by revising 1816.405 and adding 1816.405–70 to read as follows:

1816.405 Contract clauses.

1816.405–70 NASA contract clauses.

(a) As authorized by FAR 16.405(e), the contracting officer shall insert the clause at 1852.216–76, Award Fee, in solicitations and contracts when a cost-plus-award-fee contract is contemplated.

(b) The contracting officer may insert a clause substantially as stated at 1852.216–83, Fixed Price Incentive, in fixed price incentive solicitations and contracts utilizing firm or successive targets. See FAR 52.216–16 and 52.216–17. Insert the appropriate amounts. For items to be subject to incentive price revision, identify the target cost, target profit, target price, and ceiling price for each item.

(c) The contracting officer shall insert the clause at 1852.216–84, Estimated Cost and Incentive Fee, in cost-plus-incentive-fee solicitations and contracts. Insert the appropriate target cost and fee amounts.

(d) The contracting officer may insert a clause substantially as stated at 1852.216–85, Estimated Cost and Award Fee, in cost-plus-award-fee solicitations and contracts. Insert the applicable cost and fee information for the particular procurement. If there is no base fee, delete the statements regarding base fee or specify $"0" (zero) base fee.

22. Subpart 1816.6 is amended by adding 1816.603–4 and 1816.603–470 to read as follows:

1816.603–4 Contract clause.

1816.603–470 NASA contract clause.

The contracting officer may insert a clause substantially as stated at 1852.216–86, Settlement of Letter Contract, in contracts definitizing letter contracts. Insert the appropriate letter contract number, date, and modification numbers.

PART 1817—SPECIAL CONTRACTING METHODS

1817.204 [Amended]

23. In 1817.204, paragraph (a), the first sentence is removed, and the following sentence is added in its place: "The 5-year limitation (basic plus option periods) set forth in FAR 17.204(e) shall apply to all NASA contracts regardless of type."

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

24. Part 1819 is amended as set forth below:

a. Subpart 1819.1 is added to read as follows:

Subpart 1819.1—Size Standards

1819.170 Contract clause.

The contracting officer shall insert the provision at 1852.219–72, Standard Industrial Classification (SIC) Code and Small Business Size Standard, in all solicitations. Insert the applicable SIC code and small business size information (either the number of employees, or the dollar value in average annual receipts for the last three (3) fiscal years for the particular procurement).

b. In Subpart 1819.7, 1819.708 and 1819.708–70 are added to read as follows:

1819.708 Solicitation provisions and contract clauses.

1819.708–70 NASA solicitation provision.

The contracting officer shall insert the provision at 1852.219–73, Small Business and Small Disadvantaged Business Subcontracting Plan, in solicitations containing the clause at FAR 52.219–9.

Insert in the last sentence the number of calendar days after request that the offeror must submit a complete plan.

When offerors are to include subcontracting plans in their initial offer as contemplated by FAR 19.705–2(d), or if a noncompetitive solicitation will be issued, the contracting officer may use the provision with its Alternate I.

c. In Subpart 1819.8, 1819.809–1 is revised to read as follows:

1819.809–1 General.

The contracting officer shall accomplish internal NASA distribution of both the prime contract and the subcontract and provide SBA a duplicate original copy of the executed prime contract and any additional authenticated, conformed, or reproduced copies SBA requests. The SBA will provide the contracting officer two duplicate original copies of the executed subcontract and any additional authenticated, conformed, or reproduced copies the contracting officer requests for internal NASA distribution.

PART 1823—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

25. Part 1823 is amended as set forth below:

a. Section 1823.303–70 is revised to read as follows:

1823.303–70 NASA clause.

The contracting officer shall insert the clause at 1852.223–72, Potentially Hazardous Items, in solicitations and contracts involving potentially hazardous items or components. Insert the potentially hazardous items or components.

b. In 1823.7004, paragraphs (e) and (f) are added to read as follows:

1823.7004 Contract clause.

* * * * *

(e) The contracting officer shall insert the provision at 1852.223–73, Safety and Health Plan, in solicitations containing the clause at 1852.223–70, when a Safety and Health Plan is to be submitted with the offeror's proposal. This clause may be modified to identify specific information that is to be included in the plan. The contracting officer shall include the plan, as approved by the contracting officer, in any resulting contract. See 1852.223–70.

(f) When the installation safety/health officials recommend that a Safety and Health Plan be submitted by the apparently successful offeror after notification of selection but before contract award, the clause at 1852.223–73 shall be used with its Alternate I.

PART 1825—FOREIGN ACQUISITION

26. Part 1825 is amended as set forth below:

a. In Subpart 1825.4, 1825.405 is revised, and 1825.407 and 1825.407–70 are added to read as follows:

1825.405 Procedures.

Solicitations shall require that applicable duty charges be included in the offered price, whether or not duty free certificates are obtained. Duty charges shall be included in the price evaluation.

1825.407 Solicitation provision and contract clause.

1825.407–70 NASA solicitation provision.

In accordance with FAR 25.405(d), the contracting officer shall insert the provision at 1852.225–72, Offer in English Language and U.S. Dollars, in solicitations subject to the Trade Agreements Act of 1979.

b. In Subpart 1825.6, 1825.605 and 1825.605–70 are added to read as follows:

1825.605 Contract clause.

1825.605–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.225–73, Duty-Free Entry Supplies, in solicitations and contracts where the possibility exists of receiving duty-free supplies. Insert the supplies that are to be accorded duty-free entry in accordance with FAR 25.604 and 1825.604.

1825.703 [Amended]

c. In 1825.703, paragraph (a) and the paragraph (b) designator are removed.

Subpart 1825.9—[Amended]

1825.904 Determination and findings.

1825.903–70 [Redesignated as 1825.904–70]

d. In Subpart 1825.9, 1825.904 is added, and 1825.903–70 is redesignated 1825.904–70.

PART 1827—PATENTS, DATA, AND COPYRIGHTS

27. Subpart 1827.3 is amended as set forth below:

a. Section 1827.303 is added to read as follows:

1827.303 Contract clauses.

In accordance with FAR 27.303, see 1827.373 for directions for using the clauses at FAR 52.227–11 and 52.227–13.

b. In section 1827.373, the title and paragraphs (a)(1) through (a)(3) are revised, and (a)(4) is added to read as follows:

1827.373 Contract clauses and solicitation provisions.

(a) Patent rights—retention by the contractor (short form).

(1) The contracting officer shall insert the clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form), in any contract (and solicitation therefor) with a small business firm or a nonprofit organization for the performance of experimental, developmental, or research work unless a determination is made to use another clause in accordance with one of the exceptions set forth in paragraph (c) below. The clause shall be modified as specified in paragraph (a)(4) below. Also, see paragraph (f) below and 1827.374–4.

(2) If the acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement, or if the Administrator determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or to-be-entered-into treaty or agreement, the contracting officer shall use the clause with its Alternate I.

(3) To qualify for the clause at FAR 52.227–11, a prospective contractor may be required to certify that it is either a small business firm or a nonprofit organization. If there is reason to question the status of the prospective contractor, the contracting officer may file a protest in accordance with 13 CFR 121.3–5 if small business firm status is questioned or requires the prospective contractor to furnish evidence of its status as a nonprofit organization.

(4) When the clause at FAR 52.227–11 is included in a solicitation or contract, it shall be modified as authorized in FAR 27.303(a)(2) by adding the following subparagraphs to paragraph (f):

(5) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as the Contracting Officer may specify) from the date of the contract, listing subject inventions made during that period and certifying that all have been disclosed or that there are none.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or certifying that there were none, and listing all subcontracts at any tier that contain a patent rights clause or certifying that there were none.

(6) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause, by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon the Contracting

Officer's request, the Contractor shall furnish a copy of that subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(7) The Contractor shall provide, upon request, the filing date, serial number, and title; a copy of the patent application (including an English language version if filed in a language other than English); and the patent number and issue date for any subject invention for which the Contractor has retained title.

(8) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

* * * * *

1827.374-1 [Amended]

c. In 1827.374-1, paragraph (d), the reference "1852.227-11" is revised to read "1827.373(a)."

1827.374-4 [Amended]

d. In 1827.374-4, paragraph (a)(2), the reference "1852.227-11," is revised to read "1827.373(a),".

28. Subpart 1827.4 is amended as set forth below:

1827.404 [Amended]

a. In 1827.404, paragraph (e)(1), the phrase "and 1852.227-14" is removed.

1827.405 [Amended]

b. In 1827.405, paragraph (a)(1), the phrase "and 1852.227-19" is removed, and in paragraph (a)(2), the reference "1852.227-19)" is revised to read "1827.409(g))".

c. Section 1827.409 is amended by revising paragraphs (e), (f), (g), and (h) to read as follows:

1827.409 Solicitation provisions and contract clauses.

* * * * *

(e) In accordance with 1827.404(e)(1), the contracting officer shall add the following subparagraph (d)(3) to paragraph (d) of the clause at FAR 52.227-14, Rights in Data—General, except in solicitations and contracts for basic or applied research with universities or colleges:

(d)(3) The Contractor agrees not to establish claim to copyright or publish or release to others any computer software first produced in the performance of this contract without the Contracting Officer's prior written permission.

(f) In accordance with 1827.405(a)(1), the contracting officer shall add the following paragraph (e) to the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights, when it is contemplated that updates, correction notices, consultation information, and other similar items of information relating to commercial computer software delivered under a purchase order or contract are available and their receipt can be facilitated by signing a vendor supplied agreement, registration forms, or cards and returning them directly to the vendor:

(e) For the purposes of receiving updates, correction notices, consultation information, or other similar information regarding any computer software delivered under this contract/purchase order, the NASA Contracting Officer or the NASA Contract Technical Representative/User may sign any vendor-supplied agreements registration forms, or cards and return them directly to the vendor; however, such signing shall not alter any of the rights or obligations of either NASA or the vendor set forth in this clause or elsewhere in this contract/purchase order.

(g) In accordance with 1827.405(a)(2), the contracting officer shall add the following paragraph (f) to the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights, when portions of a contractor's standard commercial license or lease agreement consistent with the clause, Federal laws, standard industry practices, and the FAR are to be incorporated into the purchase order or contract:

(f) Subject to paragraphs (a) through (g) above, those applicable portions of the Contractor's standard commercial license or lease agreement pertaining to any computer software delivered under this purchase order/contract that are consistent with Federal laws, standard industry practices, and the Federal Acquisition Regulation (FAR) shall be incorporated into and made part of this purchase order/contract.

(h) In accordance with 1827.405(a)(3), the contracting officer shall use the clause at 1852.227-86, Commercial Computer Software—Licensing, in lieu of the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights, when it is considered appropriate for the acquisition of existing computer software in accordance with FAR 27.405(b)(2).

PART 1828—BONDS AND INSURANCE

29. Subpart 1828.1 is amended by adding 1828.101 and 1828.101-70 to read as follows:

1828.101 Bid guarantees.

1828.101-70 NASA solicitation provision.

In accordance with FAR 28.101, the contracting officer shall insert the provision at 1852.228-73, Bid Bond, in construction solicitations where offers are expected to exceed $25,000, and a performance bond or a performance and payment bond is required. The contracting officer may increase the amount of the bid bond to protect the Government from loss, as long as the amount does not exceed $3 million. This provision may be used in other than construction procurements if the requirements of FAR 28.103 have been complied with.

30. Subpart 1828.3 is amended as set forth below:

a. In 1828.305, paragraph (b)(2) and (b)(2)(ii) are revised to read as follows:

1828.305 Overseas workers' compensation and war-hazard insurance.

* * * * *

(b) * * *

(1) * * *

(2) The Schedule of each contract containing the clause at 1852.228-77, Reimbursement for War-Hazard Losses, shall contain an estimated cost for war-hazard losses, derived in accordance with (i) below, and a statement similar to that set forth in (ii) below:

(i) * * *

(ii) "The portion of this contract providing for the new contractor to afford protection to its employees and subcontractors to their employees against war-hazard risks (see the clauses at 52.228-4 of the Federal Acquisition Regulation (FAR) and 1852.228-77 of the NASA FAR Supplement) is on a cost-reimbursement, no-fee basis, notwithstanding the basis of the remainder of the contract."

1828.309 [Amended]

c. In 1828.309, the reference "1852.228-470" is revised to read "1852.228-77."

1828.370 [Amended]

d. In 1828.370, paragraph (a) is revised, and paragraph (c) is added to read as follows:

1828.370 Fixed-price contract clauses.

(a) The contracting officer shall insert the clause at 1852.228-70, Aircraft Ground and Flight Risk, in all negotiated fixed-price contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except as provided in paragraph (b) below, unless the aircraft are covered by a separate bailment. See the clause preface for directions for modifying the clause to accommodate various circumstances.

* * * * *

(c) When the clause at 1852.228-70 is used, the term "Contractor's premises" shall be expressly defined in the contract Schedule and shall be limited to places where aircraft may be located

during and for the performance of the contract. Contractor's premises may include, but are not limited to, those owned or leased by the contractor or those for which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

PART 1833—PROTESTS, DISPUTES, AND APPEALS

31. Subpart 1833.1 is amended by revising 1833.103 and 1833.104 to read as follows:

§ 1833.103 Protests to the agency.

(a) Immediately upon learning that a protest has been filed, the contracting officer shall notify the Headquarters Procurement Policy Division (Code HP). If the protest is filed directly with an installation, any determination under FAR 33.103(a) to award the contract before the protest is resolved will be made by the contracting officer. If the protest is filed with NASA Headquarters, any such determination will be made by the Assistant Administrator for Procurement.

(b) When a protest is filed directly with an installation or with NASA Headquarters, the contracting officer shall provide any notice under FAR 33.103(b)(1) to offerors whose offers might become eligible for award.

(c) For protests filed with NASA Headquarters, the contracting officer shall forward to the Procurement Policy Division (Code HP) within 10 work days a report essentially the same as that required by FAR 33.104(a)(3).

§ 1833.104 Protests to GAO.

(a) *General.* (1) NASA personnel shall take no action to respond to or resolve any protest filed with GAO other than in accordance with this Regulation.

(2) Upon receiving any communication from a protester or the GAO regarding a protest, the cognizant procurement officer shall immediately contact Code HP for guidance. Conversely, upon Headquarters receipt of notice from GAO of the filing of a protest, Code HP shall immediately notify the cognizant procurement officer. This is usually done via telephone and constitutes the official notice to the installation that a protest has been filed. Within three work days of being notified, the contracting officer shall forward to Headquarters (Code HP) a copy of the procurement file including all documents referred to in FAR 33.104(a)(3) (i) through (vi) and any others requested by Code HP. The contracting officer's statement (FAR 33.104(a)(3)(vi)) shall be forwarded no later than ten work days after the contracting officer has been notified. If more time is needed, requests for extension may be made by telephone to Headquarters, Code HP. When the GAO elects to use its express option procedure, the contracting officer's statement shall be forwarded to Code HP within six work days after the contracting officer has been notified. If that is not possible, a report to Code HP shall be made by telephone.

(3) The notices required by FAR 33.104(a)(4) shall be made by the contracting officer.

(4) The report required by FAR 33.104(a)(5) shall be filed by Headquarters (Code HP).

(5) Headquarters (Code HP) shall furnish copies of the report as required by FAR 33.104(a)(6) and, in consultation with the Office of General Counsel, decide which documents are relevant.

(6) Headquarters (Code HP) shall provide the information required by FAR 33.104(a)(7) to the GAO.

(b) *Protests before award.* (1) The contracting officer shall provide Headquarters (Code HP) with information and recommendations relevant to a determination under FAR 33.104(b)(1) to award a contract prior to resolution of a protest. Any such determination shall be made by the Assistant Administrator for Procurement, who for purposes of this requirement is the "head of the contracting activity." The notification to GAO required by FAR 33.104(b)(2) will be made by Code HP.

(2) The contracting officer shall make the notifications and requests required by FAR 33.104(b)(3).

(c) *Protests after award.* (1) Any request for a determination under FAR 33.104(c)(2) to authorize performance notwithstanding a protest shall be submitted to Headquarters (Code HP). Any such determination shall be made by the Assistant Administrator for Procurement who, for purposes of this requirement, is the "head of the contracting activity." The notification to GAO required by FAR 33.104(c)(3) shall be made by Code HP.

(2) Under FAR 33.104(c)(4), the contracting officer shall consult with Headquarters (Code HP) before terminating a protested contract. If FAR 33.104(c)(5) applies, the contracting officer shall consult with Code HP before taking any action.

(d) *Document requests.* If the protester in its protest statement or later in the process requests documents under FAR 33.104(a)(2), the contracting officer shall forward them to Code HP with the documents required by 1833.104(a)(3), within three work days of receipt of the request. Concurrently, the contracting officer shall within 1 work day provide copies of the protest statement, the document request if separate from the protest statement, and the requested documents to the installation Chief Counsel who will prepare a written recommendation on the release of the documents. This recommendation will be provided to the contracting officer with copies to Headquarters (Code HP) and the Associate General Counsel for Contracts (Code GK) for incorporation into the Administrative Report.

(e) *Conferences.* Representatives from Code HP and Code GK, and those installation representatives designated by Code HP or requested by the GAO will attend conferences held in accordance with FAR 33.104(e).

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

32. Part 1836 is amended by adding Subpart 1836.5 to read as follows:

Subpart 1836.5—Contract Clauses

Subpart 1836.5—Contract Clauses

1836.570 NASA contract clauses.

1836.57001 Hurricane plan.

The contracting officer shall insert the clause at 1852.236–73, Hurricane Plan, in solicitations and contracts for construction at sites that experience hurricanes.

1836.57002 Magnitude of requirement.

The contracting officer shall insert the provision at 1852.236–74, Magnitude of Requirement, in solicitations for construction. Insert the appropriate estimated dollar range in accordance with FAR 36.204.

PART 1837—SERVICE CONTRACTING

33. Subpart 1837.1 is amended by adding 1837.110 and 1837.110–70 to read as follows:

1837.110 Solicitation provisions and contract clauses.

1837.110–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.237–70, Emergency Evacuation Procedures, in solicitations and contracts for on-site support services where emergency evacuations of the NASA installation may occur, e.g., snow, hurricanes, tornados, earthquakes, or other emergencies.

PART 1842—CONTRACT ADMINISTRATION

34. Part 1842 is amended as set forth below:

1842.803 [Amended]

a. In 1842.802, paragraph (c)(5), the name "General Accounting Office." is removed, and the name "General Services Administration." is added in its place.

b. Subpart 1842.70 is revised to read as follows:

Subpart 1842.70—NASA Contract Clauses

1842.7001 Technical direction.

The contracting officer shall insert the clause at 1852.242–70, Technical Direction, in cost-reimbursement solicitations and contracts if (1) technical direction as defined in the clause (which includes the Government's approving approaches and solutions of the contractor and shifting emphasis among work areas or tasks) is appropriate to accomplish the contract requirements effectively, (2) the statement of work is conducive to technical direction by the Government, and (3) technical direction is to be in writing. Identify this duty in subparagraph 3(m), "Other duties as follows" of NASA Form 1634 (see 1842.270). This clause addresses COTR responsibilities that are in addition to those discussed in subparagraphs 3(a)–(1) of the COTR delegation and is not intended to be followed in fulfilling those other responsibilities. The clause is not authorized for use with institutions of higher education and other non-profit organizations.

1842.7002 Travel outside of the United States.

(a) The contracting officer shall insert the clause at 1852.242–71, Travel Outside of the United States, in cost-reimbursement solicitations and contracts where a contractor may travel outside of the United States and it is appropriate to require Government approval of the travel.

(b) Add Alternate I to the clause at 1852.242–71 if the contractor is an institution of higher education or other nonprofit organization.

1842.7003 Observance of legal holidays.

(a) The contracting officer shall insert the clause at 1852.242–72, Observance of Legal Holidays, in contracts when notification to the contractor of Government holidays would be useful in administering the contract.

(b) The clause shall be used with its Alternate I in cost-reimbursement contracts when work will be performed at a NASA installation and it is desired that contractor employees observe the same holidays as Government employees. This alternate may be appropriately modified for fixed-price contracts.

PART 1848—VALUE ENGINEERING

35. Part 1848 is amended by revising Subparts 1848.1 and 1848.2 to read as follows:

Subpart 1848.1—Policies and Procedures

Subpart 1848.2—Contract Clauses

Subpart 1848.1—Policies and Procedures

1848.102 Policies.

(a) Contracting officers shall include value engineering (VE) clauses in appropriate supply, service, architect-engineer, and construction contracts as prescribed in FAR Subpart 48.2, except when exemptions are granted on a case-by-case basis, or for specific classes of contracts, by the Assistant Administrator for Procurement

(b) Generally, profit or fee on the instant contract should not be adjusted downward as a result of acceptance of a VE change proposal (VECP). Profit or fee shall be excluded when calculating instant or future contract savings, except that in calculating instant or future contract savings on firm-fixed-price contracts when the parties have not set out a specific figure for profit, the contracting officer shall use the total contract price as the basis for calculating the savings.

(c) The FAR requires agencies to establish procedures for funding and payment of the contractor's share of collateral savings and future contract savings. In accordance with 1848.103, the contracting officer shall notify the responsible technical official of the potential for awarding the contractor future or collateral savings if the submitted VECP is accepted. Upon acceptance, the contracting officer shall obtain the concurrence of the program office and amend the instant contract to reflect payment of future or collateral savings.

1848.103 Processing value engineering change proposals.

(a) The contracting officer shall document the contract file with the rationale for accepting or rejecting the VECP.

(b) Upon receipt of a VECP, the contracting officer shall promptly forward it to the technical officer responsible for the contract, indicating—

(1) The date the VECP was received;

(2) The date by which the contractor must be informed of the Government's acceptance or rejection of the VECP unless additional time is required for evaluation;

(3) The date by which the contracting officer must know of the technical officer's decision in order to timely accept or reject the VECP;

(4) The need for information required to inform the contractor if the VECP is to be rejected or if additional time is needed for evaluating the VECP;

(5) The potential for awarding concurrent, future, or collateral savings to the contractor if the VECP is accepted;

(6) That if the VECP is accepted, precise information will be needed with regard to the type of savings, Government costs, etc., that can be expected from its acceptance;

(7) The need for a procurement request setting forth the specification changes to be used in any contract modification accepting the VECP in whole or in part; and

(8) The need for additional funds if acceptance of the VECP results in negative instant contract savings.

1848.104 Sharing arrangements.

1848.104–2 Sharing collateral savings.

The contracting officer may make the determination that the cost of calculating and tracking collateral savings will exceed the benefits to be derived.

Subpart 1848.2—Contract Clauses

1848.201 Clauses for supply or service contracts.

1848.201–70 NASA conditions.

(a) Insertion of a VE clause in solicitations and contracts over $100,000 applies with respect to the VE incentive clause and the exceptions set out in FAR 48.201(a) (1) through (5). However, the Administrator is not authorized to exempt the agency completely from the requirements of FAR Part 48 (see 48.201(a)(6)). The contracting office shall omit the VE incentive clause when the Administrator has exempted a contract or a class of contracts from the

requirements of FAR Part 48, unless the head of the contracting activity authorizes its inclusion.

(b) NASA contracting officers shall insert the VE program requirement clause (the clause at FAR 52.248–1 used with its Alternative I or II) in (1) initial production contracts for major systems and (2) major systems research R&D and development contracts for full-scale development, unless the contracting officer determines that its use is inappropriate and documents the file to reflect that determination. The VE program requirement clause is appropriate for an R&D major systems contract only if the contract specifications contain detailed requirements that, in the contracting officer's judgment, lend themselves to VE.

(c) The contracting officer may not insert either the VE incentive clause or the VE program requirement clause in an R&D contract where the statement of work is essentially an incorpration by reference of the propospective contractor's proposal. If any other part of the statement of work in such a contract reflects a Government specification that might profit from or be improved by application of VE techniques, the contracting officer shall consider inserting the VE incentive clause or VE program requirement clause, to refer to that part.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

36. Part 1852 is amended as set forth below:

1852.102 and 1852.102–2 [Removed]

a. Sections 1852.102 and 1852.102–2 are removed.

b. Section 1852.103–70 is revised to read as follows:

1852.103–70 Identification of modified provisions and clauses.

When a FAR clause or provision is included in a solicitation or contract and the NFS prescribes a modification, the title line shall identify the modification as shown below. This format shall be used both for incorporation by reference and when using full text.

"52.232–22 Limitation of Funds (APR 1984)—as modified by NASA FAR Supplement 1832.705–270(d)"

38. Subpart 1852.2 is amended as set forth below:

a. Sections 1852.203–70, 1852.204–70, 1852.204–71, and 1852.204–72 are revised to read as follows:

1852.203–70 Contracts between NASA and former NASA employees.

As prescribed in 1803.7002, insert the following provision in all solicitations except IFB's:

CONTRACTS BETWEEN NASA AND FORMER NASA EMPLOYEES (DECEMBER 1988)

The offeror represents that he or she ( ) is, or ( ) is not, an individual who was employed by NASA during the past two years, or a firm in which such an individual is a partner, principal officer, or majority shareholder or that is otherwise controlled or predominantly staffed by such individuals. (End of provision.)

1852.204–70 Report on NASA subcontracts.

As prescribed in 1804.672, insert the following clause in all NASA contracts of $500,000 or more or when a modification increases the amount of a contract to $500,000 or more:

REPORT ON NASA SUBCONTRACTS (DECEMBER 1988)

(a) The Contractor shall submit information on NASA Form 667 to the National Aeronautics and Space Administration (Code HM), Washington, DC 20546, substantially as follows with respect to each subcontract or subcontract modification exceeding $10,000 as soon as possible after its execution:

(1) The name and address of the prime contractor and the NASA prime contract number.

(2) The name and address of the subcontractor.

(3) Whether the subcontractor is a large or small business concern and/or a minority business concern.

(4) Whether the type of effort being performed involves research and development.

(5) A brief description of the subcontract work.

(6) The amount of the subcontract.

(7) The principal location where the subcontract work is to be performed, if known.

(b) The Contractor and its subcontractors shall submit negative reports annually, if applicable, on each prime contract and first-tier subcontract subject to this reporting requirement. These negative reports shall be submitted not later than October 31 for the 12-month period ending September 30th of each year. The negative reporting shall be continued until the contract or subcontract has been physically completed and the National Aeronautics and Space Administration (Code HM), Washington, DC 20546, so notified by the Contractor or subcontractor.

(c) "Subcontract," as used in this clause, means procurement in excess of $10,000 by the Contractor or first-tier subcontractor of articles, materials, or services for performing this contract, except purchases, regardless of amount, of stock items, materials, or services that cannot be specifically identified with this contract.

(d) "Research and development," as used in this clause, means basic and applied research, and design and development of prototypes and processes, to (1) pursue a planned search for new knowledge, with or without reference to a specific application, (2) apply existing knowledge in the creation of new products or processes, or (3) apply existing knowledge in the improvement or modification of present products and processes. It excludes subcontracts for the purchase of standard commercial items and services.

(e) The Contractor shall—

(1) Insert the provisions of paragraphs (a), (b), (c), and (d) above in each subcontract over $50,000;

(2) Instruct its subcontractors to submit their reports directly to the National Aeronautics and Space Administration (Code HM), Washington, DC 20546; and

(3) Provide its subcontractors with the number of the NASA prime contract. (End of clause.)

1852.204–71 NASA Contractor financial management reporting.

As prescribed in 1804.675–1(a), insert the following clause in contracts that require submission of any of the NASA Form 533 series of reports (excluding Form 533P).

NASA CONTRACTOR FINANCIAL MANAGEMENT REPORTING (DECEMBER 1988)

(a) The Contractor shall submit Financial Management Reports on NASA Form 533 in accordance with the instructions in Procedures for Contractor Reporting of Correlated Cost and Performance Data (NHB 9501.2B) and on the reverse side of the forms, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall be correlated with technical and schedule reporting, shall be set forth in the contract Schedule. Contractor implementation of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category and give due regard to the Contractor's established financial management information system.

(b) Lower level detail used by the Contractor for its own management purposes to validate information reported to NASA shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the contract Schedule or as designated in writing by the Contracting Officer. Upon completion and acceptance by NASA of all contract Schedule line items, the Contracting Officer may direct the Contractor to submit Form 533 reports on a quarterly basis only.

(d) The Contractor shall insert the substance of this clause in all first-tier cost-reimbursement subcontracts specifically identified in writing by the Contracting Officer and shall include their cost in its cost reports.

(e) If during the performance of this contract NASA requires a change in the

information or reporting requirements specified in the Schedule, or as provided for in paragraph (a) or (c) above, the Contracting Officer shall effect that change in accordance with the Changes clause of this contract. (End of clause.)

1852.204-72 NASA contractor financial management reporting (performance analysis report).

As prescribed in 1804.675-1(b), insert the following clause in contracts that require submission of NASA Form 533P in addition to the Form 533 series submission prescribed at 1804.675-1(a).

NASA CONTRACTOR FINANCIAL MANAGEMENT REPORTING (PERFORMANCE ANALYSIS REPORT) (DECEMBER 1988)

Monthly reporting of contract performance shall be accomplished on the NASA Monthly Contractor Financial Management Performance Analysis Report (NASA Form 533P) in accordance with the instructions In Procedures for Contractor Reporting of Correlated Cost and Performance Data (NHB 9501.2B) and on the reverse side of the form, as supplemented in the Schedule of this contract. (End of clause.)

1852.204-73 [Removed]

b. Section 1852.204-73 is removed.

c. Sections 1852.204-74 and 1852.204-75 are added to read as follows:

1852.204-74 Approval official.

As prescribed in 1804.103, insert the following clause:

APPROVAL OFFICIAL (DECEMBER 1988)

This contract is subject to the written approval of the _____ [Insert either "NASA Assistant Administrator" or "Procurement Officer"], in accordance with Federal Acquisition Regulation clause 52.204-1, Approval of Contract. (End of clause.)

1852.204-75 Security classification requirements.

As prescribed in 1804.404-70, insert the following clause:

SECURITY CLASSIFICATION REQUIREMENTS (DECEMBER 1988)

Performance under this contract will involve access to and/or generation of classified information, work in a security area, or both, up to the level of _____ [insert the applicable security clearance level]. See Federal Acquisition Regulation clause 52.204-2 in this contract and DD Form 254, Contract Security Classification Specification, Attachment _____ [Insert the attachment number of the DD Form 254]. The offeror selected for award of this procurement shall be required to execute a DoD Security Agreement (DD Form 441), which binds the contractor to observe the provisions of the DoD Industrial Security Manual. (End of clause.)

d. Sections 1852.208-70, 1852.208-71, 1852.208-72, 1852.208-73, 1852.208-74, 1852.208-75, 1852.208-76, 1852.208-77, 1852.208-78, 1852.208-79, and 1852.208-80 are added to read as follows:

1852.208-70 Rates.

As prescribed in 1808.309, insert the following clause:

RATES (DECEMBER 1988)

(a) The Contractor shall be paid at the rates set out in Appendix A, provided that the Government shall be liable for any minimum monthly charge specified in this contract commencing with the billing period in which service is initially furnished and continuing until the contract is terminated, except that this charge shall be equitably prorated for the billing periods in which commencement and termination of this contract become effective.

(b) The Contractor hereby certifies that the rates for the service furnished under this contract do not exceed the lowest rates available to any prospective customer under like conditions, and agrees that during the life of this contract the Government shall continue to be billed at the lowest rates applicable for similar conditions of service. (End of clause.)

1852.208-71 Public regulation and change of rates.

As prescribed in 1808.309, insert the following clause:

PUBLIC REGULATION AND CHANGE OF RATES (DECEMBER 1988)

(a) Rates under this contract shall be subject to regulation in the manner and to the extent prescribed by law by any Federal, State, or local regulatory agency having jurisdiction. The Contractor agrees to give the Contracting Officer written notice of the filing of an application for rate changes concurrently with the filing of the application. Such notice shall fully describe the proposed changes.

(b) If during the term of this contract the public regulatory agency having jurisdiction approves rates higher or lower than those stipulated in this contract, for like conditions of service, the Contractor agrees to continue to furnish service as stipulated in the contract and the Government agrees to pay the changed rates from the date they are made effective.

(c) If the regulatory agency promulgates any regulation concerning matters other than rates that affects this contract, the Contractor shall immediately notify the Contracting Officer. The Government shall not be bound to accept any new regulation inconsistent with Federal laws or regulations.

(d) If the Contractor, during the term of this contract, makes effective any new or amended rate schedule for the class of service furnished the Government at the service location that contains lower rates or conditions more favorable to the Government, the Contractor shall (1) forward to the Contracting Officer a copy of the schedule within 15 days after its effective date and, upon receipt of written request from the Government, (2) substitute the new or amended schedule for the one then in effect under this contract for that service location, commencing with the billing period in which the request is received. (End of clause.)

1852.208-72 Change in class of service.

As prescribed in 1808.309, insert the following clause:

CHANGE IN CLASS OF SERVICE (DECEMBER 1988)

(a) In the event of a permanent change in the class of service furnished the Government at the service location, service shall be furnished to that service location at the lowest available rate schedule of the Contractor applicable to the class of service furnished following that permanent change, subject to the Rates clause of this contract.

(b) If the Contractor's rate schedule on file with the regulatory agency and applicable to services provided by the Contractor does not contain a schedule applicable to the class of service furnished the Government, no clause in this contract shall preclude the parties from negotiating a rate schedule applicable to the class of service furnished. (End of clause.)

1852.208-73 Contractor's facilities.

As prescribed in 1808.309, insert the following clause:

CONTRACTOR'S FACILITIES (DECEMBER 1988)

(a) The Contractor, at its expense, shall furnish, install, operate, and maintain all facilities required to furnish service under this contract to, and measure that service as of, the point of delivery specified in the Service Specifications. Title to these facilities shall be and remain in the Contractor, and the Contractor shall be responsible for all loss of or damage to them.

(b) The Government hereby grants to the Contractor, free of any rental or similar charge, but subject to any limitations specified in this contract, a revocable permit or license to enter the service location for any proper purpose under this contract, including use of the site or sites agreed upon by the parties for the installation, operation, and maintenance of the facilities of the Contractor required to be located upon Government premises. These facilities shall be and remain the property of the Contractor and shall, at all times during the life of this contract and any renewals, be operated and maintained by the Contractor at its expense. All taxes and other charges in connection with these facilities, together with all liability arising out of their construction, operation, or maintenance, shall be borne by the Contractor.

(c) Authorized representatives of the Contractor shall be allowed access to the Contractor's facilities at suitable times to perform the Contractor's obligations regarding the facilities. The facilities shall be removed and Government premises restored to their original condition by the Contractor at its expense within a reasonable time after the Government revokes the permit or license granted by this clause and in any event within a reasonable time after termination of this contract, provided that if the contract is terminated for default, the facilities may be retained in place at the Government's option

until comparable service is obtained elsewhere.

(d) Proper Government authority may limit or restrict the right of access granted by this clause in any manner considered by that authority to be necessary for the national security. (End of clause.)

1852.208-74 Technical provisions.

As prescribed in 1808.309, insert the following clause. Minor changes may be made in it when insisted upon by the contractor to conform with established procedures or those in the contractor's published rates filed with a regulatory agency. The following types of changes, when made for this purpose, are not considered within the intent of 1808.307-71 relating to contracts requiring NASA Headquarters approval.

(a) *Measurement of service.* (1) The words "billed conjunctively" in the second sentence of clause subparagraph (a)(1) refer to the combination of similar quantities measured by two or more meters into a single quantity for the purpose of billing, as if the bill were prepared for a single meter. This sentence may be deleted, or the word "separately" may be inserted in lieu of the word "conjunctively," to conform to the contractor's regulated practice and/or when the schedule under which bills are computed is such that billing separately will be more economical than billing conjunctively.

(2) In clause subparagraph (a)(2), the periodic intervals prescribed between meter readings may be changed to conform to the contractor's regulated practice.

(b) *Meter test.* (1) The first sentence of clause paragraph (b), requiring testing at intervals not exceeding one year, may be changed to provide for meter tests in accordance with the contractor's regulated practice.

(2) In the third sentence of clause paragraph (b), the percentage error (shown as 2 percent) may be changed to comply with the Contractor's regulated practice.

(c) *Continuity of service and consumption.* (1) In clause subparagraph (d)(1), the adjustment provision may be deleted or changed, if necessary, to conform with the provisions of the contractor's field rate schedules. This subparagraph may be ended after the word "facilities" and before the word "provided." For the period, "10 hours" may be changed.

(2) Clause subparagraph (d)(2) may be deleted or changed, if the contractor's filed rates contain a provision requiring a continuation of demand or similar charges on a ready-to-serve basis during a period that the Government is unable to operate the service location for any cause beyond its control.

TECHNICAL PROVISIONS (DECEMBER 1988)

a) *Measurement of service.* (1) All service furnished by the Contractor shall be measured by suitable metering equipment of standard manufacture, to be furnished, installed, maintained, calibrated, and read by the Contractor at its expense. When two or more meters are installed at the service location, their readings shall be billed conjunctively. If any meter fails to register or registers incorrectly the service furnished through it, the parties shall agree upon the length of period during which it failed to register or registered incorrectly and the quantity of service delivered through it during that period, and, upon agreement, an appropriate adjustment shall be made in the Government's bills. For the purpose of the preceding sentence, any meter that registers not more than 2 percent slow or fast shall be deemed correct.

(2) The Contractor shall read meters on the same day of each month; if, however, that day falls on a Saturday, Sunday, or legal holiday, or if the Contractor is prevented from reading the meters on that day, the Contractor shall read the meters on the next succeeding business day on which it is able to do so, provided that (i) all bills based on meter reading intervals of less than 27 days or more than 33 days shall be prorated accordingly and (ii) there shall be no more than 12 billings in any one year.

(b) *Meter test.* The Contractor, at its expense, shall periodically inspect and test the meters installed by it at intervals not exceeding 1 year. At the written request of the Contracting Officer, the Contractor shall make additional tests of any or all of these meters in the presence of Government representatives. The cost of these additional tests shall be borne by the Government if the percentage of errors is found to be not more than 2 percent slow or fast. No meter may be placed or allowed to remain in service that has an error in registration exceeding 2 percent under normal operating conditions.

(c) *Change in volume or character.* Reasonable notice shall, so far as possible, be given by the Contracting Officer to the Contractor regarding any material changes proposed in the volume or characteristics of the utility service required at each location.

(d) *Continuity of service and consumption.* (1) The Contractor shall use reasonable diligence to provide a regular and uninterrupted supply of service at the service location, but shall not be liable for damages or breach of contract or otherwise to the Government for failure, suspension, diminution, or other variations of service occasioned by or in consequence of any cause beyond the Contractor's control, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, other catastrophes, strikes, or failure or breakdown of transmission or other facilities; provided that when any such failure, suspension, diminution, or variation aggregates more than 10 hours during any billing period, an equitable adjustment shall be made in the monthly rates specified in this contract (including the minimum monthly charge).

(2) If the Government cannot operate the service location in whole or in part for any cause beyond its control, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, other catastrophes, or strikes, an equitable adjustment shall be made in the monthly rates specified in this contract (including the minimum monthly charge) if the period during which the Government is unable to operate that service location in whole or in part exceeds 15 days during any billing period. (End of clause.)

1852.208-75 Renewal of contract.

As prescribed in 1808.309, insert the following clause:

RENEWAL OF CONTRACT (DECEMBER 1988)

This contract is renewable on an annual basis at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor at least _____ days before expiration. If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed ____ years. (End of clause.)

1852.208-76 Change in rates.

As prescribed in 1808.309, insert the following clause:

CHANGE IN RATES (DECEMBER 1988)

(a) If at any time during the term of this contract either of the parties considers it appropriate to change all or part of the rates applicable to the service furnished under this contract, the parties agree to promptly negotiate new rates upon receipt by one party of a written request from the other (1) specifying the rates to which a change is considered appropriate, (2) setting forth the proposed change, and (3) stating in detail the reasons for the proposed change. Any rate change agreed to by the parties as the result of such negotiations shall be made a part of this contract by the issuance of a supplemental agreement and shall become effective as of the date of the request for a change in rates, unless otherwise agreed.

(b) The Contractor agrees that a duly authorized representative of NASA shall have access to and the right to examine any pertinent books, documents, papers, or records of the Contractor relating to costs that form the basis for the rates. (End of clause.)

1852.208-77 Connection charge.

As prescribed in 1808.309, insert the following clause:

CONNECTION CHARGE (DECEMBER 1988)

(a) *Charge.* The Government, for the furnishing and installation by the Contractor at the Contractor's expense of the New Facilities described in Appendix C, attached to this contract and made a part of it, shall pay the Contractor, as a connection charge, after receipt of satisfactory evidence of completion of the facilities, $_____, representing the sum of $_____ less

the agreed salvage value in the amount of $_____, as shown in Appendix C; provided that, as a condition for final payment, the Contractor executes a release acceptable to the Contracting Officer of claims against the Government arising from that furnishing and installation.

(b) *Ownership, operation, and maintenance of new facilities to be provided.* The facilities to be supplied by the Contractor under this clause, notwithstanding the Government's payment of a connection charge, shall be and remain the property of the Contractor and shall, at all times during the life of this contract and any renewals, be operated and maintained by the Contractor at its expense. All taxes and other charges in connection with these facilities, together with all liability arising out of their construction, operation, or maintenance, shall be borne by the Contractor.

(c) *Credits.* (1) The Contractor agrees to allow the Government on each monthly bill for service furnished under this contract to the service location, a credit of ____ percent of the amount of each bill as rendered, until the accumulation of credits equals the amount of the connection charge, provided that the Contractor may at any time allow a credit up to 100 percent of the amount of each bill.

(2) If the Contractor, before any termination of this contract but after completion of the facilities provided for in this clause, serves any customer other than the Government (regardless of whether the Government is being served simultaneously, intermittently, or at all) by means of those facilities, the corresponding benefit to the Contractor is hereby recognized. It is therefore agreed that upon initiation of such service, the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge, or accelerate the credits provided for under subparagraph (1) above to 100 percent of each monthly bill, until there is fully credited a sum equitably representing the same proportion of the uncredited balance of the connection charge as of the date of initiation of such service (as agreed upon by the parties) as the portion of the facilities utilized in serving the other customer bears to the complete facilities described in Appendix C.

(d) *Termination before completion of facilities.* The Government reserves the right to terminate this contract at any time before completion of the facilities with respect to which the Government is to pay a connection charge. In the event the Government exercises this right, the Contractor shall be paid fair compensation, exclusive of profit, with respect to those facilities.

(e) *Termination after completion of facilities.* (1) *Termination by the government.* If the Government terminates this contract after completion of the facilities for which the Government is to pay a connection charge, but before the crediting in full by the Contractor or any connection charge in accordance with the terms of this contract, the possible continued usefulness of those facilities is hereby recognized. Upon such termination, the Contractor shall have the following options:

(i) To retain in place for 12 months or more after the notice of termination by the Government such facilities on condition that (A) if, during that period, the Contractor serves any other customer by means of the facilities, the Contractor shall, in lieu of allowing credits, pay the Government during the period installments in like amount, manner, and extent as the credits provided for under paragraph (c) of this clause before the termination, and (B) immediately after the period, the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge.

(ii) To remove such facilities at the Contractor's own expense within 12 months after the effective date of the termination by the Government; provided, that if the Contractor elects to remove them, the Government shall have the option of purchasing them at the agreed salvage value set forth in Appendix C; and provided further, that the Contractor shall, at the direction of the Government, leave in place such facilities located on Government property that the Contractor elects to remove and that the Government elects to purchase at the agreed salvage value.

(2) *Termination by the contractor.* If the Contractor teminates service under, or otherwise defaults in performance of, this contract before the crediting in full, in accordance with the terms of this contract, of any connection charge paid by the Government, the Contractor shall pay to the Government an amount equal to the uncredited balance of the connection charge as of the date of termination. (End of clause.)

1852.208–78 Termination charge.

As prescribed in 1808.309, insert the following clause and attach Appendix C to the contract when a payment is to be made to the contractor upon termination of service in lieu of a connection charge upon completion of the facilities. The length of time, not in excess of 60 months, as negotiated with the contractor shall be entered in the first blank. In the second blank, enter the amount of the maximum termination charge as negotiated with the contractor, but not in excess of the cost of facilities furnished and installed by the contractor less the agreed salvage value, as shown in Appendix C. Enter in the third blank the figure obtained by dividing the figure in the second blank by the figure in the first blank. The use of this clause does not affect the term of the contract; however, its use is subject to Headquarters approval in accordance with 1808.307–71.

TERMINATION CHARGE (DECEMBER 1988)

For the furnishing and installation by the Contractor at its expense of the New Facilities described in Appendix C, attached to this contract and made a part of it, the Government shall, in the event of termination of this contract by the Government before ____ months from the date on which service commences, pay the Contractor as a termination charge ____ less ____ multiplied by the number of months service has been received after the date of termination. (End of clause.)

1852.208–79 Multiple service locations.

As prescribed in 1808.309, insert the following clause:

MULTIPLE SERVICE LOCATIONS (DECEMBER 1988)

(a) The Contracting Officer may at any time, by written order, designate any service location within the Contractor's service area at which service shall be furnished or discontinued under the order, and the contract shall be modified in writing accordingly by adding to or deleting from the Service Specifications the name and location of the appropriate service location and specifying (1) a different rate if applicable, (2) the appropriate point of delivery, (3) different service specifications if applicable, and (4) any other appropriate terms and conditions.

(b) The minimum monthly charge specified in this contract shall be equitably prorated from the billing period in which commencement or discontinuance of service at any service location designated under the Service Specifications becomes effective. (End of clause.)

1852.208–80 Contractor's facilities (short form).

As prescribed in 1808.309, insert the following clause:

CONTRACTOR'S FACILITIES (SHORT FORM) (DECEMBER 1988)

The Contractor, at its expense, shall furnish, install, operate, maintain, retain title to, and be responsible for all loss of or damage to the facilities required to furnish the service provided for under this contract. The Contractor shall be allowed access to its facilities on Government premises at suitable times and shall, at the Contractor's expense, remove the facilities and restore the premises to their original condition within a reasonable time after this contract's termination. (End of clause.)

1852.208–7002, 1852.208–7003, 1852.208–7004, 1852.208–7005, 1852.208–7006, 1852.208–7007, 1852.208–7008, 1852.208–7009, 1852.208–7010, 1852.208–7011, and 1852.208–7012 [Removed]

e. Sections 1852.208–7002, 1852.208–7003, 1852.208–7004, 1852.208–7005, 1852.208–7006, 1852.208–7007, 1852.208–7008, 1852.208–7009, 1852.208–7010, 1852.208–7011, and 1852.208–7012 are removed.

f. Sections 1852.208–81 and 1852.208–83 are added to read as follows:

1852.208–81 Printing and duplicating.

As prescribed in 1808.870, insert the following clause:

PRINTING AND DUPLICATING (DECEMBER 1988)

(a) The Contractor shall reproduce any documentation required by this contract in

accordance with the provisions of the Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States.

(b) The term "printing", as used in this clause, is defined in the Government Printing and Binding Regulations and includes the processes of composition, platemaking, presswork, binding, and the end items produced by such processes and equipment.

(c) The Contractor is authorized to duplicate by offset platemaking units not requiring the use of negatives; copy-processing machines not requiring the use of negatives or metal plates; or offset lithograph presses with single unit, sheet fed, maximum sheet size 11 x 17 inches and plate image no longer than 10¾ x14¼ inches. However, the Contractor shall not exceed 5,000 production units of any page nor 25,000 production units in the aggregate for multiple page duplication. A "production unit" is one sheet, size 8½ x 11 inches (215 x 280 mm), one side only, and one color.

(d) If the Contractor has reason to believe that any reproduction required under this contract violates the regulations referred to in paragraph (a) of this clause, the Contractor shall provide the Contracting Officer with immediate notice in writing and request approval prior to accomplishment of the reproduction. (End of clause.)

1852.208–83 Acquisition of Helium.

As prescribed in 1808.002–76, insert the following clause:

ACQUISITION OF HELIUM (DECEMBER 1988)

(a) In accordance with Parts 1 and 2, Subchapter A, Chapter 1, Title 30, Code of Federal Regulations, helium furnished under this contract (purchase order) shall be Department of the Interior, Bureau of Mines, helium or shall be replaced by the supplier with an equivalent volume of helium purchased from the Bureau of Mines.

(b) The Contractor may procure (1) liquid helium or (2) gaseous helium of a quality not supplied by the Bureau of Mines from commercial sources if these sources are qualified by the Bureau of Mines and included in the Bureau of Mines publication, "List by Shipping Points of Private Distributors Eligible to Sell Helium to Federal Agencies." Copies of this publication may be obtained from the Bureau of Mines, Helium Operation, P.O. Box H4372, Herring Plaza, Amarillo, Texas 79101.

(c) The Contractor shall provide a copy of each contract (purchase order) for helium from commercial sources to the Contracting Officer and Bureau of Mines at the address in paragraph (b) above. (End of clause.)

g. Sections 1852.209–70 and 1852.209–71 are revised to read as follows:

1852.209–70 Product removal from qualified products list.

As prescribed in 1809.206–71, insert the following clause:

PRODUCT REMOVAL FROM QUALIFIED PRODUCTS LIST (DECEMBER 1988)

If, during the performance of this contract, the product being furnished is removed from the Qualified Products List for any reason, the Government may terminate the contract for Default pursuant to the default clause of the contract. (End of clause.)

1852.209–71 Limitation of future contracting.

As prescribed in 1809.508–2, the contracting officer may insert a clause substantially as follows in solicitations and contracts, in compliance with FAR 9.508:

LIMITATION OF FUTURE CONTRACTING (DECEMBER 1988)

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective offerors is invited to FAR Subpart 9.5—Organizational Conflicts of Interest.

(b) The nature of this conflict is [describe the conflict].

(c) The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described that solicitation as a prime or first-tier subcontractor under an ensuing NASA contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive advantage or potential bias (this time shall in no case be less than the duration of the initial production contract). NASA shall not unilaterally require the Contractor to prepare such specifications or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not to use them to compete with those other companies. (End of clause).

h. Section 1852.209–72 is added to read as follows:

1852.209–72 Composition of the contractor.

As prescribed in 1809.670, insert the following clause:

COMPOSITION OF THE CONTRACTOR (DECEMBER 1988)

If the Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable under this contract. (End of clause.)

i. Section 1852.210–70 is revised, and 1852.210–71, 1852.210–72, and 1852.210–75 are added to read as follows:

1852.210–70 Brand name or equal.

As prescribed in 1810.011, insert the following provision:

BRAND NAME OR EQUAL (DECEMBER 1988)

(a) As used in this provision, "brand name" means identification of products by make and model. The term "bid" means "offer" if this is a negotiated acquisition.

(b) If items called for by this solicitation are identified in the Schedule by a "brand name or equal" description, that identification is intended to be descriptive, not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products, including products of the brand name manufacturer other than the one described by brand name, will be considered for award if the products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements referenced in the solicitation.

(c) Unless the offeror clearly indicates in the bid that it is offering an "equal" product, the bid shall be considered as offering a brand-name product referenced in the solicitation.

(d)(1) If the offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or that product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsiblity of the Government and will be based on information furnished by the offeror or identified in its bid, as well as on other information reasonably available to the contracting activity.

(2) CAUTION TO OFFERORS: The contracting office is not responsible for locating or securing any information not identified in the bid and reasonably available to the contracting office. Accordingly, to ensure that sufficient information is available, the offeror must furnish as a part of its bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to (i) determine whether the product offered meets the salient characteristics requirements of the solicitation and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting office.

(3) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall (i) include in the bid a clear description of the proposed modifications and (ii) clearly mark any descriptive material to show them.

(4) If this is a sealed-bid acquisition, modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered. (End of provision.)

1852.210–71 Descriptive literature for used material.

As prescribed by 1810.011–70(b), insert the following provision:

DESCRIPTIVE LITERATURE FOR USED MATERIAL (DECEMBER 1988)

(a) Offerors' attention is directed to the clause in this solicitation entitled "Listing of Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property." If an offeror intends to furnish any items falling within any of the classes of property addressed by that clause, the following information must be submitted as an attachment to the offer:

[Insert the information needed to determine that items can reasonably be expected to conform to the solicitation requirements.]

(b) Offerors are specifically advised that if this procurement is being conducted in accordance with procedures for sealed bidding (see FAR Part 14), a failure to provide the information identified in paragraph (a) above will render the offeror nonresponsive. (End of provision.)

1852.210-72 Supplies and/or services to be furnished.

As prescribed in 1810.011-70(c), insert the following clause:

SUPPLIES AND/OR SERVICES TO BE FURNISHED (DECEMBER 1988)

The contractor shall provide all resources (except as may be expressly stated in this contract as furnished by the Government) necessary to furnish the items below in accordance with the Description/Specifications/Work Statement in Section C.

Item no.	Description	Quantity	Unit	Unit price	Total amount.
[Insert the item number, brief description, quantity, unit, unit price, and total dollar amount.]					

(End of clause.)

1852.210-75 Packaging and marking.

As prescribed in 1810.011-70(d), insert the following clause:

PACKAGING AND MARKING (DECEMBER 1988)

(a) The Contractor shall pack and mark all hardware deliverable under this contract in accordance with the provisions of NASA Handbook (NHB) 6000.1, Requirements for Packaging, Handling, and Transportation, and/or MIL-STD-2073, as applicable, except as noted below:

[Insert exceptions to packing and marking requirements or

(b) The Contractor shall pack potentially hazardous items in accordance with paragraph 204 of NHB 6000.1.

(c) The Contractor shall develop packaging, handling, and transportation records, if required, from engineering and packaging data. The Contracting Officer's technical representative is the approving official of the records and special packaging data under paragraph 302 of NHB 6000.1.

(d) The Contractor's packaging specifications or procedures may be utilized if they are (i) not in conflict with cited NASA specifications and (ii) approved in writing by the Contracting Officer. In any conflict between NASA and the Contractor specifications or procedures, the NASA documents cited in this clause shall take precedence.

(e) The Contractor shall place identical requirements on all subcontracts. (End of clause.)

PACKAGING AND MARKING (ALTERNATE I)

(a) The contractor shall preserve, pack, and mark for shipment all items deliverable under this contract in accordance with good commercial practices and adequate to ensure both acceptance by common carrier and safe transportation at the most economical rate(s).

(b) The contractor's markings on shipping containers shall be clearly legible from a distance of 36 inches. The contractor may mark by stencil, rubber stamp, or lacquer over a coated gummed label.

PACKAGING AND MARKING (ALTERNATE II)

(f) The following items to be furnished under this contract are for space flight use:

[Insert items for space flight use.]

(g) All markings for space flight items shall be blue in color. All shipping containers, shipping documents, and purchasing documents for these items shall be marked "ITEMS FOR SPACE FLIGHT USE."

(h) The Contractor shall prominently display a NASA Critical Space Item Label on the exterior of all Class I, Class II, and Class III interim packages and exterior shipping containers to alert all shipping and handling personnel to the criticality of the item in accordance with paragraph 303 of NHB 6000.1. (End of clause.)

1852.212-13 [Removed]

j. Section 1852.212-13 is removed.

k. Sections 1852.212-70 and 1852.212-72 are revised to read as follows:

1852.212-70 Notice of delay.

As prescribed at 1812.104-70(a), insert the following clause:

NOTICE OF DELAY (DECEMBER 1988)

If, because of technical difficulties, the Contractor becomes unable to complete the contract work at the time specified, notwithstanding the exercise of good faith and diligent efforts in performing of the work called for under this contract, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons for it. The notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than 45 days before the completion date specified in this contract, unless otherwise permitted by the Contracting Officer. When notice is given, the Contracting Officer may extend the time specified in the Schedule for such period as is deemed advisable. (End of clause.)

1852.212-72 Partial shipments.

Insert the following clause as prescribed in 1812.104-70(c).

PARTIAL SHIPMENTS (DECEMBER 1988)

Partial shipments will not be accepted unless authorized elsewhere in this contract or by the Contracting Officer's representative at the time of delivery. The Government reserves the right to return partial shipments to the Contractor, transportation charges collect. (End of clause.)

l. Sections 1852.212-73, 1852.212-74, 1852.214-70, 1852.214-71, and 1852.214-72 are added to read as follows:

1852.212-73 Delivery schedule.

As prescribed in 1812.104-70(d), insert the following clause:

DELIVERY SCHEDULE (DECEMBER 1988)

The contractor shall deliver the items required to be furnished by this contract as follows:

Item no.	Description	Quantity	Delivery date	Shipping address
[Insert the applicable item numbers, descriptions, quantities of items, delivery dates, and shipping addresses.] (End of clause.)				

1852.212-74 Period of performance.

As prescribed in 1812.104-70(e), insert the following clause:

PERIOD OF PERFORMANCE (DECEMBER 1988)

The period of performance of this contract shall be [Insert period of performance dates]. (End of clause.)

1852.214-70 Caution to offerors furnishing descriptive literature.

As prescribed in 1814.201-670(a), insert the following provision:

CAUTION TO OFFERORS FURNISHING DESCRIPTIVE LITERATURE (DECEMBER 1988)

Bidders are cautioned against furnishing as a part of their bids descriptive literature that includes language reserving to the bidder the right to deviate from the requirements of the invitation for bids. Statements that "Data are subject to change without notice," "Prices subject to change without notice," or words having a similar effect are examples of such reservation. The Government will reject as nonresponsive any bid that incorporates literature containing such language or any bid that must be evaluated by using literature containing such language. Bidders should clearly label any submissions of descriptive literature not intended to form a part of a bid as such in order to preclude any need for the Government to interpret the bidder's intent in submitting descriptive literature. [See FAR 14.202-5.] (End of provision.)

1852.214-71 Grouping for aggregate award.

As prescribed in 1814.201-670(b), insert the following provision:

GROUPING FOR AGGREGATE AWARD (DECEMBER 1988)

(a) The Government will evaluate offers and make award on a basis of the lowest aggregate offers for items *[Insert the item numbers and/or descriptions].*

(b) If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on all of the items specified in paragraph (a). (End of provision.)

1852.214-72 Full quantities.

As prescribed in 1814.201-670(c), insert the following provision:

FULL QUANTITIES (DECEMBER 1988)

The Government will not consider an offer for quantities of items less than those specified. If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on full quantities. (End of provision.)

1852.215-2 and 1852.215-12 [Removed]

m. Sections 1852.215-2 and 1852.215-12 are removed.

n. Sections 1852.215-70, 1852.215-71, and 1852.215-73 are revised to read as follows:

1852.215-70 Increases in estimated costs.

As prescribed in 1815.613-72, insert the following provision:

INCREASES IN ESTIMATED COSTS (DECEMBER 1988)

Once the apparent successful offeror has been selected, that offeror may not unilaterally increase the estimated costs submitted with its proposal except for—

(a) Increases resulting from updating or correcting the certified cost or pricing data submitted with the proposal;

(b) Costs resulting from the Government's directed correction of identified weaknesses in the proposal that must be corrected as a condition of contracting; or

(c) Minor changes in the requirements of the solicitation. In such cases, the Government will consider only those increases arising from requirements actually affected by the changes (irrespective of whether the changes result in an increase or decrease in the requirements or are initiated by the Government or the offeror) and then only to the extent the increases are identified and justified. (End of provision.)

1852.215-71 Adjustment for subcontract price redetermination.

As prescribed in 1815.870-2, insert the following clause:

ADJUSTMENT FOR SUBCONTRACT PRICE REDETERMINATION (DECEMBER 1988)

Promptly upon the establishment of firm prices for each of the subcontracts listed below, the Contractor shall submit, in such form and detail as the Contracting Officer may reasonably require, a statement of costs incurred in the performance of that subcontract and the firm price established for it. Thereupon, notwithstanding any other provisions of this contract as amended by this modification, the Contractor and the Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under the contract to reflect the subcontract price revision. The equitable adjustment shall be evidenced by a modification to this contract.

[List subcontracts]

(End of clause.)

1852.215-73 Late Submissions, Modifications, and Withdrawals of Proposals. (AO and SBIR Programs).

As prescribed in 1815.407-70(b), use the following provision in lieu of the provision at FAR 52.215-10 in Announcement of Opportunity and SBIR solicitations:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS (AO AND SBIR PROGRAMS) (DECEMBER 1988)

(a) The Government reserves the right to consider proposals or modifications, including any revision of an otherwise successful proposal, received after the date indicated for receipt of proposals if it would be in the Government's best interest to do so.

(b) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award. (End of provision.)

o. Sections 1852.215-74, 1852.215-75, 1852.215-76, 1852.215-77, 1852.215-78, 1852.215-79, and 1852.215-80 are added to read as follows:

1852.215-74 Alternate proposals.

As prescribed in 1815.407-70(c), insert the following provision:

ALTERNATE PROPOSALS (DECEMBER 1988)

(a) The offeror may submit an alternate proposal to accomplish any aspect of the effort or product contemplated by the solicitation in a manner that might create a beneficial improvement to the Government. The Government will consider an alternate proposal if it is accompanied by a basic proposal prepared in accordance with instructions contained in and responsive to this solicitation. The alternate proposal must be complete by itself and comply with the proposal instructions of this solicitation. The alternate proposal will be evaluated in accordance with the evaluation factors of this solicitation.

(b) In the event the Government receives an alternate proposal that, if accepted, would result in a contract with terms varying in one or more material respects from those contained in this solicitation (i.e., change in scope), and the Government concludes that implementation of the approach contained in the alternate proposal would be in its best interests, the Government may modify its solicitation in a manner appropriate to incorporate the change in scope but not reveal the substance of the alternate proposal, and thereafter give all offerors (and others if the facts warrant) an opportunity to respond to the modified solicitation. (End of provision).

1852.215-75 Expenses related to offeror submissions.

As prescribed in 1815.407-70(d), insert the following provision:

EXPENSES RELATED TO OFFEROR SUBMISSIONS (DECEMBER 1988)

This solicitation neither commits the Government to pay any cost incurred in the submission of the offer or in making necessary studies or designs for preparing the offer, nor to contract for services or supplies. Any costs incurred in anticipation of a contract shall be at the offeror's own risk. (End of provision.)

1852.215-76 False statements.

As prescribed in 1815.407-70(e), insert the following provision:

FALSE STATEMENTS (DECEMBER 1988)

PROPOSALS MUST SET FORTH FULL, ACCURATE, AND COMPLETE INFORMATION AS REQUIRED BY THE SOLICITATION (INCLUDING ATTACHMENTS). THE PENALTY FOR MAKING FALSE STATEMENTS IN PROPOSALS IS PRESCRIBED IN 18 U.S.C. 1001. (End of provision.)

1852.215-77 Preproposal/pre-bid conference.

As prescribed in 1815.407-70(f), insert the following provision:

PREPROPOSAL/PRE-BID CONFERENCE (DECEMBER 1988)

(a) A preproposal/pre-bid conference will be held as indicated below:

Date:

Time:

Location:

Other Information, as applicable: [Insert the applicable conference information.]

(b) Attendance at the preproposal/pre-bid conference is recommended; however, attendance is neither required nor a prerequisite for proposal/bid submission and will not be considered in the evaluation. (End of provision.)

1852.215-78 Make or buy program requirements.

As prescribed in 1815.708-70(a), insert the following provision:

MAKE OR BUY PROGRAM REQUIREMENTS (DECEMBER 1988)

The offeror shall submit a Make-or-Buy Program in accordance with the requirements of Federal Acquisition Regulation (FAR) 15.705. The offeror shall include the following supporting documentation with its proposal:

(a) A description of each major item or work effort (see FAR 15.704).

(b) Categorization of each major item or work effort as "must make," "must buy," or "can either make or buy."

(c) For each item or work effort categorized as "can either make or buy," a proposal either to "make" or "buy."

(d) Reasons for (i) categorizing items and work effort as "must make" or "must buy" and (ii) proposing to "make" or "buy" those categorized as "can either make or buy." The reasons must include the consideration given to the applicable evaluation factors described in the solicitation and be in sufficient detail to permit the Contracting Officer to evaluate the categorization and proposal.

(e) Designation of the offeror's plant or division proposed to make each item or perform each work effort and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(f) Identification of proposed subcontractors, if known, and their location and size status.

(g) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission. (End of provision.)

1852.215-79 Price adjustment for "Make-or-Buy" changes.

As prescribed in 1815.708-70, insert the following clause:

PRICE ADJUSTMENT FOR "MAKE-OR-BUY" CHANGES (DECEMBER 1988)

The following make-or-buy items are subject to the provisions of paragraph (d) of the clause at FAR 52.215-21, Change or Additions to Make-or-Buy Program, of this contract:

ITEM DESCRIPTION

MAKE-OR-BUY DETERMINATION

(End of clause.)

1852.215-80 Disposal of unsuccessful proposals.

As prescribed in 1815.407-70(g), insert the following provision:

DISPOSAL OF UNSUCCESSFUL PROPOSALS (DECEMBER 1988)

After contract award, one or more copies of each unsuccessful proposal will be retained in the Government's official contract file, and all other copies will be destroyed. (End of provision.)

1852.216-7 and 1852.216-13 [Removed]

p. Sections 1852.216-7 and 1852.216-13 are removed.

q. Sections 1852.216-70, 1852.216-71, 1852.216-72, 1852.216-73, 1852.216-74, 1852.216-75, and 1852.216-76 are added to read as follows:

1852.216-70 Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.

As prescribed in 1816.203-4(a), insert the following clause:

ECONOMIC PRICE ADJUSTMENT—BASIC STEEL, ALUMINUM, BRASS, BRONZE, OR COPPER MILL PRODUCTS (DECEMBER 1988)

(a) The Contractor warrants that the unit price stated in this contract for _____ does not exceed the Contractor's applicable established price in effect on the date set for opening of bids (or the contract date, if this is a negotiated contract) for like quantities of the same item. "Unit price" excludes any part of the price reflecting requirements for preservation, packaging, and packing beyond standard commercial practice. "Established price" means a price that meets the criteria of paragraph 15.804-3(c) of the Federal Acquisition Regulation as an established catalog or market price for a commercial item sold in substantial quantities to the general public. Such a price is the net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any applicable established price, and each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased. This decrease shall apply to items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly. The Contractor shall certify (1) on each invoice that each unit price stated in the invoice reflects all decreases required by this clause or (2) on the final invoice that all price decreases requried by this clause have been applied in the manner required by the clause.

(c) If the Contractor's applicable established price is increased after the date set for opening of bids (or the contract date, if this is a negotiated contract), the corresponding contract unit price shall be increased, upon the Contractor's request in writing to the Contracting Officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly; provided, that—

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed 10 percent of the original contract unit price;

(2) The increased contract unit price shall be effective on the effective date of the increase in the established price, if the Contracting Officer receives the Contractor's written request within 10 days after the increase in the established price, but, if not, the effective date of increased unit price shall be the date of receipt by the Contracting Officer of the request;

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless the Contractor's failure to deliver these quantities before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause of this contract; and

(4) No modification incorporating an increase in a unit price shall be executed under this clause until the Contracting Officer has verified the increase in the applicable established price.

(d) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any portion of the contract affected by the requested increase and undelivered at the time of cancellation. However, if the Contractor certifies to the Contracting Officer by notice received within 10 days after the Contractor receives the cancellation notice that certain items were completed or in the process of manufacture at the time the Contractor received the cancellation notice,

the Contractor may then deliver those items, and the Government shall pay for them at the increased contract unit price to the extent provided by paragraph (c) above. Any standard steel supply shall be deemed to be in the process of manufacture when the steel for it is in any state of processing after the beginning of the furnace melt.

(e) Pending any cancellation as provided in paragraph (d) above, and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the delivery schedule of the contract and shall be paid for them at the contract unit price increased to the extent provided by paragraph (c) above. (End of clause.)

1852.216-71 Economic price adjustment—nonstandard steel items.

As prescribed in 1816.203-4(a), insert the following clause:

ECONOMIC PRICE ADJUSTMENT—NONSTANDARD STEEL ITEMS (DECEMBER 1988)

(a) "Established price" means a price that meets the criteria of paragraph 15.804-3(c) of the Federal Acquisition Regulation as an established catalog or market price of a commercial item sold in substantial quantities to the general public. Such a price is the net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or scheduled price. (But see paragraph (i)(8) below.)

(b) Each contract unit price shall be subject to revision under this clause to reflect changes in the cost of labor and steel. For the purpose of any such price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified in paragraph (d) below shall be ____ percent, and the proportion of the contract unit price attributable to the cost of steel shall be ____ percent. (See paragraph (i)(1) below.)

(c) For the purposes of this paragraph (c), "labor index" means the average straight-time hourly earnings of the Contractor's employees in the _____ shop of the Contractor's _____ plant (see paragraph (i)(2) below) for any particular month. "Month" as used in this clause means "calendar month"; *provided, however,* that if the Contractor's accounting period does not coincide with the calendar month, then that accounting period shall be used throughout the clause in lieu of "month." Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight-time earnings of the Contractor's employees in the particular shop identified above for any given month by the total number of straight-time hours worked by those employees in that month. Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to (1) the "base labor index," which shall be the average of the labor indices for the three months consisting of the month of _____, 19____ (see paragraph (i)(3) below), the month immediately preceding, and the month immediately following, and (2) the "current labor index," which shall be the average of the labor indices for the two months consisting of the month in which delivery of supplies is required to be made in accordance with the terms of this contract and the month preceding.

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to (1) the "base steel index," which shall be the Contractor's established price (see paragraph (i)(8) below), including all applicable extras of $_____ per _____ (see paragraph (i)(4) below) for _____ (see paragraph (i)(5) below) on _____, 19____ (see paragraph (i)(6) below), and (2) the "current steel index," which shall be the Contractor's established price (see paragraph (i)(8) below) for the item, including all applicable extras in effect _____ (see paragraph (i)(7) below) prior to the first day of the month in which delivery of supplies is required to be made in accordance with the terms of the contract.

(e) Each contract unit price shall be revised for each month in which, by the terms of this contract, delivery of supplies is required to be made, and the revised contract unit price shall apply to any supplies required to be delivered in that month, regardless of when actually delivered. Each revised contract unit price for any month shall be computed by adding together the following three amounts: (1) the amount (representing the adjusted cost of labor) obtained by multiplying ____ percent of the contract unit price by a fraction whose numerator is the current labor index and whose denominator is the base labor index; (2) the amount (representing the adjusted cost of steel) obtained by multiplying ____ percent of the contract unit price by a fraction whose numerator is the current steel index and whose denominator is the base steel index; and (3) the amount equal to ____ percent of the original contract unit price (representing that portion of the unit price relating neither to the cost of labor nor to the cost of steel and therefore not subject to revision (see paragraph (i)(1) below)); *provided, however,* that any revised contract unit price made under this clause shall in no event exceed 110 percent of the original contract unit price. All computations shall be made to the nearest one-hundredth of one cent.

(f) Pending any revisions of the contract unit prices to be made under this clause, the Contractor shall be paid the contract unit prices for deliveries made. Within 30 days after the final delivery of supplies, or within such further period as the Contracting Officer may authorize, the Contractor shall furnish a statement setting forth and certifying the correctness of (1) the average straight-time hourly earnings of the Contractor's employees in the shop of the Contractor identified in paragraph (c) above and (2) the Contractor's established prices (see subparagraph (i)(8) below), including all applicable extras for like quantities of the item identified in paragraph (d) above. Upon request of the Contracting Officer, the Contractor shall make available its records used in the computation of the labor indices. After the receipt of the certificate by the Contracting Officer, the revised contract unit prices shall be computed in accordance with this clause, and this contract shall be modified accordingly. However, no modification shall be made until the revised established price (see paragraph (i)(8)) has been verified by the Contracting Officer.

(g) In the event of any total or partial termination of any item of this contract for the convenience of the Government, the month in which the termination notice is received by the Contractor, if prior to the month in which the delivery is required by this contract, shall be considered the month in which delivery of the terminated or partially terminated item is required for the purpose of determining the current labor and steel indices under paragraphs (c) and (d) of this clause; *provided, however,* that as to the quantity of the item that is not terminated for convenience, the month in which delivery is required by this contract shall continue to apply for determining those indices. If any steel item is terminated for default of the Contractor, any price revision shall be limited to the quantity of that item delivered by the Contractor and accepted by the Government before receipt by the Contractor of notice of termination for default.

(h) As used in this clause, the month in which delivery of supplies is required to be made under this contract means any month in which a specific quantity of units of the supplies called for by this contract is required to be delivered; *provided, however,* that if the Contractor's failure to deliver that quantity results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause of this contract, the quantity not delivered shall be required to be delivered as promptly as possible after the cessation of the cause of the failure, and the delivery schedule in this contract shall be amended accordingly.

(i) Offerors shall complete all blanks in this clause in accordance with the following instructions:

(1) Insert the same percentage figures for the corresponding blanks in paragraph (b) and in paragraphs (e) (1) and (2). In paragraph (e)(3), insert the percentage representing the difference between the sum of the percentages inserted in paragraph (b) and 100 percent.

(2) Identify the shop and plant in which the standard steel mill item identified in paragraph (d) will be finally fabricated or processed into the contract item.

(3) Insert the month of bid opening or, if this is a negotiated contract, the month in which the Contractor submitted its proposal.

(4) Insert the unit price and unit measure of the standard steel mill item used by the Contractor in the manufacture of the contract item.

(5) Identify the standard steel mill item used by the Contractor in the manufacture of the contract item.

(6) Insert the date set for bid opening or, if this is a negotiated contract, the date of the Contractor's proposal.

(7) Insert the number of days representing the Contractor's best estimate of the period required for processing the standard steel mill item in the shop identified in paragraph (c).

(8) If this is a negotiated procurement and there is no "established price" or it is not

desirable to use such price, refer to another appropriate price basis in paragraph (d), such as an established interplant price. (End of clause.)

1852.216-72 Evaluation of offers subject to economic price adjustment.

As prescribed in 1816.203-4(g), insert the following provision:

EVALUATION OF OFFERS SUBJECT TO ECONOMIC PRICE ADJUSTMENT (DECEMBER 1988)

Notwithstanding the requirements of the _____* clause, offers shall be evaluated on the basis of quoted prices without an amount for economic price adjustment being added. Offers that provide for a ceiling lower than that stipulated, if a ceiling is stipulated in the clause, shall also be evaluated on this basis, but any resultant award will be made at the lower ceiling. Offers that provide for adjustment that may exceed the maximum adjustment stipulated, if a maximum is stipulated in the clause, or that limit or delete the downward adjustment, if a downward adjustment is stipulated in the clause, shall be rejected as nonresponsive.

* Insert the title of the clause providing for economic price adjustment. (End of provision)

1852.216-73 Estimated cost and cost sharing.

As prescribed in 1816.307-70(a), insert the following clause.

ESTIMATED COST AND COST SHARING (DECEMBER 1988)

(a) It is estimated that the total cost of performing the work under this contract will be $_____ [insert total estimated cost].

(b) For performing of the work under this contract, the Contractor shall be reimbursed for not more than _____ percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining ____ percent or more of the costs of performance so determined shall constitute the Contractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the Limitation of Cost clause, the total estimated cost to the Government is hereby established as $_____ [insert estimated Government share]; this amount is the maximum cost for which the Government is obligated.

(d) The Contractor shall maintain records of all contract costs claimed by the Contractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the Contractor shall not be charged to the Government under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program). (End of clause.)

1852.216-74 Estimated cost and fixed fee.

As prescribed in 1816.307-70(b) insert the following clause:

ESTIMATED COST AND FIXED FEE (DECEMBER 1988)

The estimated cost of this contract is _____ exclusive of the fixed fee of _____. The total of estimated cost and fixed fee is _____. (End of clause.)

1852.216-75 Payment of fixed fee.

As prescribed in 1816.307-70(c), insert the following clause:

PAYMENT OF FIXED FEE (DECEMBER 1988)

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer. (End of clause.)

1852.216-76 Award Fee.

As prescribed in 1816.405, insert the following clause:

AWARD FEE (DECEMBER 1988)

(a) The Government shall pay the Contractor for performing this contract such base fee, if any, and such additional fee as may be awarded, as provided in the Schedule.

(b) Payment of the base fee and award fee shall be made as specified in the Schedule; provided, that after payment of 85 percent of the base fee and potential award fee, the Contracting Officer may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or $100,000, whichever is less.

(c) Award fee determinations made by the Government under this contract are not subject to the Disputes clause. (End of clause.)

1852.216-7001, 1852.216-7002, 1852.216-7003, 1852.216-7004, 1852.216-7005, 1852.216-7006, and 1852.216-7007 [Removed]

r. Sections 1852.216-7001, 1852.216-7002, 1852.216-7003, 1852.216-7004, 1852.216-7005, 1852.216-7006, and 1852.216-7007 are removed.

s. Sections 1852.216-78, 1852.216-79, 1852.216-80, 1852.216-81, 1852.216-82, 1852.216-83, 1852.216-84, 1852.216-85, 1852.216-86, and 1852.216-87 are added to read as follows:

1852.216-78 Firm fixed price.

As prescribed in 1816.202-70, insert the following clause:

FIRM FIXED PRICE (DECEMBER 1988)

The total firm fixed price of this contract is $_____. [Insert the appropriate amount]. (End of clause.)

1852.216-79 Level-of-effort (fixed-price).

As prescribed in 1816.207-70(a), insert the following clause:

LEVEL-OF-EFFORT (FIXED-PRICE) (DECEMBER 1988)

(a) In accomplishing the work required under this contract, the Contractor shall provide ____ direct labor hours as a minimum. These hours shall be expended as follows:

Labor Category

Minimum Direct Labor Hours

[Insert the labor categories and associated direct labor hours.]

(b) "Direct labor hours" are those productive hours expended by Contractor personnel performing work under this contract that are charged as direct labor under the Contractor's established accounting policy and procedures. The term *does not* include sick leave, vacation, or any type of administrative leave but does include direct labor hours provided under level-of-effort subcontracts.

(c) If, at the end of the contract term, the Contractor has not provided the minimum direct labor hours specified above, the total fixed price of this contract shall be reduced as follows: [Insert either a formula based upon the number of hours expended in the separate labor categories or the product of the hours of unexpended labor multiplied by one specified rate.]

(d) The Contractor may, at its own option, furnish more than the stated direct labor hours; however, the Contractor shall not be entitled to any increase in the fixed price of the contract for exceeding the stated direct labor hours.

(e) Within thirty (30) days after the end of the performance period and before submission of an invoice for final payment, the Contractor shall submit to the Contracting Officer a statement certifying the actual total number of direct labor hours expended under this contract. The Contractor further agrees to make available to the Contracting Officer such records as the Contracting Officer may reasonably require to determine that the minimum number of labor hours specified in this clause were expended in the performance of the work. (End of Clause.)

1852.216-80 Task ordering procedure.

As prescribed in 1816.307-70(d), insert the following clause:

TASK ORDERING PROCEDURE (DECEMBER 1988)

Performance under this contract is subject to the following ordering procedure.

(a) Within the direct labor hours specified in the Level-of-Effort clause of this contract, the Contractor shall incur cost under this contract in the performance of task orders and task order modifications issued in accordance with this ordering procedure. No other costs are authorized without the express written consent of the Contracting Officer.

(b) From time to time during the term of this contract, the Contracting Officer will issue task orders in writing to the Contractor, providing specific information on work to be performed within the scope of the contract. Each task order will indicate the objectives or result desired.

(c) Task orders will contain, as a minimum, the following information:

(1) Signature of the Contracting Officer.

(2) Contract number, order number, and date.

(3) Description of work.

(4) Maximum number of contract labor hours and other resources authorized.

(5) Documentation requirements.

(6) Delivery/performance schedule.

(7) Quality assurance standards, as appropriate.

(8) Travel authorized.

(9) Any other necessary information.

(d) The Contracting Officer may modify task orders in the same manner as they are issued.

(e) The Contractor shall submit within ten calendar days after receipt of each task order a onetime Contractor task plan. The task plan is the Contractor's overall approach for completing the task order and shall include the following:

(1) Discussion of the technical approach for performing the work.

(2) Estimated date of commencement of work, and any changes proposed to the schedule of performance.

(3) Direct labor hours, both straight time and overtime (if authorized), on a monthly basis by applicable labor category, and the total direct labor hours, including those in (5) below, estimated to complete the task.

(4) The travel and material estimates.

(5) An estimate for subcontractors and consultants, including the direct labor hours, if applicable.

(6) Estimated computer use time required, if applicable.

(7) Other pertinent information, such as indirect costs and interdivisional transfers.

(8) The total estimated cost and fee, where appropriate, for completion of the task order.

(f) The Contracting Officer shall approve in writing the Contractor's task plan and any plan revisions either (1) as being in accordance with the task order or (2) with identified variations constituting a modification to the task order. All approvals shall be prior to commencement of work.

(g) In the event that there is a conflict between the requirements of the task order and the Contractor's task plan, the task order shall prevail. (End of clause.)

ALTERNATE I (DECEMBER 1988)

As prescribed in 1816.307–70(e), delete paragraphs (e), (f), and (g) from the basic clause.

1852.216–81 Estimated cost.

As prescribed in 1816.307–70(f), insert the following clause:

ESTIMATED COST (DECEMBER 1988)

The total estimated cost for complete performance of this contract is $_____ [Insert total estimated cost of the contract]. See FAR clause 52.216–11, Cost Contract—No Fee, of this contract. (End of clause.)

1852.216–82 Level-of-effort (cost).

As prescribed in 1816.307–70(g), insert the following clause:

LEVEL-OF-EFFORT (COST) (DECEMBER 1988)

(a) During the term of the contract, the Contractor is obligated to provide not less than ____% [Insert minimum percentage of direct labor hours] nor more than ____% [Insert maximum percentage of direct labor hours] of the following direct labor hour:

Labor category

Direct labor hours

Labor hours

[Insert applicable labor categories, direct labor hours in each labor category, and total direct labor hours.]

(b) "Direct labor hours" are those productive hours expended by Contractor personnel performing work under this contract that are charged as direct labor under the Contractor's established accounting policy and procedures. The term *does not* include sick leave, vacation leave, or any type of administrative leave but does include direct labor hours provided under level-of-effort subcontracts.

(c) Once the maximum number of direct labor hours is reached or the contract term has ended, the Contractor's requirements under the contract are fulfilled, even though the specified work may not have been completed. The Contractor is not authorized to exceed the maximum of the direct labor hours specified in paragraph (a) unless a bilateral contract modification is executed. Any estimated cost and fee(s) adjustments for any additional direct labor hours shall be based solely upon the quantity of additional hours being added to the maximum number of direct labor hours specified in this clause.

(d) The fee(s), if any, are based upon the furnishing of the specified minimum level-of-effort. If the Contractor provides less than the specified minimum level-of-effort prior to expiration of the contract term, and the Government has not invoked its rights under the Termination clause of this contract to adjust the contract for such reduced effort, the Contracting Officer will unilaterally make an equitable downward adjustment to the contract fee. The downward adjustment in fee will be based upon the difference between the minimum direct labor hours specified under this clause and the amount of direct labor hours provided by the Contractor. At the Contracting Officer's discretion, the adjustment may take into consideration efficiencies in the Contractor's performance, including productivity improvements, if any, which contributed to the lesser number of direct labor hours being provided. (End of clause.)

1852.216–83 Fixed price incentive.

As prescribed in 1816.405(b), insert the following clause:

FIXED PRICE INCENTIVE (DECEMBER 1988)

The target cost of this contract is $_____. The target profit of this contract is $_____. The target price (target cost plus target profit) of this contract is $_____. (End of clause.)

1852.216–84 Estimated cost and incentive fee.

As prescribed in 1816.405–70(c), insert the following clause:

ESTIMATED COST AND INCENTIVE FEE (DECEMBER 1988)

The target cost of this contract is $_____. The target fee of this contract is $_____. The total target cost and target fee as contemplated by the Incentive Fee clause of this contract is $_____ [Insert appropriate target cost and fee amounts]. (End of clause.)

1852.216–85 Estimated cost and award fee.

As prescribed in 1816.405–70(d), insert the following clause:

ESTIMATED COST AND AWARD FEE (DECEMBER 1988)

The estimated cost of this contract is $_____. The base fee is $_____, and the maximum available award fee is $_____. Total cost, base fee, and maximum award fee is $_____. [Insert appropriate cost and fee amounts.] (End of clause.)

1852.216–86 Settlement of letter contract.

As prescribed in 1816.603–470, insert the following clause:

SETTLEMENT OF LETTER CONTRACT (DECEMBER 1988)

(a) This contract constitutes the definitive contract contemplated by issuance of letter contract _____, dated _____, and supersedes the letter contract and its modification no.(s) _____. [Insert letter contract number, date, and modification numbers.]

(b) The costs and fees, or prices, established in this definitive contract represent full and complete settlement of letter contract _____ and modification no.(s) _____.

(c) If this definitive contract contains terms that may be construed to be inconsistent with the letter contract, the parties agree that this definitive contract states the complete agreement and intent of the parties, and any rights and duties created by the letter contract that are inconsistent with this definitive contract are hereby waived, cancelled, and released. (End of clause.)

1852.216–87 Submission of vouchers for payment.

As prescribed in 1816.307–70(h), insert the following clause:

SUBMISSION OF VOUCHERS FOR PAYMENT (DECEMBER 1988)

(a) Public vouchers for payment of costs shall include a reference to this contract *[Insert the contract number]* and be forwarded to: *[Insert the mailing address for submission of cost vouchers.]*

This is the designated billing office for cost vouchers for purposes of the Prompt Payment clause of this contract.

(b) The Contractor shall prepare vouchers as follows:

(1) One original Standard Form (SF) 1034, SF 1035, or equivalent Contractor's attachment.

(2) Seven copies of SF 1034A, SF 1035A, or equivalent Contractor's attachment.

(3) The Contractor shall mark SF 1034A copies 1, 2, 3, 4, and such other copies as may be directed by the Contracting Officer by insertion in the memorandum block the names and addresses as follows:

(i) Copy 1 NASA Contracting Officer;

(ii) Copy 2 Auditor;

(iii) Copy 3 Contractor;

(iv) Copy 4 Contract administration office; and

(v) Copy 5 Project management office.

(c) Public vouchers for payment of fee shall be prepared similarly and be forwarded to: *[Insert the mailing address for submission of fee vouchers.]*

This is the designated billing office for fee vouchers for purposes of the Prompt Payment clause of this contract.

(d) In the event that amounts are withheld from payment in accordance with provisions of this contract, a separate voucher for the amount withheld will be required before payment for that amount may be made. (End of clause.)

t. Section 1852.217–70 is revised to read as follows:

1852.217–70 Property administration and reporting.

As prescribed in 1817.7002–4 insert the following clause:

PROPERTY ADMINISTRATION AND REPORTING (DECEMBER 1988)

All property acquired for, and reimbursed by, NASA or transferred by NASA for use under this NASA-Defense Purchase Request shall be controlled and accounted for in accordance with the Military Department's normal procedures. All excess items, however, costing $500 or more and in condition Code 7 or better (GSA Condition Codes) shall be reported to the NASA originating office for possible reutilization before disposition. (End of clause.)

1852.219–70 and 1852.219–71 [Removed]

u. Sections 1852.219–70 and 1852.219–71 are removed.

v. Sections 1852.219–72 and 1852.219–73 are added to read as follows:

1852.219–72 SIC code and small business size standard.

As prescribed in 1819.170, insert the following provision:

SIC CODE AND SMALL BUSINESS SIZE STANDARD (DECEMBER 1988)

(a) The standard industrial classification (SIC) code(s) for this procurement is (are) _____ [Insert SIC code].

(b) The small business size standard is _____ [Insert the number of employees, *or* dollar value in average annual receipts for the last three (3) fiscal years]. (End of provision.)

1852.219–73 Small business and small disadvantaged business subcontracting plan.

As prescribed in 1819.708–70, insert the following provision:

SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (DECEMBER 1988)

(a) This provision is not applicable to small business concerns.

(b) The contract expected to result from this solicitation will contain FAR clause 52.219–9, "Small Business and Small Disadvantaged Business Subcontracting Plan." The apparently successful offeror must submit the complete plan within ____ [Insert number of days] calendar days after request by the Contracting Officer. (End of provision.)

ALTERNATE I (DECEMBER 1988)

As prescribed in 1819.708–70, delete the last sentence of paragraph (b) of the basic clause and substitute the following:

Each offeror must submit the complete plan with its initial proposal.

w. Sections 1852.222–71, 1852.223–70, 1852.223–71, and 1852.223–72 are revised, and 1852–223.73 is added to read as follows:

1852.222–71 Facilities nondiscrimination.

As prescribed in 1822.7002(b), insert the following clause:

FACILITIES NONDISCRIMINATION (DECEMBER 1988)

(a) As used in this clause, "facility" means store, shop, restaurant, cafeteria, restroom, or any other public facility in the building in which the space covered by this lease is located.

(b) The lessor shall not discriminate against anyone because of race, color, religion, or national origin in furnishing, or by refusing to furnish, the use of any facility, including any services, privileges, accommodations, and activities provided by that facility. Nothing in this clause requires the furnishing to the general public of the use of any facility customarily furnished by the lessor solely to tenants and their employees, customers, patients, clients, guests, and invitees.

(c) Any noncompliance by the lessor with this clause shall constitute a material breach of this lease. In the event of noncompliance, the Government may take appropriate action to enforce compliance, may terminate this lease, or may pursue any other remedies provided by law. In the event of termination, the lessor is liable for all excess costs of the Government in acquiring substitute space, including the cost of moving to that space. Substitute space shall be obtained in as close proximity to the lessor's building as is feasible, and moving costs shall be limited to the actual expenses incurred.

(d) Whenever an agreement is to be entered into or a concession is to be permitted to operate, the lessor shall include or require the inclusion of paragraphs (a), (b), and (c) above in every such agreement or concession arrangement under which any person other than the lessor operates or has the right to operate any facility. Nothing in this clause, however, requires the lessor to include or require the inclusion of those paragraphs in any previously existing agreement or concession arrangement, or in one under which a party other than the lessor has the unilateral right to renew or extend the agreement or arrangement, until the expiration of the existing agreement or arrangement and the unilateral right to renew or extend.

(e) The lessor shall take, as expeditiously as possible, any lawful actions NASA may direct to enforce the intent of this clause, including termination of the agreement or concession and institution of court action. (End of clause.)

1852.223–70 Safety and health.

As prescribed in 1823.7004, insert the following clause:

SAFETY AND HEALTH (DECEMBER 1988)

(a) The Contractor shall take all reasonable safety and health measures in performing under this contract and shall, to the extent set forth in the contract Schedule, submit a safety plan and a health plan for the Contracting Officer's approval. The Contractor shall comply with all Federal, State, and local laws applicable to safety and health in effect on the date of this contract and with the safety and health standards, specifications, reporting requirements, and provisions set forth in the contract Schedule.

(b) The Contractor shall take or cause to be taken any other safety and health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other provision of the contract.

(c) The Contractor shall immediately notify and promptly report to the Contracting Officer or a designee any accident, incident, or exposure resulting in fatality, lost-time occupational injury, occupational disease, contamination of property beyond any stated acceptable limits set forth in the contract Schedule, or property loss of $25,000 or more arising out of work performed under this contract. The Contractor is not required to include in any report an expression of opinion as to the fault or negligence of any employee. Service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule. The Contractor shall investigate all work-related incidents or accidents to the extent necessary to determine their causes and furnish the Contracting Officer a report, in such form as the Contracting Officer may require, of the investigative findings and proposed or completed corrective actions.

(d)(1) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. The Contractor shall promptly take and report any necessary corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (1) above, the Contracting Officer may invoke the stop-work order clause in this contract or any other remedy available to the Government in the event of such failure or refusal.

(e) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (e) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that (1) amount to $1,000,000 or more (unless the Contracting Officer makes a written determination that this is not required), (2) require construction, repair, or alteration in excess of $25,000, or (3) regardless of dollar amount, involve the use of hazardous materials or operations.

(f) Authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed in order to determine the adequacy of the Contractor's safety and health measures under this clause.

(g) As a part of the Contractor's safety plan (and health plan, when applicable) and to the extent required by the Schedule, the Contractor shall furnish a list of all hazardous operations to be performed, including operations indicated in paragraphs (a) and (b) above, and a list of other major or key operations required or planned in the performance of the contract, even though not deemed hazardous by the Contractor. NASA and the Contractor shall jointly decide which operations are to be considered hazardous, with NASA as the final authority. Before hazardous operations commence, the Contractor shall submit for NASA concurrence either or both of the following, as required by the contract Schedule or by the Contracting Officer:

(1) Written hazardous operating procedures for all hazardous operations.

(2) A certification program for personnel involved in hazardous operations. (End of clause.)

1852.223-71 Frequency authorization.

As prescribed in 1823.7101, insert the following clause:

FREQUENCY AUTHORIZATION (DECEMBER 1988)

(a) Authorization of radio frequencies required in support of this contract shall be obtained by the Contractor or subcontractor in need thereof.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor or subcontractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contractual performance. Procedures furnished by the Contracting Officer shall be followed in obtaining radio frequency authorization.

(c) This clause, including this paragraph (c), shall be included in all subcontracts that call for developing, producing, testing, or operating a device for which a radio frequency authorization is required. (End of clause.)

§ 1852.223-72 Potentially hazardous items.

As prescribed in 1823.303-70, insert the following clause:

POTENTIALLY HAZARDOUS ITEMS (DECEMBER 1988)

(a) The Contractor shall furnish complete design information and drawings showing all details of construction, including materials, for the following items or components: [Insert the potentially hazardous items or components.]

These items or components are designated as potentially hazardous to employees and subcontractors who are to perform any work in connection with installing them in combination with other equipment, or in testing them either alone or in combination with other items or components, or in handling them. The contractor shall inform such employees or subcontractors of the potentially hazardous nature of these items or components before requsting or directing the performance of work.

(b) This requirement for delivery of data supersedes any terms of this contract permitting withholding of data.

(c) The Contractor shall include this clause, including this paragraph (c), in each subcontract at any tier under this contract that calls for the manufacture or handling of the items or components designated according to paragraph (a) above as potentially hazardous. (End of clause.)

1852.223-73 Safety and health plan.

As prescribed in 1823.7004(e), insert the following provision:

SAFETY AND HEALTH PLAN (DECEMBER 1988)

The offeror shall submit a detailed safety and health plan, as part of the offeror's proposal, showing how the Contractor intends to protect the life, health, and well being of NASA and contractor employees as well as property and equipment. This plan, as approved by the Contracting Officer, will be included in any resulting contract. (End of provision.)

ALTERNATE I (DECEMBER 1988)

As prescribed by 1823.7004(f), delete the first sentence of the basic clause and substitute the following:

The apparently successful offeror shall submit a detailed safety and health plan after notification of selection but before contract award, showing how the contractor intends to protect the life, health, and well being of NASA and contractor employees as well as property and equipment.

x. Section 1852.225-71 is revised, and 1852.225-72 and 1852.225-73 are added to read as follows:

1852.225-71 Nondomestic construction materials.

As prescribed in 1825.205-70, insert the following clause:

NONDOMESTIC CONSTRUCTION MATERIALS (DECEMBER 1988)

The requirements of the Buy American Act—Construction Materials clause do not apply to the following construction materials or components: [List articles of materials and supplies.] (End of clause.)

1852.225-72 Offer in english language and U.S. dollars.

As prescribed in 1825.407, insert the following provision:

OFFER IN ENGLISH LANGUAGE AND U.S. DOLLARS (DECEMBER 1988)

Offers submitted in response to this solicitation shall be in the English language and in U.S. dollars. (End of provision.)

1852.225-73 Duty-free entry supplies.

As prescribed in 1825.605-70, insert the following clause:

DUTY-FREE ENTRY SUPPLIES (DECEMBER 1988)

In accordance with the Duty-Free Entry clause of this contract, the following supplies will be given duty-free entry:

[Insert the supplies that are to be accorded duty-free entry.]

(End of clause.)

1852.227-11, 1852.227-14, and 1852.227-19 [Removed]

y. Sections 1852.227-11, 1852.227-14, and 1852.227-19 are removed.

1852.228-470 [Removed]

z. Section 1852.228-470 is removed.

aa. Sections 1852.228-70, 1852.228-71, 1852.228-72, 1852.228-73, 1852.228-74, 1852.228-75 are revised, and 1852.228-77 is added to read as follows:

1852.228-70 Aircraft ground and flight risk.

As prescribed in 1828.370, insert the following clause. The purpose of this clause is to have the Government assume risks that generally entail unusually high insurance premiums and are not covered by the contractor's contents, work-in-process, and similar insurance. Since the definitions in the clause may not cover every situation that should be covered to achieve this purpose, the clause may be modified as follows: If the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft, the definition of "aircraft" should be modified to specify that the aircraft has

reached a point of manufacture comparable to that specified in the standard definition, which is written for conventional winged aircraft. The definition of "in the open" may be modified to include "hush houses," test hangers, comparable structures, and other designated areas. In addition, clause subparagraph (d)(3) may be modified to provide for Government assumption of risk of transportation by conveyance on streets or highways if the contracting officer determines that this transportation is limited to the vicinity of the contractor's premises and is merely incident to work being performed under the contract.

AIRCRAFT GROUND AND FLIGHT RISK (DECEMBER 1988)

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft in the open, during operation, and in flight and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction.

(b) For the purposes of this clause, the following definitions apply:

(1) Unless otherwise specifically provided in the Schedule, "aircraft" includes—

(i) Aircraft (including both complete aircraft and aircraft in the course of being manufactured, disassembled, or reassembled; *provided* that an engine or a portion of a wing or a wing is attached to the fuselage) to be furnished to the Government under this contract (whether before or after acceptance Government acceptance); and

(ii) Aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract, including all property installed in, in the process of installation in, or temporarily removed from them, unless the aircraft and property are covered by a separate bailment agreement.

(2) "In the open" means located wholly outside of buildings on the Contractor's premises, or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government are considered to be in the open at all times while in Contractor's possession, care, custody, or control.

(3) "Flight" includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises.

(ii) With respect to seaplanes, flight commences with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises; *provided,* however, that aircraft off the Contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this contract, or landings approved by the Contracting Officer in writing.

(4) "Contractor's premises" means those premises designated as such in the Schedule or in writing by the Contracting Officer, and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(5) "Operation" means operations and tests, other than on any production line, of aircraft, not in flight, whether or not the aircraft is in the open or in motion during them and includes operations and tests of equipment, accessories, and power plants only when installed in aircraft.

(6) "Flight crew members" means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(7) "Contractor's managerial personnel" means the Contractor's directors, officers, and any managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business or of the Contractor's operations at any one plant or separate location at which this contract is performed or a separate and complete major industrial operation in connection with the performance of this contract.

(c)(1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to subparagraph (3) below. If the Contracting Officer finds that an aircraft is in the open under unreasonable conditions, the Contracting Officer shall notify the Contractor in writing of the conditions found to be unreasonable and require the Contractor to correct them within a reasonable time.

(2) Upon receipt of this notice, the Contractor shall act promptly to correct these conditions, regardless of whether it agrees that they are in fact unreasonable. To the extent that the Contracting Officer may later determine that they were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs incurred in correcting them, and the contract shall be modified in writing accordingly.

(3)(i) If the Contracting Officer finds that the Contractor has failed to act promptly to correct unreasonable conditions or has failed to correct them within a reasonable time, the Contracting Officer may by written notice terminate the Government's assumption of risk under this clause for any aircraft which is in the open under those conditions. This termination shall be effective at 12:01 A.M. on the 15th day following the day of receipt by the Contractor of the notice.

(ii) If the Contracting Officer later determines that the Contractor acted promptly to correct the conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (g) below, be made to compensate the Contractor for any additional costs incurred as a result of the termination, and the contract shall be modified in writing accordingly.

(4) If the Government's assumption of risk under this clause is terminated in accordance with subparagraph (3) above, the risk of loss with respect to Government-furnished property shall be determined in accordance with the Government property clause of this contract, if any, until the Government's assumption of risk is reinstated in accordance with subparagraph (5) below.

(5)(i) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government. The Government may or may not elect to reassume the risks and relieve the Contractor of liabilities as provided in this clause, and the Contracting Officer shall notify the Contractor of the Government's election.

(ii) If, after correction of the conditions, the Government elects to reassume the risks and relieve the Contractor of liabilities, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending from the end of the third working day after the Contractor notifies the Government of the correction until the Government notifies the Contractor of that election.

(iii) If the Government elects not to reassume the risks and the conditions have in fact been corrected, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending after the third working day referred to in subdivision (ii) above.

(d) The Government's assumption of risk shall not extend to damage to or loss or destruction of aircraft—

(1) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for protecting and preserving aircraft in the open and during operation, in accordance with sound industrial practice;

(2) Sustained during flight if the flight crew members conducting the flight have not been approved in writing by the Contracting Officer;

(3) While in the course of transportation by rail or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) To the extent that the damage, loss, or destruction is in fact covered by insurance;

(5) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless this damage is the result of other loss, damage, or destruction covered by this clause (except that, in the case of Government-furnished property, if the damage consists of reasonable wear and tear or deterioration or results from inherent vice in such property, this exclusion shall not apply); or

(6) Sustained while the aircraft is being worked upon and directly resulting from the work, including but not limited to any repairing, adjusting, servicing, or maintenance operation, unless the damage, loss, or destruction is of a type that would be covered by insurance that would customarily have been maintained by the Contractor at the time of the damage, loss, or destruction, but for the Government's assumption of risk under this clause.

(e)(1) With the exception of damage to or loss or destruction of aircraft in flight, the Government's assumption of risk under this clause shall not extend to the first $1,000 of loss or damage resulting from each event separately occurring. The Contractor assumes the risk of and shall be responsible for the first $1,000 of loss of or damage to aircraft in the open or during operation resulting from each event separately occurring, except for reasonable wear and tear and except to the extent the loss or damage is caused by negligence of Government personnel.

(2) If the Government elects to require that the aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) below shall not include the dollar amount of the risk assumed by the Contractor under this paragraph (e). If the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $1,000 (or the amount of the loss if smaller) as directed by the Contracting Officer.

(f) No subcontractor may be relieved from liability for damage to or loss or destruction of aircraft while in its possession or control, except to the extent that the subcontract, with the Contracting Officer's prior written approval, provides for relief of the subcontractor from that liability. In the absence of such approval, the subcontract shall require the return of the aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. If a subcontractor has not been relieved from liability and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for that damage to or loss or destruction of the aircraft for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as this clause may otherwise authorize, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to or loss or destruction of aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under this clause, whether or not such assumption may be terminated as to aircraft in the open.

(h)(1) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, separate damaged and undamaged aircraft, and put all aircraft in the best possible order. Further, except in cases covered by paragraph (e) above, the Contractor should furnish to the Contracting Officer a statement of—

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) Any insurance covering any part of the interest in the commingled property.

(2) Except in cases covered by paragraph (e) above, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing its obligations under this paragraph (h), and this contract shall be modified in writing accordingly.

(i)(1) If, before delivery and acceptance by the Government, any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of that damage, loss, or destruction, the Government shall either (i) require that the aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to the damage or (ii) terminate this contract with respect to that aircraft.

(2) If the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and the contract shall be modified in writing accordingly.

(3) If, in the alternative, this contract is terminated under this paragraph (i) with respect to the aircraft, and under this clause the Government has assumed the risk of the damage, loss, or destruction, the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amounts the Contracting Officer determines (i) that it would have cost the Contractor to complete the aircraft (or any work to be performed on it), together with any anticipated profit on the uncompleted work and (ii) to be the value, if any, of the damaged aircraft or any remaining portion of it retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft or any remaining parts of it, and, if the Contractor incurs additional costs as a result of such disposition, a further equitable adjustment shall be made in the amount due to the Contractor.

(j)(1) If the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under this clause and for which the Contractor has been compensated by the Government, it shall equitably reimburse the Government.

(2) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the Contracting Officer, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery. (End of clause.)

1852.228-71 Aircraft flight risks.

(a) As prescribed in 1828.311-270, insert the following clause:

AIRCRAFT FLIGHT RISKS (DECEMBER 1988)

(a) Notwithstanding any other provision of this contract (particularly paragraph (g) of the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause and paragraph (c) of the Insurance—Liability to Third Persons clause), the Contractor shall not (1) be relieved of liability for damage to, or loss or destruction of, aircraft sustained during flight or (2) be reimbursed for liabilities to third persons for loss of or damage to property or for death or bodily injury caused by aircraft during flight, unless the flight crew members have previously been approved in writing by the Contracting Officer.

(b) For the purposes of this clause—

(1) Unless otherwise specifically provided in the Schedule, "aircraft" includes any aircraft, whether furnished by the Contractor under this contract (either before or after Government acceptance) or furnished by the Government to the Contractor under this contract, including all Government property placed or installed or attached to the aircraft, unless the aircraft and property are covered by a separate bailment agreement.

(2) "Flight" includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line and continues until the aircraft has completed the taxi roll to a flight line.

(ii) With respect to sea-planes, flight commences with the launching from a ramp and continues until the aircraft has completed its landing run and is beached at a ramp.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off and continues until the aircraft has returned to the ground and rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device and continues until the aircraft has been re-engaged to any launching platform or device.

(3) "Flight crew members" means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(c)(1) If any aircraft is damaged, lost, or destroyed during flight and the amount of the damage, loss, or destruction exceeds $100,000 or 20 percent of the estimated cost, exclusive of any fee, of this contract, whichever is less, and if the Contractor is not liable for the damage, loss, or destruction under the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause of this contract or under paragraph (a) above, an equitable adjustment for any resulting repair, restoration, or replacement required under this contract shall be made (i) in the estimated cost, the delivery schedule, or both and (ii) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly.

(2) In determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, its employees, or any subcontractor that materially contributed to the damage, loss, or destruction shall be taken into consideration. (End of clause.)

1852.228-72 Interparty waiver of liability during STS operations.

As prescribed in 1828.371, insert the following clause:

INTERPARTY WAIVER OF LIABILITY DURING STS OPERATIONS (DECEMBER 1988)

(a) The Contractor undertakes the obligations of, agrees to be bound by, and shall receive the protection and benefits of a NASA contractor under the no-fault, no-subrogation interparty waiver of liability provision with users for Space Shuttle services, to the extent provided for and reprinted in paragraph (d) below.

(b) This inteparty waiver of liability shall not apply to damage caused by (1) NASA to the Contractor's employees or property or (2) the contractor to NASA's employees or property.

(c) This clause, including this paragraph (c), shall be included in all subcontracts under this contract under which work is to be performed in support of STS operations.

(d) The applicable definitions and the no-fault, no-subrogation interparty waiver of liability provision contained in NASA agreements with users for Space Shuttle services provide in relevant part as follows:

1. General.

a. **(Paragraph a. of the Shuttle Launch Agreement has been intentionally omitted since it is not relevant.)**

b. For purpose of this (Shuttle Launch) Agreement, the following definitions shall be applicable:

(1) "Liability" shall include payments made pursuant to United States' treaty, any judgment by a court of competent jurisdiction, administrative and litigation costs, and, after consultation with the User, settlement payments.

(2) "Damage" shall mean bodily injury to or death of any person, damage to, or loss of any property, and loss of revenue or profits or other direct, indirect, or consequential damages arising therefrom.

2. (Paragraph 2 of the Shuttle Launch Agreement has been intentionally omitted since it is not relevant.)

3. Damage to Persons or Property Involved in STS Operations.

a. For purposes of this Paragraph 3., the following definitions shall be applicable:

(1) "STS Operations" shall mean:

(a) All Space Transportation System activity;

(b) All Payload activity:

(c) All tangible personal property (including ground support, test, training and simulation equipment) related to (a) and (b) above;

(d) Research, design, development, test, manufacture, assembly, integration, transportation, or use of any materials related to (a), (b) or (c) above.

(e) Performance of any services related to (a) through (d) above.

(2) "Protected STS Operations" shall mean a period of time during which STS Operations are being performed as follows:

(a) Beginning with the signature of an Agreement or Arrangement with NASA for Space Transportation System services and (i) when any employee, Payload or property arrives at a United States Government Installation, or (ii) during transportation of such to the installation by a United States Government conveyance, or (iii) at ingress of such into an Orbiter, for the purpose of fulfilling such Agreement or Arrangement, whichever occurs first.

(b) Ending with regard to any employee when (i) the employee departs a United States Government Installation, or (ii) the Orbiter if it lands at other than such Installation, or (iii) a United States Government conveyance which transports the employee from such Installation or Orbiter, whichever occurs last.

(c) Ending with regard to a Payload or property, not Jettisoned or Deployed, under the same conditions as set forth in Subparagraph 3.a.(2)(b) above.

(d) Ending with whichever occurs last with regard to a Deployed or Jettisoned payload or property (i) after such impacts the earth; or (ii) if retrieved by the Orbiter, under the same conditions set forth in Subparagraph 3.a.(2)(b) above.

b. NASA and the User (the parties) will respectively utilize their property and employees in STS Operations in close proximity to one another and to others. Furthermore, the parties recognize that all participants in STS Operations are engaged in the common goal of meaningful exploration, exploitation and uses of outer space. In furtherance of this goal, the parties hereto agree to a no-fault, no-subrogation, interparty waiver of liability pursuant to which each party agrees not to bring a claim against or sue the other party or other users and agrees to absorb the financial and any other consequences for Damage it incurs to its own property and employees as a result of participation in STS Operations during Protected STS Operations, irrespective of whether such Damage is caused by NASA, the User, or other users participating in STS Operations, and regardless of whether such Damage arises through negligence or otherwise. Thus, the parties, by absorbing the consequences of damage to their property and employees without recourse against each other or other users participating in STS Operations during Protected STS Operations, jointly contribute to the common goal of meaningful exploration of outer space.

c. The parties agree that this common goal will also be advanced through extension of the interparty waiver of liability to other participants in STS Operations. Accordingly, the parties agree to extend the waiver as set forth in Subparagraph 3.b. above to contractors and subcontractors at every tier of the parties and other users, as third party beneficiaries, whether or not such contractors or subcontractors causing damage bring property or employees to a United States Government Installation or retain title to or other interest in property provided by them to be used, or otherwise involved, in STS Operations. Specifically, the parties intend to protect these contractors and subcontractors from claims, including "products liability" claims, which might otherwise be pursued by the parties, or the contractors or subcontractors of the parties, or other users or the contractors or subcontractors of other users. Moreover, it is the intent of the parties that each will take all necessary and reasonable steps in accordance with Subparagraph 3.e. below to foreclose claims for Damage by any participant in STS Operations during Protected STS Operations, under the same conditions and to the same extent as set forth in Subparagraph 3.b. above, except for claims between the User and its contractors or subcontractors and claims between the United States Government and its contractors and subcontractors.

d. The parties intend that the interparty waiver of liability set forth in Subparagraphs 3.b. and 3.c. above be broadly construed to achieve the intended objectives.

e. NASA will require all Space Transportation system users entering into Launch and Associated Services Agreements with NASA after December 1, 1982, to agree to the interparty waiver of liability as set forth in Subparagraphs 3.b. and 3.c. above. The User, and each other user, will require the following to agree to the waiver of liability set forth in Subparagraph 3.c. above: (i) all persons and entities to whom it assigns all or part of its right to Launch and Associated Services; (ii) any person or entity to whom it has sold or leased or otherwise agreed to provide all or any portion of its Payload or Payload services prior to the completion of NASA's launch services for a particular Payload; (iii) all its prime contractors; and (iv) all its subcontractors who will have persons or property involved in STS Operations during Protected STS Operations. NASA will require all the following to agree to the waiver of liability set forth in Subparagraph 3.c. above: (i) all its prime contractors; and (ii) all its subcontractors who will have persons or property involved in STS Operations during Protected STS Operations. Furthermore, NASA has required all STS users entering into Launch and Associated Services Agreements prior to December 1, 1982, to agree to a more limited waiver of liability, a copy of which is available from NASA upon request. Failure of any party to obtain a waiver agreement required above shall not

affect such party's right to the protections otherwise provided by this Paragraph 3. (End of clause.)

1852.228-73 Bid bond.

As prescribed in 1828.101-70, insert the following provision:

BID BOND (OCTOBER 1988)

(a) Each bidder shall submit with its bid a bid bond (Standard Form 24) with good and sufficient surety or sureties acceptable to the Government, or other security as provided in Federal Acquisition Regulation clause 52.288-1, in the amount of twenty percent (20%) of the bid price, or $3 million, whichever is the lower amount.

(b) Bid bonds shall be dated the same date as the bid or earlier. (End of provision.)

1852.228-74 Payment and performance bonds.

As prescribed in 1828.102-70, insert the following provision:

PAYMENT AND PERFORMANCE BONDS (DECEMBER 1988)

Unless the resulting contract is for $25,000 or less, the successful bidder will be required to furnish payment and performance bonds to the Contracting Officer as follows:

(a) *Performance Bonds*: (Standard Form 25)

(1) The penal amount of performance bonds shall be 100 percent of the original contract price.

(2) The Governemnt may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Government may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) *Payment Bonds*: (Standard Form 25-A)

(1) The penal amount of payment bonds shall equal—

(i) 50 percent of the contract price if the contract price is not more than $1 million;

(ii) 40 percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(iii) $2.5 million if the contract price is more than $5 million.

(2) If the original contract price is $5 million or less, the Government may require additional protection if the contract price is increased. The penal amount of the total protection as revised shall meet the requirement of subparagraph (1) immediately above.

(3) The government may secure additional protection by directing the Contractor to increase the penal sum of the existing bond or to obtain an additional bond.

(c) The Contractor shall furnish all bonds, including any necessary reinsurance agreements, to the Contracting Officer before starting work. Performance and payment bonds shall be dated the *same date as the contract award date*; or, in the case of any additional bond protection required, the *same date as the contract modification date.*

(d) Surety companies acceptable to the Government are identified by the Department of Treasury and listed in the **Federal Register.** (End of provision.)

1852.228-75 Minimum insurance coverage.

As prescribed in 1828.372, insert the following clause:

MINIMUM INSURANCE COVERAGE (OCTOBER 1988)

The Contractor shall obtain and maintain insurance coverage as follows for the performance of this contract:

(a) Worker's compensation and employer's liability insurance as requried by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The employer's liability coverage shall be at least $100,000, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

(b) Comprehensive general (bodily injury) liability insurance of at least $500,000 per occurrence.

(c) Motor vehicle liability insurance written on the comprehensive form of policy which provides for bodily injury and property damage liability covering the operation of all motor vehicles used in connection with performing the contract. Policies covering motor vehicles operated in the United States shall provide coverage of at least $200,000 per person and $500,000 per occurrence for bodily injury liability and $20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) Comprehensive general and motor vehicle liability policies shall contain a provision worded as follows:

"The insurance company waives any right of subrogation against the United States of America which may arise by reason of any payment under the policy."

(e) When aircraft are used in connection with performing the contract, aircraft public and passenger liability insurance of at least $200,000 per person and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater. (End of clause.)

1852.228-77 Reimbursement for war-hazard losses.

As prescribed in 1828.309, insert the following clause:

REIMBURSEMENT FOR WAR-HAZARD LOSSES (DECEMBER 1988)

(a) The Contractor's costs for assuming liability for employee protection against war-hazard risks pursuant to paragraph (b) of the Worker's Compensation and War-Hazard Insurance Overseas clause shall be an allowable cost under this contract, subject to the following:

(1) The Contractor shall submit proof-of-loss files to support payment or denial of each claim.

(2) As soon as practicable, but no later than one year after the expiration or termination of this contract, unless the Contracting Officer extends the time, the Contractor shall convert each claim which has not been finally settled into a suitable arrangement under which the claim can be extinguished by the Contractor with a lump-sum payment. Subject to approval by the Contracting Officer, the Contractor shall then obtain necessary release documents and settle the claim by lump-sum arrangement, taking into account any payments previously made.

(3) As to any potential claim that is known to, or reasonably should be within the knowledge of, the Contractor at the time of final settlement under this contract, the Contractor shall, at that time, present to the Government a full report and evaluation, indicating as to each potential claim that a reasonable investigation of the circumstances has been made and giving the results of the investigation, an evaluation of the merits, and an estimate of the amount involved should the potential claim mature into a valid obligation.

(4) The cost of insurance against a liability reimbursable under this clause shall not be an allowable cost or otherwise recoverable under this contract.

(b) The Government may require the Contractor to assign to the Government in the manner, at the times, and to the extent directed by the Contracting Officer all right, title, and interest of the Contractor to any refund, rebate, or recapture arising out of any claim settlement. The Government may handle such assigned entitlements in any manner it deems appropriate and may recover any benefits related to claim settlements.

(c) The Contractor shall, as soon as practicable after an occurrence that appears to give rise to a claim under this portion of the contract, (1) perform any investigations that may be appropriate and (2) promptly notify the Contracting Officer in writing of any additional amount estimated to be necessary to be obligated on account of that claim. In addition, the Contractor shall give the Government or its representatives immediate written notice of any suit or action filed whose cost or expense may be reimbursable to the Contractor under this clause. The Contractor shall to render full assistance to the Government in connection with any third-party suit or claim relating to this clause or its subject matter that the Government elects to prosecute or defend in its own behalf. (End of clause.)

bb. Sections 1852.236-73, 1852.236-74, 1852.237-70, 1852.242-71, and 1852.242-72 are added to read as follows:

1852.236-73 Hurricane plan.

As prescribed in 1836.57001, insert the following clause:

HURRICANE PLAN (DECEMBER 1988)

In the event of a hurricane warning, the Contractor shall—

(a) Inspect the area and place all materials possible in a protected location;

(b) Tie down, or identify and store, all outside equipment and materials;

(c) Clear all surrounding areas and roofs of buildings, or tie down loose material, equipment, debris, and any other objects that could otherwise be blown away or blown against existing buildings; and

(d) Ensure that temporary erosion controls are adequate. (End of clause.)

1852.236-74 Magnitude of requirement.

As prescribed in 1836.57002, insert the following provision:

MAGNITUDE OF REQUIREMENT (DECEMBER 1988)

The Government estimated price range of this project is between $_____ and $_____. [Insert the estimated dollar range.] (End of provision.)

1852.237-70 Emergency evacuation procedures.

As prescribed at 1837.110, insert the following clause:

EMERGENCY EVACUATION PROCEDURES (DECEMBER 1988)

The Contractor shall assure that its personnel at Government facilities are familiar with the functions of the Government's emergency evacuation procedures. If requested by the Contracting Officer, the Contractor shall designate an individual or individuals as contact points to provide for efficient and rapid evacuation of the facility if and when required. (End of clause.)

1852.242-71 Travel outside of the United States.

As prescribed in 1842.7002(a), insert the following clause:

TRAVEL OUTSIDE OF THE UNITED STATES (DECEMBER 1988)

(a) The Contracting Officer must authorize in advance and in writing travel to locations outside of the United States by Contractor employees that is to be charged as a cost to this contract. This approval may be granted when the travel is necessary to the efforts required under the contract and it is otherwise in the best interest of NASA.

(b) The Contractor shall submit requests to the Contracting Officer at least 30 days in advance of the start of the travel.

(c) The Contractor shall submit a travel report at the conclusion of the travel. The Contracting Officer's approval of the travel will specify the required contents and distribution of the travel report. (End of clause.)

ALTERNATE I

TRAVEL OUTSIDE OF THE UNITED STATES (DECEMBER 1988)

As prescribed in 1842.7002(b), add Alternate I to the basic clause.

(d) The costs of foreign travel may be approved as a charge to the contract for presentation of papers at meetings, conferences, or symposiums; participation in meetings, conferences, or symposiums as session chairpersons, discussion leaders, special invitees, or official staff members of the sponsoring group; "on-site" field work; and in exceptionally meritorious cases, visits to scientific or technical organizations and attendance at international conferences and technical seminars when the travel is related to efforts under the contract.

(e) The costs of foreign travel ordinarily will not be approved as a charge to the contract for the sole purpose of visiting or attending meetings, unless fully warranted by clear and recognizable direct benefits to the efforts under the contract; meetings of national (as distinguished from international) bodies, unless the travel is constructively associated with other approved goals; or meetings that are predominantly American in either attendance or presented papers. (End of clause.)

1852.242-72 Observance of legal holidays.

As prescribed in 1842.7003(a), insert the following clause:

OBSERVANCE OF LEGAL HOLIDAYS (DECEMBER 1988)

(a) The on-site Government personnel observe the following holidays:

New Year's Day
Labor Day
Martin Luther King's Birthday
Columbus Day
Washington's Birthday
Veterans Day
Memorial Day
Thanksgiving Day
Independence Day
Christmas Day

Any other day designated by Federal statute, Executive order, or the President's proclamation.

(b) When any holiday falls on a Saturday, the preceding Friday is observed. When any holiday falls on a Sunday, the following Monday is observed. Observance of such days by Government personnel shall not by itself be cause for an additional period of performance or entitlement of compensation except as set forth within the contract. (End of clause.)

ALTERNATE I (DECEMBER 1988)

As prescribed in 1842.7003(b), add the following paragraphs (c), (d), and (e) as Alternate I to the clause.

(c) Personnel assigned to this contract shall limit their observance of holidays to those set forth above. If the Contractor's personnel work during a holiday other than those above, no form of holiday or other premium compensation shall be reimbursed as either a direct or indirect cost. However, this does not preclude reimbursement for authorized overtime work that would have been overtime regardless of the status of the day as a holiday.

(d) When the NASA installation grants administrative leave to its Government employees, Contractor personnel working on-site should also be dismissed. However, the Contractor shall (1) continue to provide sufficient personnel to perform round-the-clock requirements of critical tasks already in operation or scheduled and (2) be guided by the instructions issued by the Contracting Officer or an authorized representative.

(e) Whenever administrative leave is granted to Contractor personnel pursuant to paragraph (d) above as a result of inclement weather, potentially hazardous conditions, or other special circumstances, it shall be without loss to the Contractor. The cost of salaries and wages to the Contractor for the period of any such excused absence shall be a reimbursable item of cost under this contract for employees in accordance with the Contractor's established accounting policy.

1852.250-70 and 1852.250-71 [Amended]

cc. In 1852.250-70 and 1852.250-71, in the introductory sentence, the references "1850.403-3(a)(1):" and "1850.403-3(a)(2):" are revised to read "1850.403-370(a)(1):" and "1850.403-370(a)(2):", respectively.

[FR Doc. 88-29146 Filed 12-21-88; 8:45 am]

BILLING CODE 7510-01-M

federal register

Wednesday
December 21, 1988

Part III

State Justice Institute

Grant Guideline; Notice

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Final guideline.

SUMMARY: This guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 1989 State Justice Institute grants, cooperative agreements, and contracts.

EFFECTIVE DATE: December 21, 1988.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, at 120 S. Fairfax St., Alexandria, Virginia 22314, or at (703) 684–6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Jutice Institute Act of 1984, Pub. L. 98–620, 42 U.S.C. 10701, *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the administration of justice in the State courts of the United States. Approximately $10 million will be available for award in FY 1989. The guideline published below establishes the Institute's funding schedule, procedures, and Special Interest categories for FY 1989.

On October 21, 1988, the Institute published its proposed FY 1989 Grant Guideline in the Federal Register for public comment. 53 FR 41444. The Institute specifically requested comment on a number of issues related to SJI funding for judicial education projects; on several administrative changes in the grant program; and on the appropriateness of providing "maintenance funding" to organizations providing important services to the State courts. An analysis of the comments received on these and other issues, and the Institute's response to them, is set forth below.

Judicial Education

Comment was specifically invited on the following judicial education issues:

(1) *The provision of technical assistance to State judicial educators and national judicial education organizations for the purpose of State-to-State, State-to-national, and national-to-State transfer of educational curricula, delivery techniques, services and resource materials.*

Most of the comments received on this issue were strongly supportive of the idea of a technical assistance project. In response to the suggestions of two commenters, the final guideline contemplates the support of one *or more* projects, and clarifies that a technical assistance project may be implemented either under a contract, a grant, or a cooperative agreement. See section II.B.2.b.

(2) *The award of "seed money" grants to assist interested States in developing minimum standards for judicial education and training; creating an on-going entity responsible for planning and implementing judicial education programs for judges and other court personnel.*

The final guideline includes "seed money" grants to develop in-State judicial education programs and, in response to several comments, clarifies that States interested in such funding must demonstrate the commitment of their judicial leadership to develop and continue in-State judicial education. In addition to the requirements imposed on any State court application (support for the project by the State's Chief Justice or his or her designee, and a commitment to contribute matching support), the State must also demonstrate a commitment to continue the project after the expiration of SJI funding. See section II.B.2.b.

(3) *The award of formula grants to States for certain educational purposes, e.g., developing and improving in-State judicial education programs, or supporting "scholarships" for judges and other court personnel to attend out-of-State training.*

Several commenters suggested that the Institute move cautiously in establishing formula grants. In light of the comments and after further consideration by the Board, the final Guideline does not establish a formula grant program.

(4) *The specific criteria on which education and training proposals should be evaluated.*

The public comment was very supportive of the proposed criteria to be used to evaluate education and training proposals. The final Guideline accordingly retains the following criteria to determine whether a project is likely to result in effective training for judges and other court personnel: The description of how the need for the program has been determined; the methods by which faculty will be recruited, selected, and trained; the objectives of the training; the adult education practices and teaching methods to be employed; and the methods by which the program will be evaluated to determine the impact of the training as well as the reaction of the participants. See section II.B.2.b.

(5) *The priority, if any, SJI should accord certain types of education and training programs, i.e., new judge training; continuing judicial education; or personal development projects.*

In recognition of the great need for "new judge" training nationally (a need underscored by a number of the comments received), and the lack of high quality applications received to date that focus on the educational needs of new judges, the Board has expressed a particular interest in receiving proposals to develop, present and evaluate such training in FY 1989. For purposes of the Guideline, "new judge training" is defined to include education and training conducted from the time of appointment through judge's first year of service. Section II.B.2.b.

(6). *Issues and ideas to inform the Board's long-range strategic plan for SJI support of judicial education programs at the State and national level.*

The Board is planning to publish a "Long-Term Judicial Education Funding Strategy" for public comment next spring. The Strategy will present a statement of SJI's goals and objectives in the area and a plan for allocating Institute funds for different types of education and training projects at the national, regional, and State levels. The Strategy will be revised, as appropriate, in light of the public response and the Board's further deliberations, and published as part of the Institute's FY 1990 Proposed Grant Guideline next summer. The final Strategy, reflecting the comments received on the proposed Guideline, will be published as part of SJI's final FY 1990 Grant Guideline.

Other Changes in Special Interest Areas

In addition to the Special Interest areas listed in the proposed Guideline, the final Guideline also contains the following two new areas: "Careers in the Courts" (including ways to attract, select, and retain persons in the judiciary and other court occupations) (Section II.B.2.h.) and "The Experimenta Use of Subject Matter Panels on State Intermediate Appellate Courts" (Section II.B.2.i.)

The Board carefully considered a comment to combine the special interest categories on enforcement of fines, probation, and continuing court orders into one category entitled the "Integrity of Court Orders," but declined to do so in order to assure that potential applicants consider the important subtopics within each of the categories that may not necessarily involve protecting the integrity of the court's order.

Administrative Changes

The proposed Grant Guideline requested comment on possible changes in the application process, including

ways to relieve organizations submitting multiple concept papers or applications from the burden of submitting repetitive information in each paper or application; and the establishment of policies and procedures regarding "continuation" and "on-going support" grants.

On the basis of the comments received and further consideration by the Board, the final Guideline permits applicants to eliminate repetitive information in their applications by including common information in one "cover letter" (and reducing the permissible length of the individual applications accordingly). See sections VI.A.5. and VII.E.2. The final Guideline also incorporates the proposed "continuation" and "on-going support" provisions and clarifies that continuation applications may be submitted at times other than those established for the Institute's normal funding cycles. See section IX. The award of continuation grants outside the normal cycle is subject to the discretion of the Board and the availability of funds.

The final Guideline also highlights the need for each project to include an evaluation of its impact and the degree to which it has met its objectives (section VII.C.4.b.), and requires applicants to specify evaluation costs in project budgets. See section VII.D. The Guideline also provides that the Institute will notify the designated State contact person (see Appendix) when courts in a State are named as participating project sites. In addition, the Guideline specifies that if an applicant receiving notice of the Board's approval of its application does not submit requested revisions (or a reasonable timetable for submitting such revisions) within 30 days after notification of approval, the approval will be withdrawn and the application presented to the Board for reconsideration. Section VIII.F. Other administrative changes clarify non-supplantation and match requirements. See section X.B. and X.G.3.

In response to questions raised during the comment period, the Guideline clarifies that publicly supported institutions of higher education are not considered units of State or local government for the purposes of providing match. See section X.B. The Guideline also provides that tuition and registration fees charged for Institute-supported training and education programs must be used to cover project-related costs or to reduce the amount of grant funds used to support the project. Section XI.F.3.

In addition, the Guideline modifies the review process by authorizing Institute staff to prepare only summary descriptions of proposals that, in the judgment of the Executive Director, fall outside the scope of the Institute's funding program or present ideas unlikely to merit serious consideration by the Board. Section VI.C.

"Maintenance Grants"

The final substantive issue on which public comment was requested was the appropriateness of awarding "maintenance" grants to certain organizations that provide important services to the State courts, without requiring those organizations to submit proposals seeking funds for specific projects.

Most commenters believed that such grants should not be awarded. On the basis of the comments received and the deliberations of the Board, the final Guideline does not authorize maintenance grants. The issue will, however, be raised again for public comment in the context of the "Long-Term Strategy" to be published next spring.

Recommendations to Grantwriters

Over the past two years, Institute staff have received approximately 550 concept papers and 200 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this guideline. The Institute suggests that applicants make certain that they answer the following questions when preparing a concept paper or application:

1. *What is the subject or problem you wish to address?* Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote.

2. *What do you want to do?* Explain the goal(s) of the project in simple, straightforward terms. To the greatest extent possible, an applicant should avoid a specialized vocubulary that is not readily understood by the general public. Technical jargon does not enhance a paper.

3. *How will you do it?* All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, err on the side of caution and provide the additional information. A description of project tasks will also help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. *How will you know it works?* Every project design must include an evaluation component to determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Concept papers and applications should describe the criteria that will be used to evaluate the project's effectiveness and identify program elements which will require further modification. The description in the application should include how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

5. *How will others find out about it?* Every project design must include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, presentations at appropriate conferences, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination should be identified. Reproduction and dissemination costs are allowable budget items.

6. *What are the specific costs involved?* The budget in both concept papers and applications should be clearly presented. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be clearly identified. In

applications, the budgeted figures should relate directly to the specific project tasks included in the workplan. If match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which the costs will be covered wholly or in part by the match should be specified.

7. *What, if any, match is being offered?* Courts and other units of State and local government (not including publicly supported institutions of higher education) are required by the State Justice Institute Act, as amended, to contribute a match (cash, non-cash, or both) of not less than 50 percent of the grant funds requested from the Institute. All other applicants are also encouraged to provide a matching contribution to assist in meeting the costs of a project. The match requirement works as follows: If the total cost of a project is anticipated to be $150,000, a State or local court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. Non-cash match refers to in-kind contributions by the applicant, or other public private sources. When match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which costs will be covered wholly or in part by match should be specified.

The following Grant Guideline is accordingly adopted by the State Justice Institute for Fiscal Year 1989:

State Justice Institute Grant Guideline

Table of Contents

SUMMARY

This guideline sets forth the programmatic, financial, and administrative requirements of grants, cooperative agreements, and contracts awarded by the State Justice Institute. The Institute, a private nonprofit corporation established by an Act of Congress, is authorized to award grants, cooperative agreements and contracts to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branch of State governments; and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments.

The Institute may also award funds to other nonprofit organizations with expertise in judicial administration; institutions of higher education; individuals, partnerships, firms, or corporations; and private agencies with expertise in judicial administration if the objectives of the funded program can be better served by such an entity. Funds may also be awarded to Federal, State or local agencies and institutions other than courts for services that cannot be provided for adequately through nongovernmental arrangements.

Approximately $10 million is available for grants, contracts, and cooperative agreements from FY 1989 appropriations. The Institute may also provide financial assistance in the form of interagency agreements with other grantors. The Institute will consider applications for funding support that address any of the areas specified in its enabling legislation; however, the Board of Directors of the Institute has designated certain program categories as being of special interest.

The Institute has established one round of competition for FY 1989 funds, with a concept paper submission deadline of February 2, 1989. This guideline applies to concept papers and formal applications submitted for FY 1989 funding.

The awards made by the State Justice Institute are governed by the requirements of this guideline and the authority conferred by Pub. L. 98-620, Title II, 42 U.S.C. 10701, *et seq.*

I. Background

The State Justice Institute ("Institute") was established by Pub. L. 98-620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an eleven-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator and four members of the public, no more than two of whom can be of the same political party.

The Institute's program budget for Fiscal Year 1989 is approximately $10 million. Through the award of grants, contracts and cooperative agreements, the Institute is authorized to perform the following activities:

1. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

2. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

3. Participate in joint projects with Federal agencies and other private grantors;

4. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

5. Encourage and assist in furthering judicial education;

6. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

7. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

During FY 1989, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated certain program categories as being of "special interest." See section II.B.

A. Authorized Program Areas

The State Justice Institute Act authorizes the Institute to fund projects addressing one or more of the following program areas:

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination or information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and services forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards; and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity; and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

14. Other programs, consistent with the purposes of the Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will *not* be made available for the ordinary, routine operation of court systems in any of these areas.

B. Special Interest Program Categories

1. General Description

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory program areas are eligible for funding in FY 1989, the Institute is especially interested in funding those projects that:

a. Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;

b. Address aspects of the State judicial systems that are in special need of serious attention;

c. Have national significance in terms of their impact or replicability in that they develop products, services and techniques that may be used in other States;

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a "Special Interest" project if it meets the four criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

Concept papers and applications which address a "Special Interest" category will be accorded a preference in the rating process. (See the selection criteria listed in sections VI.B., "Concept Paper Submission Requirements for New Projects" and VIII.B., "Application Review Procedures."]

2. Specific Categories

The Board has designated the areas set forth below as "Special Interest" program categories. The order of listing does not imply any ordering of priorities among the categories.

a. *Judicial and Court Personnel Career Enhancement.* This category includes the development and testing of innovative methods to enhance judicial and court personnel careers, other than direct increases in salary. These methods could include approaches that emphasize the intrinsic rewards of the profession such as job enrichment and participative management strategies, use of "quality circles", judicial and nonjudicial personnel exchange programs, innovative programs or techniques for reducing judicial stress or "burnout", judicial sabbatical programs, or mentoring programs. This category also includes efforts to prepare lawyers for judicial careers and to encourage qualified persons to seek and accept positions as judges and court professionals.

b. *Education and Training for Judges and Other Key Court Personnel.* This category includes:

i. Development by a State of minimum standards for its court education programs;

ii. Preparation by a State of long range plans to ensure a comprehensive training program and the effective allocation of limited court education resources;

iii. Development of an organization to plan and implement education programs for judges and court personnel in those States which currently have little or no capacity to develop a State court education program. Applicant States must demonstrate a commitment to maintain and enhance their court education program after the grant period; and

iv. Development of innovative continuing education and career development programs for all court personnel, including but not limited to programs that emphasize "team" training.

The Board is particularly interested in the development, presentation and evaluation of in-State orientation and training programs for judges between the time of appointment and the conclusion of their first year of service on the bench.

Court education programs should assure that faculty understand and apply adult education techniques and teaching methods; provide opportunities for structured interaction among participants; develop tangible products and materials for use by the faculty, participants, and other judicial educators; employ a process for the recruitment of qualified and effective faculty; and develop sound methods for evaluating the impact of the training.

Court education programs also should develop new or revised curricula on key topics of concern to the judiciary, such as those identified in the SJI Special Interest categories and other topics that judges and court personnel have identified as important.

The Board is also interested in supporting the provision of technical assistance to State and national judicial educators for the transfer of educational curricula and resources, faculty development techniques, delivery techniques, evaluation methods, and plans for the development and administration of judicial education programs. Technical assistance projects may also include, as one facet of the services to be provided, aiding State judicial educators and other State and local court officials in the preparation of concept papers and grant applications.

c. *Alternative Dispute Resolution (ADR).* This category includes the evaluation of new and existing dispute resolution procedures and programs that have a substantial likelihood of resolving civil, criminal, domestic relations, juvenile and other types of disputes more fairly, more expeditiously and less expensively than the traditional court process, with particular emphasis on the impact of those procedures and programs on the quality of justice provided, litigant and court costs, and court workload. Among the possible issues that may be addressed are the effects that ADR programs that focus on domestic relations cases have on case processing; the effectiveness of ADR techniques in complex civil litigation; and the judicial role in settling cases, including the effectiveness of various settlement techniques, the most appropriate point(s) in the litigation process to convene a settlement conference, and the ethical questions that may confront a judge seeking to settle a case.

d. *The Impact of User Fees on Court Revenues and the Access to Justice.* This category includes research examining the various forms of user fees that are imposed on parties in civil, criminal, domestic relations, juvenile and other types of cases in order to assess their impact on court use, policies, services, revenues, and costs.

e. *The Future and the Courts.* This category includes research on the changing demands and circumstances that will face the courts in the 21st century, and the planning and implementation of modifications that may be needed in court organization, financing, procedures, services, personnel, and facilities to respond to those demands and circumstances. A proposed project could focus on such issues as:

—The impact that demographic changes in the American population over the next generation will have on the State courts;

—How developments in chemistry, disease and disease control, engineering, computer design, and other sciences are likely to affect the courts; or

—The possible changes in court structure, court administration, or legal authority that might help the State courts more effectively administer justice.

f. *Application of Technology.* This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels, including, e.g., the publication of a court technology bulletin to assist judges and court managers in selecting technology appropriate to a court's needs; assessment of the usefulness of on-bench computer terminals; and local experiments with promising but untested applications of technology in the courts. (See paragraph XI.H.2.b. regarding the limits on the use of grant funds to purchase equipment and software.)

g. *Jury System Management.* This category includes the development, implementation and evaluation of legal and administrative procedures relating to jurors to ensure the representativeness of the juror pool, clarify jury instructions, expedite the jury selection and empanelment process without affecting fairness, and otherwise reduce the cost and enhance the fairness of the jury process.

h. *Careers in the Courts.* This category includes development and testing of ways to attract and select persons in the judiciary and other court occupations, and evaluations of the impact of equal employment opportunity policies on court personnel, administration, and the public perception of the courts.

i. *The Experimental Use of Subject Matter Panels on State Intermediate Appellate Courts.* The Board specifically invites proposals for establishing intermediate appellate court panels responsible for handling specific subject matter cases. The Board would like to support a carefully designed and evaluated "subject matter panel" experiment to test whether such panels result in more uniformity and stability in the law; preserve judicial authority and avoid undue delegation to non-judicial staff; and expedite the decisionmaking process.

The Board contemplates that the subject matter panels would consist of three to five judges who are assigned specific types of cases, e.g., torts, family matters, property cases. Criminal cases could be assigned to one panel or allocated among all of them. The panels need not be permanent but could shift through gradual rotation. For a more thorough discussion of subject matter panels, see Meador, "An Appellate Court Dilemma and a Solution Through Subject Matter Organization," 16 *Journal of Law Reform* 471 (1983).

j. *Reduction of Litigation Expense and Delay.* This category includes the implementation and evaluation of innovative programs and procedures designed to reduce substantially the expense and delay in civil, criminal, domestic relations, juvenile, or other

types of litigation at the trial or appellate level (or both), and the examination of effective methods of limiting the expense and delay arising from the use of discovery procedures.

k. *Enforcement of Fines and Orders to Pay.* This category includes the implementation and evaluation of procedures for effectively imposing, collecting, and enforcing orders to pay fines, restitution, and other obligations.

l. *Improved Enforcement and Management of Probation.* This category includes the implementation and evaluation of innovative procedures for enforcing compliance with conditions of probation, and methods through which courts responsible for managing the probation function can carry out this responsibility more effectively and efficiently.

m. *Review and Enforcement of Continuing Court Orders.* This category includes the development, implementation and evaluation of effective and efficient procedures for monitoring and enforcing on-going court orders such as those issued in civil commitment, guardianship, neglect and abuse, child support, and institutional reform cases. Examples of these procedures include but are not limited to periodic review hearings; the required submission and review of periodic reports and financial accountings; the use of citizen review panels; and the appointment of special masters. Proposed projects should seek to provide fair, current, and thorough review of continuing court orders within realistic financial constraints and without overburdening the agencies, organizations, or individuals responsible for implementing the continuing order.

n. *Substance Abuse.* The Board is interested in sponsoring (or co-sponsoring) conferences, seminars, or other forums for judges, probation officers, caseworkers and other court personnel to examine court-related issues concerning drug and alcohol abuse and to discuss the appropriate role of the courts in addressing the problem of substance abuse.

o. *Implications of AIDS for the Courts.* This category includes research regarding the implications of Acquired Immune Deficiency Syndrome for court decisions, procedures, and policies, including but not limited to such matters as pretrial release, sentencing, child custody, termination of parental rights, and the right to and termination of medical treatment.

p. *Programs and Procedures for Victims and Witnesses.* This category includes the implementation and evaluation of innovative court-based programs and procedures for providing fair treatment for victims of crimes and witnesses. "Court-based" programs include those programs that are administered directly by the courts or through contracts negotiated between service providers and the courts. Programs and services operating in prosecutors' offices are ordinarily outside the scope of Institute funding.

Eligible projects may involve civil, criminal, domestic relations, juvenile and other types of cases, including but not limited to demonstrations and evaluations of innovative court-ordered treatment programs for victims or offenders; court procedures for notifying victims of key events pertaining to their cases; the use of child victim impact statements; procedures for the fair, effective and efficient handling of domestic violence and child sexual abuse cases; the issuance and enforcement of protective orders; and the obtaining of testimony from children.

q. *Responding to the Court-Related Needs of Elderly and Disabled Persons.* This category includes research and demonstration projects on issues related to access to the courts by elderly persons and physically or mentally disabled persons, and the fair and effective handling of cases affecting those persons; and the presentation of a national conference for judges, court personnel and others on the court-related needs of elderly or disabled persons. The issues that may be addressed include, but are not limited to:

—The fair and effective disposition of cases concerning the provision of medical, mental health, social and support services to elderly or disabled persons;

—The fair and effective disposition of cases concerning the imposition of plenary or limited surrogate decision-makers;

—The impact on court caseloads of the increasing proportion of elderly persons in the population; and

—The improvement of access to courthouses and court proceedings for litigants, jurors, witnesses, and victims of crime who have mobility or communication impairments.

r. *Public Education About the Courts.* This category includes projects designed to improve the public's understanding of the courts, such as the development of video tapes and other informational materials to be shown to citizens' groups or in schools; the development of survey instruments by which the courts could determine areas of public dissatisfaction or misunderstanding; and other innovative approaches to enhancing the public's understanding of the purpose of the courts, the operations of the judicial system, and the system's responsiveness to its citizens.

s. *Courthouse Security and Operation.* This category includes the implementation and evaluation of innovative techniques for improving courthouse security; the provision of technical assistance to jurisdictions to evaluate and enhance the security of courthouse facilities; and the development of policies, practices and procedures which emphasize the prevention of incidents that endanger the lives of judges, court personnel, and others in the courtroom. Funds will not be made available solely to hire additional security personnel or to purchase alarm or other security systems.

t. *The Relationship Between State and Federal Courts.* This category includes research to develop creative ideas and procedures that could improve the administration of justice in the State courts and at the same time reduce the work burdens of the Federal courts. Such research projects might address innovative State court procedures for:

—Reducing the burdens attendant to Federal habeas corpus cases involving State convictions;

—Handling civil, criminal, domestic relations or other types of cases in which a party also is subject to a Federal bankruptcy proceeding;

—Processing complex multistate litigation in the State courts;

—Facilitating the adjudication of Federal law questions by State courts with appropriate opportunities for review; and

—Otherwise allocating judicial burdens between and among Federal and State courts.

Other possible areas of research include studies examining the impact of the enforcement of selected Federal statutes on the State courts, the likely effect of the elimination or restriction of Federal diversity jurisdiction on the State courts, and the factors that motivate litigants to select the Federal or State courts in cases in which there is concurrent jurisdiction.

u. *Special Needs of the Largest Urban Courts.* This category is limited to projects submitted by State or local court systems regarding the implementation and evaluation of innovative programs and procedures to address the critical needs of a trial court serving a city or county with a population of at least 1,000,000 persons. Such projects might include the development and testing of improved methods to assist those courts in

selecting, retaining and removing judges, or projects to relieve acute problems in the court's ability to handle civil, criminal, domestic relations, juvenile and other types of cases in a fair and timely manner. The Board will consider awarding grants of up to $500,000 each to support projects in this category. Up to $1,000,000 of available grant funds have been set aside to support such projects.

C. Programs Addressing a Critical Need of a Single State or Local Jurisdiction

1. The Board will consider supporting a limited number of projects submitted by State or local courts that relate only to that State or local jurisdiction. Up to $500,000 of available grant funds has been set aside for such projects.

2. Concept papers and applications requesting funds for projects under this section must meet the requirements of sections VI ("Concept Paper Submission Requirements for New Projects") and VII ("Application Requirements") respectively, and must demonstrate that:

a. The proposed project is essential to meeting a critical need of the jurisdiction; and

b. The need cannot be met solely with State and local resources within the foreseeable future.

3. All awards under this category are subject to the matching requirements set forth in section X.B.

III. Definitions

The following definitions apply for the purposes of this guideline:

A. *Institute:* The State Justice Institute.

B. *State Supreme Court:* The highest appellate court in a State, unless, for the purposes of the Institute program, a constitutionally or legislatively established judicial council acts in place of that court. In States having more than one court with final appellate authority, *State Supreme Court* shall mean that court which also has administrative responsibility for the State's judicial system. *State Supreme Court* also includes the office of the court or council, if any, its designates to perform the functions described in this guideline.

C. *Designated Agency or Council:* The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and to be accountable for those funds.

D. *Grantor Agency:* The State Justice Institute.

E. *Grantee:* The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, *grantee* refers to the State Supreme Court.

F. *Subgrantee:* A State or local court which receives Institute funds through the State Supreme Court.

G. *Match:* The portion of project costs not borne by the Institute. *Match* includes both cash and in-kind contributions.

H. *Renewal Funding:* A grant to support an existing project for an additional period of time. Renewal funding may take the form of a continuation grant or an on-going support grant.

I. *Continuation Grant:* A grant of no more than 24 months to permit completion of activities initiated under an existing Institute grant or enhancement of the knowledge, programs, or services produced or established during the prior grant period.

J. *On-going Support Grant:* A grant of up to 36 months to support a project that is national in scope and that provides the State courts with services, programs, or products for which there is a continuing important need.

K. *Human Subjects:* Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions, and/or experiences through an interview, questionnaire, or other data collection technique(s).

IV. Eligibility for Award

In awarding funds to accomplish these objectives and purposes, the Institute has been directed by Congress to give priority to State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)); national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705(b)(1)(B)); and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).

An applicant will be considered a "priority" education and training applicant under section 10705(b)(1)(C) if: (1) The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and (2) the applicant demonstrates a record of substantial experience in the field of judicial education and training.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fees.

Finally, the Institute is authorized to make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section XI.B.2 of this guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in the Appendix.

V. Types of Projects and Amounts of Awards

A. Types of Projects

Except as expressly provided in sections II.B.2.u. and II.C.1. above, the Institute has placed no limitation on the overall number of awards or the number of awards in each special interest category. The general types of projects are:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical Assistance.

B. Size of Awards

1. Except as specified in paragraphs V.B.2. and 3., concept papers and applications for new projects and applications for continuation grants may request funding in amounts up to $300,000, although awards in excess of $200,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. A project addressing the needs of the largest urban courts under Special Interest category u. may, receive support of up to $500,000.

3. Applications for on-going support grants may request funding in amounts up to $600,000. The funds to support the first year of the project will be drawn

from the Institute's appropriations for the Fiscal Year of the award. Funds to support each subsequent year will be made available subject to the availability of appropriations for that Fiscal Year, the satisfactory performance of the project as reflected in the quarterly Progress Reports required to be filed and routine grant monitoring, and the submission for Institute approval of a detailed annual task schedule within 30 days of the end of each project year.

C. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily will not exceed 24 months.

2. Grant periods for on-going support grants ordinarily will not exceed 36 months.

VI. Concept Paper Submission Requirements for New Projects

Concept papers are an extremely important part of the application process because they enable the Institute to learn the program areas of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. Because of their importance, the Institute requires all parties requesting financial assistance from the Institute (except those seeking renewal funding pursuant to section IX.) to submit concept papers prior to submitting a formal grant application. This requirement may be waived by the Board only if it determines that extraordinary circumstances exist to justify the waiver.

A. Format and Content

Concept papers must include a cover sheet and a narrative.

1. The cover sheet must contain:

a. A title describing the proposed project;

b. The name and address of the court, organization or individual submitting the paper; and

c. The name, title, address (if different from that in b.), and telephone number of a contact person who can provide further information about the paper.

2. The narrative must be no more than 10 double-spaced pages on 8½ by 11 inch paper. Margins should not be less than 1 inch. The narrative should contain:

a. A statement listing the statutory program area(s), and "special interest" category(ies), if any, addressed by the paper;

b. An explanation of the need for the project;

c. A summary description of the approach to be taken;

d. A summary description of how the project will be evaluated, including the evaluation criteria;

e. A description of the products that will result, the degree to which they will be applicable to courts across the nation, and the manner in which the products and results of the project will be disseminated;

f. An explanation of the expected benefits to be derived from the project;

g. The identity of the key staff (if known) and a summary description of their qualifications;

h. A preliminary budget estimate including the anticipated costs for personnel, fringe benefits, travel, equipment, supplies, contracts, indirect costs, and other anticipated major expenditure categories;

i. The amount, nature (cash or non-cash), and source of match to be provided (see section X.B.); and

j. A statement of whether financial assistance for the project has been or will be sought from other sources.

3. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. The Institute will not accept concept papers exceeding 10 pages. The page limit does not include letters of cooperation or endorsements. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

5. Applicants submitting more than one concept paper may include material that would be identical in each concept paper in a cover letter, and incorporate that material by reference in each paper. However, the incorporated material will be counted against the 10-page limit for each paper.

B. Selection Criteria

1. All concept papers will be evaluated by the staff on the basis of the following criteria:

a. The demonstration of need for the project;

b. The soundness and innovativeness of the approach described;

c. The benefits to be derived from the project; and

d. The reasonableness of the proposed budget.

2. "Special Interest" category concept papers submitted pursuant to section II.B. will also be rated on the proposed project's relationship to one of the "Special Interest" categories set forth in that section, and the degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

3. "Single jurisdiction" concept papers submitted pursuant to section II.C. will be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B., and on the special requirements listed in section II.C.2.

4. In determining which concept papers will be selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the submitter's anticipated match; whether the submitter is a "priority applicant" under the Institute's enabling legislation (see 42 U.S.C. 10705(b)(1) and section IV above); and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review Process.

Concept papers will be reviewed competitively by the Board of Directors. Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for those concept papers which fall within the scope of the Institute's funding program and merit serious consideration by the Board. Staff will also prepare a list of those papers that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's funding program or are not likely to merit serious consideration by the Board. The narrative summaries, rating sheets, and list of non-reviewed papers will be presented to the Board for their review. Committees of the Board will review concept paper summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which concept paper applicants should be invited to submit formal applications for funding. The decision to invite an application is solely that of the Board of Directors.

D. Submission Requirements.

An original and three copies of all concept papers submitted for consideration in Fiscal Year 1989 must be sent by first class or overnight mail, or by courier no later than February 2, 1989. A postmark or courier receipt will constitute evidence that the concept paper was sent on or before the

deadline date. All envelopes containing concept papers should be marked CONCEPT PAPER and should be sent to State Justice Institute, 120 S. Fairfax Street, Alexandria, Virginia 22314.

Receipt of each concept paper will be acknowledged in writing. Extensions of the deadline for submission of concept papers will not be granted.

The Board expects to meet on March 30–April 1, 1989 to review the concept papers and invite applications. The Institute will send written notice to all persons submitting concept papers of the Board's decisions regarding their papers and of the key issues and questions that arose during the review process. A decision by the Board not to invite an application may not be appealed, but does not prohibit resubmission of the concept paper or a revision thereof in a subsequent round of funding. The Institute will also notify the designated State contact listed in the Appendix when the Board invites applications that are based on concept papers which are submitted by courts within their State or which specify a participating site within their State.

VII. Application Requirements for New Projects

Except as specified in Section VI, a formal application for a new project is to be submitted only upon invitation of the Board following review of a concept paper. An application for Institute funding support must include an application form, budget forms (with appropriate documentation), a project and program narrative, and certain certifications and assurances. These documents are described below.

A. Forms

1. Application Form (Form A)

The application form requests basic information regarding the proposed project, the applicant, and the amount of funding support requested. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete, that submission of the application has been authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. Certificate of State Approval (Form B)

An application from a State or local court must include a copy of Form B signed by the State's Chief Judge or Chief Justice, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or designated agency or council will receive, administer, and be accountable for the awarded funds.

3. Budget Forms (Form C or C1)

Applicants may submit the proposed project budget either in the tabular format of Form C or in the spreadsheet format of Form C1. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, a separate form should be submitted for the portion of the project extending beyond month 12.

In addition to Form C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category.

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. Assurances (Form D)

This form lists the statutory, regulatory, and policy requirements and conditions with which recipients of Institute funds must comply.

B. Project Abstract

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one single-spaced page on 8–½ by 11 inch paper.

C. Program Narrative

The program narrative should not exceed 25 double-spaced pages on 8–½ by 11 inch paper. Margins should not be less than 1 inch. The page limit does not include appendices containing resumes and letters of cooperation or endorsement. Additional background material may be attached only if it is essential to obtaining a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

1. Project Objectives

A clear, concise statement of what the proposed project is intended to accomplish.

2. Program Areas to be Covered

A statement which lists the program areas set forth in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories that are addressed by the proposed projects. A discussion should be included only if the relationship between the proposed project and the program areas and special interest categories is not obvious.

3. Need for the Project

If the project is to be conducted in a specific location(s), a discussion of the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, a discussion of the problems that the proposed project will address, and why existing materials, programs, procedures, services or other resources do not adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

4. Tasks, Methods and Evaluation

a. *Tasks and Methods.* A delineation of the tasks to be performed and the methods to be used for accomplishing each task. For example:

For research and evaluation projects, the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included of the value of the proposed research and the methods to be used to minimize or eliminate such risk.

For education and training projects, the adult education techniques to be used in designing and presenting the training, including the teaching methods to be used and the opportunities for structured interaction among the participants; how faculty will be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars or workshops to be conducted; the

materials to be provided and how they will be developed; the cost to participants; and the methods to be used for evaluating the reaction of the participants and the impact and effectiveness of the training.

For demonstration projects, the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they will be identified and their cooperation obtained; how the program or procedures will be implemented and monitored; and how the results of the demonstration will be determined and assessed.

For technical assistance projects, the types of assistance that will be provided; the particular program area(s) for which assistance will be provided; how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; the cost to recipients; and how the usefulness and impact of the technical assistance will be determined and assessed.

b. *Evaluation*. Every project design must include an evaluation plan to determine whether the project met its objectives. The plan should present the qualifications of the evaluator(s); describe the criteria that will be used to evaluate the project's effectiveness; explain how the evaluation will be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach is appropriate; and present a schedule for completion of the evaluation. The evaluation should be designed to provide an objective and independent assessment.

5. Project Management

A detailed management plan including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

6. Products

A description of the products to be developed by the project (e.g., monographs, training curricula and materials, videotapes, articles, or handbooks), including when they will be submitted to the Institute. The application must explain how and to whom the products will be disseminated; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant will be offered to the courts community and the public at large. Ordinarily, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that will be disseminated to the project's primary audience, or both. The products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties. Fourteen copies of all project products must be submitted to the Institute.

7. Applicant Status

An applicant that is not a State or local court and has not received a grant from the Institute within the past two years should include a statement indicating whether it is requesting "priority status" recognition as either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. A request for recognition as a priority recipient pursuant to 42 U.S.C. 10705 (b)(1)(B) or (1)(C) must set forth the basis for designation as a priority recipient in its application. If the applicant is neither an organization qualifying as a priority recipient nor a State court, this section must demonstrate how it will serve the objectives of the relevant program area(s) in terms or replicability and other appropriate factors. Non-judicial units of Federal, State, or local government must demonstrate that the proposed services are not available from non-governmental sources.

8. Staff Capability

A summary of the training and experience of the key staff members that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

9. Organizational Capacity

Applicants that have not received a grant from the Institute within the past two years should include a statement describing the capacity of the applicant to administer grant funds including the financial systems used to monitor project expenditures (and income, if any), and a summary of the applicant's past experience in administering grants, as well as any resources or capabilities that the applicant has that will particularly assist in the successful completion of the project.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the current calendar year. If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be certified by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute. Unless requested otherwise, an applicant that has received a grant from the Institute within the past two years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

10. Letters of Support for the Project

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, written assurances of cooperation and availability should be attached as an appendix to the application.

D. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. Additional background or schedules may be attached only if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should address the items listed below. The costs attributable to the project evaluation should be clearly identified.

1. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by,

and salaries to be paid to, individuals directly involved with the project. The applicant should address the basis for personnel compensation and explain any deviations from current rates or established written organization policies.

2. Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented as well as a description of the elements included in the determination of the percentage rate.

3. Consultant/Contractual Services

The applicant should describe each type of service to be provided. The basis for compensation rates and the method for selection should also be included. Rates for consultant services must be set in accordance with Section XI.H.2.c.

4. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include a description of the rate method used and address the per diem rates separate from transportation expenses. The purpose for travel should also be included in the narrative.

5. Equipment

Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section XI.H.2.b.

6. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the details supporting the total requested for this expenditure category.

7. Construction

Construction expenses are prohibited except for the limited purposes set forth in section X.G.2. Any allowable construction or renovation expense should be described in detail in the budget narrative.

8. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used in developing the monthly and long distance estimates.

9. Postage

Anticipated postage costs for project related mailings should be described in the budget narrative. The cost of special mailings such as for a survey or for announcing a workshop should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the justification material.

10. Printing/Photocopying

Anticipated costs for printing or photocopying should be included in the budget narrative. Applicants should provide the details underlying these estimates in support of the request.

11. Indirect Costs

Applicants should describe the indirect cost rates applicable to the grant in detail. These rates must be established in accordance with section XI.H.3.

12. Match

The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well.

E. Submission Requirements

1. An application package containing the application, an original signature on Form A (and on Form B, if the application is from a State or local court), and four photocopies of the application package must be sent by first class or overnight mail, or by courier no later than May 23, 1989. A postmark or courier receipt will constitute evidence that the application was sent on or before the deadline date. Please mark APPLICATION on all application package envelopes and send to: State Justice Institute, 120 S. Fairfax Street, Alexandria, Virginia 22314. Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for receipt of applications will not be granted.

2. Applicants invited to submit more than one application may include material that would be identical in each application in a cover letter, and incorporate that material by reference in each application. However, the incorporated material will be counted against the 25-page limit for the program narrative.

VIII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter inviting submission of a formal application.

B. Selection Criteria

1. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

a. The soundness of the methodology;

b. The appropriateness of the proposed evaluation design;

c. The qualifications of the project's staff;

d. The applicant's management plan and organizational capabilities;

e. The reasonableness of the proposed budget;

f. The demonstration of need for the project;

g. The products and benefits resulting from the project; and

h. The demonstration of cooperation and support of other agencies that may be affected by the project.

2. "Special Interest" applications submitted pursuant to section II.B. will also be rated on the proposed project's relationship to one of the "Special Interest" categories set forth in that section, and the degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

3. "Single jurisdiction" applications submitted pursuant to section II.C. will also be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B. and on the special requirements listed in section II.C.2.

4. In determining which applicants to fund, the Institute will also consider the applicant's standing in relation to the statutory priorities discussed in section IV; the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's match; and the extent to which the proposed project

would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review and Approval Process

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application, and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for a grant. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

The Institute will send written notice to applicants concerning all Board decisions to approve or deny their respective applications and the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but does not prohibit resubmission of a concept paper based on that application in a subsequent round of funding. The Institute will also notify the designated State contact listed in Appendix A when grants are approved by the Board to support projects that will be conducted by or involve courts in their State.

F. Response to Notification of Approval

Applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) has not been submitted to the Institute within 30 days after notification, the approval will be automatically rescinded and the application presented to the Board for reconsideration.

IX. Renewal Funding Procedures and Requirements

The Institute recognizes two types of renewal funding. The first, a "continuation grant," is to permit completion of activities initiated under an existing Institute grant or to enhance the knowledge, programs or services produced or established during the prior grant period. Continuation grants are intended to support projects with a limited duration. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support. Continuation grants are subject to the limits on size and duration set forth in section V.B.1. and V.C.1.

The second, an on-going support grant, is to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need. On-going support grants are subject to the limits on size and duration set forth in sections V.B.2. and V.C.2.

The Board may, in its discretion and subject to the availability of funds, consider requests for renewal funding at times other than those set for new projects in Sections VI. and VIII.

A. Continuation Grants

1. In lieu of a concept paper, a grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and must contain an estimate of the funds to be requested and a brief description of anticipated changes in scope, focus or audience of the project.

b. Letters of intent will not be reviewed competitively. Within 30 days of receiving a letter of intent, the Institute will inform the grantee filing of the date by which an application for a continuation grant must be submitted.

2. An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the the topics listed in section VII.C., the program narrative of an application for a continuation grant should:

a. Explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation will benefit the participating courts or the courts community generally. That is, to what extent will the goals and objectives of the project be unfulfilled if the project is not continued, and conversely, how will the findings or results of the project be enhanced by continuing the project?

b. Discuss the status of all activities conducted during the previous project period, identify any activities that were not completed, and explain why;

c. Present a detailed task schedule for the next project period;

d. Specify the key findings or recommendations resulting from the evaluation of the project, if they are available, and explain how they will be addressed during the proposed continuation;

e. Describe fully any other changes to the tasks to be performed, the methods to be used, the products of the project, the assigned staff, or the grantee's organizational capacity;

f. Indicate why other sources of support are inadequate, inappropriate or unavailable; and

g. Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

3. An application for a continuation grant should not repeat information contained in a previously approved application.

4. The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for a continuation grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

B. On-going Support Grants

1. A project is eligible for consideration for an on-going support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing important need for the services, programs or products provided by the project as indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

2. The Board will consider awarding an on-going support grant for a period of up to 36 months. The total amount of the grant will be fixed at the time of the initial award. Funds will be made available in annual increments as specified in section V.B.3.

Each project supported by an on-going support grant must include an evaluation component assessing its effectiveness and operation throughout the grant period. A comprehensive evaluation report must be completed not less than 90 days before the end of the grant period.

3. In lieu of a concept paper, a grantee seeking an on-going support grant must inform the Institute by letter of its intent to submit an application for such funding no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in section IX.A.1.a.

4. An application for an on-going support grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of applications for an on-going support grant should:

a. Provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State courts, State court judges, or State court managers and personnel are using the services or programs provided by the project;

b. Demonstrate support for the continuation of the project from the courts community;

c. Discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why;

d. Present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period;

e. Attach a copy of the final evaluation report regarding the effectiveness and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they will be addressed during the proposed renewal period;

f. Describe fully any other changes to the tasks to be performed, the methods to be used, the products of the project, the assigned staff, or the grantee's organizational capacity;

g. Indicate why other sources of support are inadequate, inappropriate or unavailable; and

h. Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

5. An application for an on-going support grant should not repeat information contained in a previously approved application.

6. The submission requirements set forth in section VII.E. other than the deadline for mailing apply to applications for an on-going support grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The extent to which the project has met its goals and objectives, the key findings and recommendations resulting from an evaluation of the project, and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new applications set forth in sections VII.C–VII.E.

X. Compliance Requirements

The State Justice Institute Act (Pub. L. 98–620) contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

A. State and Local Court Systems

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The latter shall receive, administer, and be accountable for all funds awarded to such courts. 42 U.S.C. 10705(b)(4). The Appendix to this guideline lists the agencies, councils and contact persons designated to administer Institute awards to the State and local courts.

B. Matching Requirements

1. All awards to courts or other units of State or local government (not including publicly supported institutions or higher education) require a match from private or public sources of not less than 50 percent of the total amount of the Institute's award. For example, if the total cost of a project is anticipated to be $150,000, a State court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as a match. A cash match, non-cash match, or both may be provided, but the Institute will give preference to those applicants who provide a cash match to the Institute's award.

The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and a majority of the Board of Directors. 42 U.S.C. 10705(d) (as amended).

2. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project (see section VIII.B. above).

C. Conflict of Interest

Personnel and other officials connected with Institute-funded programs shall adhere to the following requirements:

1. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge he/she or his/her

immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

a. Using an official position for private gain; or

b. Affecting adversely the confidence of the public in the integrity of the Institute program.

3. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

D. Lobbying

Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

E. Political Activities

No recipient shall contribute or make available Institute funds, program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Finally, officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

F. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

G. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity;

2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

3. Solely to purchase equipment.

H. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

I. Reporting Requirements

Recipients of Institute funds shall submit Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (that is, no later than *January 30, April 30, July 30, and October 30*). These reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The quarterly financial status report shall be submitted in accordance with section XI.G.2. of this guideline.

J. Audit

Each recipient must provide for an annual fiscal audit. (See section XI.J. of this guideline for the requirements of such audits.)

Accounting principles employed in recording transactions and preparing financial statements must be based upon generally accepted accounting principles (GAAP).

K. Suspension of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, Institute guidelines, or the terms and conditions of the award. 42 U.S.C. 10708(1).

L. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

M. Disclaimer

Recipients of Institute funds shall prominently display the following disclaimer on all project-related products developed with Institute funds:

> This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.

N. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

O. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is

a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

P. Charges for Grant-Related Products

When Institute funds fully cover the cost of developing, producing, and disseminating a product, e.g., a document or software, the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, and dissemination costs, the grantee may recover its costs for reproducing and disseminating the material to those requesting it.

Q. Approval of Key Staff.

If the qualifications of a person assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, a recipient shall submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary of that person and associated costs may be paid or reimbursed from grant funds.

XI. Financial Requirements

A. Accounting Systems and Financial Records

All grantees, subgrantees, contractors and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget.

1. Purpose

The purpose to this section is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;

b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

c. Generating financial data which can be used in the planning, management and control of programs; and

d. Facilitating an effective audit or funded programs and projects.

2. References

Except where inconsistent with specific provisions of this guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied.

a. *Office of Management and Budget (OMB) Circular A–21*, Cost Principles for Educational Institutions.

b. *Office of Management and Budget (OMB) Circular A–87*, Cost Principles for State and Local Governments.

c. *Office of Management and Budget (OMB) Circular A–88 (revised)*, Indirect Cost Rates, Audit and Audit Followup at Educational Institutions.

d. *Office of Management and Budget (OBM) Circular A–102*, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

e. *Office of Management and Budget (OMB) Circular A–110*, Grants and Agreements with Institutions of Higher Education, Hosptials and other Non-Profit Organizations.

f. *Offfice of Management and Budget (OMB) Circular A–128*, Audits of State and Local Governments.

g. *Office of Management and Budget (OMB) Circular A–122*, Cost Principles for Non-profit Organizations.

B. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include the accounting of receipts and expenditures, the maintaining of adequate financial records and the refunding of expenditures disallowed by audits.

2. *Responsibilities of State Supreme Court*

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court shall receive all Institute funds awarded to such courts and shall be responsible for assuring proper administration of Institute funds. The State Supreme Court is responsible for all aspects of the project including proper accounting and financial recordkeeping by the subgrantee. The responsibilities include:

a. *Reviewing Financial Operations.* The State Supreme Court should be familiar with, and periodically monitor, its subgrantees' financial operations, records system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court *or* evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any projects income resulting from program operations.

c. *Budgeting and Budget Review.* The State Supreme Court should ensure that each subgrantee prepares an adequate budget on which its award commitment will be based. The detail of each project budget should be maintained on file by the State Supreme Court.

d. *Accounting for Non-Institute Contributions.* The State Supreme Court will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of this guideline are applied to such funds.

e. *Audit Requirement.* The State Supreme Court is required to ensure that subgrantees have met the necessary audit requirements as set forth by the Institute (see section X.J. and XI.J.).

f. *Reporting Irregularities.* The State Supreme Court and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

C. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and

contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

D. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute shall be structured and executed on a "total project cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. However, the full matching share must be obligated by the end of the period for which the Institute funds have been made available for obligation under an approved project.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See XI.B.2.)

E. Maintenance and Retention of Records

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

F. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below.

1. Interest.

A State and any agency or instrumentality of a State including State institutions of higher education and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government that are direct grantees and nonprofit organizations must refund any interest earned. Grantees shall so order their affairs to ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the project provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees shall be used to pay project-related costs not covered by the grant, or to reduce the amount of grant funds needed to support the project. Registration and tutition fees may be used for other purposes only with the prior written approval of the Institute.

4. Other

Other project income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions.

G. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "Check-Issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. *Termination of Advance Funding.* When a grantee organization receiving cash advances from the Institute—

i. Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

ii. Engages in the improper award and administration of subgrants or contracts; or

iii. Is unable to submit reliable and/or timely reports,

the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by the use of the Institute check method to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute reserves the right to suspend payments until the deficiencies are corrected.

c. *Principle of Minimum Cash on Hand.* Recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. Financial Reporting

In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

The Financial Status Report is required from all grantees for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with instructions for its preparation, will be included in the official Institute Award package. In circumstances where an organization requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, in support of the Request for Advance or Reimbursement.

3. Consequences of Non-Compliance with Submission Requirements

Failure of the grantee organization to submit required financial and program reports may result in a suspension of grant payments.

H. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in *OMB Circulars A–87,* Cost Principles for State and Local Governments; *A–21,* Cost Principles Applicable to Grants and Contracts with Educational Institutions; and *A–122,* Cost Principles for Non-Profit Organizations.

2. Costs Requiring Prior Approval

a. *Preagreement Costs.* The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the starting date of the grant period.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or the software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $200 a day.

3. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved by a Federal agency as set forth below, the Institute will accept that rate.

a. *Approved Plan Available.*

(1) The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved rate agreement must be submitted to the Institute.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

(3) Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiation agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. *Establishment of Indirect Cost Rates.* In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute. The proposal must be submitted in a timely manner (within three months after the start of the grant period) to assure recovery of the full amount of allowable indirect costs, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved.

c. *No Approved Plan.* If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

I. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute is adopting the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circular A–102* and *A–110* shall be applicable to all grantees and subgrantees of Institute funds except as provided in subsection b. below.

a. *Acquisition.* All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already

available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

b. *Title to Property.* At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not received, or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

. *Audit Requirements*

1. Audit Objectives

Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the grantee's or subgrantee's administration of grant funds and required non-Institute contributions for the purpose of determining whether the recipient has:

a. Established an accounting system integrated with adequate internal fiscal and management controls to provide full accountability for revenues, expenditures, assets, and liabilities;

b. Prepared financial statements which are presented fairly, in accordance with generally accepted accounting principles;

c. Prepared Institute financial reports (including Financial Status Reports, Cash Reports, and Requests for Advances and Reimbursements) which contain accurate and reliable financial data, and are presented in accordance with prescribed procedures; and

d. Expended Institute funds in accordance with the terms of applicable agreements and those provisions of Federal law or Institute regulations that could have a material effect on the financial statements or on the awards tested.

2. Implementation

Each grantee (including a State or local court receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. The audit may be of the entire grantee organization (e.g., a university) or of the specific project funded by the Institute. The audit shall be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. The audit shall be conducted in compliance with generally accepted auditing standards established by the American Institute of Certified Public Accountants. A written report shall be prepared upon completion of the audit. Grantees are responsible for submitting copies of the reports to the Institute within thirty days after the acceptance of the report by the grantee, for each year that there is financial activity involving Institute funds.

3. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: Follow-up, maintaining a record of the actions taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and actions taken.

4. Consequences of Non-Resolution of Audit Issues

It is the general policy of the State Justice Institute not to make new grant awards to an applicant having an unresolved audit report involving Institute awards. Failure of the grantee organization to resolve audit questions may also result in the suspension of payments for active Institute grants to that organization.

K. Close-Out of Grants

1. Definition

Close-out is a process by which the Institute determines that all applicable administrative and financial actions and all required work of the grant have been completed by both the grantee and the Institute.

2. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (revised end date), the following documents must be submitted by the grantee to the Institute:

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award amount by the Institute. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds to the Institute at the same time they submit a final report.

b. *Final Progress Report.* This report should be prepared in accordance with instructions provided by the Institute.

XII. Grant Adjustments

All requests for program or budget adjustments requiring Institute approval must be submitted in a timely manner by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments which require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories which exceed or are expected to exceed 5 percent of the approved budget.

2. A change in the scope of work to be performed or the objectives of the project (see section XII.D.).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the expenditure deadline (see section XII.E.).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see sections XII. F. and G.).

7. The assignment of a person to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section X.Q.).

8. A successor in interest or name change agreements.

9. A transfer or contracting out of grant-supported activities (see section XII.H.).

10. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2.

B. Request for Grant Adjustments

All grantees and subgrantees must promptly notify the SJI program managers, in writing, of events or proposed changes which may require an adjustment from the approved application. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the SJI

program managers determine would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment Notice signed by the Executive Director or his/her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

A grantee/subgrantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager. Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute.

E. Date Changes

Requests for changes or extensions of the grant period are to be made 90 days in advance of the end date of the grant whenever possible. In no instance may the request be made less than 30 days before the end date of the grant.

F. Temporary Absence of the Project Director

Whenever absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

A principal activity of the grant-supported project shall not be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements should be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, are to be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

STATE JUSTICE INSTITUTE BOARD OF DIRECTORS

C. C. Torbert, Jr., Chairman, Chief Justice, Supreme Court of Alabama.
Rodney A. Peeples, Vice Chairman, Resident Judge, Second Judicial Circuit, South Carolina.
John F. Daffron, Jr., Secretary, Judge, Chesterfield, Virginia Circuit Court.
Larry P. Polansky, Treasurer, Executive Officer, District of Columbia Courts.
Joseph W. Brown, Esq., Jones, Jones, Close & Brown.
James Duke Cameron, Justice, Supreme Court of Arizona.
Ralph Erickstad, Chief Justice, Supreme Court of North Dakota.
Janice Gradwohl, Judge, County Court, Lincoln, Nebraska.
Daniel J. Meador, Professor of Law, University of Virginia Law School.
Sandra A. O'Connor, States Attorney of Baltimore County, Towson, Maryland.
David I. Tevelin, Executive Director (ex officio).

David I. Tevelin,
Executive Director.

APPENDIX—LIST OF STATE CONTACTS REGARDING ADMINISTRATION OF INSTITUTE GRANTS TO STATE AND LOCAL COURTS

Mr. Allen L. Tapley, Administrative Director, Administrative Office of the Courts, 817 South Court Street, Montgomery, Alabama 36130, (205) 834–7990.
Mr. Arthur H. Snowden II, Administrative Director, Alaska Court System, 303 K Street, Anchorage, Alaska 99501, (907) 264–0547.
Mr. William L. McDonald, Administrative Director, Supreme Court of Arizona, 1314 North 3rd Street, Suite 200, Phoenix, Arizona 85004, (602) 255–4359.
Mr. James D. Gingerich, Executive Secretary, Arkansas Judicial Department, Justice Building, Little Rock, Arkansas 72201, (501) 371–2295.
Mr. William E. Davis, Administrative Director, State Building, 350 McAllister Street, Room 3154, San Francisco, California 94102, (415) 557–1581.
Mr. James D. Thomas, State Court Administrator, Colorado Judicial Department, 1301 Pennsylvania Street, Suite 300, Denver, Colorado 80203–2416, (303) 861–1111, ext. 585.
Mr. Bruce Borre, Director, Research and Planning, Office of the Chief Court Administrator, Drawer N, Station A, Hartford, Connecticut 06106, (203) 722–5836.
Mr. Lowell Groundland, Director, Administrative Office of the Courts, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware 19801, (302) 571–2480.
Mr. James Lynch, Deputy Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, NW., Washington, DC 20001, (202) 879–1700.
Mr. Kenneth Palmer, State Courts Administrator, Florida State Courts System, Surpeme Court Building, Tallahassee, Florida 32399–1900, (904) 488–8621.
Mr. Robert L. Doss, Jr., Administrative Director of the Courts, The Judicial Council of Georgia, 244 Washington Street, SW., Suite 500, Atlanta, Georgia 30334, (404) 656–5171.
Mr. Perry C. Taitano, Administrative Director, Superior Court of Guam, Judiciary Building, 110 West O'Brien Drive, Agana, Guam 96910, 011 (671) 472–8961 through 8968.
Ms. Janice Wolfe, Administrative Director of Courts, The Judiciary, Post Office Box 2560, Honolulu, Hawaii 96804, (808) 548–4605.
Mr. Carl F. Bianchi, Administrative Director of the Courts, Supreme Court Building, 451 West State Street, Boise, Idaho 83720, (208) 334–2246.
Mr. Samuel D. Conti, Administrative Director of the Courts, Supreme Court Building, Springfield, Illinois 62701–1791, (217) 782–7770.
Mr. Bruce A. Kotzan, Executive Director, Supreme Court of Indiana, State House, Room 323, Indianapolis, Indiana 46204, (317) 232–2542.
Mr. William J. O'Brien, State Court Administrator, Supreme Court of

Iowa, State House, Des Moines, Iowa 50319, (515) 281–5241.

Mr. Howard P. Schwartz, Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, Kansas 66612, (913) 296–4873.

Ms. Laura Stammel, Comptroller, Administrative Office of the Courts, 403 Wapping Street, Frankfort, Kentucky 40601, (502) 564–2350.

Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana, 301 Loyola Avenue, Room 109, New Orleans, Louisiana 70112–1887, (504) 568–5747.

Mr. Dana R. Baggett, State Court Administrator, Administrative Office of the Courts, P.O. Box 4820, Downtown Station, Portland, Maine 04112, (207) 879–4792.

Mr. Peter J. Lally, Assistant State Court Administrator, Courts of Appeal Building, 361 Rowe Boulevard, Annapolis, Maryland 21401, (301) 974–2141.

Honorable Arthur M. Mason, Chief Administrative Justice, The Trial Court, Commonwealth of Massachusetts, 317 New Courthouse, Boston, Massachusetts 02108, (617) 725–8787.

Honorable Dorothy Comstock Riley, Chief Justice, Supreme Court of Michigan, Law Building, Post Office Box 30052, Lansing, Michigan 48909, (517) 373–0128.

Ms. Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota, 230 State Capitol, St. Paul, Minnesota 55155, (617) 296–2474.

Ms. Krista Johns, Director, Center for Court Education and Continuing Studies, Box 879, Oxford, Mississippi 38677, (601) 232–5955.

Mr. Ron Larkin, Director of Operations, Office of the State Court Administrator, 1105 R Southwest Blvd., Jefferson City, Missouri 65109, (314) 751–3585.

Mr. R. James Oppedahl, State Court Administrator, Montana Supreme Court, Justice Building, Room 315, 215 North Sanders, Helena, Montana 59620–3001, (406) 444–2621.

Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, State Capitol Building, Room 1220, Lincoln, Nebraska 68509, (404) 471–2643.

Mr. Donald J. Mello, Court Administrator, Administrative Office of the Courts, Capitol Complex, Carson City, Nevada 89710, (702) 885–5076.

Mr. Jeffrey Leidinger, Director, Administrative Office of the Courts, Supreme Court of New Hampshire, Noble Drive, Concord, New Hampshire 03301, (603) 271–2521.

Mr. Robert Lipscher, Administrative Director, Administrative Office of the Courts, CN–037, RJH Justice Complex, Trenton, New Jersey 08625, (609) 984–0275.

Honorable Albert M. Rosenblatt, Chief Administrative Judge, New York State Office of Court Administrator, Empire State Plaza, Agency Building 4, 20th Floor, Albany, New York 12207, (913) 431–1930.

Mr. Robert L. Lovato, State Court Administrator, Administrative Office of the Courts, Supreme Court of New Mexico, Supreme Court Building, Room 25, Sante Fe, New Mexico 87503, (505) 827–4800.

Mr. Franklin E. Freeman, Jr., Administrative Director, Administrative Office of the Courts, Post Office Box 2448, Raleigh, North Carolina 27602, (919) 733–7106/7107.

Mr. William G. Bohn, State Court Administrator, Supreme Court of North Dakota, State Capitol Building, Bismarck, North Dakota 58505, (701) 224–4216.

Mr. Stephan W. Stover, Administrative Director of the Courts, Supreme Court of Ohio, State Office Tower, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2653.

Mr. Howard W. Conyers, Administrative Director, Administrative Office of the Courts, 1915 N. Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521–2450.

Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 378–6046.

Mr. Ralph Hunsicker, Administrative Office of Pennsylvania Courts, 407 City Towers, 301 Chestnut Street, Harrisburg, Pennsylvania 17101, (717) 783–7322.

Mr. Matthew J. Smith, State Court Administrator, Supreme Court of Rhode Island, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277–3263 or 277–3272.

Mr. Louis L. Rosen, Director, South Carolina Court Administration, Post Office Box 50447, Columbia, South Carolina 29250, (803) 758–2961.

Honorable George W. Wuest, Chief Justice, Supreme Court of South Dakota, 500 East Capitol Avenue, Pierre, South Dakota 57501, (605) 773–4885.

Mr. Cletus W. McWilliams, Executive Secretary, Supreme Court of Tennessee, Supreme Court Building, Room 422, Nashville, Tennessee 37219, (615) 741–2687.

Mr. C. Raymond Judice, Administrative Director, Office of Court Administration of the Texas Judicial System, Post Office Box 12066, Austin, Texas 78711, (512) 463–1625.

Honorable Gordon R. Hall, Chief Justice, Supreme Court of Utah, State Capitol Building, Room 332, Salt Lake City, Utah 84114, (801) 533–5285.

Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, Montpelier, Vermont 05602, (802) 828–3281.

Ms. Viola E. Smith, Clerk of the Court/Administrator, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774–6680, ext. 248.

Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, 3rd Floor, Richmond, Virginia 23219, (804) 786–6455.

Ms. Mary McQueen, State Court Administrator for the Courts, Supreme Court of Washington, Highways-Licensing Building, 6th Floor, 12th & Washington, Olympia, Washington 98504, (206) 753–5780.

Mr. Ted J. Philyaw, Administrative Director of the Courts, Administrative Office, 402-E State Capitol, Charleston, West Virginia 25305, (304) 348–0145.

Mr. J. Denis Moran, Director of State Courts, Post Office Box 1688, Madison, Wisconsin 53701–1688, (608) 266–6828.

Justice Walter Urbigkit, Supreme Court of Wyoming, Supreme Court Building, Cheyenne, Wyoming, 82002, (307) 777–7571.

[FR Doc. 88–29189 Filed 12–20–88; 8:45 a.m.]

BILLING CODE 0000–00–M

federal register

Wednesday
December 21, 1988

Part IV

Environmental Protection Agency

40 CFR Part 300

National Oil and Hazardous Substances Pollution Contingency Plan; Notice of Public Meetings

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3479-8]

National Oil and Hazardous Substances Pollution Contingency Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meetings.

SUMMARY: The Environmental Protection Agency (EPA) is holding four public meetings on the proposed revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), published elsewhere in today's edition of the **Federal Register**. The revisions are intended to implement the regulatory changes necessitated by the Superfund Amendments and Reauthorization Act of 1986 (SARA), as well as to clarify existing NCP language and to reorganize the NCP to coincide more accurately with the sequence of response actions. The public meetings are scheduled to allow EPA to meet directly with interested parties concerning the proposed revisions. At each meeting, EPA expects to present a summary of a major proposed changes and to accept oral and written statements.

DATES: The four meetings are scheduled to be held on January 10, 12, 17, and 19, 1989.

ADDRESSES: The meetings will take place in the following areas from 9:00 a.m. to 5:00 p.m., unless concluded earlier, and will continue in the evening beginning at 6:30 p.m.:

January 10, 1989 *Chicago Illinois area.* Sheraton International at O'Hare, 6810 N. Mannheim Road, Rosemont, IL 60018, (312) 297–1234.

January 12, 1989 *Washington, D.C. area.* Holiday Inn Crown Plaza, 300 Army–Navy Drive, Arlington, VA 22202, (703) 892–4100.

January 17, 1989 *Dallas, Texas.* Sheraton Park Central Hotel & Towers, 12720 Merit Drive, Dallas, Texas 75251 (North Dallas), (214) 385–3000.

January 19, 1989 *Los Angeles, California area.* Sheraton Long Beach at Shoreline Sq., 333 East Ocean Boulevard, Long Beach, CA 90802, (213) 436–3000.

FOR FURTHER INFORMATION CONTACT: Betti VanEpps or Tod Gold, Policy and Analysis Staff, Office of Emergency and Remedial Response [OS–240], U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, at 1–202–382–2182.

SUPPLEMENTARY INFORMATION: Any member of the public wishing to present an oral statement at a meeting must contact the Policy and Analysis Staff at the address or telephone number given above in advance of the meeting. Such statements will be permitted to the extent that time allows. Since time will be limited, EPA recommends that the public consider submitting written comments in lieu of oral presentations. All written and oral statements will be made part of the record and will be taken into consideration by EPA.

Henry L. Longest II,

Director, Office of Emergency and Remedial Response.

[FR Doc.88–26788 Filed 12–20–88: 8:45 am]

BILLING CODE 6560–50–M

federal register

Wednesday
December 21, 1988

Part V

Environmental Protection Agency

40 CFR Part 300

National Oil and Hazardous Substances Pollution Contingency Plan; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3381-4]

National Oil and Hazardous Substances Pollution Contingency Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The Superfund Amendments and Reauthorization Act of 1986 (SARA) amends existing provisions of and adds major new authorities to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Furthermore, SARA mandates that the NCP be revised to reflect these amendments. The proposed NCP revisions are intended to implement regulatory changes necessitated by SARA, as well as to clarify existing NCP language and to reorganize the NCP to coincide more accurately with the sequence of response actions.

DATES: Comments on the proposed revisions to the NCP must be submitted on or before February 21, 1989. Elsewhere in this issue of the **Federal Register**, a separate notice is being published announcing the dates, times, and locations of public meetings regarding today's proposed revisions to the NCP to be held during the public comment period.

ADDRESS: Written comments on the proposed revisions to the NCP should be submitted, in triplicate, to the Superfund Docket, located in Room LG at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The record supporting this rulemaking is contained in the Superfund Docket and is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Tod Gold, Policy and Analysis Staff, Office of Emergency and Remedial Response [OS-240], U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, at 1-202-382-2182, or the RCRA/Superfund Hotline at 1-800-424-9346 (in Washington, DC, at 1-202-382-3000).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction

Pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, as amended by section 105 of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, (CERCLA or Superfund or the Act), and Executive Order (E.O.) No. 12580 (52 FR 2923, January 29, 1987), the Environmental Protection Agency (EPA) is proposing revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). Revisions to the NCP were last promulgated on November 20, 1985 (50 FR 47912). For the reader's convenience and because the section numbers are being changed, EPA is reprinting the entire NCP, except for Appendices A (Uncontrolled Hazardous Waste Site Ranking System: A Users Manual) and B (National Priorities List), which are or will be proposed separately, and C (Revised Standard Dispersant Effectiveness and Toxicity Tests), for which only minor technical corrections are being proposed. EPA is not reproposing those portions of the NCP that are unchanged and does not solicit comment on those provisions. Comment is requested only on new portions of, or substantive changes to, the NCP.

All existing subparts of the NCP have proposed revisions and several new subparts are being added. Furthermore, because the NCP is being reorganized, many of the existing subparts have been redesignated with a different letter. The proposed reorganization of NCP subparts is as follows:

Subpart A—Introduction
Subpart B—Responsibility and Organization for Response
Subpart C—Planning and Preparedness
Subpart D—Operational Response Phases for Oil Removal
Subpart E—Hazardous Substance Response
Subpart F—State Involvement in Hazardous Substance Response
Subpart G—Trustees for Natural Resources
Subpart H—Participation by Other Persons
Subpart I—Administrative Record for Selection of Response Action
Subpart J—Use of Dispersants and Other Chemicals
Subpart K—Federal Facilities [Reserved]

In today's revisions to the NCP, EPA is proposing a broad and comprehensive rulemaking to revise as well as restructure the NCP. The primary purpose of today's proposal is to incorporate changes mandated by the Superfund Amendments and Reauthorization Act of 1986 (SARA) and to set forth the EPA's proposed approach for implementing SARA. SARA extensively revised existing provisions of and added new authorities to CERCLA. These changes to CERCLA necessitate revision of the NCP.

The regulation and the rest of the preamble use the term "CERCLA" to mean CERCLA as amended by SARA; the term "SARA" is used only to refer to Title III, which is an Act separate from CERCLA, and to other parts of SARA that did not amend CERCLA. The term "SARA" is used in this overview portion of the preamble, however, to highlight the changes to CERCLA.

A. Statutory Overview

The following discussion summarizes the CERCLA legislative framework, with particular focus on the major revisions to CERCLA mandated by SARA as well as those mandated by E.O. No. 12580, which delegates certain functions vested in the President by CERCLA to EPA and other Federal agencies. In addition, this discussion gives reference to the specific preamble sections that detail how these changes to CERCLA are reflected in today's proposed rule.

1. *Reporting and Investigation.* CERCLA section 103 requires that a release into the environment of a hazardous substance in an amount equal to or greater than its "reportable quantity" (established pursuant to section 102 of CERCLA) must be reported to the National Response Center. Title III of SARA establishes a new, separate program that requires releases of hazardous substances, as well as other "extremely hazardous substances," to be reported to State and local emergency planning officials. The preamble discussion of Subpart C summarizes Title III reporting requirements.

CERCLA section 104 provides the Federal government with authority to investigate releases. SARA amends CERCLA section 104 to clarify EPA's investigatory and access authorities, explicitly empowering EPA to compel the release of information and to enter property for the purpose of undertaking response activities. Amended section 104(e) also provides Federal courts with explicit authority to enjoin property owners from interfering with the conduct of response actions. SARA further amends CERCLA section 104 to authorize EPA to allow potentially responsible parties (PRPs) to conduct investigations. The preamble discussion

of Subpart E details how these revisions to CERCLA are reflected in today's proposed rule.

2. *Response Actions.* CERCLA section 104 provides broad authority for a Federal program to respond to releases of hazardous substances and pollutants or contaminants. There are two major types of response actions: the first is "removal action," the second is "remedial action." CERCLA section 104 is amended by SARA to increase the flexibility of removal actions. This amendment increases the dollar and time limitations on removal actions from $1 million and six months to $2 million and one year, and allows a new exemption from either limit if continuation of the removal action is consistent with the remedial action to be taken. (The existing exemption for emergency actions remains in effect.) SARA also amends CERCLA section 104 to require removals to contribute to the efficient performance of a long-term remedial action, where practicable.

In addition, SARA amends CERCLA section 104 to require that, for the purpose of remedial actions, primary attention be given to releases posing a threat to human health. (To this end, SARA also amends CERCLA section 104 to expand health assessment requirements at sites and to allow individuals to petition ATSDR for health assessments.)

Among the major new provisions added by SARA are CERCLA sections 121(a) through 121(d), which supplement sections 104 and 106 by stipulating general rules for the selection of remedial actions, providing for review of remedial actions, and describing requirements for the degree of cleanup. These new sections codify rigorous remedial action cleanup standards by mandating that remedial actions meet applicable or relevant and appropriate Federal standards and more stringent State standards. Where the remedial action involves transfer of hazardous substances off-site, this transfer may only be made to facilities in compliance with the Resource Conservation and Recovery Act (RCRA) (or other applicable Federal laws) and applicable State requirements. (EPA has proposed separately the regulatory requirements for the off-site transfer of hazardous substances and codify these in the final NCP, 53 FR 48218, November 29, 1988.)

Section 121 emphasizes a long-term perspective on remedies by requiring that long-term effectiveness of remedies and permanent reduction of the threat be considered and that the calculation of the cost-effectiveness of a remedy include the long-term costs, including the cost of operation and maintenance. The section mandates a preference for remedies that permanently reduce the "volume, toxicity, or mobility" of the hazardous substance, and requires that remedies use permanent solutions and alternative technologies or resource recovery technologies to the maximum extent practicable. The preamble discussion of Subpart E details how these revisions to CERCLA are reflected in today's proposed rule.

3. *State and Public Participation.* New CERCLA section 121(f) requires the "substantial and meaningful" involvement of the States in the initiation, development, and selection of remedial actions. States are to be involved in decisions on conducting preliminary assessments and site inspections. States will also have a role in long-term planning for remedial sites and negotiations with potentially responsible parties. In addition, States are to be given reasonable opportunity to review and comment on such documents as the remedial investigation/feasibility study (RI/FS) and the proposed plan for remedial action. CERCLA also provides in section 121(e)(2) that a State is permitted to enforce any Federal or State standard, requirement, criterion, or limitation to which the remedial action is required to conform.

CERCLA section 104(d) provides that a State may apply to carry out the response action. This section allows States to enter into cooperative agreements with the Federal government to conduct response actions. SARA amends CERCLA section 104 to make it easier for States to enter into such cooperative agreements. The preamble discussion concerning Subpart F details how these revisions to CERCLA are reflected in today's proposed rule.

SARA adds a new CERCLA section 117 to codify public involvement in the Superfund response process. This section mandates public participation in the selection of remedies and provides for grants allowing groups affected by a release to obtain the technical expertise necessary to participate in decisionmaking. Proposed community relations requirements are described in section H of the Subpart E, § 300.430 preamble discussion.

4. *Enforcement.* CERCLA sections 106 and 107 authorize EPA to take legal action to recover from responsible parties the cost of response already underway or to compel them to respond to the problem themselves. SARA adds to CERCLA a number of provisions that are intended to facilitate responsible party financing of response actions. CERCLA section 122, for example, provides mechanisms by which settlements between responsible parties and EPA can be made, and allows for "mixed funding" of response actions, with both EPA and responsible parties contributing to response costs.

SARA creates a new CERCLA section 310, which allows for citizen suits. Any person may commence a civil action on his/her own behalf against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution), alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to CERCLA (including any provision of an agreement under section 120 relating to Federal facilities). A civil action may also be commenced against the President or any other officer of the United States (including the Administrator of the Environmental Protection Agency and the Administrator of the Agency for Toxic Substances and Disease Registry) where there is alleged a failure to perform any act or duty under CERCLA, including an act or duty under section 120 (relating to Federal facilities), which is not discretionary with the President or such other Federal officer, except for any act or duty under section 311 (relating to research, development, and demonstration). Section 310 requires that citizen suits be brought in a United States district court.

SARA amends CERCLA section 113 to require the lead agency to establish an administrative record upon which the selection of a response action is based. This record must be available to the public at or near the site. Section 113(j) provides that judicial review of any issues concerning the adequacy of any response action is limited to the administrative record. The preamble discussion of new Subpart I includes the introduction of administrative record requirements into the NCP.

5. *Federal facilities.* Section 120(a)(2) of CERCLA provides that all guidelines, rules, regulations, and criteria for preliminary assessments, site investigation, National Priorities List (NPL) listing, and remedial actions are applicable to Federal facilities to the same extent as they are applicable to other facilities. No Federal agency may adopt or utilize guidelines, rules, regulations, or criteria that are inconsistent with those established by EPA under CERCLA. (For purposes of the NCP, the term "lead agency" generally includes Federal agencies that are conducting response actions at their own facilities.)

Section 120 also defines the process that Federal agencies must use in undertaking remediation at their facilities. It requires EPA to establish a Federal agency hazardous waste compliance docket that includes a list of Federal facilities. EPA must assure that a preliminary assessment is conducted at each facility within 18 months of enactment and, where appropriate, evaluate these facilities for potential inclusion on the NPL within 30 months of enactment. Section 120(d) clarifies that Federal facilities shall be evaluated for inclusion on the NPL by applying listing criteria in the same manner as the criteria are applied to private facilities. Requirements governing listing are set forth in proposed Subpart E of the NCP and in Appendix A (the Hazard Ranking System). Federal agencies must commence the RI/FS within six months of listing on the NPL and enter into an interagency agreement with EPA. Section 120(e) provides for joint EPA/Federal agency selection of the remedy, or selection by EPA if EPA and the Federal agency are unable to reach an agreement. CERCLA section 120(f) makes clear that State officials shall have an opportunity to participate in the planning and selection of the remedial action, in accordance with section 121.

The requirements of the NCP, including the requirements related to RI/FS and selection of remedy and the administrative record, are applicable to Federal agency response actions under CERCLA at NPL and non-NPL sites, except where specifically noted that the requirements apply only to Fund-financed activities. However, the deadlines in section 120(e) and the requirement for joint selection of the remedy do not apply at non-NPL sites. A subpart specifically for Federal facilities (Subpart K) is reserved in this proposal. EPA plans to propose Subpart K after this proposal of the NCP. EPA is following its usual regulation development process for this subpart, including formation of a workgroup. The workgroup will be managed by EPA and will include membership of interested Federal agencies and States. EPA plans to finalize Subpart K as expeditiously as possible after consideration of public comment.

Even in instances where NCP requirements do not appear strictly to apply to Federal agency response, de facto compliance may still be necessary. One such example is the statutory limitations of 12 months and $2 million on removal actions. When either of those limits is reached and no statutory exemption applies, Fund-financed activity must cease, unless appropriate remedial actions are planned. Thus, the limitations serve two purposes. In addition to their primary function of establishing the funding limits on removals, the statutory time and dollar limits also serve as markers signaling the end point of removal authority. In order for Fund-financed remediation activity to continue at a site where a statutory limit has been reached and no exemption applies, it must be conducted as a remedial action. Thus, while the limits have no real application to funding or duration of response at a Federal facility, they do mark the point at which applicable remedial requirements of the NCP must begin to be met.

B. Brief Summary of Proposed Changes to the NCP

In addition to incorporating changes mandated by SARA and E.O. 12580, the proposed revisions are intended to:

1. Reorganize the NCP to describe more accurately the sequence in which response actions are taken pursuant to the NCP;

2. Clarify existing language on roles, responsibilities, and activities of affected parties; and

3. Incorporate changes suggested by program experience since the last revisions to the NCP.

Major revisions in each subpart are summarized briefly in the paragraphs that follow:

Proposed Subpart A is similar to existing Subpart A, but contains some clarifying revisions. Proposed Subpart A also reflects new statutory definitions and authorities. Subpart B combines the existing NCP's Subparts B and C; and the letter designations of existing Subparts D through F are changed accordingly. Proposed Subpart B of this regulation lists specific responsibilities that Federal agencies have as members of the National Response Team. Proposed Subpart C (existing Subpart D) includes the information from the current NCP regarding "Plans" and adds information on Title III of SARA. However, it should be noted that regulations implementing Title III of SARA are found at 40 CFR Part 355 et seq.

Redesignated Subpart D (existing Subpart E), "Operational Response Phases for Oil Removal," does not have significant proposed revisions. Proposed Subpart E (existing Subpart F) addresses hazardous substance response. Today EPA is proposing major revisions to this subpart to incorporate the CERCLA amendments to hazardous substance response authorities. Furthermore, EPA is proposing to restructure the sections within new Subpart E to correspond more accurately to established procedures for hazardous substance response.

Proposed Subpart F (new) is being added to satisfy the new statutory mandate to promulgate regulations for State involvement in CERCLA response actions. State participation in Federal facility response will be governed by the provisions of proposed Subpart F. Proposed Subpart G (existing Subpart G) contains several revisions to clarify the designations of trustees for natural resources. Proposed Subpart H (new) consolidates into one new subpart existing language currently in various NCP sections concerning participation by other persons in response activities, with some revisions and additions. Proposed Subpart I (new) codifies the statutory requirements for establishment of an administrative record documenting how a response action is selected for a given CERCLA site. Proposed Subpart J, "Use of Dispersants and Other Chemicals," is very similar to existing Subpart H; clarifying revisions are proposed to this subpart.

Executive Order 12580, in conjunction with CERCLA, delegates responsibility for remedial actions at NPL or non-NPL sites and all removal actions, except emergencies, to the heads of Executive departments and agencies, where either the release is on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of those departments and agencies, including vessels bare-boat chartered and operated. The E.O. also delegates authority to the Department of Defense (DOD) and Department of Energy (DOE) to respond to emergencies under their jurisdiction, custody, or control. The E.O. delegates to EPA the responsibility for defining the term emergency for the purposes of the delegations.

For the purpose of the delegations, EPA considers an emergency to be a release or threat of release generally requiring initiation of a removal action within hours of the lead agency's determination that a removal action is appropriate. This is consistent with the discussion in the preamble for removals (§ 300.415) and in the regulatory section on the administrative record for removals (§ 300.820). EPA will respond only to those public health or environmental emergencies that the Federal agency cannot respond to in a timely manner.

EPA invites public comment on today's revisions, including comments on the proposed reorganization described above. Table I, which shows

the distribution of current NCP sections into proposed new sections, has been prepared to assist the reader in identifying and tracking the reorganized rule language. An asterisk (*) next to a new section number indicates that substantial changes are proposed.

TABLE I.—NCP DISTRIBUTION TABLE

Old section and title	New section
Subpart A	(Subpart A)
300.1—Purpose and objectives.	300.1.*
300.2—Authority	300.2.
300.3—Scope	
300.3(a)	300.3(a).
300.3(b)	300.3(b) (1–4), (6), (9).
300.3(c)	300.3(c).
300.4—Application	300.2.
300.5—Abbreviations	
300.5(a)	300.4(a).
300.5(b)	300.4(b).*
300.6—Definitions	300.5.*
Subpart B	(Subpart B)
300.21—Duties of the President delegated to Federal agencies.	300.100.
300.22—Coordination among and by Federal agencies.	
300.22(a)	300.105(a)(1–2).*
300.22(b)	300.105(a)(3).
300.22(c)	300.105(a)(4).
300.22(d)	300.130(d).
300.22(e)	300.130(b)(3) & (c).
300.22(f)	300.130(e).
300.22(g)	300.130(f).
300.23—Other assistance by Federal agencies.	
300.23(a)	300.170.
300.23(b)	300.170(a); 300.175.*
300.23(c)	300.170(b).
300.23(d)	300.170(c); 300.175.*
300.24—State and local participation.	300.180.
300.25—Nongovernmental participation.	
300.25(a–c)	300.185(a–c).
300.25(d)	300.185(d).*
Subpart C	(Proposed to become part of Subpart B)
300.31—Organizational concepts.	300.105(b) & (d).
300.32—Planning and coordination.	
300.32(a)	300.110(a–e); (g); (h) (1), (3), (5–8); (i).
300.32(b)	300.115(a–i) & (k).
300.32(c)	300.120(d) & (g); 300.210(c).*
300.33—Response operations.	
300.33(a)	300.120(a–c); 300.130(g).
300.33(b)	300.120(e); 300.135.*
300.34—Special forces and teams.	
300.34(a)	300.145(a).
300.34(b)	300.145(b).
300.34(c)	300.145(c).
300.34(d)	300.145(d).
300.34(e)	300.145(g).
300.34(f)	300.115(j)(1–4), (6–7).
300.34(g)	300.110(j).
300.34(h)	300.110(k).
300.35—Multi-regional responses.	300.140.
300.36—Communications.	
300.36(a–c)	300.125.
300.36(d)	300.115(j)(5).
300.37—Special considerations.	
300.37(a)	Deleted.
300.37(b)	300.145(e).*
300.38—Worker health and safety.	300.150.
300.39—Public information.	300.155.
300.40—OSC reports	300.165.
Subpart D	(Proposed to become Subpart C)
300.41—Regional and local Plans.	300.210.*
300.42—Regional contingency plans.	
300.42(a)	300.210(b).
300.42(b)	Deleted.
300.42(c)	300.210(b).
300.43—Local contingency plans.	
300.43(a)	300.210(c).*
300.43(b)	Deleted.
Subpart E	(Proposed to become Subpart D)
300.51—Phase I—Discovery and notification..	300.300.
300.52—Phase II—Preliminary assessment and initiation of action.	300.305.
300.53—Phase III—Containment, countermeasures, cleanup, and disposal.	300.310.
300.54—Phase IV—Documentation and cost recovery.	300.315.
300.55—General pattern of response.	300.320.
300.56—[Reserved]	Deleted.
300.57—Waterfowl conservation.	300.330.
300.58—Funding	300.335.
Subpart F	(Proposed to become Subpart E)
300.61—General	
300.61(a)	300.400(a).
300.61(b)	Deleted.
300.61(c)	300.400(c).
300.61(d)	300.400(h).
300.61(e)	300.400(i).
300.62—State role	Replaced by new Subpart F.
300.63—Discovery or notification.	
300.63(a)	300.405(a).
300.63(b)	300.405(b).
300.63(c)	300.405(e).
300.63(d)	300.405(f).
300.64—Preliminary assessment for removal actions.	
300.64(a–b)	300.410(b–d).
300.64(c)	300.410(e).
300.64(d)	300.410(g).
300.64(e)	300.410(h).
300.65—Removals	
300.65(a)	300.415(a).*
300.65(b)	300.415(b).*
300.65(c)	300.415(d).
300.65(d)	300.415(f).
300.65(e)	300.415(g).
300.65(f)	300.415(j).*
300.65(g)	
300.65(h)	300.415(k).
300.65(i)	300.700(c).*
300.66—Site evaluation phase and National Priorities List determination.	
300.66(a)	300.420(a–c).*
300.66(b)	300.425(c).*
300.66(c)	300.425(b) & (d–e).*
300.67—Community relations.	300.415(n)*; 300.430(c) & (f)*; 300.435(c).*
300.68—Remedial action..	300.430*; Appendix D.*
300.69—Documentation and cost recovery.	300.160.
300.70—Methods of remedying releases.	Replaced by new Appendix D.
300.71—Other party responses.	Replaced by new Subpart H.
Subpart G	(Subpart G)
300.72—Designation of Federal trustees.	300.600.*
300.73—State trustees	300.605.
300.74—Responsibilities of trustees.	300.615.*
Subpart H	(Proposed to become Subpart J)
300.81—General	300.900.
300.82—Definitions	300.5.
300.83—NCP Product Schedule.	300.905.
300.84—Authorization of use.	300.910.
300.85—Data requirements.	300.915.
300.86—Addition of products to schedule.	300.920.
None	Subpart I.

II. Major Revisions in Each Subpart

In this section, revisions to each subpart are explained. Major revisions for each subpart (and each section in the case of Subpart E) are discussed first, followed by a discussion of other revisions.

Subpart A—Introduction

Subpart A, the preface to the NCP, contains statements of purpose, authority, applicability, and scope. It also explains the abbreviations and defines the terms used in the NCP.

A. Major Revisions

1. *Definitions reflecting the roles of States and Federal agencies.* Changes are proposed for the current definitions of "lead agency," "on-scene coordinator" (OSC), and "remedial project manager" (RPM), and new definitions are proposed for "support agency," "support agency coordinator," "Superfund State contract," and

"Superfund Memorandum of Agreement" (SMOA).

The proposed definition of "lead agency" states that the lead agency provides the OSC/RPM to plan and implement the response action under the NCP. The terms "plan" and "implement" for purposes of a remedial action refer to the RI/FS and the remedial design/remedial action (RD/RA) activities, respectively. The "lead agency" definition includes political subdivisions of States, as well as States themselves, and a reference to SMOAs. In addition, because Indian Tribes are afforded substantially the same treatment as States are afforded during response actions, the proposed definition of "State" includes Federally recognized Indian Tribes. (See § 300.515 for requirements Indian Tribes must meet to be afforded the same treatment as States.) Thus, for example, EPA may enter into cooperative agreements with such Indian Tribes. The proposed "lead agency" definition also reflects E.O. 12580, which delegates lead agency authorities to Department of Defense (DOD), Department of Energy (DOE), and other Federal agencies under certain specific conditions. The Federal agency will maintain its lead agency implementation responsibilities even when the remedy at an NPL site is selected jointly with EPA, or when the remedy is selected by EPA alone in situations where the Federal agency and EPA are unable to reach agreement. The new definition of "support agency" clarifies the relationship between the lead and support agencies described in proposed NCP provisions. In the case of remedial actions taken at Federal facilities under CERCLA section 120, EPA and the State will both be support agencies to the lead Federal agency.

The definitions for OSC and RPM are proposed to be simplified, with emphasis placed on the agency that designates the official. The proposed definitions for OSC and RPM combined with the definition for "lead agency" allow an official from a State, political subdivision, or Indian Tribe to be the lead OSC or RPM where a cooperative agreement, a contract, or the SMOA designates one of those entities as lead agency. It should be noted that this designation must be made on a site-specific basis. In some circumstances, a support agency coordinator, also defined in Subpart A, may be designated on a site-specific basis, with authority to carry out support agency responsibilities for particular response actions.

The new definitions for SMOA and "State Superfund contract" clarify the Federal/State partnership. Both documents are intended to formalize the responsibilities of lead and support agencies. The SMOAs are described in greater detail in the proposed new Subpart F of the NCP.

2. *Definitions of "applicable requirements" and "relevant and appropriate requirements."* These definitions have been modified pursuant to the CERCLA amendments to include the statutory provision that in addition to Federal requirements, more stringent, promulgated State requirements can also be applicable or relevant and appropriate.

In addition, EPA proposes to revise the definitions of the terms "applicable requirements" and "relevant and appropriate requirements" to clarify the wording of these two definitions without altering their basic meaning or significance. The current NCP defines "applicable requirements" as "those Federal requirements that would be legally applicable, whether directly, or as incorporated by a Federally authorized State program, if the response actions were not undertaken pursuant to CERCLA section 104 or 106." EPA today proposes to define applicable requirements as "those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under Federal or State law that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site."

The proposed changes to the current definitions are not substantive and are not intended to affect implementation. They are intended to clarify the definitions and, in the case of "applicable," eliminate the conditional wording of the current definition, which has caused some confusion. However, EPA is not changing its position (see 50 FR 47917, November 20, 1985) that other environmental laws do not legally apply to on-site response actions conducted under the authority of CERCLA sections 104, 106, or 122, except as they are incorporated by CERCLA section 121(d). Nonetheless, as EPA decided in promulgating the 1985 NCP revisions, and as Congress affirmed in enacting section 121 of CERCLA, the substantive requirements of other environmental laws will be met in CERCLA remedial actions. The only exceptions to this requirement are the six specified in CERCLA section 121(d)(4).

The current NCP defines "relevant and appropriate requirements" as "those Federal requirements that, while not 'applicable,' are designed to apply to problems sufficiently similar to those encountered at CERCLA sites that their application is appropriate. Requirements may be relevant and appropriate if they would be 'applicable' but for jurisdictional restrictions associated with the requirement." Today EPA proposes to clarify this definition with the following substitution: "Relevant and appropriate requirements means those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under Federal or State law that, while not 'applicable' to a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site, address problems or situations sufficiently similar to those encountered at the CERCLA site that their use is well suited to the particular site."

The word "substantive" in the proposed definitions is not meant to imply a necessary level of "significance" or "weight" for a requirement to be applicable or relevant and appropriate. Rather, "substantive" is used to distinguish the universe of applicable or relevant and appropriate requirements from administrative or procedural requirements, which are not potentially applicable or relevant and appropriate.

Further discussion on applicable or relevant and appropriate requirements and how they are identified and used in the remedial selection process, including more discussion of the distinction between "substantive" and "administrative," can be found in the Subpart E, § 300.430 preamble section below, "F. Compliance with the applicable or relevant and appropriate requirements of other laws."

B. Other Revisions

1. *Organization of Subpart A.* EPA has rewritten § 300.1, "Purpose and objectives," to clarify that the purpose of the NCP is twofold: (1) To provide a plan for an organizational structure; and (2) to provide a plan for responses, under that structure, to discharges of oil and releases of hazardous substances, pollutants, or contaminants.

Section 300.2, "Authority," is combined with current § 300.4, "Application," to eliminate redundancies. Section 300.3, "Scope," is being expanded to reflect new authorities created by the CERCLA amendments. Proposed § 300.3(b) reflects the outline of the NCP.

In addition, definitions contained in the current Subpart H, "Dispersants," (e.g. burning agent, sinking agent) are proposed to be moved to Subpart A so

that all definitions are in one place. No substantive changes are proposed to these definitions. Proposed §§ 300.6 and 300.7 have been added to explain use of number and gender and computation of time in the NCP.

2. *New abbreviations.* EPA is including many operational abbreviations that are commonly used in communications regarding actual site response. For example, the abbreviation "RI/FS" is commonly used by EPA to refer to the remedial investigation/feasibility study process where hazards at CERCLA sites are characterized and alternatives for response to those hazards are developed. EPA believes that the NCP should contain abbreviations that have become common in EPA communications. However, EPA is not adding any new department or agency title abbreviations, even though the Nuclear Regulatory Commission is now a member of the National Response Team (NRT). Because "NRC" is already listed as the abbreviation for the National Response Center, confusion will be avoided by not using this abbreviation for Nuclear Regulatory Commission.

3. *Minor definitional changes.* Some of the changes are merely to conform with word or phrase changes required by CERCLA or Executive Order 12580, and others are proposed strictly for clarification. The following are changes required to conform with the statute: Addition of abandonment of drums to the definition of "release;" addition of a phrase to include related enforcement activities in the definitions of "remove or removal," "remedy or remedial action," and "respond or response;" and addition of provisions for Indian Tribes to the definition of "natural resources."

Clarifying changes include expanded definitions of "trustee" and "operable unit." Indian Tribes were added to the definition of "trustee" to be consistent with statutory changes.

The definition of "operable unit" was expanded to explain that operable units can be distinguished by their dimensional aspects. This is an important concept because a Record of Decision often is signed for, and site work often is conducted as, one or several operable units, not an entire site response. Operable units may be actions performed at a site simultaneously on different portions of the site or in a series of actions. Sometimes the purpose of conducting an operable unit is to address the most imminent threat or to stabilize a threat posed by the site or to undertake a discrete, well-defined portion of the project while developing the overall remedial action. Examples of this are providing an alternative water supply or retarding movement of a contaminated plume while a source control and ground-water remediation strategy is being formulated. Sometimes remediation may consist of several operable units conducted sequentially for logistical and technical reasons. An example of this is where demolition and treatment of waste in tanks on a site is the first operable unit to facilitate locating equipment or materials handling for staging the second operable unit, which may be to cleanup an adjacent lagoon or contaminated soils on the site. In addition, operable units sometimes may be conducted concurrently but as separate activities. An example of this is where source control activities are one operable unit and ground water restoration is another operable unit. For more information on operable units, see proposed regulatory and preamble language for Subpart E, § 300.430.

Changes also include shortened definitions of "remedial investigation," "feasibility study," "source control remedial action," and "management of migration." EPA is proposing to shorten the definitions because the current definitions contain details inappropriate for a definition. These definitional changes do not represent a change in policy or meaning.

4. *New definitions.* EPA is proposing to incorporate in the NCP new definitions that were added to CERCLA. The proposed NCP adds definitions directly from the statute for the terms "alternative water supply" and "Indian Tribe."

EPA is also proposing the addition of several new definitions including "CERCLIS," "community relations coordinator," "cooperative agreement," "miscellaneous oil spill control agents," "operation and maintenance," "preliminary assessment," "public vessel," "remedial design," "SARA," "site inspection," "State," "treatment technology," and "vessel."

i. *CERCLIS.* EPA is proposing to add a definition for CERCLIS because CERCLIS has become a key documentation tool for most Superfund remedial and removal activities, and it is mentioned in portions of the NCP. CERCLIS is EPA's inventory of potential hazardous waste sites. In the past, CERCLIS was primarily an inventory of remedial releases or sites and included only some sites on which removals had been undertaken. However, CERCLIS has recently been changed to include releases at removal, remedial, and enforcement sites so that it is a more comprehensive list of all Superfund activities. To ensure as comprehensive a data base as possible, EPA is now also entering data for CERCLA response actions undertaken by the United States Coast Guard (USCG). In addition, as the definition explains, CERCLIS contains active and inactive (i.e., previously addressed) sites. EPA archives inactive sites in CERCLIS as a historical record of accomplishment. For informational and dissemination purposes, EPA considers only active sites.

ii. *Community relations coordinator.* EPA is proposing the addition of a definition for the term "community relations coordinator." The community relations coordinator is an important person in CERCLA responses; therefore, EPA believes it is necessary to include a definition of the title for informational purposes.

iii. *Cooperative agreement.* EPA is proposing to define cooperative agreement as a Federal assistance agreement in which substantial EPA involvement is anticipated.

iv. *Miscellaneous oil spill control agents.* EPA is proposing to add a definition of "miscellaneous oil spill control agents" for informational purposes.

v. *Operation and maintenance and remedial design.* The terms, "operation and maintenance" (O&M) and "remedial design" are proposed as new definitions because they are important terms commonly used in EPA communications; furthermore, a new NCP section (§ 300.435) has been added to reflect new CERCLA provisions affecting remedial design/remedial action (RD/RA) and O&M.

vi. *Preliminary assessment and site inspection.* EPA is proposing to add definitions for the terms, "preliminary assessment" (PA) and "site inspection" (SI), because they are important and discrete procedures in the site evaluation process. Use of the terms is also common in EPA communications. There are two kinds of PAs and SIs. Removal PAs and removal SIs are carried out to determine the nature of a release and associated threats when initial notification or discovery data suggest that a relatively rapid assessment or response is appropriate. The objective of removal PAs and SIs is to make timely and accurate decisions on which subsequent removal actions can be based. The other subset is remedial PAs/SIs. Remedial PAs are generally the first stage in the process of evaluating whether there is a release or threatened release at a site that does not appear to warrant removal action and determining the nature of the threat associated with that release or threat. Remedial SIs are the second step in the process and include an on-site

investigation and other gathering of data to determine whether further action at the site is necessary.

vii. *Public vessel and vessel.* Definitions for the terms "public vessel" and "vessel," taken from Clean Water Act (CWA) section 311 and CERCLA, are proposed for addition because the terms are used in several other NCP definitions.

viii. *SARA.* The proposed rule also includes a definition for "SARA," the Superfund Amendments and Reauthorization Act of 1986. This is the law that, among other things, amended CERCLA. One significant component of SARA is Title III, a free-standing section on emergency planning and community right-to-know. Regulations implementing Title III are codified at 40 CFR Subchapter J, and referred to in Subpart C of the proposed NCP.

ix. *State.* EPA is proposing to add a definition of "State" that includes "Indian Tribes." Except for purposes of SARA Title III or where specifically noted in the NCP, Indian Tribes may be treated in the same manner as States. EPA proposes to include Indian Tribes in the definition of State so that the term does not have to be repeated in every place that "State" appears. Section 300.515 describes in more detail requirements for Indian Tribes.

x. *Treatment technology.* The term "treatment technology" is also being added as a new definition for informational purposes. The term is used often in EPA communications and has become a central consideration in the remedial selection process. It has a precise meaning, which EPA believes should be included in the NCP.

5. *Deletion of definitions.* The definition of "Federally permitted release" is proposed to be deleted because it is no longer used in the NCP. To avoid confusion with other plans, the term "Plan" is no longer used to mean the NCP in the proposed rule. The definition of "Plan" is proposed to be deleted. The term "quality assurance/project plan" is proposed to replace "Site Quality Assurance and Sampling Plan."

C. Point of Clarification

The NCP includes within the terms "discharge" and "release," threats of discharge and threats of release. Thus, the phrases "threat of discharge" and "threat of release" have generally been deleted from the current rule where they appear with the terms "discharge" and "release," except when they are part of a statutory definition. To clarify this, EPA proposes to add the definition "threat of discharge or release" with cross-references to "discharge" and "release."

Subpart B—Responsibility and Organization for Response

Proposed Subpart B describes the responsibilities of Federal agencies for response and preparedness planning and describes the organizational structure within which response takes place. It lists the Federal participants in the response organization, their responsibilities for preparedness planning and response, and the means by which State and local governments, Indian Tribes, and volunteers may participate in preparedness and response activities. The term "Federal agencies" is meant to include the various departments and agencies within the Executive Branch of the Federal government.

A. Major Revisions

No major substantive changes are proposed for this subpart. EPA is proposing, however, a major reorganization of Subpart B. The most significant element of this reorganization is that EPA proposes to combine existing Subparts B and C. Furthermore, EPA proposes to change the sequence in which information from current Subparts B and C is presented. The proposed revisions present key information in a logical sequence of response-oriented activities from preparedness planning through response operations. The overall National Response Team (NRT), Regional Response Team (RRT), and OSC/RPM organization is introduced at the beginning, and the discussion of activities that have to be completed before and during response operations is integrated with a discussion of the role and responsibility of each of these major entities in the Federal response organization. Qualifications, exceptions, and caveats are generally described after the main or usual course of action. The listing of the capabilities of Federal agencies with respect to preparedness planning and response now follows the sections related to response operations.

B. Other Revisions

1. *Reorganization overview of existing Subparts B and C.* EPA proposes to combine existing Subparts B and C and reorganize the existing language (with minor revisions) in the following order:

i. Identification of the NRT/RRT/OSC/RPM organizational system (§ 300.105);

ii. Roles and responsibilities of the NRT and RRT (§§ 300.110 and 300.115) and OSC/RPM (§ 300.120), and activities that must be accomplished prior to a response;

iii. Notification and communication of threats or incidents (§ 300.125);

iv. Determination that a response is needed, including discussion of separate authorities of the Clean Water Act and CERCLA (§ 300.130);

v. Response operations—organized around OSC/RPM activities (§ 300.135);

vi. Other response-related topics such as multi-regional response, special teams, and documentation and cost recovery (§§ 300.140 through 300.165);

vii. Federal agency participation (§ 300.170) and Federal capabilities and expertise of NRT member agencies that might be required or useful in certain preparedness planning and responses (§ 300.175); and

viii. Information on State and local governments, Indian Tribes, and volunteer participation in and coordination with Federal preparedness planning and response (§§ 300.180 and 300.185).

In general, very little existing NCP language is proposed to be deleted. Deletions are proposed only when, in the proposed new sequence, it would be clearly repetitive and not necessary to assure that key ideas are highlighted in frequently used sections. New introductory language has been added in some sections and new headings indicate more clearly the contents of each section.

Several cross-references to other sections of the NCP have been added. For example, Community Relations Plans are referred to in this proposed subpart under Public Information to remind the reader of the existence of community relations requirements and the need for coordination where such plans are in effect.

EPA proposes to change or add language in several places to make clearer the parallels between NRT and RRT responsibilities and activities and to highlight the complementary nature of the RRT–OSC relationship. For example, the discussion of the OSC's responsibility for "OSC contingency plans" (proposed in Subpart C as the new name for plans formerly called "Federal local plans") complements the discussion of the RRT members' responsibility to participate in such planning. Language is also proposed in several places to reflect the current responsibilities or activities (e.g., RRT work planning) that are needed and being performed, but that are not identified in the current NCP.

2. *Executive Order 12580.* The 1986 CERCLA amendments and E.O. 12580 (52 FR 2923, January 29, 1987) have

expanded the responsibilities of Federal agencies for facilities and vessels under their jurisdiction, custody, or control. EPA notes that the language proposed throughout this subpart is intended to be generally applicable to all Federal OSCs/RPMs.

3. *Indian Tribes.* Proposed new language in various sections of this subpart introduces Indian Tribal government representation in the NRT/RRT system. The 1986 CERCLA amendments establish that Indian Tribes are to play essentially the same role as States for the purposes of the Superfund program. Although not explicit in the current NCP, provision had previously been made for Indian Tribes to participate in RRTs when Indian Tribes so request. Indian Tribes are now proposed to be included in the definition of State in Subpart A, so they are specifically mentioned in Subpart B only when the role of responsibilities of Indian Tribes needs separate explanation.

4. *Title III.* New references are proposed to be incorporated throughout the proposed subpart relating to review of State and local emergency preparedness planning required by SARA Title III. The emergency preparedness planning activities discussed in this subpart are carried out under the authority of Title III, not CERCLA.

5. *Incident-specific response teams (§ 300.115(j)).* EPA proposes this paragraph to notify RRT members of key information relating to a release when full RRT activation is not warranted. Without systematic transfer of correct information, RRT members may receive only partial or erroneous information from second-hand sources as to effects on people or natural resources from a release. Systematic means of notification should be covered in Regional Contingency Plans (RCPs) so the OSC/RPM is not distracted from managing the response by the need to maintain frequent contact with RRT members. EPA notes that numerous communications techniques and tools are becoming more readily available to RRT members. For example, electronic bulletin boards and conference call systems have been used successfully.

6. *On-scene coordinators and remedial project managers (§ 300.120).* The first paragraph of proposed § 300.120, sets forth all OSC/RPM responsibilities and activities up to the time of an actual response. EPA proposes this language to replace existing §§ 300.32(c) and 300.33(a) with the items of responsibility or activity in a slightly different order, stating first the basic OSC responsibility—that the OSC is to be in charge of the response. It is in light of this responsibility that the OSC undertakes the other preparedness and planning duties and the OSC's related activities with RRT member representatives. Where appropriate, there is parallel language for RPMs regarding remedial response.

In addition to remedial action responsibilities, an RPM may have removal authority responsibilities if, during the remedial process, a release is discovered that will threaten public health or the environment within a timeframe shorter than that in which the remedial program can respond and it is more efficient for the RPM to conduct the action. Because of this overlap in OSC and RPM responsibilities, the term "OSC/RPM" is proposed to be used in the NCP, where appropriate, to describe responsibilities that may belong to either an OSC or an RPM, depending on the particular circumstances of the release.

Additionally, EPA is proposing to use the terms OSC and RPM to apply to State representatives overseeing State-lead response actions. Therefore, changes are proposed in this section, as well as elsewhere in the NCP, to accurately reflect this approach.

The SMOA, a cooperative agreement, or another agreement, such as an agreement between EPA and another Federal agency or between another Federal agency and a State, may provide for the establishment of a support agency at a response action. To clarify the response structure and the interaction of the support agency and the OSC/RPM, a description of responsibilities of a support agency coordinator (SAC) is proposed to be added to § 300.120(f). There may be a support agency and a SAC at a site only if specified in an agreement with the lead agency. Generally, a support agency will not be designated for responses to oil discharges or emergency releases of hazardous substances. If a support agency is designated in such an agreement, the support agency may designate a SAC to be the prime representative of that agency and responsible for interacting and coordinating with the OSC/RPM. The purpose of designating a SAC is to provide a specific person in the support agency to assist the OSC/RPM as requested. In particular, the SAC is responsible for providing and reviewing data and documents as requested by the OSC/RPM during the planning, design, and response activities.

Changes are proposed for § 300.120(e) regarding RPM responsibilities, currently § 300.33(b)(14), to reflect changes in Federal agency responsibilities due to the CERCLA amendments and E.O. 12580. For example, a new paragraph, non-Fund-financed Federal-lead, was added to cover sites at which a Federal agency other than EPA or the USCG (primarily DOD and DOE) has the lead.

7. *Notification and communications (§ 300.125).* EPA proposes to add the word "notification" to the title of existing § 300.36, and to move it to a new location. In EPA's proposed revisions, notification starts the communications process, followed by the determination of whether to initiate a Federal response. This section has been moved to more accurately reflect its place in the response sequence. Both the title and the location change better reflect the importance of the National Response Center in the NRT/RRT/OSC/RPM system.

EPA reiterates that statutory and regulatory reporting requirements are still keyed to discharges of oil and releases of hazardous substances exceeding a reportable quantity (RQ). EPA is aware, however, that many notifiers do not have the training or knowledge to determine if there is an RQ of a substance involved in a release. Therefore, whenever there is any doubt about whether a release exceeds an RQ, EPA encourages that the release be reported to the NRC. Reporting ensures positive referral of every incident to each Federal agency with jurisdiction and/or regulatory interest.

The NRC is tasked with processing all reports regardless of the material involved or the reported significance of the incident. All reports are passed immediately by telephone to the proper Federal response entity and recorded in the NRC data base at the time of receipt. Public, government, industry, or academic requests for access to stored data may be made through a written Freedom of Information Act request to the Chief, National Response Center, 2100 Second Street, NW., Room 2611, Washington, DC 20593. See § 300.405, "Discovery or Notification," and related preamble discussion.

8. *Determinations to initiate response and special conditions (§ 300.130).* EPA proposes to consolidate in § 300.130 language currently in several places in the NCP. The section addresses the initiation of a Federal response, provides a basic statement about response management responsibilities of the co-chair agencies (whether under the CWA or CERCLA), discusses the special authorities and circumstances that may affect the initiation of a response, and contains cross-references to the relationship of the NCP to other kinds of

Federal response authorities (e.g., natural disasters). Also, for example, § 300.130(f) refers to the Federal Radiological Emergency Response Plan (FRERP) when a discharge or release involves radioactive materials. When EPA is required to respond under the FRERP, it will do so in accordance with the provisions of the U.S. EPA Radiological Emergency Response Plan. (See EPA Report No. 520/1–81–002, December 1986.)

9. *Response operations (§ 300.135).* EPA proposes to relocate existing § 300.33, to introduce it with language currently contained in § 300.33(b), and to keep the language that follows it virtually unchanged. EPA also proposes to relocate the language describing the way OSC jurisdiction is determined from current § 300.33(a) to new § 300.120. This section describes the OSC/RPM components of the NRT/RRT/OSC/RPM system.

10. *Special teams and other assistance available to OSCs/RPMs (§ 300.145).* EPA proposes changes to existing § 300.34 to combine information currently in two separate paragraphs about special technical resources available to OSCs/RPMs (e.g., on marine salvage) and to delete information no longer applicable (dive teams and Spill Cleanup Inventory System).

11. *Worker health and safety (§ 300.150).* EPA proposes to make several revisions to existing § 300.38 to bring it up to date with CERCLA and other changes in applicable regulations and policy developed since the last revision of the NCP.

12. *Public information (§ 300.155).* The title of this section has been changed to "Public Information and Community Relations" to indicate that obligations in this area extend beyond merely informing the public.

13. *Documentation and cost recovery (§ 300.160(d)).* Section 300.160(d) is a proposed new section of the NCP added in response to changes made by the 1986 amendments to CERCLA. Section 107(a)(4)(D) of CERCLA establishes that the responsible parties are liable for "* * * the costs of any health assessment or health effects study carried out under section 104(i)." This new section of the NCP responds to the statutory requirement by providing for the development of documentation to assure that these costs will be recoverable from responsible parties at CERCLA sites. The responsible parties are liable under section 104(i) of CERCLA for the costs of:

i. A health assessment for each facility on the National Priorities List (NPL);

ii. Health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, for which the probable source of such an exposure is a release;

iii. Pilot studies of health effects for selected groups of exposed individuals, where such studies are deemed appropriate by the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR) on the basis of a health assessment;

iv. Full-scale epidemiological or other health studies as may be necessary to determine the health effects on a population exposed to a hazardous substance from a release or threatened release, where deemed appropriate by the Administrator of ATSDR on the basis of a pilot study or other study or health assessment;

v. Establishing a registry of exposed persons;

vi. Population health surveillance programs for exposed populations; and

vii. Steps necessary to reduce exposure and eliminate or substantially mitigate the significant risk to human health, including but not limited to provision of alternative water supplies and permanent or temporary relocation of individuals.

In addition, section 104(i)(5) of CERCLA authorizes health effects research addressing inadequacies in the existing health risk information on substances frequently found at CERCLA sites.

This research is based on the data inadequacies identified in the toxicological profiles on the substances selected under section 104(i)(2)(A). These substances are selected for their potential human health risk in terms of (1) chemical toxicity, (2) frequency-of-occurrence at NPL sites, and (3) potential for human exposure. This research reduces the inadequacies in the existing health effect data base by further determining the health effects of these substances or by developing the techniques and methods to further such determination. A more complete data base on these substances' health effects will allow EPA to estimate better the health risks at NPL sites.

To minimize duplication of health effects research across the various government programs, and to minimize unnecessary cost recovery actions, whenever possible, EPA and ATSDR will coordinate the research programs under the Toxic Substances Control Act (TSCA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the National Toxicology Program (NTP) to fill the data inadequacies identified in the toxicological profiles. This position is consistent with CERCLA section 104(i)(5)(D) which states:

> It is the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers and processors of the hazardous substance in question, as required in programs of toxicological testing under the Toxic Substances Control Act. Within 1 year after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of EPA shall promulgate regulations which provide, where appropriate, for payment of such costs by manufacturers and processors under the Toxic Substances Control Act, and registrants under the Federal Insecticide, Fungicide, and Rodenticide Act, and recovery of such costs from responsible parties under this Act.

In many cases, the cost of research conducted under these programs is already borne by the manufacturers, the processors, and the registrants of the substances as intended by the Congress. The existing regulations under TSCA and FIFRA allow EPA to pass the major portion of the research costs to them. For example, 40 CFR Part 716 requires submission of health and safety studies on chemical substances selected for priority consideration for testing rules under section 4(a) of TSCA. Under 40 CFR Part 158, manufacturers and processors of pesticides are required to provide health and environmental risk information on pesticides for which registration is sought.

Where costs are incurred that are not otherwise borne by manufacturers, processors, or registrants, any agency conducting health effects research initiated by the Administrator of ATSDR, under the authority of CERCLA section 104(i), should maintain complete documentation of the expenditures related to this research and submit these documents to EPA for cost recovery actions.

14. *OSC reports (§ 300.165).* EPA proposes to leave current § 300.40 largely unchanged, except for an increase in the time for submitting OSC reports from 60 to 90 days. This change is viewed as giving the OSC a more realistic amount of time in light of the OSC's many other responsibilities. EPA expects that, wherever possible, all or parts of reports prepared to meet other requirements can be used with little or no revision to meet review needs of the RRTs and the NRT. An OSC report's recommendations may be a source for new procedures and policy.

15. *Federal agency capabilities (§§ 300.170 and 300.175).* EPA is proposing that the description of the capabilities of Federal agencies with

respect to response (currently § 300.23) be reorganized to highlight the leadership roles of EPA and the USCG. EPA also proposes to amend the regulation to refer to EPA's legal expertise in interpreting CERCLA and other environmental laws. Additionally, EPA is proposing to revise and update the descriptions of some of the other agencies' capabilities and expertise related to preparedness planning and response. Furthermore, EPA is adding a paragraph describing the Nuclear Regulatory Commission's capabilities and expertise to reflect the fact that the Commission was recently added to the NRT membership roll. It should be noted that the purpose of these sections is to discuss the special capabilities agencies have and the assistance they can render during any response action. These sections are not intended to specifically address Federal facilities.

16. *Nongovernmental participation (§ 300.185).* This section deals with the use of volunteers in Superfund response actions. Use of volunteers may be appropriate when it can be done in a safe and well-organized way. Key to the use of volunteers is capable leadership on the part of knowledgeable officials and areas of work that are suitable to these individuals. Prior to the use of volunteers, appropriate consideration must be given to the issue of liability for volunteer action, with regard to its effect on both the lead agency and on the volunteers themselves.

17. *National System for Emergency Coordination.* In January 1988, the President approved the National System for Emergency Coordination (NSEC). The NSEC is a mechanism for assuring that the Federal government provides assistance to State and local governments in "extreme catastrophic technological, natural, or other domestic disasters of national significance." The President may activate the NSEC in the event of a catastrophic environmental incident. As additional information regarding the implementation of NSEC becomes available, it may be necessary to make additional revisions to the NCP.

Subpart C—Planning and Preparedness

Proposed Subpart C revises current Subpart D and provides an extensive cross-reference to SARA Title III (the "Emergency Planning and Community Right-to-Know Act of 1986") and its regulations at 40 CFR Subchapter J.

A. Major Revisions

1. *SARA Title III.* Historically, the NCP has provided for Federal planning and coordination entities and for Federal contingency plans. Although there has previously been no Federal requirement for State and local planning, the NCP has always provided for coordination with such entities and plans where they exist. SARA Title III, however, now requires development of a State and local planning structure and local emergency response plans.

Title III provides the mechanism for citizen and local government access to information concerning potential chemical hazards present in their communities. This information includes requirements for the submission of material safety data sheets and emergency and hazardous chemical inventory forms to State and local governments, and for the submission of toxic chemical release forms to the States and EPA. Title III also contains general provisions concerning emergency training, review of emergency systems, trade secret protection, providing information to health professionals, public availability of information, enforcement, and citizen suits. Regulations implementing Title III are codified at 40 CFR Subchapter J. EPA will reference Title III and these regulations in Subpart C where appropriate.

2. *OSC contingency plans.* The name and contents of "Federal local plans" have been modified. EPA proposes to use the new name "OSC contingency plans" to replace the name "Federal local plan" in order to remove ambiguity in the phrase "Federal local" and because the OSC is responsible for developing these plans. Changes also have been made to describe better what these plans are and to identify how they are different from and linked to the "emergency plans" required by section 303 of SARA.

B. Point of Clarification

Title III definitions of facility and release. Title III and CERCLA provide slightly differing definitions of the terms "facility" and "release." Affected parties should carefully note these differences and their applicability to requirements in Title III and CERCLA.

Subpart D—Operational Response Phases for Oil Removal

Proposed Subpart D contains only minor revisions to current Subpart E. Proposed § 300.300(b) includes a reference to the EPA Regional emergency response telephone number. Another modification to § 300.300(b) and the addition of § 300.300(c) have been proposed to clarify that in the case of required reports of oil discharges made by the person in charge of a vessel or facility, reports must be made to the National Response Center (NRC). In other cases, reporting to the NRC is encouraged but not mandatory (this section is consistent with the changes to the counterpart section in Subpart E, "Discovery or Notification" (§ 300.405)). Proposed § 300.305(d) clarifies the requirement for OSC notification of natural resource trustees and makes it consistent with the wording in § 300.410. Proposed § 300.310(c) requires that applicable or relevant and appropriate requirements be met in the disposal of materials recovered in cleanup operations. Finally, proposed § 300.320(b)(4) describes appropriate responses for medium and major oil discharges, which are described separately in existing §§ 300.55(b)(4) and 300.55(b)(5).

Subpart E—Hazardous Substance Response

The Hazardous Substance Response subpart contains a detailed plan covering the entire range of authorized activities involved in abating and remedying releases or threats of releases of hazardous substances, pollutants, or contaminants. EPA is proposing major revisions to the hazardous substance response authorities included in the NCP. The revisions incorporate amendments to CERCLA and reorganize the sections of the subpart to coincide with the general order of established procedures during response.

Specifically, EPA is proposing to expand current § 300.62 on the State role into a separate subpart (new Subpart F), which incorporates the new State involvement regulations, and to move the entire discussion to appear after the Hazardous Substance Response subpart—today proposed to be redesignated as "Subpart E." EPA also proposes to revise and reformat current § 300.67 on community relations so that it is no longer a separate section but is incorporated into the other sections as appropriate. Furthermore, EPA is proposing to rename and reorganize the sections in Subpart E as follows:

§ 300.400 General.
§ 300.405 Discovery or notification.
§ 300.410 Removal site evaluation.
§ 300.415 Removal action.
§ 300.420 Remedial site evaluation.
§ 300.425 Establishing remedial priorities.
§ 300.430 Remedial investigation/feasibility study (RI/FS) and selection of remedy.
§ 300.435 Remedial design/remedial action, operation and maintenance.

General Framework for Responding to Releases

Before discussing the revisions section-by-section, it is useful to review the general framework for responding to releases of hazardous substances,

pollutants, or contaminants. The framework outlined in the 1982 NCP and refined in the 1985 NCP and in this proposed revision to the NCP establishes general procedures for discovery or notification, response, and remediation of releases that pose a threat to human health and the environment. EPA's primary consideration in CERCLA response actions is that remedies be protective of human health and the environment. The variety of releases and threats encountered, however, makes it necessary that specific response actions and cleanup levels be determined on a site-by-site basis. Therefore, the function of the NCP is to delineate how such site-specific decisions on response actions will be made.

CERCLA authorizes EPA to administer response actions in several ways:

i. EPA can take direct action using Fund monies;

ii. Under EPA oversight, responsible parties can undertake a response action as a result of EPA's enforcement authorities; and

iii. States can undertake a response action using CERCLA monies pursuant to a cooperative agreement with EPA.

1. *Discovery or notification.* The first step in the response process occurs when there is discovery or notification of a release (the definition of "release" in Subpart A includes threat of release). This discovery or notification occurs in the various ways described in § 300.405. As described in that section, notice of a release is typically directed to the National Response Center. Once Federal officials are aware of a release, there are two types of responses: Removal or remedial. Before any response action is taken, however, the conditions and problems at the site must be evaluated.

2. *Site evaluation.* When notice of a release is received, EPA will consider the reported facts and circumstances to determine whether a removal or a remedial site evaluation should be undertaken.

The main differences between removal and remedial site evaluations are their respective purposes and the amount of time available for conducting the evaluation before an action must begin. When a lead agency conducts a removal site evaluation, the agency usually has some reason to believe that a prompt action may be needed. If there is any indication that there may be an emergency or other time-critical situation, the release is evaluated for possible removal action. The same is generally not true with remedial site evaluations because the primary purpose of a remedial site evaluation is to assist in determining whether a release should be included on the National Priorities List (NPL). (See § 300.425(b); urgent situations do not allow for developing the more comprehensive data required in remedial site evaluations to score the site for the NPL.)

It should be noted, however, that removal and remedial site evaluations overlap. Information gathered during a remedial site evaluation may indicate that the contamination or one portion of the contamination at a site should be addressed by the removal program or information gathered during a removal site evaluation may indicate that the contamination at a site can be better addressed by the remedial program. The important point is that when the lead agency receives notification of a release, it makes a quick determination as to whether the site seems to be a likely candidate for removal action. If the release does not immediately seem to be a likely candidate for removal, then the release is listed on CERCLIS for a remedial site evaluation to be conducted in the future.

Because of the pressing nature of removal response, a removal PA/SI is characterized by a quick assessment. When the OSC is responding to an explosion or transportation spill, a removal site evaluation may involve only an on-site assessment. Where more time is available (for a non-time-critical removal), a removal site evaluation may involve a review of any existing information available on the release plus an on-site evaluation, including sampling. During these evaluations, the lead agency generally reviews conditions of a release to see whether the release is from a discrete source. Due to the limitations on removal actions, the removal program is generally unable to address large areas of contamination, i.e., where there is not an identifiable discrete source. For example, the lead agency may look for unstabilized tanks, drums, lagoons, or a small area of highly contaminated soil in evaluating the urgency of the release. Section 300.410 describes in more detail the removal site evaluation, including when it is terminated. The criteria for removal actions described in § 300.415(b)(2) are used in the removal site evaluation to determine whether a removal action may be appropriate.

Remedial PAs and SIs are more comprehensive and structured because there is not the same time constraint as there is for removal PA/SIs. A remedial PA will consist of a review of existing information and may include on-site or off-site reconnaissance where safe and appropriate. After the PA is complete, the lead agency will prepare a report that describes the characteristics of the release and recommends whether further remedial evaluation is warranted. At sites where further action is indicated, the lead agency will conduct an SI that will build on the information collected in the remedial PA and involve, as required, on-site and off-site field investigations and sampling. Data gathered during the remedial PA/SI are used to evaluate the release using the Hazard Ranking System (HRS) to determine whether the site should be listed on the NPL. For more discussion on remedial site evaluation see the preamble section below, "§ 300.420—Remedial Site Evaluation." For more discussion on the NPL, see the preamble section below, "§ 300.425—Establishing Remedial Priorities."

3. *Removal actions.* After conducting the removal site evaluation (or, as appropriate, during a remedial activity) the factors described in § 300.415(b)(2) are considered in determining whether or not a removal action is appropriate. If the lead agency determines, upon consideration of such factors, that a removal action is appropriate, actions shall begin as soon as possible to prevent, minimize, or mitigate the threat to human health and the environment. (Section 300.415(d) describes the types of measures that may be taken.) CERCLA requires the termination of Fund-financed removal actions after 12 months have elapsed from the date of the initial response or after $2 million has been obligated unless statutory exemptions apply.

EPA has conducted removal actions in response to a wide range of situations including, "midnight dumping" and other illegal disposal, releases from active manufacturing or waste disposal facilities, and transportation-related incidents. In addition, removal actions may be conducted in response to a time-critical situation at a remedial response site. For example, a removal action may be required to stabilize an NPL site before remedial response activities can begin, or a removal action may be necessary in response to a sudden dangerous situation such as a fire or explosion that occurs during a long-term remedial response.

In situations involving immediate threats, it is not difficult to determine that use of removal authorities is appropriate. In less obvious situations, however, the lead agency must rely on the best technical judgment of its response personnel to determine whether use of removal authority or remedial authority is more appropriate to address the identified threats. On-

scene coordinators and remedial project managers are charged with using all the information available to them at the time to determine how quickly a response must be initiated and, therefore, which response authorities are appropriate.

Notwithstanding the discussion of lead and support agency conduct of removals, potentially responsible parties may undertake these activities under EPA oversight as a result of EPA's enforcement authorities.

4. *Remedial response*—i. *Remedial investigation/feasibility study and selection of remedy.* The lead agency generally will conduct a remedial investigation (RI) and feasibility study (FS) (although actions may be initiated at any time prior to, during, or after the RI/FS when there is a need or opportunity to reduce or control risk or prevent further environmental degradation). The purpose of the RI is to gather sufficient data to characterize the conditions at the site in order to assist in determining the appropriate action. The RI should be focused so that only data needed to develop and evaluate alternatives and to support design are collected. Nonetheless, because of the complexity of the problems, it can take many months of investigatory and sampling work to characterize properly the pathways of exposure to the surrounding population, the hazardous substances that are present at the site, the concentrations of these substances in various areas of the site, and other conditions that must be understood before the best remedy can be selected for that site.

As the problems at a site are beginning to be understood, a feasibility study is conducted. The purpose of the FS is to develop and analyze alternatives for appropriate action. The level and detail of the analysis will be tailored to the scope and complexity of the action needed. As the impacts of these alternatives and other factors are considered, the number of alternatives is reduced. A remedy is selected in a Record of Decision based on these studies. The proposed regulation and preamble for § 300.430 explain in detail the RI/FS and selection of remedy process; therefore details of the process will not be repeated here.

ii. *Remedial design/remedial action and operation and maintenance.* After an RI/FS has been completed and a remedy has been selected, the lead agency designs the remedy. The remedial design stage includes developing the actual plans and specifications for the selected remedy. When this is completed, the lead agency conducts and completes the remedial action. After a joint inspection of the remedy following the completion of construction, the State or other appropriate party (e.g., a Federal facility) will generally assume responsibility for ensuring that the remedy is operational and functional. After the lead and support agencies have determined that the remedy is operational and functional, the State or other appropriate party is responsible for operating and maintaining the site as needed. Section 300.435 describes remedial design/remedial action (RD/RA) and operation and maintenance (O&M) activities.

Notwithstanding the discussion of lead and support agency conduct of RI/FSs, RD/RAs, and O&M, potentially responsible parties (PRPs) can undertake these activities as a result of EPA's enforcement authorities.

5. *Relationship between removal and remedial activities.* It is important to note that response to releases of hazardous substances does not follow a straight sequential path from discovery through removal to remedial action. Although the NCP sections on removal site evaluation and removal actions come before the remedial site evaluation and other remedial sections, in reality, a decision to conduct a removal may be made at any time in the remedial process, and sites initially evaluated or addressed by the removal program may be referred to the remedial program. Thus the need for removal is considered during a remedial PA, a remedial SI, RI/FS, and actual remedial action. If a removal action does not fully address the threat posed by a release, the lead agency will ensure an orderly transition from removal to remedial response activities. The removal program is intended to address releases that pose a relatively near-term threat that can be addressed within the statutory limits. The remedial program is intended to address significant releases that cannot be addressed under the removal program. There will always be some overlap between the two programs, and it is important that they work closely together. The goal is to ensure that the most significant threats are addressed in the most efficient and effective manner.

6. *State participation.* State participation is critical to the response program. It is EPA's intention that the States and EPA function as partners, and States are encouraged to participate in all facets of the response process: Removal, pre-remedial, remedial, and enforcement. EPA proposes to use general agreements called Superfund Memoranda of Agreement (SMOA) to delineate non site-specific Federal/State interactions and responsibilities. Site-specific State-lead actions are undertaken via cooperative agreements between the State and the EPA Region. For more information on State involvement see proposed Subpart F of the NCP.

7. *Public participation.* CERCLA requires the opportunity for participation of the public and of PRPs in the remedy selection process and the development of the administrative record supporting the remedy selected (see Subpart I). The NCP discusses the opportunities for public and PRP participation, including comment periods, public meetings, and formal community relations plans specifying interactions at each remedial action site. In enforcement actions, there will be comment periods for consent decrees and, in the removal action process, participation is encouraged to the extent allowed by the exigencies of the situation. The public participation requirements have been incorporated into each of the sections where they apply (e.g., §§ 300.415, 300.430, and 300.435). See Subpart E, § 300.430 preamble section below, "H. Community Relations."

8. *Federal facilities.* CERCLA emphasizes the application of the Superfund program to Federal facilities indicating the intent of Congress that Federal agencies address releases from such facilities with attention equal to that given by EPA to non-Federal sites. Unless a provision specifically addresses Fund-financed activities only, all provisions in Subpart E (and throughout the NCP, as appropriate) apply to Federal facilities.

Subpart E: Section-by-Section

A section-by-section discussion of the proposed revisions to Subpart E follows, in order of appearance, with two exceptions: Community relations and applicable or relevant and appropriate requirements. These requirements are described in their own separate preamble sections because the requirements are interspersed throughout the Subpart E regulatory sections.

Section 300.400 General.

This section revises existing NCP § 300.61 and contains a general discussion of the prerequisites, methods, criteria, and limitations of response actions addressing hazardous substance releases.

A. Major Revisions

1. *Limitations on response (§ 300.400(b)).* Amendments to CERCLA section 104(a)(3) added significant

limitations on response authorities. Those limitations have been incorporated into the NCP through the addition of new § 300.400(b). The proposed section states that the Fund may not be used to respond to releases of naturally occurring substances, to releases from products that are a part of the structure of a building and result in exposure within that building, or to releases into drinking water supplies due to deterioration of the water system through normal use. However, there is an exception allowed. The Fund may be used to respond in cases where the lead agency determines that the release is a public or environmental emergency and that no other person with the authority and capability to respond will do so in a timely manner. EPA expects these exceptions to be rare.

An example of the first type of situation for which the Fund is not available for response is found in the Reading Prong and other areas, where high levels of radon were discovered inside buildings erected on naturally radioactive formations. Examples of the second type of situation are chemically-treated wood or masonry materials containing radionuclides which may be part of the structure of a building and result in exposure to persons in that building. Examples of the third type of situation are releases of lead and other contaminants into a municipal drinking water supply system solely from the natural deterioration of pipes and welds in the system.

2. *Entry and access (§ 300.400(d)).* CERCLA section 104(e)(3) allows any officer, employee, or representative of the President, duly designated by the President, to have access to vessels, facilities, establishments, or other places, where any hazardous substance, pollutant, or contaminant may be, or has been released, generated, stored, treated, disposed of, or transported from or where access is needed to determine the need for response or the appropriate response or to effectuate a response action under CERCLA. As one method of enforcing such authority, where consent is not forthcoming, CERCLA section 104(e)(5) authorizes the President to issue administrative orders for entry and access to such property. In E.O. 12580 the President delegated this authority to Executive departments and agencies. To ensure full understanding of the scope and proper utilization of this authority, EPA proposes to include in § 300.400(d) the requirements for administrative orders, the scope of orders, the activities permitted under orders, and certain content, delivery, and enforcement aspects of such orders.

In accordance with CERCLA's increased emphasis on private party response, EPA specifies in this section that it may designate a potentially responsible party as EPA's representative solely for the purpose of access, and that it may exercise the authorities contained in section 104(e), including issuing an administrative order, to gain access for the potentially responsible party. Such designation will only be used where the potentially responsible party is conducting a response action pursuant to an administrative order or consent decree and the designation is in accordance with relevant EPA policy.

3. *"On-site" for permitting purposes (§ 300.400(e)).* Section 121(e) of the amended CERCLA states: "No Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely on-site, where such remedial action is selected and carried out in compliance with this section." EPA proposes to state that on-site permits are not required for response actions taken by EPA, other Federal agencies, States, or private parties pursuant to CERCLA sections 104, 106, or 122. For the purposes of implementing this section, EPA has proposed to define the term "on-site" in § 300.400(e)(1) to include the "areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action."

Flexibility in defining a site is necessary in order to provide expeditious response to site hazards. EPA emphasizes that the lead agency must always comply with the substantive requirements that would otherwise be included in a permit and that the NCP requires public participation in the remedy selection process. EPA also believes that required approval or consultation by regulatory bodies is analogous to permit requirements and is encompassed within the CERCLA section 121(e) exemption. However, EPA intends to consult closely with the appropriate regulatory authority where time permits. The definition will exempt the lead agency only from administrative processes. These administrative processes could otherwise delay implementation of a response action for several months.

The definition of "on-site" is intended to address the following types of situations. First, remedial actions frequently involve treatment systems that require significant land area for construction. For example, an incinerator cannot be placed on top of contaminated soil but may require some area adjacent to the area of contamination. Situations have arisen where the contamination is in a lowland marshy area and it is not possible to locate an incinerator or construction staging area in the marshy area but it is possible to do so in an uncontaminated upland area in very close proximity. Moreover, the "areal extent of contamination" is intended to include sites where areas of contamination are discrete rather than continuous but are within reasonably close proximity to one another. The decision document should describe the boundaries of the site. A second situation is where a containment structure or a slurry wall to contain contaminated material must be built adjacent to the contaminated material, not in the contaminated area. Third, a ground water plume may extend several miles from the source of contamination or the source may not even be defined at the time of response. If the remedy selected is to intercept the plume and treat the ground water upgradient of a drinking water supply, the treatment facility must be placed near the point of interception.

EPA's interpretation of CERCLA section 121(e) is that each of these situations falls under the purview of that section and that permits are not required for the activities. For this reason, EPA has proposed a flexible definition of "on-site" that can be tailored to specific cases. However, as a matter of policy, EPA will implement the proposed definition with certain limitations. It is EPA's general policy to invoke the permit exemption only when the area within very close proximity to the contamination is necessary for implementation of the portion of the response action relating to the hazardous substance with which it is in proximity. An example is an area of contaminated soil and contaminated ground water that extends several miles from the contaminated soil. The remedy selected includes incineration of the contaminated soil and pumping and treating the contaminated ground water plume. Following EPA's policy in this example, the lead agency would locate the pump system along the contaminated ground water plume, as necessary, without a permit; but, it would only locate the incinerator near the contaminated soil. The lead agency would generally not locate the incinerator several miles from the contaminated soil over the plume. In such a case, where the incinerator must be located far from the source, the lead agency, in accordance with this policy, should obtain a permit.

EPA's interpretation of "on-site" further includes situations where the remedial activity occurs entirely on-site but the effects of such activity cannot be strictly limited to the site. For example, a direct discharge of CERCLA wastewater would be an on-site activity if the receiving water body is in the area of contamination or is in very close proximity to the site, even if the water flows off-site.

EPA notes that section 104(d)(4) of CERCLA allows EPA to treat non-contiguous facilities as one where those facilities are "reasonably related on the basis of geography, or on the basis of threat or potential threat to public health or welfare or the environment." EPA interprets this section to allow it to elect to treat several CERCLA facilities as one "site" for purposes of section 121(e). Under this approach, hazardous substances from several CERCLA facilities could be managed on-site at one of those CERCLA facilities without having to obtain a permit for the wastes that are brought from the other CERCLA facilities. Among the criteria EPA uses to treat non-contiguous facilities as one site are that the facilities are reasonably close to one another and the wastes are compatible for the selected treatment or disposal approach. EPA solicits comment on whether to limit this approach to situations where the non-contiguous facilities are under the ownership of the same entity.

EPA is considering several other possible ways of defining "on-site" for permitting purposes. Each of these is described and discussed briefly below.

i. Define "on-site" as the areal extent of surface contamination. This concept is similar to the RCRA concept of a hazardous waste management area. It would make the definition of "on-site" more definite but would have several problems. First, there are CERCLA sites that have relatively minimal or no surface contamination because the contamination is primarily in the ground water. This definition would mean that in certain cases there would be little or no area that would be considered "on-site" and exempt from permits. Second, this option would mean that permits would have to be obtained in cases where the construction or staging area cannot be located on top of the contamination, even if the staging areas were in very close proximity. As described above, these administrative processes could delay remedial actions at many sites even after there has been public comment on the proposed remedy.

ii. Define "on-site" as identical to a CERCLA facility. The term "facility" is defined in section 101(9) of CERCLA (this definition is repeated in § 300.5 of the NCP) as "any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel." Defining the term "on-site" to be the same as "facility" probably would allow the lead agency to follow a plume and construct a treatment system over the plume without obtaining a permit because of the phrase "or any site where a hazardous substance has been deposited * * * or otherwise come to be located." It would not, however, address the concern that noncontaminated land may be needed as a construction staging area and may be an integral part of the remedial action to be taken. In addition, it should be noted that it is often difficult to define a CERCLA facility boundary. When a site is listed on the NPL, an attempt is made to describe the facility and its boundaries. However, the extent of contamination is not always known at that point in the process. Later, during the RI/FS stage, the facility boundaries may be better defined.

iii. Define "on-site" as the facility plus any contiguous area necessary for carrying out the response. This would address the problem described in number (i) above but the requirement of contiguity may present other problems. For example, sometimes it may not be possible to locate the construction staging area directly contiguous to the facility; perhaps there is unused railroad property between the facility and the proposed staging area or some other similar obstacle.

iv. Define "on-site" as encompassing the area having the same legal ownership as the primary contaminated area or areas. This definition would limit the permit-free areas available for staging and implementing response actions. Because the site would be defined in terms that do not directly relate to the contamination, there may be situations where the ability to implement a remedy expeditiously is artificially constrained by the proximity of the property line.

B. Other Revisions

1. *Current § 300.61(b).* This paragraph has been deleted to conform with amendments to CERCLA section 104(a)(1)(B). The former CERCLA section 104(a)(1) and NCP authorized a response action "unless the President determines that such removal or remedial action will be done properly by the owner or operator of the facility * * * or by any other responsible party." The change to CERCLA and deletion of this section from the NCP clarify that the Federal government is not precluded from conducting a response action, merely because responsible parties have indicated a willingness to take some form of response action.

2. *Health assessments (§ 300.400(f)).* This paragraph has been added to codify the requirements of CERCLA section 104(i) that a health assessment be performed by ATSDR at each site proposed to be listed on the NPL or in response to a petition for a health assessment.

C. Points of Clarification

1. *Pollutants and Contaminants.* CERCLA section 104(a)(1) authorizes response actions whenever any hazardous substance, including mixtures of oil and hazardous substances, is released or whenever there is a release of any pollutant or contaminant that may present an imminent and substantial danger to the public health or welfare. This standard is reflected in NCP § 300.400(a). Note that under CERCLA, "imminent and substantial danger" limitation applies only to pollutants and contaminants and not to hazardous substances. Moreover, the limitation does not define the scope of the removal actions as described in § 300.415(b).

2. *Response to HWTC's petition to modify the NCP to permit treatability testing without the need to obtain a RCRA permit.* The Hazardous Waste Treatment Council (HWTC) has petitioned EPA to issue regulations facilitating small-scale treatability studies on wastes at Superfund sites that contain or may contain RCRA hazardous wastes by exempting owners or operators of facilities conducting such tests from RCRA requirements that would otherwise apply to facilities treating, storing, and disposing of hazardous wastes. HWTC has submitted two petitions for regulatory action. One seeks a regulation under RCRA that would generally exempt such studies from regulation under RCRA when conducted within certain limits of study size, storage volume, etc. The second petition is directed more specifically at treatability studies conducted to support decisionmaking at CERCLA sites. It seeks to exempt treatability studies conducted to support remedy decisions at CERCLA sites from

permitting requirements by defining the facilities at which treatability studies are conducted as being "on-site." As discussed elsewhere, activities conducted "on-site" are exempted from the need to obtain permits. Such a definition, therefore, would exempt those conducting treatability studies from any permitting requirements and would not be limited to the need to obtain a RCRA permit. EPA is separately considering HWTC's petition for rulemaking under RCRA. (See 52 FR 35279, September 18, 1987.) Only the second petition, under which treatability tests on wastes from CERCLA sites would be exempted from permitting by defining them as occurring "on-site," is considered here.

Treatability tests are an important part of the RI/FS process as well as other waste management processes. EPA has concluded, however, that to the extent it is appropriate to adjust permitting requirements to encourage treatability testing, that should be accomplished by directly modifying the RCRA regulations to address such testing generally. EPA does not believe that the term "on-site" can extend to a distant facility that may be conducting a treatability test. For these reasons, EPA is not proposing in today's notice to extend the definition of the term "on-site" to include facilities conducting treatability tests characterizing wastes from CERCLA sites as contemplated by HWTC's petition. Instead EPA will consider the merits of HWTC's position in the context of HWTC's petition for rulemaking under RCRA.

Section 300.405 Discovery or Notification.

This section revises current NCP § 300.63 and discusses how CERCLA sites may be discovered, the notification responsibility to report releases of hazardous substances, pollutants, or contaminants to the National Response Center (NRC), and the details of the notification process. There are no major revisions.

Revisions

1. *Discovery of release (§ 300.405(a)).* EPA is proposing two minor clarifying changes to current § 300.63(a) on how releases are discovered. First, notification under section 103(a) of CERCLA (notification of releases of reportable quantities) and under section 103(c) of CERCLA (owners and operator's notification to EPA of the existence of a facility at which hazardous substances are or have been stored, treated or disposed of) have been separated into (1) and (2).

Second, EPA is proposing to add to the list of discovery methods a new method for discovering releases. This revision is intended to reflect the fact that the new statutory provision allowing citizen petitions for preliminary assessments also represents a new method for discovering a release.

2. *Notification requirements (§ 300.405 (b), (c) and (d)).* EPA is proposing a minor clarifying change to the notification requirements in § 300.63(b) to state that where direct reporting to the NRC is not practicable, reports may be made to the predesignated EPA OSC through the Regional 24-hour emergency response telephone number. This wording was added to alert the public that such numbers exist, but should be used only in the very rare cases where the NRC cannot be reached (for example, because a caller cannot get through to the NRC). EPA strongly urges that all reports of releases be made directly to the NRC. If the notifier can reach a telephone, the NRC must be called. EPA notes that the most likely situations in which direct reporting to the NRC may not be practicable are releases from vessels at sea or offshore platforms with no telephone access. In these cases, releasers would normally report by radio to a Coast Guard station that maintains a radio watch. Releasers who report to the nearest Coast Guard unit under this provision must also notify the NRC as soon thereafter as possible.

Reporting requirements and penalties in CERCLA and the NCP are effective only for releases covered by the 40 CFR 302.4 List of Hazardous Substances and Reportable Quantities (RQs). However, whenever there is any doubt about whether a release equals or exceeds a RQ, EPA encourages that it be reported to the NRC. Paragraph (c) is proposed to be added to highlight this and to make clear the only two situations that should not be reported to the NRC.

The NRC processes all reports of releases that it receives, regardless of the substance involved or the significance of the incident. Reports are archived into the NRC computer data base at the time of receipt and passed immediately by telephone to the appropriate response entity. This centralized reporting simplifies and expedites public, governmental, industrial, and academic access to information regarding hazardous substance releases and response.

EPA is proposing to add a new § 300.405(d), to enumerate the kinds of information that should be provided to the NRC during notification of releases. However, EPA points out that reporting should not be delayed because of missing information.

3. *CERCLIS (§ 300.405(f)(2)).* EPA is proposing language to indicate that when notification shows that removal action is not necessary, but that a remedial site evaluation should be performed, the release will be listed in the CERCLIS remedial inventory. (For a definition and discussion of CERCLIS, see the Subpart A preamble section, "4. New Definitions.")

4. *SARA Title III (§ 300.405(g)).* EPA is proposing minor clarifying changes to the notification requirements of the NCP. EPA is adding a reference to the new SARA Title III notification requirements. This reference states that notification of the NRC does not generally satisfy all Title III notification requirements. This has been added because it is important to note that several notifications may be needed for each release to meet the requirements of SARA.

Section 300.410 Removal Site Evaluation.

This section revises current NCP § 300.64 and discusses the preliminary assessment that is conducted to evaluate available data about a reported release to determine whether the conditions warrant a removal action.

A. Major Revisions

1. *Title of section.* EPA is proposing to change the title of this section from "Preliminary Assessment for Removal Actions" to "Removal Site Evaluation." Parallel changes for the section concerning remedial site evaluations are also being made. These changes clarify that one of the first steps before conducting either a removal or remedial action is to evaluate the release conditions in order to determine what actions may be needed. Section titles in the current NCP do not reflect the similar requirements for removal and remedial actions.

2. *Natural resources (§ 300.410(g)).* EPA proposes to revise current § 300.64(d) to state that the OSC or lead agency is responsible for ensuring that State and Federal trustees of affected natural resources are notified promptly when it is determined that natural resources have been, or are likely to be, damaged. Current § 300.64(d) links this notification to a preliminary assessment determination. The proposed language broadens the section to require trustee notification whenever any data indicate that natural resources will be threatened. Furthermore, the new language clarifies that the OSC or lead agency will coordinate, as appropriate,

the necessary response action assessments, evaluations, investigations, and planning with the State and Federal trustees.

B. Other Revisions

1. *Removal/Remedial program coordination (§ 300.410(h)).* EPA proposes a minor addition at § 300.410(h) to clarify that when a removal site evaluation indicates that a removal action is not needed, but that a remedial action may be needed, a remedial site evaluation shall be initiated and the release shall be listed on the CERCLIS remedial inventory. This is similar to the addition proposed for the notifications section at § 300.405(f)(2).

2. *Termination of removal site evaluation (§ 300.410(e)).* EPA is proposing minor changes to current § 300.64(c) to reference the limitations on response in § 300.400(b).

As discussed in the current NCP, it is important to note that if another party is responding, the OSC will not continue to pursue a removal site evaluation or action, whether or not such person is under court or administrative order. However, if the person is under an order, the OSC may provide surveillance as a separate action, to assure compliance with the order. There may also be instances of voluntary response where the OSC provides monitoring to assure proper response and to avoid a situation where followup action would be needed.

C. Minor Revisions

EPA is proposing other minor conforming revisions to ensure consistency in wording between the new statute and the NCP, and between subparts.

Section 300.415 Removal action.

This section contains the CERCLA program's removal authorities. EPA is proposing several revisions to portions of the current NCP § 300.65 including: the statutory limits on removal actions and exceptions to those limits; the relationship of removal action to anticipated long-term remedial action; a list of appropriate removal actions for specific situations; requirements for post-removal site control; and the requirement for submission of the OSC's report to the RRT.

Today's preamble discussion uses several descriptive terms to broadly differentiate among various types of removals, and EPA wishes to provide here an understanding of their meanings in this context: "Emergencies" generally refer to those actions where the release requires that response activities begin on-site within hours of the lead agency's determination that a removal action is appropriate. "Time-critical" removals are those where, based on the site evaluation, the lead agency determines that a removal action is appropriate and that there is a period of less than six months available before response activities begin on-site. "Non-time-critical" removals are those where, based on the site evaluation, the lead agency determines that a removal action is appropriate and that there is a planning period of more than six months available before on-site activities must begin. The lead agency for non-time-critical removals will undertake an engineering evaluation/cost analysis (EE/CA) or its equivalent.

Because Superfund resources are finite, it is not possible for EPA to conduct all removals authorized by CERCLA. Therefore, the removal program sets priorities to ensure that the most serious public health and environmental threats will be addressed. Classic emergencies, such as fires and explosions and time-critical removals that cannot be addressed by any other authority, are the removal program's highest priorities.

A. Major Revisions

1. *Statutory limits (§ 300.415(b)(5)).* The amendments to CERCLA section 104(c)(1) raised the statutory limits for Fund-financed removal actions from six months and $1 million, to twelve months and $2 million, respectively. The amendments also provide a new exemption from the time and dollar limits for situations where the lead agency determines that continued response is otherwise appropriate and consistent with the remedial action to be taken. Formerly, there was an exemption only for those situations that met the emergency criteria in CERCLA section 104(c).

EPA proposes to include the new statutory limits and the new exemption in the NCP at § 300.415(b)(5). In the proposal, only statutory language has been included for both provisions. This is consistent with the way the emergency exemption has been treated in the current NCP.

EPA has developed an approach for implementing the new exemption and solicits comment on this approach. EPA believes that the new exemption should be used primarily for proposed and final NPL sites and should be used for non-NPL sites only in rare circumstances. EPA believes that Congress originally put the statutory limits in place because it intended that the removal program generally be short-term and mitigative in nature. Long-term remedial actions generally involve complete cleanup of sites which are on the NPL. EPA believes that the new exemption was included to ensure that the time and monetary limits would not preclude proper implementation of the requirement in CERCLA section 104(a)(2) that removal actions should, to the extent practicable, contribute to the efficient performance of any long-term remedial action (see below for discussion of this provision). The purpose of the provision is to conserve Fund monies at NPL sites by performing indicated removals at these sites that take into account the ultimate remedy. Monies spent wisely during the removal portion at NPL sites would enable the entire action to be completed more efficiently and cost-effectively.

In accordance with this interpretation, EPA has developed the following criteria for determining when use of the new exemption at proposed and final NPL sites is appropriate:

i. To avoid a foreseeable threat;

ii. To prevent further migration of contaminants;

iii. To use alternate technology to reduce mobility, toxicity, or volume; or

iv. To comply with off-site requirements.

Although EPA intends to use the new exemption primarily at NPL sites in order to maintain the effectiveness of the NPL priority system, EPA also recognizes that there may be some limited circumstances at non-NPL sites where use of the new exemption could be appropriate. If, for example, treatment could be used that would permanently or significantly reduce mobility, toxicity, or volume at a non-NPL site, then it might be appropriate to use the new exemption at a non-NPL site. Use of the exemption in these situations at non-NPL sites would be consistent with a permanent remedy, but use at non-NPL sites is not intended to supplant the remedial program. EPA will ensure that the new exemption is used at non-NPL sites only in limited circumstances by requiring that each decision for using the new exemption at a non-NPL site be approved by the Assistant Administrator for the Office of Solid Waste and Emergency Response.

2. *Efficient performance of the long-term remedial action (§ 300.415(c)).* CERCLA section 104(a)(2) provides that removal actions should, to the extent practicable, contribute to the efficient performance of any long-term remedial action with respect to the release. EPA is proposing to incorporate this language into the NCP. This provision is intended to avoid repetitive removal actions or actions that do not take into account

their impact on performance of subsequent remedial action, and to allow for more permanent tasks to be completed under removal authorities. EPA proposes to apply this requirement to all removal actions. Since removals may occur in situations where there is only limited information on whether or not a remedial action is anticipated, the lead agency need only consider information that is available at that time. The lead agency should consider the following questions when selecting a removal action that will contribute to the efficient performance of the long-term remedy:

i. What is the long-term response plan for the site? If there is no plan, what is it likely to be? To determine the long-term response plan the OSC need use only currently available information. The OSC is not required to determine long-term action.

ii. Which threats will require attention prior to the start of the long-term response? An efficient removal should address those threats that require attention in order to stabilize the site or protect human health and the environment until the long-term remedy can be implemented.

iii. How far should the removal go to ensure that the threats are adequately abated? If a long-term remedy is planned, an efficient removal should mitigate the threat to human health and the environment until the remedial action can be implemented. At a minimum, this means that the removal should prevent or reduce further migration or public contact.

iv. Is the proposed removal action consistent with the long-term remedy? An efficient removal generally should not hinder or foreclose viable options for a long-term remedial action.

Removal action should not be unduly delayed by the consideration of the above criteria. The threat to human health and the environment shall remain the primary concern of the lead agency conducting the removal. Occasionally, it may not be practicable to be entirely consistent with the long-term remedial action. This may occur when it is necessary to slow the migration but not possible to implement the long-term remedy. For example, removal actions may be needed that merely stabilize (e.g., cap) some sites to reduce the migration threat until a long-term treatment remedy is developed. EPA is currently developing guidance to further address the details. EPA solicits comments on the policy of extending the section 104(a)(2) provision to all removals rather than limiting it to NPL sites only, and on the criteria for determining whether a removal will contribute to the efficient performance of the long-term remedial action.

B. Other Revisions

1. *Engineering evaluations and costs analyses (§ 300.415(b)(4)).* It is EPA's intent that the lead agency conduct an engineering evaluation and cost analysis (EE/CA) or its equivalent, as appropriate, as a part of removal actions in those cases where adequate planning time is available before the start of the removal. EPA believes adequate planning time is a minimum of six months. EE/CAs contain evaluations of possible alternative technologies, selection of the response, and document the decisionmaking process. Engineering evaluations and cost analyses use a screening process and analysis of removal options based upon such factors as technical feasibility, institutional considerations, reasonableness of cost, timeliness of the option with respect to threat mitigation, environmental impacts, and the protectiveness of the option. This information will be subject to review and comment by the public prior to initiation of the affected removal.

2. *Appropriate actions (§ 300.415(d)).* EPA is proposing some minor changes to the current §§ 300.65(c) (3) and (6) by clarifying additional activities that can be conducted.

3. *Off-site policy.* Current § 300.65(g) requires that removal actions taken pursuant to CERCLA sections 104 and 106 that involve the storage, treatment, or disposal of hazardous substances, pollutants, or contaminants at off-site facilities shall use only those facilities that are operating under appropriate Federal or State permits or authorization and other legal requirements. EPA has separately proposed regulations implementing CERCLA section 121(d)(3) which imposes requirements on the off-site transfer of hazardous substances or pollutants or contaminants, 53 FR 48218, November 29, 1988.

4. *State-lead removals (§§ 300.415 (h) and (i)).* EPA is proposing to codify in the NCP its existing policy allowing States to enter into cooperative agreement to undertake Fund-financed removal actions, provided that States follow all the provisions of the NCP removal authorities. Non-time-critical actions are the most likely candidates for State-lead removal because sufficient time generally exists to complete a cooperative agreement. The new language also states that facilities operated by a State or political subdivision require a minimum cost share of 50 percent of the total response costs if a remedial action is taken.

5. *Post-removal site control (§ 300.415(l)).* Because of statutory limits on removals and the historical role of removals as short-term actions, there will sometimes be situations at both NPL and non-NPL sites where post-removal site control actions (such as watering a grass cover) will be necessary. EPA expects that States, potentially responsible parties, or EPA's remedial program (in the case of some Fund-financed NPL sites) will provide for post-removal site control activities to ensure the protectiveness of the removal action. This may also involve arranging for private parties or Federal facilities to conduct the post-removal site control. In most cases, the possible State role in post-removal site control will be discussed prior to initiation of removal activities. EPA wants to encourage that, to the extent practicable, the State commitment to conduct such action be secured prior to the start of cleanup.

EPA is developing procedures for assumption of post-removal site control at NPL and non-NPL sites. For more discussion of State assurances necessary for cooperative agreement for State-lead removal and remedial actions, see the discussion of the new State involvement regulations in today's preamble discussion of Subpart F.

6. *OSC reports (§ 300.415(m)).* This paragraph has been added to ensure that OSCs and RPMs conducting removal actions submit OSC reports. It is important that where RPMs are overseeing removal actions at NPL sites, they submit OSC reports to the RRT for review (see "Points of Clarification" below for discussion of situations where an RPM might oversee a removal). The Subpart B discussion of OSC reports also proposes some minor clarifying changes for OSC reports.

7. *Community relations (§ 300.415(n)).* Discussion of community relations is included in the Subpart E, § 300.430 preamble section, "H. Community Relations."

C. Points of Clarification

1. *Compliance with other laws.* CERCLA section 121 requires that remedial actions attain a level of standard of control which is applicable or relevant and appropriate to any hazardous substance, pollutant or contaminant that will remain on-site. In contrast, section 121 does not require that removal actions attain applicable or relevant and appropriate requirements (ARARs). EPA's policy for removal actions, however, is that ARARs will be identified and attained to the extent practicable. ARARs are those substantive requirements that pertain to

actions or conditions in the environment (see Subpart E, § 300.430 preamble section below, F.15).

Three factors will be applied to determine whether the identification and attainment of ARARs are practicable in a particular situation: (i) The exigencies of the situation; (ii) the scope of the removal action to be taken; and (iii) the effect of ARAR attainment on the statutory limits for duration and cost.

i. *Exigencies of the situation.* OSCs must often act quickly to provide protection of public health and the environment, and any delay would compromise this objective of the removal action. Where urgent conditions constrain or preclude efforts to identify and attain ARARs, the OSC's documentation of these conditions will be considered sufficient as justification for not attaining all ARARs. To illustrate, a site may contain leaking drums that pose a danger of fire or explosion in a residential area. The drums should be removed or stabilized immediately without attempting to identify and comply with all potential ARARs. The OSC's documentation should describe the time-critical nature of the situation and the removal action taken.

ii. *Scope of the removal action.* Removal actions generally focus on the stabilization of a release or threat of release and mitigation of near-term threats. ARARs that are within the scope of such removal actions, therefore, are only those ARARs that must be attained in order to eliminate the near-term threats. For example, a removal action may be conducted to remove large numbers of leaking drums and associated contaminated soil. In this situation, because the removal focuses only on partial control, chemical-specific ARARs for ground-water restoration would not be considered.

iii. *Statutory limits.* CERCLA sets time and money limitations on a Fund-financed removal action. Attainment of all ARARs for a removal response may not be possible within the 12 months or $2 million limits set in the statute. For instance, a removal action may be undertaken at a site where there is widespread soil and ground water contamination. This response might involve removal of surface debris and excavation of highly contaminated soil necessary to reduce the direct contact threat and further deterioration of the ground water. If the statutory limits were reached or approached as a result of the debris removal and limited excavation, and no statutory exemption applied, more extensive excavation of low-level soil contamination as part of the removal may not be warranted. Although the statutory limits may preclude removals from attaining all identified ARARs, OSCs will strive to comply with those ARARs that are most crucial to the proper stabilization of the site and protection of public health and the environment. (Exemptions to the $2 million/12 month statutory limits may be granted where sites meet the criteria for approving the "emergency" or "consistency" exemptions.)

If none of the three factors would act to preclude identification and attainment of particular ARARs (i.e., attainment is not impracticable), then the statutory waivers in CERCLA section 122(d)(4) and § 300.430(f)(3) of the proposed NCP should be examined to ascertain, as for a remedial action, whether the ARAR may be waived. For example, State ARARs do not have to be attained where the State standard, requirement, criterion, or limitation has not been consistently applied in circumstances similar to the response in question. If a State standard is identified as an ARAR for a removal action, attainment of that ARAR may be waived if the State has inconsistently applied it in similar circumstances. The ARARs waivers generally may be used as they are used for remedial activities.

2. *Removals conducted during the remedial process.* During the course of the remedial process at an NPL site, releases or threats of releases may be discovered that will threaten public health or the environment within a length of time shorter than that in which the remedial program can respond. In such situations, it is appropriate to use removal authority to quickly abate or remove the threat. This may be done either through: (i) A traditional removal action conducted by the removal program using its own resources, or (ii) through an "expedited response action" (ERA) conducted by the remedial program using its own resources. ERAs are performed when the threat identified in the removal action memorandum is of such a nature that response can be delayed for six months or more. The delay allows time for the procurement process, preparation of an EE/CA or its equivalent, and solicitation of formal public comment to be completed.

The potential for concurrent removal and remedial activities, and new CERCLA language encouraging consistency with remedial actions makes it important for OSCs and RPMs to coordinate with each other and to share the data that they have generated during their respective activities.

3. *Removal versus remedial actions and "trigger" level.* EPA has considered whether a clearer removal/remedial distinction could be made through the establishment of "trigger" levels for these actions (e.g., setting specific maximum levels of contamination for particular hazardous substances that would always "trigger" a removal action rather than a remedial action). EPA has decided against this because response decisions are made on a site-by-site basis and there is no one trigger level which would be appropriate for all situations involving a particular contaminant. In general, as described at the beginning of the preamble discussion for Subpart E, the removal program is more likely to remove point sources of contamination that can be addressed within the removal statutory limits. The remedial program, on the other hand, may address a wider range of contamination problems. Use of "trigger" levels is not appropriate for making this distinction. In addition, "trigger" levels would vary based on the additive effects that can result from the interaction of several chemicals. Finally, as treatment technology changes, established standards may change, and any regulatory language might always be a few steps behind technology. Therefore, EPA continues to believe strongly that OSCs and RPMs must consider all information available to them at the time that decisions are made about which response approach to use at a given site.

4. *Regulations on reimbursement to local governments.* CERCLA section 123 authorizes reimbursement of local governments for expenses incurred in providing temporary emergency measures in response to releases of hazardous substances, pollutants, or contaminants. Reimbursement is limited to $25,000 per response and is not intended to supplant local funds normally provided for such response. EPA has issued a separate interim final rule, 40 CFR Part 310, which establishes the procedures and requirements for local government reimbursement. (See 52 FR 39386, October 21, 1987.) As such, only a reference to this new CERCLA provision is included in Subpart H of the NCP.

Section 300.420 Remedial Site Evaluation.

This section revises current § 300.66, "Site evaluation phase and National Priorities List determination." Current § 300.66 has been split into two sections: "Remedial Site Evaluation" and "Establishing Remedial Priorities." In § 300.420, EPA is today proposing revisions that expand the activities that may be undertaken during remedial site

evaluation to determine whether a site should be included on the NPL. The revised section addresses how EPA proposes to use remedial preliminary assessments and site inspections (PA/SIs) to evaluate and characterize releases to determine if they warrant remedial action.

A. Major Revisions

1. *Purpose and content of a remedial preliminary assessment (§ 300.420(b)).* The revised rule states in § 300.420(b) that remedial preliminary assessments (PAs) shall be conducted for all sites listed in the CERCLIS remedial inventory. Moreover, EPA is proposing to define a PA, which was previously undefined, in the definition section of Subpart A (see also Subpart A preamble).

The purpose of the remedial PA, as described in the current NCP, is to set priorities for remedial site inspection, to determine whether removal action is warranted, and to eliminate from further remedial consideration those releases that do not threaten public health or the environment. Today's proposed regulatory revisions would expand the purpose of the remedial PA to include the gathering of appropriate existing data to assist in developing a hazard ranking score. Additionally, EPA proposes that remedial PAs may consist not only of a review of existing data and an off-site reconnaissance, but also may include an on-site reconnaissance, if appropriate.

Today's proposed revisions would add provisions requiring the lead agency to complete a remedial PA report. The revisions generally outline the type of information that should be contained in the report, including a description of the site, the probable nature of the release, and a recommendation of whether further action is warranted as well as the nature of such further action and which agency should carry it out.

2. *Citizen petitions for preliminary assessments (§ 300.420(b)(5)).* Section 105(d) of CERCLA, as amended, provides that any person who is, or may be affected by a release of a hazardous substance, pollutant, or contaminant, may petition the President to conduct a preliminary assessment of the hazards associated with the release. If a PA has not yet been conducted, it must be completed within a year or an explanation of why the PA is not appropriate must be provided. In E.O. 12580, the President delegated this authority to EPA or the heads of Executive departments and agencies with respect to facilities under the jurisdiction, custody, or control of those departments and agencies. EPA is proposing procedures which address how the public should petition EPA or other appropriate Federal agency and how EPA will respond to petitions, including criteria for determining when a PA is not appropriate.

Petitions for PAs should be directed to the Regional Administrator who oversees the area in which the release is located or, in the case of a release from a Federal facility, to the Federal agency responsible for that facility. In cases where EPA receives a petition involving a release from a Federal facility, this petition will be forwarded to the appropriate Federal agency for action. A list of EPA Regional Offices, their addresses, and the States and other areas for which they are responsible is provided in section C. below.

3. *Required information to be submitted with PA petitions (§ 300.420(b)(5) (i) and (ii)).* In developing the procedures for petitions, EPA has attempted to balance the need for specific information concerning a release or potential release necessary to act on the petition, against the potential burdens that such procedures might place on the public. Specific information on the location of the release is essential. Additional information and documentation on the nature of, and history of, activities at the release will expedite response to petitions; and in cases where an immediate threat may be posed, facilitate appropriate further evaluation or response to such threats. In accordance with CERCLA section 105(d), petitioners also have a responsibility to demonstrate how they are, or may be, affected by the release. EPA is proposing that at a minimum the petition shall contain the following information:

i. Name, address, phone number, and signature of petitioner;

ii. Description of the location of the release or suspected release, including a marked map, if possible;

iii. How the petitioner is or may be affected by the release or suspected release;

Additionally, EPA is proposing that the petitioner should include as much information as possible regarding:

iv. The type of substances released or with potential to be released;

v. The nature and the history of activities that have occurred at releases or suspected releases; and

vi. Prior contacts with local and State authorities about the release and the disposition of these notifications.

Items i. through iii. are essential to a complete petition, and EPA will not deem the one-year time period for responding to the petition to begin until such information has been provided. Information in response to items iv. through vi. is recommended and will facilitate the review of the petition and identification of the need for further assessment and/or immediate response to potential threats which might be posed by the release. Additionally, since not all releases or potential releases of hazardous substances can be addressed under CERCLA, EPA encourages petitioners affected by releases to notify all appropriate State and local agencies of the suspected release. This will assist in determining the appropriate response authority in cases where response appears warranted.

4. *Responsibilities of the lead Federal agency in receiving or responding to PA petitions (§ 300.420(b)(5)(iii)).* Upon receipt of a complete PA petition, EPA or the appropriate Federal agency (the lead Federal agency) will first determine whether a PA has already been conducted for the release. In cases where a PA has not been conducted, pursuant to the language in CERCLA section 105(d), the lead Federal agency will determine whether such an assessment is appropriate. Where appropriate, a removal or remedial PA will be completed within one year. When a PA is deemed appropriate, the lead Federal agency will determine whether a removal, as opposed to a remedial, PA will be performed, based on the information available at the time of notification of the release or the suspected release. Where a PA is not deemed appropriate, the lead Federal agency will notify the petitioner and provide an explanation of this determination within one year.

In determining whether a PA is appropriate, the lead Federal agency will take into consideration: (i) Whether there is any information indicating that a release has occurred or that there is a threat of a release of a hazardous substance, pollutant, or contaminant; and (ii) whether the site appears to be eligible for response under CERCLA.

The first criterion is expected to be used rarely, but could be applicable in those cases where the petition, or other readily available information, does not provide sufficient information to show that there has been a release or there is potential for release at a specific site. EPA is proposing the second criterion for situations where, based on the available information, it is clear that the site will ultimately not be eligible for response under CERCLA, for example, because of a statutory exemption. Therefore, further site evaluation would not be appropriate under CERCLA.

When determining whether or not a PA is appropriate, the lead Federal

agency will also consider whether there is any indication that an immediate response may be needed. If there is such an indication, the lead Federal agency will initiate a removal PA. If the release is found to meet one of the removal criteria in § 300.415(b), the lead Federal agency will initiate a removal action. Although this will satisfy the requirement to perform a PA in response to a petition, when the removal PA or removal action is complete, the lead Federal agency will consider whether further evaluation may be needed.

When there is no indication that an immediate response may be needed, the lead Federal agency will conduct a remedial PA to respond to a citizen petition for a PA. As described elsewhere, remedial PAs are more comprehensive and serve a different purpose than removal PAs. Because EPA expects that remedial PAs will generally be conducted in response to a citizen petition, the paragraphs on PA petitions are proposed to be located in the section on remedial site evaluations.

When the results of a completed PA indicate that the release or threat of release may pose a threat to human health or the environment, the remedial evaluation process will be continued.

5. *Purpose and content of site inspections (§ 300.420(c)).* The proposed revisions to the NCP state that if the PA indicates that further site evaluation is warranted, the lead agency shall conduct a remedial site inspection (SI). The current NCP states that the purposes of the SI are to determine which releases pose no threat or potential threat to public health or the environment, to determine if there is any immediate threat to persons living or working near the release, and to collect data to determine whether a site where a release has occurred or may occur should be included on the NPL.

The proposed NCP retains the same basic concepts with some modifications. First, EPA proposes that the language in subparagraph (c)(1) be changed so that it parallels language used about PAs in subparagraph (b)(1). Second, subparagraph (c)(1)(iv) as proposed concerns collecting data beyond that which is required to score the release pursuant to the HRS. This paragraph no longer ties SIs directly to listing a release on the NPL as the existing NCP does. EPA proposes in (c)(1)(iv) to expand the scope of data collection and sampling during selected SIs, as appropriate, to better characterize the release so that, where necessary, the RI/FS or response under other authorities can be initiated more rapidly and effectively. While information gathered during the SI may be used to evaluate a release pursuant to the HRS, it may be more appropriate to undertake response under authorities other than CERCLA. In such a case, the release would not be listed on the NPL. (For further information, see preamble discussion, "§ 300.425—Establishing Remedial Priorities.")

The SI builds upon the information collected in the remedial PA and consists of a visual inspection of the release as well as the collection of samples. However, if adequate sampling has already occurred, the additional collection of samples may not be necessary. Like the PA, if the SI reveals that a removal action may be necessary, the lead agency shall initiate a removal site evaluation.

Today's revisions would require that the lead agency complete an SI report and that the revisions generally outline the contents of this report. The report would include information regarding a description, history, or nature of waste-handling at the site, a description of known contaminants, a description of pathways of migration of contaminants, an identification and description of human and environmental receptors, and a recommendation as to whether further action is warranted.

B. Point of Clarification

Criteria for determining that further remedial evaluation is warranted. At each step in the remedial site evaluation process the lead agency is responsible for recommending whether further evaluation or action is warranted. Because the major end purpose of the remedial site evaluation process has been to determine whether a release should be included on the NPL, EPA generally has not begun or continued to evaluate a site (except where a removal action was needed) if a site was found, as a matter of policy, not to be eligible for the NPL (e.g., a RCRA site).

EPA is proposing revisions to the primary purpose of the remedial site evaluation process. (See the proposed changes described above.) EPA is also requesting comments on expanding the current NPL deferral policy to include other Federal and State response authorities (See preamble discussion, "§ 300.425—Establishing Remedial Priorities.") EPA believes that the overriding goal in the remedial site evaluation program should be to ensure, to the extent practicable, that sites posing the most serious threat are identified and then addressed as soon as possible by the appropriate Federal or State authorities. This could result in a remedial PA or SI being conducted at a site that is later deferred, as a matter of policy, from listing on the NPL. For example, EPA may perform an SI on a site subject to RCRA corrective action even though the site may be eligible for deferral from the NPL.

The second result is that the focus of further remedial site evaluation will be on sites that show evidence of a significant threat or potential threat to human health or the environment. In determining at the end of the remedial PA and SI whether or not a site poses a significant threat or potential threat to human health or the environment, the lead agency may use a combination of a preliminary HRS score and best professional judgment. The preliminary HRS score is based on the HRS model but uses very conservative assumptions to compensate for the limited data available at early stages of the evaluation process. In addition, where necessary and appropriate, best professional judgment may be used to supplement the preliminary score in making decisions about whether or not to proceed to the next phase of evaluation. The use of conservative assumptions combined with the use of best professional judgment should address those situations where data are limited but there may be a potential threat.

If the lead agency determines that a site poses a significant threat or potential threat based on a preliminary HRS score or based on best professional judgment, then the site may proceed to the next stage of evaluation up to NPL consideration. If the preliminary score or judgment indicates that the site is unlikely to meet NPL scoring requirements, then EPA will notify the appropriate State of the results of the site evaluation and that EPA does not at that time intend to pursue further action under CERCLA section 104 or other Federal authorities.

During the remedial preliminary assessment, available information is collected and documented to characterize the site as accurately as possible so that a decision can be made about the site. The remedial PA should result in a recommendation on whether further action is needed. The recommendation may be that the site may be appropriate for a removal, or that the site should proceed to a remedial site inspection because there is evidence of significant threat, or that the remedial site evaluation should be terminated because the evidence does not show that there is or may be a significant threat.

C. Regional Offices

(As of October 1988)

Address	Areas in the region
Region I	
JFK Federal Building, Room 2203, Boston, MA 02203.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
Region II	
26 Federal Plaza, New York, NY 10278.	New Jersey, New York, Puerto Rico, Virgin Islands.
Region III	
841 Chestnut Street, Philadelphia, PA 19107.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.
Region IV	
345 Courtland Street, NE Atlanta, GA 30365.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
Region V	
230 South Dearborn St., Chicago, IL 60604.	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
Region VI	
1445 Ross Avenue, Suite 1200, Dallas, TX 75202.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
Region VII	
726 Minnesota Ave., Kansas City, KS 66101.	Iowa, Kansas, Missouri, Nebraska.
Region VIII	
999 18th Street, Suite 500, Denver, CO 80202-2405.	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
Region IX	
215 Fremont Street, San Francisco, CA 94105.	American Samoa, Arizona, California, Guam, Hawaii, Nevada, Northern Mariana Islands, Trust Territory of the Pacific Islands.
Region X	
1200 Sixth Avenue, Seattle, WA 98101.	Alaska, Idaho, Oregon, Washington.

Section 300.425 Establishing Remedial Priorities.

This section reorganizes and revises current § 300.66(c) of the NCP which addressed listing on the National Priorities List. The revised section sets forth the criteria and procedures for placing sites on the NPL and the criteria and procedures for deleting sites from the NPL.

A. Major Revisions

1. *Clarification of rank on the NPL (§ 300.425(b)).* EPA is proposing to revise the first sentence of current paragraph § 300.66(c)(2), which states that "[t]he NPL serves as a basis to guide the allocation of Fund resources among releases," to clarify that the NPL is a list of priority releases for long-term remedial response under CERCLA. A site's rank on the NPL is one of a number of factors which guide the allocation of Fund resources. Sites are added to the NPL in order of their HRS score and as new sites are added to the NPL they are generally incorporated into the previously promulgated NPL in order of their HRS score. The NPL is presented in groups of 50 sites to emphasize that minor differences in HRS score do not necessarily represent significantly different levels of risk. EPA considers sites within a group to have approximately the same priority for response actions.

To the extent feasible, once sites are listed on the NPL, EPA determines high-priority candidates for either Fund-financed response action or enforcement action from within the highest priority groupings, however many factors other than a site's rank are considered. For example, the status of enforcement actions, voluntary private party response, and State willingness to cost share may enter into the decision regarding the order in which funds will be committed to respond to sites. In addition, it should be noted that CERCLA section 120(e)(1) requires the appropriate Federal agency to commence an RI/FS at a Federal facility not later than 6 months after the inclusion of the Federal facility on the NPL.

In § 300.425(b), EPA proposes not to include the reference to the 400-site minimum originally required in the 1980 CERCLA and reflected in current § 300.66(c)(1). This is a minor conforming revision to reflect the statutory amendments.

2. *Procedures for placing sites on the NPL (§ 300.425(d)).* Most of this section is proposed to be reorganized from current § 300.66(c). The major addition is the description of procedures for proposing the NPL in the **Federal Register** and ensuring public involvement. Sections 300.425(d)(5) (i) and (ii) have been standard procedure for listing sites on the NPL and were added to the NCP for clarification.

3. *Revision of requirement to submit the recommended NPL to the NRT.* EPA is proposing that current § 300.66(c)(9) be deleted because the NRT does not generally have additional factual data that is relevant to the HRS score or other NPL eligibility of specific sites. Therefore, it is not generally necessary to submit the recommended NPL to the NRT for review and comment as the current NCP requires. EPA notes that sites are added to the NPL only after they have been proposed for listing on the NPL in the **Federal Register**. After proposal in the **Federal Register**, EPA receives and responds to these comments from interested members of the public as well as from other Federal and State entities in the final rulemaking. EPA believes that through the **Federal Register** proposal, the member agencies of the NRT would still receive notice and have an opportunity to comment regarding sites for which they may have information relating to whether a specific site is eligible for the NPL. In situations in which the NRT has, or appears likely to have, factual information regarding whether a particular site is eligible for the NPL, EPA will consider this information during the NPL rulemaking process and, if appropriate, consult with the NRT.

4. *Deletion of sites from the NPL (§ 300.425(e)).* This section incorporates former § 300.66(c)(7) in describing the criteria for deleting sites from the NPL. A site may be deleted where no further response is appropriate.

There are three changes to § 300.425(e) on deletions. The first change is that § 300.425(e)(2) has been added to specify that the State in which the release was located must concur in deleting it from the NPL. CERCLA section 121(f)(1)(C) requires State concurrence on deletion from the NPL.

The second change is a minor conforming addition to § 300.425(e)(3) to reflect the new provision in CERCLA section 105(e) to relist without rescoring a site that has been deleted if there is a significant later release at that site.

The third change is that information has been added to describe how EPA will conduct the deletion process and ensure public involvement. This procedure for publishing a Notice of Intent to Delete in the **Federal Register** and soliciting public comments is existing EPA policy and was followed in the March 7, 1986 Notice of Deletion.

Any site deleted from the NPL under proposed § 300.425(e) remains eligible for further Fund-financed response in the unlikely event that conditions at the site require such action, consistent with CERCLA section 105(e).

B. Point of Clarification

HRS revisions. The 1986 amendments to CERCLA require EPA to promulgate amendments to the HRS to assure, to the maximum extent feasible, that the HRS accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review. The HRS is Appendix A to the NCP and is the

principal mechanism EPA uses to place sites on the NPL. Revisions to the HRS are being undertaken as a separate rulemaking action, and when finalized after opportunity for public comment, will be incorporated into the NCP as revised.

C. Proposal to Recategorize Sites on the NPL

The current NCP provides that releases may be deleted or recategorized on the NPL. At the time of promulgation of the 1985 NCP revisions, the deletion criteria and procedures had undergone several comment periods (see 49 FR 40322, October 15, 1984; 50 FR 5862, February 12, 1985; and 50 FR 47912, November 20, 1985) and EPA was in the process of deciding whether sites would be deleted from or recategorized on the NPL. The final NPL rulemaking on June 10, 1986 (51 FR 21066–67) reflected EPA's intention to delete sites rather than recategorize them on the NPL. However, EPA is now considering an approach that would recategorize sites on the NPL while still providing for deletion from the NPL when appropriate under current deletion criteria.

The purpose of this proposal would be to improve the way EPA communicates to the public the status of remediation progress at NPL sites. Currently, EPA identifies a response category and cleanup status code for each site on the NPL at which action has been initiated (51 FR 21075, June 10, 1986). Sites may be deleted from the NPL "where no further response is appropriate," such as where response actions have been completed either by the PRPs or through Fund-financed response, or where no remedial measures have been deemed necessary. EPA is concerned that the response category (identifies who has the lead) and the cleanup status codes (I=implementation activity underway, one or more operable units; O=one or more operable units completed, others may be underway; and C=implementation activity completed for all operable units) do not fully reflect the remedial response activities at a site. In many cases, due to the nature of hazardous waste contamination, a significant period of time may be required between installation of an appropriate and fully functional remedy and the completion of the remedial action. For example, a remedy designed to restore groundwater quality to acceptable levels may consist of long-term (e.g., 20 years) "pump and treat" operations. That such long-term activity is underway is not well communicated by the current status codes.

Therefore, in order to provide more useful information on the status of remedial activities conducted at NPL sites, EPA is considering a proposal to establish a new category on the NPL. This category would be the Construction Completion category, consisting of sites where construction activities have been completed, i.e., sites where long-term response actions (LTRA) are in progress or sites awaiting deletion. An LTRA represents a site where all remedial actions have been implemented but where continued operation of the remedy is required for an indefinite period before the levels of protection specified in the Record of Decision (ROD) are achieved. A site awaiting deletion is where an approved Close Out Report indicates that no further remedial activity is required or appropriate at that site.

When a remedy has been implemented and is operating properly, a Close Out Report (interim or final) would summarize the technical basis for determining that construction activities are complete at a site. For sites awaiting deletion, the Close Out Report would document that the remedy has achieved protectiveness levels specified in the ROD, and that remedial action is complete. For LTRAs, the Close Out Report would describe the nature of the continuing action. Sites initially denoted as LTRAs would eventually become sites awaiting deletion (on the basis of final or amended Close Out Reports). Those sites for which CERCLA requires five-year reviews of the remedy (see § 300.430(f)) would be clearly identified upon attaining classification in the Construction Completion category. Moreover, EPA does not believe that the need to conduct a five-year review means that a site must be listed as an LTRA; such sites may also, where appropriate, become deletion candidates.

After a Close Out Report has documented that a site can be placed in the Construction Completion category, EPA may begin the deletion process, where appropriate. However, in cases where a significant delay will exist between placing a site in the Construction Completion category and the date of the next NPL deletion notice, EPA may initiate the deletion process without placing the site in that category.

EPA requests comment on this proposal, specifically on the merits of creating a Construction Completion category.

D. Deferral Policies

EPA has in the past deferred the listing of sites on the National Priorities List (NPL) when other authorities were found to exist that were capable of accomplishing needed corrective action. To date, this deferral policy has been limited to two specifically enumerated Federal laws. EPA is considering broadening the deferral approach, such that listing of sites on the NPL would be deferred in cases where a Federal authority and its implementing program are found to have corrective action authority. EPA further requests comment on whether to extend this policy as well to States that have implementing programs with corrective action authorities to address CERCLA releases. EPA also requests comment on extending this policy to sites where the potentially responsible parties (PRPs) enter into Federal enforcement agreements for site remediation under CERCLA.

This section of the preamble is intended to clarify EPA's approach to determining which of those sites meeting the eligibility criteria of the NCP will be listed on the NPL. This section will describe the reasons EPA has implemented a deferred listing approach for certain authorities, the regulatory and statutory background of NPL listing policies, and issues raised by today's draft policy to consider the expansion of the deferred listing approach. EPA intends to keep the current deferral policies in effect, and not implement a general deferred listing policy, until comments are considered on today's draft policy.

There are two primary reasons why EPA is considering expanding its use of NPL deferrals to appropriate Federal and State authorities. First, EPA believes that this approach will assist EPA in meeting CERCLA objectives; by deferring to other authorities, a maximum number of potentially dangerous hazardous waste sites can be addressed, and EPA can direct its CERCLA efforts (and Fund monies, if necessary) to those sites where remedial action cannot be achieved by other means. Second, EPA believes where other authorities are in place to achieve corrective action, it may be appropriate to defer to those authorities.

1. *Purpose of the NPL.* EPA's approach to listing sites on the NPL is based on its interpretation of the purpose of the NPL. A conference report on CERCLA explains that the NPL was intended to:

> [S]erve primarily informational purposes identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. S. Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980).

In the past, EPA viewed the NPL as a list compiled for the purpose of informing the public of the most serious hazardous waste sites in the nation,

regardless of which law applies. Subsequently, it was viewed as a list for informing the public of hazardous waste sites that appear to warrant remedial action under CERCLA. In addition, it may be appropriate to view the non-Federal section of the NPL merely as a list for informing the public of hazardous waste sites that appear to warrant CERCLA funding for remedial action through CERCLA funding alone. EPA believes that one of the latter two approaches would be preferable to the broad approach of listing all potential problem sites. This will allow EPA to make the NPL a more useful management tool for EPA and also to provide more meaningful information to the public and the States. EPA's decision on which way to view the NPL will be largely determined by its decision on the deferral policies discussed below. As explained in the following discussion, EPA believes that the latter two alternative views of the NPL are consistent with CERCLA and its legislative history.

EPA's interpretation of the NPL as a list that should not include all sites that could potentially be addressed by CERCLA is consistent with the terms of the statute itself. CERCLA section 105(a)(8)(B) calls upon the President to list "national priorities among the known releases or threatened releases throughout the United States," not to list all releases. Therefore, although EPA believes it has the authority to list any site where there has been a release or threatened release of a hazardous substance, pollutant, or contaminant, EPA believes that it is not obligated to do so.

Further, the statute requires EPA, in determining whether a site is to be listed on the NPL, to consider factors enumerated in CERCLA sections 105(a)(8) (A) and (B). The factors include the relative risks posed by the site, State preparedness to assume State costs and responsibilities, and "other appropriate factors." The statutory directive to "take into account to the extent possible" the enumerated factors provides EPA with broad discretion to weigh factors as appropriate. Moreover, the fact that Congress did not specify what factors are "appropriate" supports the breadth of EPA's discretion. Since the proposal of the first NPL (47 FR 58476, December 30, 1982), EPA has considered "other appropriate factors" to include the availability of other Federal authorities to address the problems at a site. PRP enforcement agreements, as well as the willingness of a State to undertake a site remediation, may also constitute other appropriate factors.

This interpretation is also consistent with Congressional intent. In the House Appropriations Committee Report for Fiscal Year 1988, the conferees expressed some concern over whether Superfund is operating to produce maximum environmental benefit for the investment: "The Committee wants to reemphasize the overriding principle of the legislation that Superfund should be reserved for the most serious sites not otherwise being addressed." H. Rept. 189, 100th Cong., 1st sess. 27–28 (1987).

The view of the NPL as a list of sites where CERCLA action is required is also consistent with the legislative history surrounding the reauthorization of RCRA. In adding new authorities to RCRA (sections 3004(u) and 3008(h)) in 1984, for example, Congress recognized that the burden of responding to the nation's waste sites should not fall entirely on Superfund. In its report on the Hazardous and Solid Waste Amendments of 1984, the House Committee on Energy and Commerce stated the following:

> Unless all hazardous constituent releases from solid waste management units at permitted facilities are addressed and cleaned up the Committee is deeply concerned that many more sites will be added to the future burdens of the Superfund program with little prospect for control or cleanup. The responsibility to control such releases lies with the facility owner and operator and should not be shifted to the Superfund program, particularly when a final [RCRA] permit has been requested by the facility. H. Rept. 198, 98th Cong., 1st Sess. 61 (1983).

EPA believes that the use of the NPL to identify sites that appear to warrant remedial (or Fund-financed) action under CERCLA, as compared to action under RCRA or another authority, is consistent with Congressional intent.

Finally, EPA believes that a more limited use of the NPL gives greater effect to the informational and management functions of the list. To include on the NPL every site that has a hazardous substance problem may give the public the misleading impression that every such site is awaiting CERCLA review or attention. In fact, some sites may be addressed by an ongoing corrective action program under another statute such as RCRA. Listing only those sites that appear to warrant remedial action or funding under CERCLA will also serve to make the NPL a more useful management tool for EPA, e.g., in setting priorities for reviewing and addressing sites.

A determination that a site "appears to warrant" remedial action or funding under CERCLA would not reflect a judgment that remedial action should be taken or funds spent at a site. As has always been the case, the decision to list a site on the NPL is not sufficiently refined to make final determinations as to which sites pose threats qualifying for remedial action under CERCLA (see 48 FR 40658, September 8, 1983). Rather, the findings are meant to pinpoint problem sites that deserve more comprehensive analysis under CERCLA. The approach being discussed today would simply add a judgment that no other authority is currently available to address the problem, and thus the site should be listed on the NPL for further evaluation.

2. *Current deferral policies.* EPA's current deferral policy has been limited to sites that can be addressed by the corrective action authorities of RCRA Subtitle C or that are subject to regulation by the Nuclear Regulatory Commission. EPA is now considering, and seeks comment on, the possibility of deferring more generally to Federal authorities. This would be consistent with the view of the NPL as a list of sites where response action is appropriate under CERCLA.

Currently, RCRA Subtitle C facilities are listed on the NPL only if necessary corrective actions under RCRA are unlikely to be performed (51 FR 21054, June 10, 1986), or if certain criteria for listing are met (53 FR 23978, June 24, 1988). Three categories of RCRA facilities have been identified where it is unlikely that RCRA corrective action will be performed: (i) Facilities owned by persons who are bankrupt, (ii) facilities that have lost RCRA interim status and for which there are additional indications that the owner or operator will be unwilling to undertake corrective action; and (iii) facilities, analyzed on a case-by-case basis, whose owners or operators have shown an unwillingness to undertake corrective action. On August 9, 1988 (53 FR 30002–09), EPA announced the additional criteria that would be used in determining if a RCRA facility was unwilling to adequately carry out corrective action activities, and requested comment on criteria to be used in determining if the owner/operator is unable to pay for corrective action. On June 24, 1988 (53 FR 23978), EPA identified four other categories of RCRA facilities that may be listed on the NPL, i.e., non- or late-filers, protective filers, sites with pre-HSWA permits, and converters. RCRA Subtitle C facilities that meet any of the above categories are appropriate for listing provided the site meets the HRS scoring or other eligibility requirements.

EPA's present policy for Nuclear Regulatory Commission-licensed sites

(48 FR 40658, September 8, 1983) is not to list releases of source, by-product, or special nuclear material from any Nuclear Regulatory Commission-licensed facility on the grounds that the Nuclear Regulatory Commission has full authority to require cleanup of releases from such facilities, but to list such releases from State-licensed facilities.

EPA under CERCLA does not oversee remedial activities at deferred sites under either the RCRA or Nuclear Regulatory Commission deferred listing policy. EPA generally does not believe it is appropriate under CERCLA to oversee the work of other Federal agencies, or of other authorities under EPA's jurisdiction once a site has been deferred. (Of course, EPA would oversee the remedial activities at a site deferred from listing based on a CERCLA enforcement order.) Although a policy of deferring to other Federal authorities may result in variations in procedures and extent of remedial action, it may be appropriate to assume that the Federal authority will adequately address the remedial action. The Federal laws that have been passed have undergone national notice and comment, and are generally consistent in their application from State to State. In the case of sites deferred for action under RCRA Subtitle C, the corrective action provisions are substantially equivalent to those required under CERCLA, and thus EPA believes it is not necessary to require compliance with CERCLA corrective action standards as a condition of deferral. In the case of the Nuclear Regulatory Commission sites, the Commission has full authority and expertise to require corrective action of the unique waste types subject to its jurisdiction. EPA did not deem it appropriate to require compliance with CERCLA standards.

Later in this section, there is discussion of the possibility of also deferring sites, with the State's concurrence, subject to CERCLA section 106 enforcement agreements. This would be deferral under CERCLA authorities, and not deferral to another Federal authority. This approach would be consistent with the view of the NPL as a list of sites that appear to warrant CERCLA funding for remedial action.

3. *Expanding the deferral policy to other Federal authorities.* EPA is today considering extending the deferral option to other Federal programs as follows:

i. *RCRA Subtitle D.* Under the deferred listing approach, RCRA Subtitle D landfills would continue to be listed on the NPL because corrective action authorities are not currently available for such facilities. However, EPA proposed regulations that will require corrective action at new and existing Subtitle D municipal waste landfills (53 FR 33313, August 30, 1988). These regulations are expected to be implemented by the States when they adopt permit programs to implement the regulations. Only after the Subtitle D regulations are effective would new and existing municipal landfills generally be deferred to the States that have adopted State permit programs that incorporate the revised Federal Subtitle D regulations. Because closed municipal landfills will not be regulated by Subtitle D, they will continue to be listed on the NPL if eligible.

ii. *RCRA Subtitle I.* Under the deferred listing approach, EPA would defer listing sites that can be addressed by Subtitle I corrective action authorities when those authorities take effect. Section 9003(h) of RCRA gives EPA authority to respond to petroleum releases from underground storage tank (UST) systems or to require their owners and operators to do so. It also establishes a trust fund to finance some of these activities. On September 23, 1988, EPA issued final standards for the regulation of hazardous materials in USTs under RCRA Subtitle I. Subpart F of those regulations requires corrective action for "confirmed releases" from USTs containing either hazardous substances listed under CERCLA or petroleum (53 FR 37082).

However, where USTs are but one of numerous leaking units (landfills, surface impoundments, above ground tanks, etc.), EPA will determine whether to defer to a mix of authorities or list sites on the NPL.

iii. *Mining wastes.* Under the deferred listing approach, in cases where States address sites using State-share monies from the Abandoned Mine Land Reclamation (AMLR) Fund under the response authorities of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the sites would be deferred from listing.

Although the AMLR Fund was designed primarily to address reclamation and restoration of land and water resources adversely affected by past coal mining, SMCRA sections 409 (a) and (c) provide that States can use funds to address noncoal sites if either all coal sites have been addressed, or the Governor of the State declares that the noncoal project is necessary for the protection of public health or safety. It is important to note that generally the decision to use AMLR funds at a particular site resides with the State concerned, except in one narrow circumstance. EPA will continue to add noncoal mining sites to the NPL should States choose not to take action to respond to the site under SMCRA. States may also choose to use State-share AMLR funds for portions of CERCLA remedial action activities. Sites at which only portions of the remedial action take place with AMLR funds would continue to be listed .

One exception to this policy is the situation where a State has funded all of its known coal and noncoal mining projects, and is proposing to use its remaining AMLR funds for impact assistance (e.g., construction of roads, recreation facilities, etc.). EPA would not list a mining site that is: (a) Discovered in a State where it was previously thought that all mining projects had been completed and impact assistance had been granted, (b) the site is eligible for AMLR funding, (c) sufficient AMLR funds remain to fund the entire response action, and (d) the State intends to use those funds for impact assistance. Currently, no sites meet this description.

iv. *Pesticide sites.* To date, EPA has not finalized its policy regarding the listing of pesticide application sites; thus, pesticide application sites will not be generally listed on the NPL at this time (49 FR 40320, October 15, 1984). EPA believes that the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) may be the most appropriate statute for controlling the source of contamination resulting from the registered use of pesticides since it provides the authority to cancel or limit a pesticide's use or to require label changes when the risks associated with use outweigh the benefits. Therefore, FIFRA will be the primary statute used to address pesticide problems. However, EPA will continue to list sites resulting from leaks, spills, and improper disposal of pesticides. In addition, CERCLA removal activities, such as providing alternate water supplies, may be initiated if it is determined that the release or threat of release constitutes a public health or environmental emergency and no other party has the authority or capability to respond in a timely manner.

v. *Other Federal authorities.* It is possible that by amendment, a Federal regulatory authority not mentioned above will be authorized to require corrective action at sites currently addressed under CERCLA. If so, the affected sites would also be addressed under the general deferred listing approach.

vi. *Oversight of Federal authorities.* As noted earlier, EPA believes it may be appropriate to assume that a Federal authority will adequately address a site,

and thus has to date deferred to RCRA Subtitle C and Nuclear Regulatory Commission authorities without oversight. However, the additional Federal authorities being considered today for deferral do not necessarily present the same level of assurance of remediation that meet the environmental protection standards of CERCLA. Thus, for response actions under these additional Federal authorities, it may be appropriate to require some oversight by CERCLA officials or a requirement that CERCLA cleanup standards be applied. A decision by EPA to defer to another Federal authority for the corrective action of a site does not constitute an approval by EPA of the method or extent of the response to be undertaken by that other authority.

EPA requests comment on the appropriateness of deferring generally to Federal authorities, and on whether such authorities should be required to meet some or all CERCLA standards in addressing deferred NPL sites.

4. *Expanding the deferral policy to State authorities.* EPA believes it is appropriate at this time to consider broadening the scope of the deferral policies to include State authorities in addition to Federal authorities in recognition of other possible avenues of response action.

EPA has already instituted a policy of deferring non-Federal RCRA sites to States that are authorized to carry out the Subtitle C corrective action authorities of RCRA (51 FR 21054, June 10, 1986). However, EPA currently does not defer to other State authorities even if they have authority to achieve some corrective action at contaminated sites. The present framework of the NPL process has not precluded States from taking independent enforcement authorities during CERCLA remedial activities, and a State can request the enforcement lead at sites on the NPL. (Under any of the proposed approaches for State deferral, a State would retain the option of having a State-lead enforcement site listed. Subpart F of today's proposal discusses EPA's criteria for designating a State as the lead agency. The Subpart F criteria are intended solely for State-lead actions under CERCLA.)

EPA has, in the past, listed sites being addressed under State authorities so that it could ensure that similar sites were remediated to similar levels, and in a manner consistent with the NCP. Further, public participation, ATSDR health assessments, and oversight by EPA is assured for all NPL sites. In addition, affected communities are eligible to apply for Technical Assistance Grants (TAGs) at sites on the NPL (53 FR 9471, March 24, 1988), and mixed funding settlements for remedial action are possible.

EPA is now considering deferring to State authorities more generally. EPA recognizes that many more sites need to be addressed than present CERCLA resources can accomodate; by deferring some problem sites to the States, EPA believes more overall response actions can be accomplished more quickly, and EPA can direct its resources to sites that otherwise would not be addressed. As with any deferral, no CERCLA funds would be available to the State for the site being deferred, although EPA may exercise its enforcement or response authorities at that site. Moreover, the State may be required to obtain on-site permits, as permit exemptions are only available for CERCLA actions.

EPA notes that even if a State has authorities applicable to Federal facilities, the remediation of such sites will not be deferred, and Federal facilities will continue to be listed on the NPL, consistent with CERCLA section 120(d)(2).

EPA believes it may be appropriate to defer listing sites on the NPL to allow the States to fully utilize corrective action authorities under their own programs when they have programs in place for obtaining some corrective action at contaminated sites. This approach is consistent with the view of the NPL as a list of sites where response action is appropriate under CERCLA, and the site is not being otherwise addressed.

A deferral would not be a delegation of any CERCLA authority, and it is not intended to ensure equivalence to CERCLA. By deferring to a State authority, EPA is not approving the remediation to be undertaken by that State authority. In considering this deferral policy, EPA recognizes that corrective actions under State authorities may not follow the procedures and requirements of the NCP, and in some cases, this may result in differences, e.g., some States may have more stringent corrective action standards than EPA while other States may have less stringent corrective action standards. Requiring State authorities to conform strictly to NCP requirements might result in fewer States choosing to undertake a site remediation that could be deferred. EPA requests comment on the level of remediation that should be required for sites deferred to States.

It is important to note in instances where State authorities intend to recover their costs from responsible parties under CERCLA section 107 for sites subsequently listed on the NPL, response actions at these sites may not be "inconsistent with" the NCP.

Although EPA does not intend to apply all of the procedures and requirements of the NCP to deferred sites, EPA strongly believes that the general public participation procedures of the NCP are a necessary part of any State deferral policy. The NCP has specific requirements to inform the community of releases and planned actions at a site, and to provide the public an opportunity to comment on removal and remedial plans. However, EPA recognizes that specific requirements to involve a community in remediation decisions may or may not exist under State authorities. Therefore, EPA believes if sufficient public participation requirements do not already exist under the State authority, the State should be required, as a condition of deferral, to develop a site-specific public participation plan to inform the community of remediation progress and involve the community in the remedy selection.

EPA is requesting comment in general on the issue of deferring to State authorities, and requests comment on two options for implementing deferral to States: (i) Deferral based upon a State petition to EPA requesting deferral; and (ii) deferral based upon a State's certification of its commitment and ability to address the site according to certain CERCLA standards. EPA intends to keep the current limited State deferral policy, i.e., deferral to authorized State RCRA authorities, in effect while public comments are reviewed. If a more expanded State deferral policy is implemented, EPA would apply it prospectively to sites as they are proposed for listing (see discussion of final sites below).

i. *Option 1—Deferral based upon a State petition.* Under this option, EPA would defer sites from listing on the NPL in cases where the State petitioned EPA for deferral. Specifically, once EPA believes that a site scores above the HRS cutoff, or otherwise meets eligibility requirements for listing sites on the NPL, EPA would consider deferring the site if the State petitions EPA certifying that:

a. The State has provided reasonable notice to the public of its intent to petition for deferral of a site, and its plans and general schedule for corrective action under State laws;

b. The State will provide for public participation in the remedy selection process; and

c. If requested by the public, the State would hold a public meeting at which it

discussed its decision to petition for deferral.

Under this option, the State would explain to the public and EPA its plans and general schedule for corrective action under State laws. EPA specifically requests comment on whether the State should be required to hold a public meeting or if such meeting should be held only if requested. This option represents a total deferral; it is not intended to ensure equivalence to CERCLA. EPA believes that this option could maximize the overall number of corrective actions that occur by allowing CERCLA funds and resources to be directed to other sites at which no response action by State authorities is anticipated.

This option would have no requirements or obligations for oversight by EPA. However, EPA would still have the flexibility to exercise CERCLA authorities to achieve corrective action at sites deferred from listing, if necessary. EPA would reserve the right to terminate the deferral status of a site and take the necessary procedural steps to list the site on the NPL where the State revises its earlier position and requests that the site be considered for listing.

ii. *Option 2—Deferral based upon a State certification.* This option would defer individual sites from listing on the NPL in cases where the State provides a more detailed certification of its ability and commits to perform corrective action according to certain CERCLA standards. Specifically, once EPA believes that a site scores above the HRS threshold for listing, or otherwise meets eligibility requirements for listing sites on the NPL, EPA would consider deferring the site if the State demonstrates and certifies in writing to EPA the following:

a. The existence of State regulatory response or enforcement authorities that are sufficient to achieve corrective action.

b. Sufficient State personnel and funds committed for either: (1) enforcement actions, compliance monitoring, and oversight of PRP remediation, or (2) State-implemented corrective action.

c. Satisfactory schedules with milestones to complete the enforcement or corrective action process.

d. Commitment to provide status reports to EPA and the public.

e. Provision for public participation in the remedy selection process, and

f. Commitment to select a remedy that is consistent with the cleanup standards of section 121 of CERCLA.

This option accomplishes the overall goal of increasing the States' involvement in the corrective action process, thereby making CERCLA resources available for other sites. It would require greater EPA oversight than the first option, and requires remediation consistent with standards in section 121 of CERCLA.

As discussed in the first option, EPA would retain its right to apply CERCLA authorities at deferred sites, if necessary. Additionally, EPA would consider terminating the deferral status of a site and taking the necessary procedural steps to list the site on the NPL if any of the commitments in the State certification were not met.

For both options, EPA is considering two management approaches to account for sites that are deferred. The first approach would be to propose deferral site candidates for listing on the NPL, and solicit public comment on the HRS score and the deferral issue. If a decision is made to defer, the sites would remain on the proposed NPL in a stayed, deferred status. This would provide the public with information on the sites EPA has deferred from listing, and would allow EPA to engage in final rulemaking to place the site on the NPL in an expeditious manner if termination were necessary. (In such a case, EPA would request comment on termination of the deferral prior to promulgating the site on the final NPL.)

If deferred sites are proposed on the NPL in a stayed, deferred status, ATSDR health assessments would be performed at those sites, and affected communities would be eligible to apply for TAGs. EPA requests comments on whether it is appropriate to issue TAGs at these sites, since one purpose of the deferral policy is to direct Fund monies to sites that otherwise cannot be addressed by authorities other than CERCLA.

The second management approach EPA is considering would be to defer sites to States prior to, and without, NPL proposal. This could conserve the resources that EPA would use for proposal so that they could be applied to other sites. Under this approach, the responsibility to inform the public about deferred sites could be left solely to the States through the petition or certification procedures discussed above. Alternatively, EPA could retain the role of informing the public through a separate, non-NPL listing in the **Federal Register** of deferred sites. In either case, by not first proposing the site, EPA would have to propose the site to the NPL and take comment on the HRS score before addressing a site under the CERCLA remedial program if deferral termination is necessary. (Of course, the HRS score would not change as a result of any response actions taken by the State during the period of deferral, consistent with EPA's past practice explained at 48 FR 40664, September 8, 1983). However, EPA could apply certain CERCLA response authorities to the sites prior to their listing, including removal actions and remedial investigations.

Further, due to the absence of NPL proposal under this approach, ATSDR would not be required to perform a health assessment at the deferred site. (CERCLA authorizes ATSDR to perform health assessments in response to requests from the public. Petitions for health assessments will require data showing a high probability of the existence of a current or potential health problem.) In addition, TAGs would not be available (CERCLA does not authorize TAGs at non-NPL sites) and the possibility of mixed funding settlements for remedial actions at such sites would be precluded.

EPA specifically requests comment on whether a site deferred to a State should be proposed to the NPL in a "deferred" category, or whether the public should be informed of the deferral through a non-NPL notification or State action.

EPA will consider comments on the current policy and the two options for deferral to State authorities. If EPA determines that it is appropriate to revise the current policy, EPA may adopt one of the options described or a combination of both.

5. *Sites regulated by multiple authorities.* EPA recognizes that there may be some sites that are regulated by a mix of authorities. In cases such as these, EPA requests comment on whether the site should be deferred to a mix of authorities, or whether EPA should address the site comprehensively under CERCLA.

6. *Deferral of sites with agreements under CERCLA enforcement authorities.* Currently, it is EPA's policy to keep enforcement-lead sites on the NPL until the selected remedy is complete in order to ensure that CERCLA Fund resources are available to quickly achieve mitigation if the PRPs fail to comply with CERCLA orders or enforcement agreements, and to keep the public apprised of remedial progress at the site. This policy also provides for the potential availability of TAGs, the performance of ATSDR health assessments at affected sites, and allows for the possibility of mixed funding for remedial actions.

However, in addition to the State deferral options previously discussed, EPA is also considering options for not listing, or deferring from listing sites where PRPs enter into Federal

enforceable agreements for site remediation under CERCLA. A policy of not listing sites where enforceable cleanup orders or agreements under CERCLA are in place may facilitate EPA efforts to expeditiously obtain such enforceable agreements for remedial action at sites that would otherwise be listed on the NPL and evaluated under the CERCLA remedial program. EPA would retain approval authority over any remedial action at sites deferred from listing based on an enforceable CERCLA order or agreement. State concurrence would be necessary for deferring sites under this policy.

Although EPA has not yet reached a decision on this issue, the options being considered today are within EPA's discretion under the statute. CERCLA section 104(a)(1) authorizes EPA to respond to the release or threat of release of hazardous substances, but provides that a PRP may be allowed to carry out the action if the President or his delegate "determines that such [removal and remedial] action will be done properly and promptly by the owner or operator of the facility or vessel or by any other responsible party." In addition, CERCLA section 105(a)(8)(A) directs EPA to "the extent practicable, to tak[e] into account" appropriate factors in developing the NPL, giving EPA broad discretion to consider such factors as PRP remedial action agreements.

EPA seeks comment on two principal options: (i) Deferral to CERCLA enforcement authorities prior to NPL proposal based on an agreement to carry out the EPA-selected remedial design/remedial action (RD/RA) pursuant to a consent decree, and (ii) deferral at the time of proposal based on an agreement to conduct a remedial investigation/feasibility study (RI/FS) for that site, with the proposed site dropped if the PRP subsequently agrees to perform the RD/RA pursuant to a consent decree. Both options will continue to assure the opportunity for public comment on the remedy selected by EPA under the CERCLA consent decree. This CERCLA enforcement authority deferral policy being considered today will not be implemented until public comments have been considered. EPA intends to keep the current deferral policies in effect while comments are reviewed. If this deferral policy is issued, EPA plans to apply it prospectively (see discussion of final sites below). These options, and variations of these options, are discussed below.

i. *Option 1—Pre-proposal deferral based on agreement to perform RD/RA.* Under this option, EPA would, with the concurrence of the State agency, defer listing of a site if a PRP were willing to enter into a consent decree with EPA for the total remediation of a site prior to the site's proposal for NPL listing. However, EPA would not delay the normal process for assessing sites, developing HRS scores, and proposing on the NPL. Only those sites for which a consent decree is signed prior to proposal of the site on the NPL would be considered.

Because completed preliminary assessments and site investigations are publicly available documents, EPA believes that many PRPs will have adequate information concerning the potential listing of a site on the NPL in order to decide whether to begin negotiations of a consent decree with EPA for remediation of a site. However, EPA intends to continue its policy of not releasing draft HRS scores prior to a decision to propose a site for the NPL. EPA would simply acknowledge that a site is being considered for listing on the NPL.

Under this option, more consent decrees providing for remediation may be signed, freeing CERCLA Fund resources for remedial action at other sites. (CERCLA resources would be required for oversight of sites deferred based on an agreement under CERCLA enforcement authorities.) Moreover, these consent decrees would represent enforceable agreements under CERCLA for the entire response effort, including remedial action, and would provide the necessary legal assurances that a protective remedy, selected and approved by EPA, would proceed in a timely manner. Further, EPA would select the remedy under this approach, and the full remedial process described under Subpart E of the NCP, including the public participation requirements, would be required; all consent decrees would also be published in the **Federal Register** before entry by the court.

This option would allow PRPs, by agreeing to an enforceable consent decree under CERCLA to perform the total remediation, to avoid the listing of their site on the NPL. However, at this stage in the remedial process, the actual remedy to be implemented will be unknown and the PRPs may be reluctant to agree to implement a remedy of unknown cost and dimensions. Even if the PRPs agreed to implement the EPA-selected remedy, they might be reluctant to waive their rights to contest EPA's choice of remedy in the context of dispute resolution under the consent decree, which process may involve further resource commitment by EPA.

This option might have limited applicability at sites with multiple parties. Because EPA does not intend to implement a formal process prior to proposal to notify parties of their potential responsibility at sites, there may not be adequate time for numerous PRPs to agree to implement the site remedy to be selected by EPA in the future.

If a PRP fails to complete the remedy and the enforcement mechanisms available under the consent decree are not successful (e.g., if the PRP is financially unable to continue the work), Fund-financed action could not be taken until the site was listed on the NPL (although financial assurances such as performance bonds could also be required under this option to ensure that remedial action would continue).

Under this approach, because sites would not be listed or proposed for listing on the NPL, TAGs would not be available and ATSDR health assessments would not be required (see State deferral discussion).

As part of this option, EPA is also seeking comment on the appropriate method for identifying problem sites to the public if those sites are not proposed for the NPL because of deferral to a CERCLA enforcement agreement. One alternative is to publish a notice in the **Federal Register** identifying sites that are to be deferred prior to proposal on the NPL. Another alternative is to notify the affected public of the deferral by publication in a local newspaper(s) of general circulation. Of course, once a consent decree is lodged, the public will be notified (pursuant to 28 CFR 50.7), and will have an opportunity to comment on the remedy that EPA ultimately selects.

ii. *Option 2—Proposal and deferral based on an agreement to conduct RI/FS.* EPA is also considering an option under which EPA would propose a site for listing on the NPL, but would defer final listing of the site if the PRPs agree to perform the RI/FS under an enforceable CERCLA agreement (administrative order or consent decree). The site would remain on the proposed NPL (in a stayed, deferred status) until the RI/FS is completed, the public comments on the remedy are received, and the record of decision is issued. If the PRPs agree to implement the remedy selected in the record of decision under an enforceable consent decree or order under CERCLA, the site would be dropped from the proposed list; if they do not, EPA would proceed to list the site on the final NPL. Adoption of this option would make the final NPL a list of sites where CERCLA Fund-financed

action appears to be warranted, rather than a list of sites where CERCLA action, whether Fund-financed or enforcement lead, appears to be warranted.

Because sites would be formally proposed for listing, the PRPs would be fully informed of the opportunity of entering into an enforceable CERCLA agreement. This approach may encourage PRP performance of RI/FSs and RD/RAs thus freeing CERCLA Fund monies for other sites. In addition, because deferral candidates would remain on the proposed NPL until a final consent decree is entered, EPA can proceed rapidly to final listing and site remediation using the Fund in the event the PRPs do not agree to implement the selected remedy. This option would also ensure that EPA has substantial input into, and control over, the PRP-conducted RI/FS or RD/RA, since both efforts would be completed under the terms of enforceable agreements under CERCLA, and with EPA oversight.

The process contemplated in this option would allow a PRP to avoid listing on the final NPL by agreeing to undertake a remedial response pursuant to an enforceable agreement under CERCLA. In addition, in contrast to the first option (defer prior to proposal), the PRPs are entering into agreements in a stepwise fashion and are not committing to final site remediation until the remedial options have been fully explored if necessary.

If the PRP does not consent to implement the remedy identified as a result of the RI/FS, Federal funds could not be spent for the remedial action until the site was listed as final on the NPL. However, additional planning or removal actions under section 104 could take place if necessary.

A variation on this option would be that, rather than proposing the site for listing on the NPL, the site would be included on a special list pending the PRPs entering into a consent decree. This variation presents a greater risk of delay in remedial action because if the PRP fails to sign a consent decree for cleanup, the site must be first placed on the proposed NPL, comment taken on HRS scoring, and then placed on the final list. Additionally, because sites would not be listed or proposed for listing on the NPL under this option, TAGs would not be available and ATSDR health assessments would not be required, and the possibility of mixed funding settlements for remedial actions at such sites would be precluded (see State deferral discussion).

EPA will consider comments on the current policy and the two options for deferral to enforcement authorities. If EPA determines that it is appropriate to revise the current policy of not deferring to PRPs entering into enforcement agreements, EPA may adopt one of the options described above or a combination of both.

7. *Deletion of proposed and final sites based upon deferral to other authorities.* In today's notice, EPA is requesting comment on deferring the placement of sites on the NPL when Federal or State authorities are available to address contamination at the site, as well as deferring sites where the PRPs have signed enforceable CERCLA consent orders for remedial action. EPA is also considering whether this policy should be applied to sites on the final NPL, i.e., whether final NPL sites should be deleted if they are being addressed by another authority or under a CERCLA consent order. On August 9, 1988 (53 FR 30005), EPA announced that it would not systematically apply the RCRA deferral policy in certain limited circumstances. As with the general deferral policies discussed in today's notice, the deletion of final sites would tend to free CERCLA's resources for use in situations where another authority is not available, and thus may help maximize the overall number of response actions.

As stated with respect to the RCRA deferral policy, EPA does not believe it is appropriate to systematically review the final sites already on the NPL to see whether any are being addressed, or may be addressed, under another statute or under a CERCLA consent order. It is EPA's opinion that such a review would be time consuming, thereby detracting from the more important work of the CERCLA program, and could disrupt work at sites where CERCLA actions have already begun. However, in certain limited circumstances, EPA believes that it may be appropriate to remove a site from the final NPL before a cleanup is complete if EPA is satisfied that the site is being or will be addressed under another statute or authority.

EPA believes that it is appropriate to apply different and more stringent criteria in actions to delete based on deferral to other authorities for sites that are on the final NPL, as compared to sites that are merely candidates for deferral prior to NPL listing. For final NPL sites, EPA has completed its listing process, identified the site as a potential problem requiring further attention, and has often commenced CERCLA actions. In addition, the listing itself has created public anticipation of a response under CERCLA. Thus, EPA and the public have a significant interest in seeing that these sites are addressed. EPA does not believe that applying different criteria to final sites that may be deleted will cause any significant prejudice to any party; as EPA has stated repeatedly in the past, inclusion on the NPL does not determine the liability of any party for the cost of any response actions that may be taken at a site (48 FR 40659, September 8, 1983).

Therefore, EPA is considering applying this policy on a case-by-case basis in the following limited circumstances. A site may be an acceptable candidate for deletion based upon deferral to another authority where EPA is presented with evidence that:

i. A site on the NPL is currently being addressed by another regulatory authority under an enforceable order or permit requiring corrective action or the PRPs have entered into a CERCLA consent order to perform the RD/RA;

ii. Response is progressing adequately;

iii. Deletion would not otherwise disrupt an on-going CERCLA response action; and

iv. All criteria for deferral to that authority have been met (i.e., the requesting party must meet all conditions for deferral to that authority in addition to the three specific criteria set out above for deletion based upon deferral).

EPA would generally consider it to be a disruption of a CERCLA remedial action to defer a final NPL site in situations where funds and/or personnel have been committed for further action such as an RI/FS, remedial design or remedial construction activity.

To date, sites have been deleted from NPL only "where no further response is appropriate," such as where remedial actions have been completed either by the PRPs or through Fund-financed response, or where no remedial measures have been deemed necessary (current NCP § 300.66(c)(7), reproposed today as § 300.420(e)(1)). In order to delete sites for deferral, it may be necessary to adopt additional deletion criteria or to reinterpret the existing criteria to apply to instances where another authority is addressing the site, and thus, no further response is appropriate under CERCLA (or, alternatively, that no further response is necessary using CERCLA funds). As with any deletion, a deletion based upon a decision to defer would be entered only after a notice of intent to delete (and defer) is filed in the **Federal Register** and comment is taken. If EPA later determines that CERCLA remedial action is necessary at the site, the site would remain eligible for CERCLA Fund-financed remedial action and relisting on the NPL without the

requirement to reapply the HRS (current NCP § 300.66(c)(8), reproposed today as § 300.420(e)(2)).

EPA requests comment on the policy of deleting final sites based upon deferral to other authorities, and on the criteria that should be applied in reviewing petitions for such deletions.

8. *Effective date of policy.* No deferral policy being considered today will be implemented until public comments have been considered. EPA intends to keep the current deferral policies (e.g., RCRA and Nuclear Regulatory Commission) in effect while such comments are being reviewed.

Section 300.430 Remedial Investigation/Feasibility Study (RI/FS) and Selection of Remedy.

Today EPA is proposing major revisions to Subpart E to incorporate the new requirements of the 1986 CERCLA reauthorization amendments into existing procedures, and to reflect program management principles EPA intends to follow in order to promote the efficiency and effectiveness of the remedial response process. Chief among these principles is a bias for action.

The 1986 CERCLA amendments include a number of requirements related to the remedial alternatives development and remedy selection process. Section 121 of the statute retains the original CERCLA mandates to select remedies that are protective of human health and the environment and that are cost-effective. In addition, today's proposed revisions address the new statutory requirements for remedial actions to attain the applicable or relevant and appropriate requirements of other Federal and State environmental laws, the mandate to utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable, and the preference for remedies that employ treatment that permanently and significantly reduces the toxicity, mobility, or volume of hazardous substances, pollutants, or contaminants as their principal element over those that do not.

The overarching mandate of the Superfund program is to protect human health and the environment from the current and potential threats posed by uncontrolled hazardous waste sites. This mandate applies to all remedial actions and cannot be waived. The mandate for remedies that protect human health and the environment can be fulfilled through a variety of means, including the destruction, detoxification, or immobilization of contaminants through the application of treatment technologies, and by controlling exposure to contaminants through engineering controls (such as containment) and/or institutional controls which prevent access to contaminated areas.

The CERCLA amendments emphasize achieving protection that will endure over long periods of time by mandating the use of permanent solutions to the maximum extent practicable and by specifying long-term effectiveness factors that must be assessed under section 121(b)(1) (A–G). The amendments also express a clear preference for achieving this protection through the use of treatment technologies as the principal element of remedies. These provisions reflect the belief that treatment that destroys or reduces the hazardous properties of contaminants (e.g., toxicity or mobility) frequently will be required to achieve solutions that afford a high degree of permanence. The highest degrees of permanence are clearly afforded by remedies that are not heavily reliant on long-term operation and maintenance following the completion of an implemented action.

In addition to these new mandates, the amended CERCLA retained the mandate for selecting remedies that are cost-effective. Although cost-effectiveness cannot be used to select a nonprotective remedy, this mandate does require EPA to evaluate closely the costs required to implement and maintain a remedy and to select protective remedies whose costs are proportionate to their overall effectiveness. This mandate establishes efficient use of resources as a standard for Superfund remedial actions and reflects Congress' intent to maximize the use of the Fund across a large number of sites. EPA intends to focus available resources on selection of protective remedies that provide reliable, effective response over the long-term.

This combination of mandates (i.e., remedies that provide permanent solutions to the maximum extent practicable, the preference for treatment as a principal element, and cost-effectiveness) creates dynamic tensions for the Superfund program. In today's proposal EPA extends some of the fundamental features of the current NCP in proposing to resolve these competing goals through a process that examines the characteristics of sites and alternative approaches for remediating the problems those sites pose. This process evaluates alternative hazardous waste management strategies using nine criteria related to CERCLA's mandates to determine advantages and disadvantages of the various remedial action alternatives. This analysis identifies site-specific trade-offs between options, and facilitates the risk management decision which is the fundamental nature of remedy selection decisions at CERCLA sites. In balancing trade-offs among options and selecting the protective alternative which seems to offer the best combination of attributes in terms of the nine criteria and is thus most appropriate for a given site, EPA is exercising the discretion granted by CERCLA to determine the maximum extent to which permanent solutions and treatment or resource recovery technologies can be practicably utilized in a cost-effective manner.

EPA believes that the solutions that are most appropriate for a given site will vary depending on the size, complexity, and location of the site, the magnitude of the threats posed, the timing of the availability of suitable treatment technologies, and the proximity of human and environmental receptors, among other factors. While the CERCLA amendments strongly encourage the use of treatment technologies in CERCLA remedial actions, they allow for discretion in dealing with site circumstances and technological, economic, and implementation constraints that place practical limitations on the use of treatment technologies. Treatment is most likely to be practicable for wastes that cannot be reliably controlled in place, such as liquids, highly mobile materials (e.g., solvents), and high concentrations of toxic compounds (e.g., several orders of magnitude above levels that allow for unrestricted use and unlimited exposure). Treatment is less likely to be practicable where sites have large volumes of low concentrated material, or where the waste is very difficult to handle and treat (e.g., mixed waste of widely varying composition). Specific situations that may limit the use of treatment could include sites where: (1) Treatment technologies are not technically feasible or are not available within a reasonable timeframe; (2) the extraordinary size or complexity of a site makes implementation of treatment technologies impracticable; (3) implementation of a treatment-based remedy would result in greater overall risk to human health and the environment due to risks posed to workers or the surrounding community during implementation; or (4) severe effects across environmental media resulting from implementation would occur. In addition, there are CERCLA sites or portions of sites where the concentrations of the wastes are at low

levels or are substantially immobile, and where the wastes can be reliably contained over a long period of time through the use of engineering controls. In these situations, treatment may not always offer a sufficient degree of increased permanence and long-term protection to be cost-effective.

CERCLA sites are frequently complex and involve a number of different problems. EPA believes that it often will be the case that the most appropriate solution for a site will involve a combination of methods of achieving protection of human health and the environment. Most frequently, EPA expects that treatment of the principal threats posed by a site, with priority placed on treating highly toxic, highly mobile waste, will be combined with engineering controls (such as containment) for treatment residuals and untreated waste.

As appropriate, institutional controls such as water use and deed restrictions may supplement engineering controls for short- and long-term management to prevent, or limit exposure, to hazardous substances, pollutants, or contaminants. Institutional controls will be used routinely to prevent exposures to releases during the conduct of a remedial investigation and feasibility study, during remedial action implementation, and as a supplement to engineering controls designed to manage wastes over time. The use of institutional controls to restrict use or access should not, however, substitute for active response measures (e.g., treatment and/or containment of source material, restoration of ground waters to their beneficial uses) as the sole remedy unless such active measures are determined not to be practicable, based on the balancing of trade-offs among alternatives that is conducted during the selection of remedy. These trade-offs, based on the nine criteria, are identified during the analysis of alternatives.

EPA recognizes that the approach presented in today's proposed rule is not the only approach possible for resolving the competing goals and requirements of the Superfund program. Therefore, later in this preamble EPA presents four alternative approaches. Two of those alternatives are site-specific balancing approaches that, while similar to the one proposed in today's rule, differ primarily in terms of how they organize the evaluation criteria, and how they incorporate the statutory requirements to select remedies that are cost-effective and that use permanent solutions and treatment technologies to the maximum extent practicable. The two additional alternatives presented later represent different approaches to remedy selection, based on different views of the goals and purposes of the Superfund program. EPA solicits comments on these four alternative approaches as well as the approach presented in today's proposed rule.

A. Program Management Principles

Today's proposal also includes revisions to the 1985 NCP that are not mandated by CERCLA. These revisions reflect principles by which EPA intends to manage the Superfund remedial program. These principles stem from experience gained over the first eight years of the program. In managing CERCLA sites, EPA must balance the goal of definitively characterizing site risks and analyzing alternative remedial approaches for addressing those threats in great detail, and the desire to implement protective measures quickly. EPA intends to balance these goals with a bias for initiating response actions necessary or appropriate to eliminate, reduce, or control hazards posed by a site, as early as possible. EPA will promote the responsiveness and efficiency of the Superfund program by encouraging action prior to or concurrent with conduct of an RI/FS as information is sufficient to support remedy selection. While the bias for action promotes multiple actions of limited scale, the program's ultimate goal continues to be to implement final remedies at sites.

Early action may be taken at a site via enforcement or Fund-financed activities taken under removal or remedial authorities. In deciding between using removal and remedial authorities, the lead agency should consider: (i) The criteria and requirements for taking removal actions in § 300.415 of today's proposed rule; (ii) the statutory limitations on removal actions and the criteria for waiving those limitations; (iii) the availability of resources; and the (iv) urgency of the site problem. Specific actions that may be taken under removal authorities include emergency action, non-time-critical removals, and expedited response actions. A discussion of these activities is included in the § 300.415 preamble section. Early actions using remedial authorities are initiated as operable units.

The Superfund program has long permitted remedial actions to be staged through multiple operable units. Operable units are discrete actions that comprise incremental steps toward the final remedy. Operable units may be actions that completely address a geographical portion of a site or a specific site problem (e.g., drums and tanks, contaminated ground water) or the entire site. Operable units include interim actions (e.g., pumping and treating of ground water to retard plume migration) that must be followed by subsequent actions which fully address the scope of the problem (e.g., final ground water operable unit that defines the remediation level and restoration timeframe). Such operable units may be taken in response to a pressing problem that will worsen if unaddressed, or because there is an opportunity to undertake a limited action that will achieve significant risk reduction quickly.

The appropriateness of dividing remedial actions into operable units is determined by considering the interrelationship of site problems and the need or desire to initiate actions quickly. To the degree that site problems are interrelated (e.g., contaminated soils and ground water), it may be most appropriate to address the problems together. However, where problems are reasonably severable, phased responses implemented through a sequence of operable units may promote more rapid risk reduction.

Related to the bias for action is the principle of streamlining, which EPA intends to emphasize in managing the Superfund program as a whole and in conducting individual remedial action projects. On a project-specific basis, recommendations to ensure that the RI/FS and remedy selection process is conducted as effectively and efficiently as possible include:

a. Focusing the remedial analysis to collect only additional data needed to develop and evaluate alternatives and to support design;

b. Focusing the alternative development and screening step to identify an appropriate number of potentially effective and implementable alternatives to be analyzed in detail. Typically, a limited number of alternatives will be evaluated that are focused to the scope of the response action planned;

c. Tailoring the level of detail of the analysis of the nine evaluation criteria (see below) to the scope and complexity of the action. The analysis for an operable unit may well be less rigorous than that for a comprehensive remedial action designed to address all site problems;

d. Tailoring selection and documentation of the remedy based on the limited scope or complexity of the site problem and remedy. In particular, operable units initiating interim remedies may require less complex justifications because they are limited actions that will only require minimum

documentation of statutory findings based on the presumption that additional response will further address the site problem;

e. Accelerating contracting procedures and collecting samples necessary for remedial design during the public comment period.

Although the level of effort and extent of analysis required for an RI/FS will vary on a site-specific basis, the procedural steps needed for remedy selection do not. These steps, however, may be less extensive depending on the complexity and scope of the problem being addressed. Regardless of the level of effort and analysis on a specific RI/FS, the lead agency is responsible for ensuring that all procedural requirements are met, including support agency participation, soliciting public comment, developing an administrative record, and preparing a record of decision.

Circumstances that may be particularly conducive to a more streamlined analysis during an RI/FS include:

(1) Site problems are straightforward such that it would be inappropriate to develop a full range of alternatives. For example, site problems may only involve a single group of chemicals that can only be addressed in a limited number of ways, or site characteristics (e.g., fractured bedrock) are such that available options are limited. To the extent that obvious, straightforward problems exist, they may create opportunities to take actions quickly that will afford significant risk reduction;

(2) The need for prompt action to bring the site under initial control outweighs the need to examine all potentially appropriate alternatives;

(3) ARARs, guidance, or program precedent indicate a limited range of appropriate response alternatives (e.g., PCB standards for contaminated soils, Superfund Drum and Tank Guidance, BDAT requirements);

(4) Many alternatives are clearly impracticable for a site from the outset due to severe implementability problems or prohibitive costs (e.g., complete treatment of an entire large municipal landfill) and need not be studied in detail; and

(5) No further action or extremely limited action will be required to ensure protection of human health and the environment over time. This situation will most often occur where a removal measure previously has been taken.

The bias for action and principles of streamlining are considered throughout the life of a remedial project but begin to be evaluated as site management planning is initiated. Site management planning is a dynamic, ongoing, and informal strategic planning effort that generally starts as soon as sites are proposed for inclusion on the NPL and continues through the RI/FS and remedy selection process, remedial design and remedial action phases, to deletion from the NPL. This strategic planning activity is the means by which the lead and support agencies determine the types of actions and/or analyses necessary or appropriate at a given site and the optimal timing of those actions. At the RI/FS stage, this effort involves review of existing site information, consideration of current and potential risks the site poses to human health and the environment, an assessment of future data needs, understanding of inherent uncertainties in the process, priorities among site problems and the program as a whole, and prior program experience. The focus is on taking action at the site as early as site data and information make it possible to do so.

B. Major Revisions to the RI/FS and Selection of Remedy Process

The RI/FS process proposed today incorporates statutory requirements, reflects the program management principles of the bias for action, streamlining, and site management planning, and builds on the engineering and analytical steps established in the current NCP. The RI/FS remedy selection process is portrayed in the following specific steps: (1) Project scoping which includes developing workplans; (2) a remedial investigation that typically includes gathering basic site data for site characterization and the baseline risk assessment, and conducting treatability studies; (3) a feasibility study, which includes the development of alternatives, a screening step, as necessary, and a detailed analysis of the alternatives; (4) remedy selection; and (5) documentation. As presented in today's proposal, these steps appear highly articulated and distinct. In practice, the steps are usually highly interactive. The RI/FS process should be tailored to match the scope and nature of the site problems.

The steps in the process are intended to ensure that remedial alternatives are formulated to be protective of human health and the environment and designed to meet the applicable or relevant and appropriate requirements of other Federal and State environmental laws. Judgments as to the cost-effectiveness of the alternatives and the extent to which permanent solutions and treatment or resource recovery technologies can be practicably utilized at a given site are made in the remedy selection process, as trade-offs between protective alternatives are balanced.

1. *Project scoping.* The purpose of scoping is to define more specifically the appropriate type and extent of investigative and analytical studies that should be undertaken for a given site. Scoping is distinct from site management planning in that it entails formal planning for both the remedial investigation and feasibility study. Scoping has been separated from the remedial investigation section to which it is attached under the current NCP simply to highlight the workplan development process and the development of other project plans such as the sampling and analysis plan (SAP), the health and safety plan (HSP), and the community relations plan (CRP).

During scoping, to assist in evaluating the possible impacts of releases from the site on human health and the environment, a conceptual understanding of the site should be established considering in a qualitative manner the sources of contamination, potential pathways of exposure, and potential receptors. This preliminary characterization is initially developed with readily available information and is refined as additional data are collected. A site-specific baseline risk assessment with additional qualitative and/or quantitative aspects will be performed during the RI to build on this conceptual understanding by characterizing further the type and magnitude of potential risks. The identification of potential ARARs and other criteria, advisories and guidance to be considered (TBCs) will begin during scoping as lead and support agencies initiate a dialogue on potential requirements during planning meetings or discussions that occur between agencies. Under CERCLA section 121(d)(2)(A)(ii), State requirements must be identified in a timely manner in order to be considered ARARs. Sections 300.430 (d) and (e) and 300.510(d) in today's proposed rule describe the process for identification of ARARs by the lead and support agencies.

The main objectives of scoping are to identify the types of decisions that need to be made, to determine the types (including quantity and quality) of data needed, and to design efficient studies to collect these data. The scope and detail of the investigative studies and alternative development and analysis should be tailored to the complexity of site problems. This will require a consideration of how the phases of the remedial process could most appropriately be conducted and the

level of effort and analysis required for each phase. The greatest opportunities to streamline the analysis generally will occur when the scope of the study and remedial action are limited to a small part of the site, or when the threats are clearly defined and technical solutions are straightforward.

2. *Remedial investigation (RI).* The RI includes: (i) The collection of data identified during project scoping as necessary to characterize the site and evaluate remedial alternatives; (ii) the characterization of current and potential risks through a baseline risk assessment; and (iii) treatability studies, as appropriate. Today's proposed revisions emphasize that the program management principle of streamlining will be applied to determinations of what is necessary to adequately characterize a site. Site-specific judgments are required to determine how much additional information is necessary to support decisions, taking into consideration the added time and costs of collecting and analyzing the data.

During site characterization, site-specific data are collected and assessed to determine what, if any, types of response actions are warranted. In light of CERCLA's mandate to assess permanent solutions, alternative treatment technologies, and resource recovery technologies, EPA is proposing to collect, as appropriate, data about treatment technologies, such as characteristics of the waste or the site that affect the types of treatment possible and the effectiveness of treatment approaches, the extent to which substances on-site may be reused or recycled, and the potential for future releases if any substances or treatment residuals remain on-site. The RI may also include treatability studies that are needed to better evaluate potential technologies.

Once the contaminants of concern at a site have been identified, the baseline risk assessment is initiated to determine whether the site poses a current or potential risk to human health and the environment in the absence of any remedial action. It provides the basis for determining whether or not remedial action is necessary and the justification for performing remedial actions. The Superfund baseline risk assessment process may be viewed as consisting of an exposure assessment component and a toxicity assessment component, the results of which are combined to develop an overall characterization of risk. As indicated above, these assessments are site-specific and therefore may vary in both detail and the extent to which qualitative and quantitative analyses are utilized, depending on the complexity and particular circumstances of the site, as well as the availability of pertinent ARARs and other criteria, advisories, and guidance.

An exposure assessment is conducted to identify the magnitude of actual or potential human or environmental exposures, the frequency and duration of these exposures, and the routes by which receptors are exposed. This assessment involves developing for each site a current exposure scenario as well as a reasonable maximum exposure scenario. The current exposure analysis is used to determine whether a health or environmental threat exists based on existing site conditions. The reasonable maximum exposure scenario is used to provide decisionmakers with an understanding of potential future exposures and should include an assessment of the likelihood of such exposures occurring. This exposure scenario will provide the basis for the development of protective exposure levels.

The toxicity assessment component of Superfund risk assessment considers: (a) The types of adverse health or environmental effects associated with chemical exposures; (b) the relationship between magnitude of exposures and adverse effects; and (c) related uncertainties such as the weight of evidence for a particular chemical's carcinogenicity in humans. Typically, the Superfund risk assessment process relies heavily on existing toxicity information or profiles developed on specific chemicals. These are generally estimated carcinogen exposures that may be associated with specific lifetime cancer risk probabilities (risk-specific doses or RsDs), and noncarcinogen exposures that are not likely to present appreciable risk of significant adverse effects to humans (including sensitive subgroups) over lifetime exposures (reference doses or RfDs).

During risk characterization, chemical-specific toxicity information is compared both against measured contaminant exposure levels and those levels predicted through fate and transport modeling to determine whether levels at or near the site are of potential concern. Results of this analysis are presented with all critical assumptions and uncertainties so that significant risks can be readily identified.

3. *Feasibility study (FS).* The purpose of the FS is to provide the decisionmaker with an assessment of alternatives, including their relative strengths and weaknesses, and the trade-offs in selecting one alternative over another. The FS process involves developing a reasonable range of viable remedial alternatives and analyzing these alternatives in detail using nine evaluation criteria. Because the RI and FS are conducted concurrently, this is an interactive process in which potential alternatives and remediation goals are continually refined as additional information from the RI becomes available.

i. *Establishing protective remedial action objectives.* The first step in the FS process involves developing remedial action objectives for protecting human health and the environment which should specify contaminants and media of concern, potential exposure pathways, and preliminary remediation goals. The preliminary remediation goals, by establishing initially acceptable contaminant levels for each exposure route, assist in setting parameters for the purpose of evaluating technologies and developing remedial alternatives. Because these preliminary remediation goals typically are formulated during project scoping or concurrent with initial RI activities (i.e., prior to completion of the baseline risk assessment), they are initially based on readily available environmental or health-based ARARs (e.g., MCLs, WQC) and other criteria, advisories, or guidance (e.g., RfDs). As new information and data are collected during the RI, including the baseline risk assessment, and as additional ARARs are identified during the RI, these preliminary remediation goals may be modified as appropriate to ensure that remedies comply with CERCLA's mandate to be protective of human health and the environment and comply with ARARs.

During the development and analysis of alternatives, the risks associated with potential alternatives, both during implementation and following completion of remedial action, are assessed, based on the reasonable maximum exposure scenario and any other controls necessary to ensure that exposure levels are protective and can be attained. These are generally assessed for each exposure route unless there are multiple exposure routes where combined effects may have to be considered. For noncarcinogenic chemicals, EPA has concluded that protection is achieved when exposures are such that no appreciable risk of significant adverse effects to individuals over a lifetime of exposure exist. For carcinogens, EPA uses health-based ARARs to set remediation goals when

they are available. When an ARAR does not exist, EPA guidance has been to select remedies resulting in cumulative risks that fall within a range of 10^{-4} to 10^{-7} individual lifetime excess cancer risk. EPA is willing to continue using this range in the future as it provides flexibility in developing protective remedies suitable to site-specific conditions. However, EPA is interested in receiving comment on a risk range of 10^{-4} to 10^{-6} since this risk range is used in certain other EPA programs.

The risk range is important because it is a standard used by EPA to comply with CERCLA's mandate to protect human health. Furthermore, the choice of risk range will continue to be important as the Superfund program matures and as related science and policy evolve.

EPA, therefore, solicits comment on two potential risk ranges in particular—the current 10^{-4} to 10^{-7} range and an alternative 10^{-4} to 10^{-6} range—and on issues related to these or alternative risk ranges. Commenters are requested to provide as much supporting information as practical for any alternatives suggested. Issues that commenters may want to consider include the following:

(1) The potential impact of improvements in the understanding of cancer risk assessment, including biological mechanisms, interpretation of data, measures of exposure, etc.

(2) The ability of available analytical methods to measure chemical substances at concentrations associated with low levels of risk.

(3) Possible advantages or disadvantages of a narrower or broader risk range, or of a single risk value.

(4) The desirability of using a risk range for cleanup at these sites to protect current and potential sources of drinking water that is more stringent than the 10^{-4} to 10^{-6} range that characterizes drinking water standards and that is more stringent than what is considered de minimis risk under other programs.

(5) The ability of treatment technologies to achieve cleanups at specified levels of risk. This may include technologies that are unable to achieve removal of contaminants to very low levels, as well as other technologies that can only achieve low levels of risk.

(6) Whether available funds should be used to attain very low levels of risk at a limited number of sites, or to achieve cleanup at more sites (at somewhat higher levels of risk for some sites) with a greater reduction in overall risk.

(7) The effect of achieving particular risk levels on the time needed to complete the remedial action and the extent to which this should be considered when selecting remedies.

(8) The relationship between EPA's risk range and those used in State Superfund programs, including the impact of EPA's range on the development of State programs.

(9) The evolving issue of public perception of relative risks in our society.

Commenters are invited to address these and other issues related to either the Superfund program's risk range or alternatives that they may suggest.

In general, chemical-specific ARARs are set for a single chemical or closely related group of chemicals. These requirements typically do not consider the mixtures of chemicals and other conditions (e.g., multiple pathways of exposure) that may be found at CERCLA sites. Therefore, due to site-specific factors, remediation goals set at the level of single chemical-specific requirements may not adequately protect human health or the environment at that site. In these instances, remediation goals may be set below the chemical-specific requirements (i.e., at more stringent levels) in order to obtain a remedy that is protective. Remedies resulting in cumulative risks that fall within the generally acceptable risk range for carcinogens (10^{-4} to 10^{-7}) or meet acceptable levels for noncarcinogens are said to be protective of human health.

Superfund remedies will also be protective of environmental organisms and ecosystems. However, "protectiveness" in this context is often considerably less quantitative.

During selection of remedy, the final remediation goals, and resulting exposure levels, will be determined by balancing the major trade-offs among protective, ARAR-compliant alternatives, using specified evaluation criteria (see sections 3.iii. and 4., below).

During the FS, pertinent factors for modifying the remediation goals within the acceptable risk range can be divided into three broad categories: (a) Exposure factors, (b) uncertainty factors, and (c) technical factors. Included under exposure factors are: the cumulative effect of multiple contaminants, the potential for human exposure from other pathways at the site, population sensitivities, potential impacts on environmental receptors, and cross media impacts of alternatives. Factors related to uncertainty may include: the reliability of alternatives, the weight of scientific evidence, and the reliability of exposure data. Technical factors may include: detection/quantification limits for contaminants, technical limitations to restoration, the ability to monitor and control movement of contaminants, and background levels of contaminants.

Remediation levels should be set for appropriate environmental media, and performance standards established for selected engineering controls and treatment systems including controls implemented during the response measure. For ground water, remediation levels should generally be attained throughout the contaminated plume, or at and beyond the edge of the waste management area when waste is left in place. For air, the selected levels should be established for the maximum exposed individual, considering reasonably expected use of the site and surrounding area. For surface waters, the selected levels should be attained at the point or points where the release enters the surface waters.

ii. *Development and screening of alternatives.* Once remedial action objectives have been developed, general response actions, such as treatment, containment, excavation, pumping, or other actions that may be taken to satisfy those objectives should be established. Technologies potentially applicable to each general response action are then identified, briefly evaluated to verify their suitability, and assembled into remedial alternatives. In the event a large number of alternatives are developed, a screening step may be conducted.

For most sites, the initial range of alternatives should represent distinct, promising alternative approaches to managing the site problems. The major change in this step from the current NCP is the organizing scale along which the alternatives are to be arrayed.

The current NCP requires alternatives to be developed, as appropriate, from the following categories: (a) An off-site alternative; (b) an alternative that attains ARARs; (c) an alternative that exceeds ARARs; (d) an alternative that does not attain ARARs; and (e) a no-action alternative. These categories tested on the implicit assumption that alternatives would share the same potential ARARs and that the ability to meet or exceed those requirements corresponded to different levels of protection. Program experience has shown that while alternatives will usually share chemical- and location-specific ARARs, each will have a unique set of action-specific requirements. Additionally, it is now clear that ARARs do not by themselves necessarily define protectiveness. First, ARARs do not exist for every contaminant, location, or waste management activity that may be encountered or undertaken at a CERCLA site. Furthermore, in those

circumstances where multiple contaminants are present, the cumulative risks posed by the potential additivity of the constituents may require cleanup levels for individual contaminants to be more stringent than ARARs to ensure protectiveness at the site. Finally, determining whether a remedy is protective of human health and the environment also requires consideration of the acceptability of any short-term or cross-media impacts that may be posed during implementation of a remedial action.

In light of these determinations and in response to the new statutory emphasis on utilizing permanent solutions and treatment technologies to the maximum extent practicable, EPA is proposing a major change in the range of alternatives required to be developed.

The initial range of alternatives should represent distinct, promising alternative approaches to managing the site problems. In light of the statutory preference for treatment remedies, this range typically will include alternatives that feature, as a principal element, treatment that reduces the toxicity, mobility, or volume of the hazardous substances at the site. Typically, treatment alternatives range from remedies that treat the principal threats at the site, to remedies that completely destroy, detoxify, or immobilize the hazardous substances and leave materials that require no long-term management. Principal threats will be defined on a site-specific basis and may include a discrete areas of the site that consists of highly toxic and/or highly mobile waste (e.g., a lagoon filled with highly concentrated organic contaminants and surrounded by slightly contaminated soils), or a single environmental medium (e.g., highly contaminated ground water).

In developing alternatives, the lead agency should consider whether the prospective remedy should be developed as an on-site alternative, an off-site alternative, or both. While CERCLA clearly states that off-site disposal without treatment is the least preferred alternative, it does not express any preference for or bias against off-site disposal with treatment. In evaluating off-site actions, however, EPA's requirements related to the off-site transfer of CERCLA wastes must be taken into account.

In addition to treatment alternatives, the lead agency should develop, as appropriate, alternatives that control the threats posed by hazardous substances and/or prevent exposure, such as containment technologies and institutional controls. Containment options typically provide a baseline for comparison with other actions and provide alternatives in case the lead agency concludes that remedies featuring treatment are not practicable.

A no-action alternative will always be developed, although analysis of this option frequently will be more limited than for other alternatives unless information suggests that indeed no action is necessary. In the remedial context, this option is often "no further action," since removals or enforcement actions frequently will have taken place prior to the FS or maintenance activities may be ongoing. The no-action alternative involves leaving the site essentially as it is. Analyzing the no-action alternative provides another useful baseline for evaluating the costs of and protection provided by the other alternatives being considered.

The statutory preference for treatment must be considered in developing a reasonable number of options that have real potential for addressing site problems. The appropriate number of alternatives to be developed will vary by site depending on the nature of the site and the risks posed by the contaminants. For example, while treatment technologies encompass a range of options, there might be only one viable technology that can be applied to the hazardous substances at a particular site. Thus, the variation within the treatment range might involve only the amount of waste treated, or the levels to which the contaminants are reduced by the single technology. In other instances, such as large municipal landfills or mining waste sites, comprehensive treatment options are less likely to be practicable, and therefore the universe of viable alternatives might be reduced to a limited number of remedies involving treatment of the principal threats, engineering controls, institutional controls, or combinations of those approaches.

For an operable unit that does not constitute the complete response action for the site or a particular site problem, it may not be necessary or appropriate to develop the full array of alternatives discussed above. In the event the risk assessment indicates no action is required, few, if any, alternatives will be developed. In summary, a lengthy list of remedial alternatives is not required to fulfill the purpose of this phase of the CERCLA process. The number and type of remedial alternatives should be tailored to fit the site problems being addressed and established remedial action objectives.

CERCLA grants EPA flexibility to examine and select technologies that have not yet been proven in practice, in order to address certain types of sites and to promote the development of new methods of treatment of hazardous substances. Therefore, EPA today proposes that innovative technologies be carried through to the detailed analysis, if there is a reasonable belief that those technologies will offer significant advantages over other options being considered (e.g., better performance or implementability, fewer or lesser adverse impacts, or lower costs).

A screening step may be conducted in those situations where a wide array of alternatives are available in order to reduce the number of alternatives that will be analyzed in detail. Although the screening will reduce the number of alternatives being considered, a range of choices should be preserved. Screening will not be necessary where only a few choices have emerged from the development of alternatives phase. When the screening step is conducted, the most promising subset of alternatives that are suitable to the site in question should be identified through a preliminary evaluation of the relative effectiveness, implementability, and cost of the alternatives. The effectiveness of the alternatives relates to their overall performance in eliminating, reducing, or controlling the current and potential risks posed by the site, both during implementation and over time. The implementability of the alternatives involves the degree of difficulty associated with their actual construction, including technical, administrative, and logistical problems that affect the time necessary to complete the remedy. Cost considerations include construction costs and the costs of operating and maintaining the remedy over time.

Data at this stage in the remedial process may be incomplete due to ongoing field investigations and treatability studies, but they should be sufficient to assess the major relative strengths and weaknesses of the alternatives. The primary focus during screening is on identifying those alternatives that are clearly ineffective or unimplementable, or that are clearly inferior to other alternatives being considered in terms of their effectiveness, implementability, or cost.

Cost generally will not be the sole reason for eliminating an alternative from further consideration at the screening phase. The primary function of cost at this point in the process is to help identify alternatives that provide levels of effectiveness similar to those of other options being considered, but at substantially higher cost. Cost can also be considered in conjunction with other

factors to determine whether or not an option is likely to yield results in terms of implementability and effectiveness that are in proportion to its costs, relative to other alternatives under consideration. For example, cost may be considered along with implementability factors to determine whether treatment of the principal threats posed by a large municipal landfill would be cost-effective and practicable, relative to other remedial options.

When utilized, the screening step provides another opportunity to tailor the remaining analysis to the identified site problems, ensuring that the number and the types of alternatives carried forward matches the nature and complexity of the site problems.

The lead agency should coordinate with the support agency when developing and/or screening alternatives. The lead agency and support agency should begin to identify action-specific ARARs and TBCs for alternatives that remain for the detailed analysis.

iii. *Detailed analysis.* The purpose of the detailed analysis is to objectively assess the alternatives with respect to nine evaluation criteria that encompass statutory requirements and include other gauges of the overall feasibility and acceptability of remedial alternatives. This analysis is comprised of an individual assessment of the alternatives against each criterion and a comparative analysis designed to determine the relative performance of the alternatives and identify major trade-offs (i.e., relative advantages and disadvantages) between them. This analysis should focus on those subfactors under each criterion that are most pertinent to the circumstances of the site and the scope of the action. Information gathered during this analysis will be used by the decisionmaker to select a remedial action.

These nine criteria can be categorized into three groups, each with distinct functions in selecting the remedy. During the selection process, the decisionmaker will consider these criteria as follows. Overall protection of human health and the environment and compliance with applicable or relevant and appropriate requirements (or invoking a waiver) are threshold criteria that must be satisfied in order for an alternative to be eligible for selection. Long-term effectiveness and permanence, reduction of toxicity, mobility, or volume, short-term effectiveness, implementability, and cost are the primary balancing factors used to weigh major trade-offs between alternative hazardous waste management strategies. State and community acceptance are modifying considerations that are formally taken into account after public comment is received on the proposed plan and RI/FS report.

Threshold Criteria

(1) *Overall protection of human health and the environment.* Protectiveness is the primary requirement that CERCLA remedial actions must meet. A remedy is protective if it adequately eliminates, reduces, or controls all current and potential risks posed through each pathway by the site. A site where, after the remedy is implemented, hazardous substances remain without engineering or institutional controls, must allow for unrestricted use and unlimited exposure for human and environmental receptors. For those sites where hazardous substances remain such that unrestricted use and unlimited exposure is not allowable, engineering controls, institutional controls, or some combination of the two must be implemented to control exposure and thereby ensure reliable protection over time. In addition, implementation of a remedy cannot result in unacceptable short-term risks to, or cross-media impacts on, human health and the environment.

(2) *Compliance with applicable or relevant and appropriate requirements (ARARs).* Compliance with ARARs is one of the statutory requirements for remedy selection. Alternatives are developed and refined throughout the CERCLA process to ensure either that they will meet all of their respective ARARs or that there is good rationale for waiving an ARAR. During the detailed analysis, information on Federal and State action-specific ARARs will be assembled along with previously identified chemical-specific and location-specific ARARs. Alternatives will be refined to ensure compliance with these requirements, or to begin to identify waivers that might be invoked.

Primary Balancing Criteria

(3) *Long-term effectiveness and permanence.* This criterion reflects CERCLA's emphasis on implementing remedies that will ensure protection of human health and the environment into the future as well as in the near term. In evaluating alternatives for their long-term effectiveness and the degree of permanence they afford, the analysis should focus on the residual risks that will remain at the site after the completion of the remedial action. This analysis should include consideration of the following: the degree of threat posed by the hazardous substances remaining at the site; the adequacy of any controls (e.g., engineering and institutional controls) used to manage the hazardous substances remaining at the site; the reliability of those controls; and the potential impacts on human health and the environment, should the remedy fail based on assumptions included in the reasonable maximum exposure scenario. This evaluation criterion incorporates the statutory requirements to take into account the following: The uncertainties associated with land disposal; the goals, objectives, and requirements of RCRA; the persistence, toxicity, mobility, and propensity to bioaccumulate of the hazardous substances and their constituents; the long-term potential for adverse health effects from human exposure; the potential for future remedial action costs if the remedy were to fail; and the potential threat to human health and the environment associated with redisposal or containment of the hazardous substances.

(4) *Reduction of toxicity, mobility, or volume.* This criterion addresses the statutory preference for remedies that employ treatment as a principal element by ensuring that the relative performance of the different treatment alternatives in reducing toxicity, mobility, or volume will be assessed. Specifically, the analysis should examine the magnitude, significance, and irreversibility of reductions.

(5) *Short-term effectiveness.* This criterion includes the short-term impacts of the alternatives—i.e., impacts during implementation—on the neighboring community, the workers, or the surrounding environment, including the potential threats to human health and the environment associated with excavation, treatment, and transportation of hazardous substances. The potential cross media impacts of the remedy and the time to achieve protection of human health and the environment should also be analyzed.

(6) *Implementability.* Implementability considerations include the technical and administrative feasibility of the alternatives, and the availability of the goods and services (e.g., treatment, storage, or disposal capacity) on which the viability of the alternative depends. Implementability considerations often affect the timing of various remedial alternatives, e.g., limitations on the season in which the remedy can be implemented, the number and the complexity of materials-handling steps that must be followed. the need to obtain permits for off-site activities, and the need to secure

technical services such as well drilling and excavation.

(7) *Cost.* Cost encompasses all construction and operation and maintenance costs incurred over the life of the project. The focus during the detailed analysis is on the net present value of these costs. EPA intends to continue to rely on OMB Circular A–94 for determining the discount rate for Federal projects, while retaining the option provided in A–94 of using sensitivity analyses. EPA believes that the discount rate represents an important aspect of developing a realistic accounting of the future costs of remedial alternatives and an accurate comparison of the total costs, and the cost-effectiveness, of treatment and nontreatment remedies.

Modifying Criteria

(8) *State acceptance.* This criterion, which is an ongoing concern throughout the remedial process, reflects the statutory requirement to provide for substantial and meaningful State involvement. State comments may be addressed during the development of the FS, as appropriate, although formal State comments usually will not be received until after the State has reviewed the draft RI/FS and the draft proposed plan prior to the public comment period. The proposed plan that is issued for public comment along with the RI/FS report should indicate whether or not the State has commented on or concurred with EPA's preferred alternative or that State comments have not been received. The ROD should specifically address State concurrence or nonconcurrence with the response action that is selected, particularly noting State views on compliance or noncompliance with State ARARs.

(9) *Community acceptance.* This criterion refers to the community's comments, where community is broadly defined to include all interested parties, on the remedial alternatives under consideration. These comments are taken into account throughout the RI/FS process through the communications that occur as the community relations plan is implemented. Again, EPA can only preliminarily assess community acceptance during the development of the FS, since formal public comment will not be received until after the public comment period for the proposed plan and the RI/FS is held. The detailed analysis, however, may summarize preliminary comments on components of the alternatives received up to that point.

4. *Selecting remedial actions.* The selection of a CERCLA remedial action from among alternatives is a two-step process. First, the lead agency, in conjunction with the support agency, will review the results of the RI/FS to identify a preferred alternative, which will be presented to the public in a proposed plan along with the supporting information and analysis, for review and comment. Second, the lead agency, will review the public comments, consult with the support agency in order to evaluate whether the preferred alternative is still the most appropriate remedial action for the site or site problem, and make a decision.

While the decisionmaking steps, in general, are similar for all types of response actions, the information, analysis, and criteria upon which response action decisions are based will vary depending on the scope of the action and complexity of the decision.

The identification of the preferred alternative, and subsequently the remedy selection, is based on an evaluation of the major trade-offs among alternatives in terms of the evaluation criteria, focusing on specific factors most relevant to site circumstances, and the overall practicability of each alternative. The decisionmaker should first determine whether all alternatives meet the threshold criteria. Those alternatives that provide adequate protection of human health and the environment, and either comply with all of their ARARs, or provide grounds for invoking a waiver of an ARAR, satisfy the threshold criteria. Any alternative that does not satisfy both of these requirements is not eligible for selection.

The preferred alternative is then selected by determining which alternative appears to provide the best combination of attributes with respect to the five primary balancing criteria: Long-term effectiveness, short-term effectiveness, reduction in toxicity, mobility, or volume, implementability, and cost. Generally, at this point only informal and perhaps incomplete comments of the State and community are known. These two modifying criteria are typically considered after the public comment period on the proposed plan.

Total costs of each alternative should be compared to the overall effectiveness they afford and the relationship between costs and overall effectiveness across alternatives should be examined to determine which alternatives offer results proportional to their costs such that they represent a reasonable value for the money. The lead agency will choose the alternative that represents the best combination of those factors that are deemed most important to the site. In performing the balancing necessary to make that decision, the decisionmaker must weigh the preference for remedies involving treatment as a principal element.

The proposed plan will identify the alternative that appears to offer the best balance of trade-offs among alternatives in terms of the criteria, summarize the position of the State resulting from its formal comments on the RI/FS and the draft proposed plan, and state the lead agency's expectation that the preferred alternative will satisfy all statutory requirements. The proposed plan will be issued for public review and comment.

In making the final selection, the lead agency reassesses its initial determination that the preferred alternative provides the best balance of trade-offs, now factoring in any new information or points of view expressed by the State or community during the public comment period. The decisionmaker will consider State and community comments regarding EPA's evaluation of alternatives with respect to the other criteria (e.g., potential short-term impacts associated with implementation). These comments may help EPA determine whether to modify aspects of the preferred alternative, or whether another alternative provides a more appropriate balance. If the preferred alternative is determined to be the most appropriate remedy, in that it offers the best balance among the factors evaluated, the lead agency will select that alternative. If not, the lead agency, in conjunction with the support agency, will select another protective, cost-effective alternative that provides a better combination of long- and short-term effectiveness, reduction of toxicity, mobility, or volume, implementability, and cost. This may require a discussion of significant changes in the ROD or the development of a new proposed plan to be made available for additional public comment prior to selection of remedy. (See § 300.430 preamble section below, "H. Community Relations.")

For Fund-financed actions, EPA may consider the need to use Fund monies at other sites in selecting a less costly remedy over a more desirable but substantially more expensive alternative as the most practicable, cost-effective solution.

In selecting a remedy, the statutory requirements discussed below must be satisfied. These requirements will be addressed differently depending on the scope of the action being taken.

i. The selected remedy is protective of human health and the environment, by eliminating, reducing, or controlling risks posed through each pathway such that human and environmental receptors are no longer threatened. The protectiveness evaluation of an operable

unit may be limited to that unit itself; at a minimum, the protectiveness determination should show that conditions at a site are not exacerbated as a result of the action.

ii. The selected remedy at least attains all ARARs, unless use of a waiver or waivers is justified. For an operable unit, the ARAR determination will be limited to the wastes being actively managed. CERCLA section 121 allows EPA to waive ARARs for actions that are a portion of a more comprehensive remedy that will attain ARARs when completed. Only Federal and State requirements that are applicable or relevant and appropriate to the operable unit must be addressed. Justification must be provided if a waiver is being invoked.

iii. The selected remedy is cost-effective in that its overall effectiveness is proportionate to its total costs.

iv. The selected remedy utilizes permanent solutions, treatment technologies, or resource recovery technologies to the maximum extent practicable. In making this determination for an operable unit, the need or opportunity to take expeditious action at the site may be considered.

5. *Documenting decisions.* Remedies selected under Superfund are documented in a record of decision (ROD). The general process of documenting decisions is similar for both operable units and comprehensive remedial actions, however, the content and level of detail will vary depending on the scope of the action. A ROD serves several purposes. It summarizes the problems posed by a site, the technical analysis of alternative ways of addressing those problems, and the technical aspects of the selected remedy that are later refined into design specifications. A ROD is also a legal document that demonstrates that the lead and support agency decisionmaking has been carried out in accordance with statutory and regulatory requirements and that explains the rationale by which remedies were selected. EPA's decisions will be supported on the basis of the ROD and other materials in the administrative record in cases that challenge remedy selection decisions. Finally, RODs are important documents that summarize key facts discovered, analyses performed, and decisions reached by the lead and support agencies. A notice of availability of a signed ROD will be published in a major local newspaper of general circulation. In addition, the lead agency will make the ROD available for public inspection and copying at or near the site, before remedial action begins.

All RODs will have the following common features:

i. A brief summary of the problems posed by the site, the alternatives evaluated as potential remedies, the results of that analysis, the rationale for the remedial action being selected, and the technical aspects of the selected action.

ii. A demonstration that the decision was made in accordance with statutory and regulatory requirements. The ROD should discuss how the requirements of section 121 of CERCLA have been addressed, including whether or not the preference for treatment as a principal element is satisfied or an explanation in those cases in which the selected remedial action does not satisfy this preference.

iii. A description of the remediation level(s) and/or other performance levels that the remedial action is expected to achieve.

iv. A statement of whether or not hazardous substances, pollutants, or contaminants will remain at the site such that a five-year review of the response action will be required (see section 6. below).

v. A discussion of significant changes in the final selected remedy from the preferred alternative. A responsiveness summary that identifies and responds to significant comments should be available with the record of decision.

6. *Five-year review.* The CERCLA amendments require periodic reviews—at least every five years—at sites where the remedial action leaves hazardous substances, pollutants, or contaminants on-site. EPA interprets this requirement to mean that a review is required at those sites where such substances remain on-site above levels that allow for unrestricted use and unlimited exposure for human and environmental receptors. This means that whenever a remedy is selected that assumes limited uses of the land or relies on institutional controls to ensure attainment of protective exposure levels, a review will be conducted. In addition, a review will be conducted at sites where substances remain on-site if the standards initially used to define protective exposure levels are subsequently changed. If the periodic review shows that a remedy is no longer protective of human health and the environment, additional action will be evaluated and taken to mitigate the threat.

In addition to the statutorily required five-year reviews, EPA might specify in its record of decision more frequent reviews, or specific reviews of the remedy selected, such as assessments of remedial technologies that might not have been available at the time the decision was made.

C. Alternative Selection Of Remedy Approaches

1. *Variations on the site-specific approach.* EPA has considered two major variations on the site-specific balancing approach laid out in today's proposed rule, each of which establishes a somewhat different structure. EPA has considered the potential advantages and disadvantages associated with the kind of structure these variations would afford. After analysis of public comment, EPA may include in the final NCP rule any or a combination of the options discussed here.

i. *Variation Number 1: Site-specific balancing with a cost-effectiveness screen.* The first variation would follow the process as laid out in the proposed rule through the screening of alternatives. However, this approach would: (a) Retain the organization of evaluation criteria used during screening through the detailed analysis and selection; (b) not include State and community acceptance as evaluation criteria; (c) establish an explicit step by which cost-effectiveness would be determined that would screen alternatives before the final determination of the practicable extent to which permanent solutions and treatment technologies will be utilized.

The detailed analysis would focus on the three categories of criteria first examined in the screening step: effectiveness (long- and short-term), implementability, and cost. While individual protectiveness and ARARs factors would be examined in the detailed analysis of effectiveness and implementability, the protectiveness finding and final determination of ARAR compliance (or justification of a waiver) would not be addressed until the selection step. Reductions in toxicity, mobility, or volume would also be analyzed under effectiveness, rather than as a separate criterion. Under this approach, State acceptance also would not be an explicit evaluation criterion. This approach would not ask for an explicit characterization of State comments unless there were a disagreement between EPA and the State over the preferred alternative in the proposed plan or at the time of final remedy selection. In the case where the State is the lead agency, this approach would consider State acceptance to be built into the process. Where the State is serving as the support agency, this approach would rely on the support agency comment period on the completed RI/FS and proposed plan to

provide an adequate opportunity for formal comments. Similarly, community acceptance would not be an evaluation criterion but a consideration in the final selection phase as public comments received on the proposed plan and RI/FS are factored into the lead and support agencies' thinking. Thus, the detailed analysis would be limited to producing an organized presentation of the trade-offs among alternatives in terms of effectiveness (short- and long-term, including toxicity, mobility, or volume reduction), implementability and cost, highlighting those trade-offs of primary importance for this particular site.

The selection phase under this alternative approach would be conducted very similarly to the proposed rule with the exception that the determination of the cost-effectiveness of the alternatives would be made as an explicit screening step prior to selection of the alternative which represents the best balance of factors and utilizes permanent solutions and treatment technologies to the maximum extent practicable. Following a check that all alternatives afford adequate protection and attain their ARARs (or provide grounds for invoking a waiver), the cost-effectiveness of the alternatives would be determined by examining the long-term effectiveness achieved by each alternative in relation to its costs and comparing this long-term effectiveness/cost relationship among alternatives. Those alternatives which do not offer long-term effectiveness proportionate to their costs relative to the other alternatives would not be considered to be cost-effective and would be eliminated from further consideration. This step would function as a threshold screen to determine whether the alternatives are cost-effective, not which is "the only" or "the most" cost-effective option. Relative degrees of cost-effectiveness could be taken into account in the final balancing step by which the remedy is selected.

This approach retains a consistent organization of criteria throughout the screening, detailed analysis, and selection steps of the process. Limiting the balancing to three broader categories of criteria, as opposed to nine, may simplify and streamline the analysis and focus the rationales for remedy selection. This approach would not include State and community acceptance as formal criteria to be balanced along with effectiveness, implementability, or cost factors. This approach also establishes a step which more clearly separates the cost-effectiveness finding from the finding that permanent solutions and treatment technologies or resource recovery technologies have been used to the maximum extent practicable.

ii. *Variation Number 2: Sequential decisionmaking approach.* Another variation on a site-specific balancing approach involves breaking the final remedy selection into multiple, sequential decision steps. Again, the steps of the process through the screening of alternatives are the same as under the previously described approaches. The detailed analysis is conducted using the effectiveness, implementability, and cost categories of criteria proposed in Variation No. 1. Differences arise in the selection phase, which is conducted in five steps under this approach.

First, using the results of the detailed analysis, the alternatives are qualitatively ranked for overall effectiveness. The preference for treatment is addressed by favoring options that afford better long-term reliability and permanence, other factors being equal, and by giving this factor increased emphasis if factors are not equal. Other considerations are emphasized on a site-specific basis. Following (or concurrent with) this effectiveness ranking, the alternatives are qualitatively ranked for their overall implementability. Clearly unimplementable or impracticable alternatives would be eliminated from further consideration. Again, individual implementability factors would be emphasized on a site-specific basis. The effectiveness and implementability rankings would then be combined into a joint effectiveness/implementability ranking, also performed qualitatively. This step would require a balancing of all noncost factors, again giving long-term effectiveness and permanence extra emphasis.

After an overall noncost ranking is determined, the relative costs of the alternatives would then be considered. Unlike the previous approach, which determines the cost-effectiveness of alternatives by focusing on the relationship between their cost and their long-term effectiveness only, this approach would focus on the relationship between cost and all noncost factors. Specifically, this approach would isolate and compare the differences in cost and the differences in combined effectiveness and implementability across remedial alternatives. Alternatives whose incremental costs were out of proportion to incremental effectiveness/implementability would be deemed not cost-effective. All other alternatives would be deemed cost-effective and would therefore be eligible for final selection.

The final step involves selecting from the remaining (cost-effective) options the one that received the highest effectiveness/implementability ranking. The option that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable would be the alternative that offers the best balance of noncost factors (effectiveness and implementability) that is also cost-effective.

This approach adds more structure to the process by separating the final remedy selection into a series of steps, and by specifying the sequence in which those steps would take place. Each step would be presented in detail and justified in the record of decision. An advantage that may derive from this second variation is more consistent documentation of the rationale for remedy selection. Alternatively, the compartmentalization of decisionmaking steps may not allow sufficient flexibility for decisionmakers to synthesize all of the different kinds of information they must bring to bear on a remedy selection.

EPA solicits comments on these alternative site-specific balancing approaches, specifically on potential advantages or disadvantages related to the type of criteria considered in the detailed analysis, the steps by which the statutory findings are made, and the degree of structure they propose.

2. *Alternative strategies*—i. *Point of departure strategy.* A different type of strategy would adopt a point of departure analysis. This approach would differ from those previously described as early as the development of alternatives phase. Aggressive treatment options that could result in absolute destruction, detoxification, or immobilization of all waste above health- or risk-based levels would be identified. Initially, containment technologies or treatment/containment combinations might also be considered but would not pass the screening step if any viable alternatives involving full treatment existed. The detailed analysis would focus on identifying the most effective alternatives with effectiveness here defined primarily by technical feasibility and the long-term results each treatment process could achieve. Short-term impacts that might be caused by an alternative would be a secondary consideration.

Effective treatment options would then be put through an implementability

screen. The implementability screen would be used primarily to eliminate clearly unimplementable options, although alternatives that were significantly less implementable than other options and offered no gain in long-term effectiveness and permanence would also be screened out. The least costly of the most effective options, defined primarily in terms of toxicity, mobility, or volume reduction achieved, would be selected.

This approach places the greatest emphasis on treatment, virtually equating the degree of effectiveness, permanence, and/or protectiveness with the degree of toxicity, mobility, or volume reduction attained. This is a fundamentally different assumption than that which underlies the other three approaches previously discussed. It is a point of departure approach in that it presumes that the alternative employing the most aggressive form of treatment of all waste typically will be selected unless unimplementable. This approach gives much less weight to short-term impacts of the technologies, site-specific implementability considerations, and the relative cost-effectiveness of alternatives than any of the site-specific balancing approaches. This approach implicitly interprets the mandate to "utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable" as a mandate to use the maximum amount of treatment possible.

Variations of this point of departure approach could be fashioned that would retain the initial presumption that the analysis of alternatives should begin with those that achieve the greatest toxicity, mobility, or volume reduction through treatment, but would allow broader consideration of implementability factors and cost-effectiveness to permit consideration of other alternatives employing less treatment. Modifications could avoid the presumption that full treatment is the necessary means to achieving protection of human health and the environment.

One potential implication of this approach, particularly with respect to the way it defines cost-effectiveness and the mandate to utilize permanent solutions and alternative treatment or resource recovery technologies to the maximum extent practicable, is that it may jeopardize EPA's ability to ensure an efficient use of Trust Fund monies. Application of maximum treatment to each site as it is addressed in turn may prevent EPA from distributing resources across sites in a manner that ensures that treatment can be applied to the worst problems first. In addition, under this option, other mandates in CERCLA section 121, including protection of human health and the environment, compliance with ARARs, and cost-effectiveness, might not be accorded sufficient consideration during the selection of remedy process.

ii. *Site stabilization strategy.* Another wholly different strategy would assume the objective of maximizing the number of sites that could be addressed by the Superfund program. To stretch the resources of the trust fund, the vast majority of sites initially would be addressed in conjunction with the Superfund removal program with only interim remedial measures. Only those sites or portions of sites for which treatment was immediately necessary to protect human health and the environment might be addressed with treatment. This strategy would envision two phases of CERCLA implementation: the first, a series of interim remedies to stabilize sites and to prevent further degradation; the second, implementation of "permanent" remedies most often involving substantial treatment. This second and final phase of remediation would address the sites posing the worst risks first.

EPA seeks comments on the appropriateness and desirability of pursuing one of these alternative strategies.

3. *Analytical tools and techniques.* In addition to these overall approaches and strategies, there are a number of different analytical tools and methodologies that could be employed in the detailed analysis and/or selection phases in a variety of ways and combinations to come up with additional variations. These tools and techniques include screening against threshold criteria, pairwise comparison, and ranking of alternatives or criteria. These techniques are represented in some of the approaches previously described. Additional tools that could be employed include scoring, which would involve measuring alternatives against a consistent scale, weighting of alternatives or criteria in an explicit fashion, and the techniques of decision analysis which could be used to construct a multi-attribute model that incorporates the assumptions of exactly how different criteria should be considered in relation to one another in assessing the attributes of alternatives. This could be done on a programmatic or site-specific basis.

EPA solicits comments on the potential advantages and disadvantages associated with these techniques, the appropriateness of establishing them in regulations or guidance, and recommendations regarding alternative approaches that might be established using different combinations of these methods.

D. Special Notice and Moratoria

A fundamental goal of the CERCLA enforcement program is to facilitate settlements, i.e., agreements securing the voluntary performance or financing of response actions by PRPs. EPA believes that settlements are most likely to occur and will be most effective when EPA interacts frequently and early in the process with PRPs. The special notice procedures in CERCLA section 122(e) provide an important means of encouraging interaction and improving the prospects for settlement.

Section 122(e) provides EPA with the discretion to issue special notice letters when to do so would facilitate agreement and expedite remedial action. Issuance of a special notice triggers a moratorium during which EPA may not commence a response action under section 104(a) or an RI/FS under section 104(b), or initiate an enforcement action under section 106. This moratorium provides a "formal" period for EPA and PRPs to negotiate a settlement.

Initially, the length of the special notice moratorium is 60 days. If EPA receives a good faith offer during this 60 day period, the moratorium is extended an additional 30 days for RI/FS negotiations as well as 60 days for RD/RA negotiations, non-time-critical removal negotiations, and enforcement actions under section 106.

While "formal" negotiations pursuant to a special notice will play a central role in the settlement process, "formal" negotiations should not be viewed as the sole vehicle for reaching settlement. To assure that "formal" negotiations are productive, frequent interaction between EPA and PRPs, through exchange and "informal" discussions may be appropriate outside of the "formal" special notice moratorium. "Informal" discussions are communications that can occur between EPA and PRPs throughout the response process.

The "Interim Guidance on Notice Letters, Negotiations, and Information Exchange," dated October 19, 1987, includes guidance to the Regions on the use of the special notice procedures and on managing negotiation deadlines for removal and remedial actions. In addition, the "Interim Guidance: Streamlining the CERCLA Settlement Decision Process," dated February 12, 1987, includes guidance on managing negotiation deadlines for the RI/FS and RD/RA.

E. EPA's Approach for Ground-Water Remediation Under the Superfund Program

It has been the policy of EPA's Superfund program for several years to operate within the framework of EPA's Ground-Water Protection Strategy in determining the appropriate remediation for contaminated ground water at CERCLA sites. EPA's Ground-Water Protection Strategy establishes different degrees of protection for ground waters based on their vulnerability, use, and value. EPA's Superfund program has applied this concept in looking to characteristics of vulnerability, use, and value, among other factors, in formulating and evaluating remedial alternatives for contaminated ground water. This section summarizes the approach EPA has presented in the "Preliminary Review Draft Guidance on Remedial Actions for Contaminated Ground Water at Superfund Sites" (April, 1988).

The goal of EPA's Superfund approach is to return usable ground waters to their beneficial uses within a timeframe that is reasonable given the particular circumstances of the site. The Superfund remedial process assesses the characteristics of the affected ground water as the first step toward making three decisions: the level to which the ground water will be restored; the timeframe within which the restoration will occur; and the most appropriate technology or approach for attaining these goals. Using the "EPA Guidelines for Ground-Water Classification" (Draft, December 1986) as a guide, a determination is made as to whether the contaminated ground water falls within Class I, II, or III.

Class I ground waters are resources of unusually high value that are highly vulnerable to contamination because of the hydrological characteristics of the areas where they occur. They are characterized as follows:

1. The ground water is irreplaceable because no reasonable alternative source of drinking water is available to substantial populations; or

2. The ground water is ecologically vital, providing the base flow for a particularly sensitive ecological system that supports a unique habitat.

Class II ground waters are all non-Class I ground waters that are currently used or are potentially available for drinking water or other beneficial uses. Class II–A ground waters are currently used as a source of drinking water; Class II–B ground waters are potential drinking water sources.

Class III ground waters are not considered to be potential sources of drinking water and are of limited beneficial use. These are ground waters which are highly saline, or are otherwise contaminated beyond levels that allow restoration using methods reasonably employed in public water treatment systems. This condition must not be the result of a release that is attributable to a specific site. Class III is further distinguished by the degree of interconnection with adjacent water. Class III–A ground waters are highly to moderately interconnected; Class III–B ground waters have a low degree of interconnection and are typically at greater depths. CERCLA sites will rarely involve Class III–B ground waters.

The lead agency will use the EPA Guidelines for Ground-Water Classification to assist in classifying the ground water at a CERCLA site. Such classifications are site-specific and limited in scope to the Superfund remedial action that will be undertaken. Classifications performed by EPA's Superfund program do not apply to that geographical area in general, to any other actions that may be undertaken under any other State or Federal program, or to private actions. The classification scheme described above may be superseded by other classification schemes which may have been promulgated by a State and are applicable or relevant and appropriate to the CERCLA response. This approach may also be modified by State ARARs that derive from wellhead protection programs which may require protection of a municipal water source, or replacement if that source is contaminated.

The Superfund program's approach to ground-water remediation calls for development of a limited number of ground-water remediation alternatives expressed in terms of a remediation level (i.e., cleanup concentration in the ground water), a time period for restoration to the preliminary remediation goals for all locations in the area of attainment, and the technology or approach that will be used to achieve those goals.

Preliminary remediation goals are established based on the analysis of ARARs and other pertinent standards, criteria, and advisories identified by the lead and support agencies. For ground water that is or may be used for drinking water (Class I or II), the maximum contaminant levels (MCLs) set under the Safe Drinking Water Act or more stringent promulgated State standards are generally the applicable or relevant and appropriate standard. (For a fuller discussion regarding when MCLs are relevant and appropriate, see Subpart E, § 300.430 preamble section, F.13, CERCLA-specified relevant and appropriate requirements.) When MCLs or State standards do not exist for contaminants identified in the ground water at the site, the Superfund program looks to other ARARs, standards, criteria, or advisories including: proposed MCLs, health advisories, drinking water equivalent levels, reference doses, risk specific doses, water quality criteria, MCLGs, proposed MCLGs, or State health advisories. As noted in the earlier discussion of establishing protective remediation goals during the RI/FS, it may be necessary to make adjustments to these levels when ARARs and other standards, criteria, and advisories are outside the 10^{-4} to 10^{-7} risk range which EPA generally considers as protective at CERCLA sites.

It should be noted that although MCLs are generally the cleanup standards, as described above, the remedial action necessary to attain an MCL level for the most predominant chemical (or a protective level for a chemical without an MCL) usually results in other chemicals achieving levels that are more protective than their respective MCLs.

It should also be noted that the Superfund program achieves consistency with 40 CFR 264.94 of RCRA Subpart F which may be ARAR to CERCLA actions. These provisions offer the choice of establishing cleanup standards at background, MCLs, or alternate concentration limits (ACLs). In setting remediation levels, the Superfund program generally uses the MCL or other health-based standards, criteria, or advisories which are the equivalent of a health-based ACL under RCRA.

Restoration time periods refer to the period of time needed to achieve established remediation levels within the entire area of attainment, defined as the area from the edge of any waste that, as the final remedy, will be managed on-site to the limits of the contaminant plume. Restoration time periods may range from very rapid (one to five years) to relatively extended (perhaps several decades). EPA's preference is for rapid restoration of contaminated ground water that can be used for drinking water wherever practicable, particularly for Class I ground waters and ground waters associated with drinking water supplies described in CERCLA section 118 (i.e., where the release of hazardous substances, pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a principal drinking water supply). The most appropriate timeframe must,

however, be determined through an analysis of alternatives. The minimum restoration timeframe will be determined by hydrogeological conditions, specific contaminants at a site, and the size of the contaminant plume. Once a determination of the practical limits on the restoration timeframe has been made, the restoration timeframes for remedies can be evaluated relative to these limits based on the following factors:

i. Feasibility of providing an alternative water supply;

ii. Current use of ground water;

iii. Potential need for ground water;

iv. Effectiveness and reliability of institutional controls;

v. Ability to monitor and control the movement of contaminants in ground water;

vi. Cost; and

vii. Other environmental impacts.

If there are other readily available drinking water sources of sufficient quality and yield that may be used as an alternative water supply, the importance of rapid restoration of the contaminated ground water is reduced. Where a future demand for drinking water from ground water is likely and other potential sources are not sufficient, those remedies which achieve more rapid restoration should be favored.

The effectiveness and reliability of institutional controls to prevent the utilization of contaminated ground water for drinking water purposes during the restoration period should be evaluated. If these controls are not clearly effective, more rapid restoration may be necessary. The availability of good management and institutional controls may provide a basis to extend the period of response. Institutional controls will usually be used as supplementary protective measures during implementation of ground-water remedies as well.

The third variable in formulating and evaluating ground water alternatives is the technology or method that will be used to achieve the remediation level within the desired timeframe. EPA expects that most ground water remedies at CERCLA sites will involve at least some pumping and treating. Variation among alternatives often stems from the aggressiveness of the pumping scheme (e.g., number of wells, rate of extraction, whether or not reinjection is included), the type of treatment applied (e.g., air stripping), and what is done with the residuals from the treatment process. Typical options for the treated effluent include reinjection, discharge to surface water, or discharge to a publicly owned treatment works (POTW). Other more passive methods, such as gradient control and slurry walls may be appropriate to prevent the further spread of contamination. In limited cases, natural attenuation, which can involve either the dispersion or actual biodegradation of contaminants, may be the most appropriate solution for a site.

There are special situations where it may not be practicable to actively restore ground water including sites where there are: (a) Widespread plumes resulting from non-point sources (e.g., some mining, pesticide, or industrial areas); (b) Hydrogeological constraints (e.g., aquifers with very low transmissivity, or aquifers in fractured bedrock or Karst formations); (c) Containment constraints (e.g., the presence of dense, non-aqueous phase liquids which collect in "puddles" at the base of an aquifer); and (d) Physiochemical limitations (e.g., interactions between contaminants and the aquifer material which limit the rate at which they can be removed). In these cases, the lead agency may provide wellhead treatment and/or rely on natural attenuation with institutional controls as the final remedy.

The 1986 amendments to CERCLA state a preference for treatment that reduces the toxicity, mobility, or volume of hazardous substances as a principal element. This preference applies to ground water as well as source control actions. Wherever ground water poses one of the principal threats at a site, the Superfund program will seek to pump and treat if practicable. However, site characteristics, such as fractured bedrock or karst topography, may preclude or severely hinder aggressive pumping and treating options in certain cases and dictate other ground-water restoration methods. In other situations, natural attenuation may achieve site cleanup goals in a reasonable period of time.

For Class I and II ground waters, the Superfund program will consider several different alternative restoration time periods (including five years) and methodologies to achieve the preliminary remediation level and select the most appropriate option (including the final cleanup level) by balancing trade-offs of long-term effectiveness, short-term effectiveness, reductions of toxicity, mobility, or volume, implementability, and cost.

CERCLA section 121(d)(2)(B)(ii) allows the use of ACLs if specified conditions are met. EPA proposes to use ACLs for the Class I and II ground water when these conditions are met and cleanup to MCLs or other protective levels is determined not to be practicable. When the likely point of human exposure has been set beyond the facility boundary, this provision requires an analysis at the end of the remedial action to determine whether the ground water discharging into surface water will cause a statistical increase of contaminants in the surface water. Moreover, such a remedial action must include enforceable measures to prevent use of any contaminated ground water. In using this provision, the lead agency would also consider an alternative remedy that would partially restore ground water to levels that could reasonably be treated by public water treatment systems.

For Class III ground water (i.e., ground water that is unsuitable for human consumption due to high salinity or widespread contamination and does not have the potential to affect drinkable ground water), drinking water standards are neither applicable nor relevant and appropriate. Likewise, restoration timeframes and cleanup methods for these ground waters will not be formulated on the same basis as drinkable ground waters. Rather, alternatives should be developed based on the specific site conditions. First, a determination must be made as to whether the ground water has any beneficial use (e.g., agricultural or industrial). If so, a remediation level, restoration time period, and method can be tailored to returning the ground water to that designated use. More typically, concerns with Class III ground waters will center on potential discharge of the contaminated ground water to surface waters or "higher class" ground waters and Superfund will establish a level consistent with exposure-based ACLs under RCRA Subpart F. Environmental receptors and systems may well determine the necessity and extent of ground-water remediation. In general, alternatives for Class III ground waters will be relatively limited and the evaluation less extensive than for Class I or II ground waters and the focus will be on preventing adverse spread of the contamination.

Complex fate and transport mechanisms of contaminated ground waters often make it difficult to accurately predict the performance of the ground-water remedial action. Therefore, the remedial process must be flexible and allow for changes in the remedy based on the performance of several years of operation. If the chosen remedial action does not meet performance expectations after a period of operation, the decisionmaker should decide the extent to which further or different action is necessary and

appropriate to protect human health and the environment.

Widespread contamination due to multiple sources is handled in a special way by the Superfund program. At most NPL sites, program policy is to determine contributors to the aquifer contamination, and involve them in the overall response action. EPA will take the lead role in managing the overall response if the NPL site is the primary contributor to the multiple-source problem. To the extent it can be determined, Superfund participation in the overall ground-water remediation will be proportional to the contribution the NPL site(s) makes to the areawide problem. EPA may also take any action necessary to protect human health and the environment such as providing alternate water supplies or wellhead treatment if there is a reasonable belief that the NPL sources in and of themselves pose a threat to human health and the environment.

EPA solicits comment on this approach toward ground-water remediation at NPL sites.

F. Compliance with the Applicable or Relevant and Appropriate Requirements of Other Laws

CERCLA mandates that remedial actions be in compliance with other environmental and public health laws. Compliance with other laws is a key consideration throughout the remedial selection process. This section discusses achieving compliance with applicable or relevant and appropriate requirements (ARARs) under other laws in the following order:

1. The history of EPA's Compliance Policy.
2. Codification of the Compliance Policy in CERCLA reauthorization.
3. The definition of ARARs and Other Information To Be Considered (TBC).
4. The difference between applicable requirements and relevant and appropriate requirements.
5. Resolving ARAR disputes.
6. Types of ARARs.
7. State ARARs.
8. Methods for identifying ARARs.
9. Compliance with ARARs and the development and selection of remedies.
10. Circumstances in which ARARs may be waived.
11. When and where ARARs and TBCs associated with cleanup levels must or should be attained.
12. Addressing new ARARs or other information after the initiation of the remedial action.
13. CERCLA-specified relevant and appropriate requirements.
14. ARARs for investigation-derived waste.
15. Substantive versus administrative requirements.
16. Potential ARARs of the Resource Conservation and Recovery Act (RCRA).
17. Hypothetical examples of relevant and appropriate requirements.

(The relationship between ARARs and determining remediation levels is discussed in the § 300.430 preamble section above, B.3.)

1. *The history of EPA's Compliance Policy.* The November 20, 1985 revisions to the NCP stated that, as a general rule, EPA's policy is to attain or exceed applicable or relevant and appropriate requirements under Federal environmental and public health laws in CERCLA response actions. At that time EPA revised existing § 300.68(i) of the NCP to require that, for all remedial actions, the selected remedy must attain or exceed the Federal ARARs identified for that site. In the preamble to the 1985 revisions to the NCP, EPA stated that ARARs could only be determined on a site-by-site basis, gave examples of how this would work, and reprinted from EPA's October 2, 1985 Compliance Policy a list of Potentially Applicable or Relevant and Appropriate Requirements, as well as a list of Other Federal Criteria, Advisories, Guidance, and State Standards To Be Considered (TBC). TBCs are non-promulgated criteria, advisories, etc., that can be consulted along with or in addition to ARARs. From these lists, the lead agency could select ARARs or TBCs, based upon the circumstances at a particular site. Furthermore, EPA provided five limited circumstances in which remedies that did not attain all ARARs could be selected.

2. *Codification of the Compliance Policy in CERCLA Reauthorization.* On October 17, 1986, CERCLA was reauthorized with additional new requirements. Section 121 of CERCLA requires that remedial actions comply with Federal and more stringent State requirements that are legally applicable or relevant and appropriate under the circumstances of the release or threatened release with respect to any hazardous substance or pollutant or contaminant that will remain on-site. EPA's policy is to attain or exceed such ARARs during the implementation of the remedial action (where pertinent to the action itself) as well as at the completion of the action, unless a waiver is justified.

The term ARAR refers to an applicable or relevant and appropriate requirement; a single requirement cannot be both applicable and relevant and appropriate. However, when reference is made to compliance with ARARs, the term refers to such requirements collectively and means compliance with both applicable requirements and relevant and appropriate requirements.

Although section 121(d) basically codified EPA's 1985 policy regarding compliance with other laws, this section does add some requirements to the pool of potential ARARs. The 1986 CERCLA amendments provide that promulgated State standards that are more stringent than Federal standards are also potential ARARs for CERCLA remedial actions. Where no Federal ARAR exists for a chemical, location, or action, but a State ARAR does exist, or where a State ARAR is broader in scope than the Federal ARAR, the State ARAR is considered more stringent.

Furthermore, the CERCLA amendments provide that Federal water quality criteria established under the Clean Water Act (CWA), and maximum contaminant level goals (MCLGs) established under the Safe Drinking Water Act, must be attained when found to be relevant and appropriate under the circumstances of the release (see ARARs preamble section below, "13. CERCLA-specified relevant and appropriate requirements").

CERCLA retains the basic concept of compliance with ARARs for any remedy selected (unless a waiver is justified). ARARs will be determined by the lead agency based upon its analysis of which requirements are applicable or relevant and appropriate to the distinctive set of circumstances and actions contemplated at a specific site.

The requirements of CERCLA section 121 generally apply as a matter of law only to remedial activities occurring on-site. However, as a matter of policy, EPA will attain ARARs to the extent practicable considering the exigencies of the situation when carrying out removal actions (see § 300.415 preamble section, C.1.).

3. *The definition of ARARs and TBCs (§§ 300.5 and 300.400(g)).* EPA is proposing nonsubstantive clarifications to the definition of applicable requirements.

i. *Applicable requirements.* EPA proposes that applicable requirements are "those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under Federal or State law that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site." (See the discussion of definition revisions in today's Subpart A preamble section.)

Applicable requirements may be identified on a site-specific basis by determining whether the jurisdictional prerequisites of a requirement fully address the circumstances at the site or the proposed remedial activity. Some typical jurisdictional prerequisites follow:

a. Who, as specified by the statute or regulation, is subject to its authority;

b. The activities the statute or regulation requires, directs, or prohibits;

c. The substances or places within the authority of the requirement; and

d. The time period for which the statute or regulation is in effect.

Basically, in determining applicability, the question is whether a regulation would be legally enforceable at the site (or for the contaminant or action) if a private party were remediating the site apart from any CERCLA authority.

The word "substantive" in the proposed definitions of "applicable" and "relevant and appropriate" is not meant to imply a necessary level of "significance" or "weight" for a requirement to be an ARAR. Rather, "substantive" is used to distinguish the universe of ARARs from administrative requirements, which are not considered potential ARARs. (See ARARs preamble section below, "15. Substantive versus administrative requirements.")

ii. *Relevant and appropriate requirements.* If a requirement is not applicable, one must consider whether a requirement is both relevant and appropriate. EPA is also proposing nonsubstantive clarifications to the definition of relevant and appropriate requirements. EPA proposes that relevant and appropriate requirements are "those cleanup standards, standards of control, or other substantive environmental protection requirements, criteria, or limitations promulgated under Federal or State law that, while not 'applicable' to a hazardous substance, pollutant, or contaminant, remedial action, location, or other circumstance at a CERCLA site, address problems or situations sufficiently similar to those encountered at the CERCLA site that their use is well-suited to the particular site."

Relevant and appropriate requirements are also determined on a site-specific basis by determining their jurisdictional prerequisites and comparing them to the circumstances at a CERCLA site. Once the decisionmaker determines that a requirement is not applicable, the decisionmaker compares the circumstances at the site to the purpose and subject matter addressed by the requirement in question to determine if there is sufficient similarity to find that the requirement is both relevant and appropriate for the site.

Determining whether a requirement is both relevant and appropriate is essentially a two-step process. First, to determine relevance a comparison is made between the action, location, or chemicals covered by the requirement and related conditions of the site, release, or potential remedy; a requirement is relevant if the requirement generally pertains to these conditions. Second, to determine whether the requirement is appropriate, the comparison is further refined by focusing on the nature of the substances, the characteristics of the site, the circumstances of the release, and the proposed remedial action; the requirement is appropriate if, based on such comparison, its use is well-suited to the particular site. Only those requirements that are determined to be both relevant and appropriate must be complied with.

EPA proposes that the following criteria, where pertinent to the type of requirement in question, be used to determine whether there is sufficient similarity to find that a requirement is relevant and appropriate:

a. Whether the purpose for which the requirement was created is similar to the specific objectives of the CERCLA action;

b. Whether the media regulated or affected by the requirement are similar to the media contaminated or affected at the CERCLA site;

c. Whether the substances regulated by the requirement are similar to the substances found at the CERCLA site;

d. Whether the entities or interests affected or protected are similar to the entities or interests affected by the CERCLA site;

e. Whether the actions or activities regulated by the requirement are similar to the remedial action contemplated at the CERCLA site;

f. Whether any variances, waivers, or exemptions of the requirement are available for the circumstances of the CERCLA site or CERCLA action;

g. Whether the type of place regulated is similar to the type of place affected by the CERCLA site or CERCLA action;

h. Whether the type and size of structure or facility regulated is similar to the type and size of structure or facility affected by the release or contemplated by the CERCLA action; and

i. Whether any consideration of use or potential use of affected resources in the requirement is similar to the use or potential use of the affected resource.

In determining which requirements are relevant and appropriate, the pivotal criteria differ depending upon the type of requirement under consideration, namely chemical-specific, location-specific, or action-specific (see ARARs preamble section below, "6. Types of ARARs"). In general, for chemical-specific requirements the focal point for the relevant and appropriate determination is whether the requirement for the chemical at the CERCLA site sets a health- or environmental-based level based on an exposure scenario (including the medium) that is similar to the potential exposure at a CERCLA site. For location-specific requirements, generally the primary test for relevance and appropriateness is whether the location under consideration is sufficiently similar to the location upon which the requirement is based. For action-specific requirements, generally the test for relevance is whether the action contemplated at the CERCLA site is similar. In order to determine appropriateness, the decisionmaker may consider, among others, the following factors: whether the action contemplated at the site or the circumstances at the site which require an action, the substances involved, and the objectives of the action are sufficiently similar to the action-specific requirement itself.

iii. *Other information to be considered (TBC).* Other information that does not meet the definition of ARAR may be necessary to determine what is protective or may be useful in developing Superfund remedies. Criteria, advisories, or guidance developed by EPA, other Federal agencies, or States may assist in determining, for example, health-based levels for a particular contaminant for which there are no ARARs or the appropriate method for conducting an action. This other information to be considered (TBC) when developing CERCLA remedies generally falls within three categories:

a. Health effects information with a high degree of creditability, e.g., RfDs;

b. Technical information on how to perform or evaluate site investigations or response actions; and

c. Policy, e.g., EPA's ground-water policy.

4. *The difference between applicable requirements and relevant and appropriate requirements.* Applicable requirements and relevant and appropriate requirements differ in the amount of discretion allowed in identifying them. Applicable requirements are identified by a largely objective comparison to the circumstances at the site; if there is a

one-to-one correspondence between the requirement and the circumstances at the site, then the requirement is applicable. There is little discretion involved in this determination. If a requirement is not applicable, the decisionmaker uses best professional judgment to determine whether the requirement addresses problems or situations that are generally pertinent to the conditions at the site (i.e., the requirement is relevant) and whether the requirement is well-suited to the particular site (i.e., the requirement is appropriate). However, once a regulation (or portion thereof) is identified as relevant and appropriate, it is applied as strictly as is an applicable requirement.

Statutes and regulations are sometimes made up of discrete requirements, each requirement having its own set of jurisdictional prerequisites. EPA has found that within these authorities often only some requirements within a regulation are relevant and appropriate. In contrast with an applicable requirement, flexibility exists to identify discrete "appropriate" portions of a regulation which may be mixed with "appropriate" portions of other regulations in a manner that makes good environmental sense for the site. (See hybrid closure example described in ARARs preamble section below, "16.vi. Hypothetical examples of compliance with RCRA: closure requirements.")

The other requirements in that same regulation may be relevant (in that they address in a broad sense the same problem as is faced at the CERCLA site) but not appropriate because the requirement is not well-suited to the circumstances at the CERCLA site.

An example of a requirement that may be relevant but not appropriate in certain situations is the requirement to cap landfills upon closure. This requirement is designed to apply to specific types of discrete units. This requirement for closure of hazardous wastes deposited on land may be relevant because it addresses the same kinds of wastes and action proposed at a CERCLA site, but may be inappropriate because of the physical size and character of the contamination at the CERCLA site. Although capping may be appropriate for smaller areas, it may not be appropriate in some circumstances for large dispersed areas of low-level soil contamination, such as may be found at many large municipal landfill facilities. (Other examples are described in the ARARs preamble section below, "16. Potential ARARs of RCRA.")

5. *Resolving ARAR disputes.* Because judgment is involved in determining which requirements are relevant and appropriate, Federal, State, and potentially responsible parties may on occasion arrive at different conclusions. EPA, operating in its oversight role for CERCLA enforcement actions, will resolve ARAR disputes between the lead agency and the potentially responsible parties. An ARAR dispute between a State and EPA may be submitted to the dispute resolution process described in today's preamble discussion of Subpart F on State Involvement. If a State strongly desires attainment of a substantive requirement that has been determined by the dispute resolution process not to be an ARAR, such a requirement will be met if the State demonstrates an ability and willingness to pay for the additional increment of expense associated with attaining such a requirement. Moreover, as discussed in today's preamble Subpart F section, States may be required to take the lead in the remedial design and remedial action necessary to meet such additional requirements.

6. *Types of ARARs.* For ease of identification, EPA divides ARARs into three categories: chemical-specific, location-specific, and action-specific. Chemical-specific ARARs are usually health- or risk-based numerical values or methodologies which, when applied to site-specific conditions, result in the establishment of numerical values. These values establish the acceptable amount or concentration of a chemical that may remain in, or be discharged to, the ambient environment. For example, the Safe Drinking Water Act requires the establishment of maximum contaminant levels (MCLs), the maximum permissible level of a contaminant in water which is delivered to any user of a public water system. MCLs are generally relevant and appropriate as cleanup standards for contaminated ground water that is or may be used for drinking. (See ARARs preamble section below, "13. CERCLA-specified relevant and appropriate requirements.")

Location-specific ARARs generally are restrictions placed upon the concentration of hazardous substances or the conduct of activities solely because they are in special locations. Some examples of special locations include floodplains, wetlands, historic places, and sensitive ecosystems or habitats. Examples of location-specific ARARs are the substantive requirements of the Coastal Zone Management Act and the Wild and Scenic Rivers Act. Consideration must also be given to whether locational restrictions are prospective only (e.g., siting requirements) or whether they are intended for existing situations.

Action-specific ARARs are usually technology- or activity-based requirements or limitations on actions taken with respect to hazardous wastes, or requirements to conduct certain actions to address particular circumstances at a site. Remedial alternatives which involve, for example, closure or discharge of dredged or fill material may be subject to ARARs under RCRA and the Clean Water Act, respectively.

These categories were developed to assist in identifying ARARs and are not necessarily precise. Some ARARs may not fit into any one of these categories while other ARARs may fit into two or more of these categories. For example, RCRA land disposal regulations can be considered both chemical and action-specific. (See EPA's draft "CERCLA Compliance with Other Laws Manual," OSWER Directive No. 9234.1–01, which provides detailed guidance on identification of and compliance with ARARs. The manual includes matrices which group ARARs into the chemical-specific, location-specific, and action-specific categories.)

7. *State ARARs (§ 300.400(g)(4)).* Section 121(d)(2)(A) of the amended CERCLA states that remedies must comply with "any promulgated standard, requirement, criteria, or limitation under a State environmental or facility siting law that is more stringent than any Federal standard, requirement, or limitation" if applicable or relevant and appropriate to the hazardous substance or release in question.

In § 300.400(g)(4), EPA proposes to define promulgated State requirements as those laws or regulations that are of general applicability and are legally enforceable. State advisories, guidance, or other non-binding guidelines as well as standards that are not of general applicability will not be considered potential ARARs.

EPA's treatment of State ARARs is fully consistent with the way EPA has treated Federal requirements under the current NCP, in which Federal advisories and nonpromulgated guidelines are put in a separate category ("other information to be considered") from potential ARARs. Like their Federal counterparts, State advisories and other nonpromulgated guidelines may still be considered in determining an appropriate, protective remedy; but neither Federal nor State advisories should be treated as potential ARARs.

Further, unless limitations found in site-specific State permits are based on promulgated ARARs, such limitations will not be considered potential ARARs, however widely they may be used in the State. However, frequently used permit limitations may be considered in fashioning a protective remedy for a site.

The phrase "legally enforceable" refers to State regulations or statutes which contain specific enforcement provisions or are otherwise enforceable under State law. EPA expects that State laws or standards which are considered potential ARARs have been issued in accordance with State procedural requirements. The phrase "of general applicability" is meant to preclude consideration of State requirements promulgated specifically for one or more CERCLA sites as potential ARARs. EPA believes that Congress did not intend CERCLA actions to comply with requirements that would not also apply to other similar situations in that State. This interpretation is consistent with the statutory qualification on State siting requirements banning land disposal in CERCLA section 121(d)(2)(C)(iii)(I) and the waiver for inconsistently applied State standards in CERCLA section 121(d)(4)(E). For a State requirement to be a potential ARAR it must be applicable to all remedial situations described in the requirement, not just CERCLA sites.

General State goals that are contained in a promulgated statute and implemented via specific requirements found in the statute or in other promulgated regulations are potential ARARs. For example, a State antidegradation statute which prohibits degradation of surface waters below specific levels of quality or in ways that preclude certain uses of that water would be a potential ARAR. Where such promulgated goals are general in scope, e.g., a general prohibition against discharges to surface waters of "toxic materials in toxic amounts," compliance must be interpreted within the context of implementing regulations, the specific circumstances at the site, and the remedial alternatives being considered.

8. *Methods for identifying ARARs.* The preamble sections above regarding RI/FS and selection of remedy generally describe when ARARs and TBCs are identified and analyzed (e.g., during "project scoping," "remedial investigation," etc.). This section explains how ARARs can be identified during those stages.

The identification of ARARs necessarily begins with a review of the universe of Federal and State requirements to determine the potential ARARs that may be applied at a site (see Subpart F preamble regarding identification of State ARARs). Examples of potential Federal and State ARARs and TBCs are included in the next Subpart E, § 300.430 preamble section, "G." As more is learned about the site and as remedial alternatives are considered, Federal and State requirements can be narrowed to those which are potential ARARs for each alternative.

ARARs are identified with increasing certainty as the RI/FS process proceeds. For example, the purpose of site characterization during the remedial investigation phase is to provide data regarding contaminants or chemicals present in the release, the extent of contamination, and the specific location and characteristics of the site. These data assist in identifying more specifically the potential chemical- and location-specific ARARs. Likewise, as more details regarding remedial alternatives are developed, potential action-specific ARARs can be identified. During the detailed analysis and selection of remedy phases, the decisionmaker must compare the potential ARARs to the known information regarding conditions at the site and the remedial alternatives to determine if the potential ARARs are, in fact, actually applicable or relevant and appropriate to the response action. More ARARs may need to be identified during remedial design as the specific details of the remedial action are developed. (See also ARARs preamble section below, "12. Addressing new ARARs or other information after the initiation of the remedial action.")

9. *Compliance with ARARs and the development and selection of remedies.* In the 1985 revisions to the NCP, EPA required the development of five remedial alternatives, primarily based upon their relative attainment of ARARs. As discussed in today's preamble section regarding RI/FS and selection of remedy, remedies would no longer be developed along this scale although all remedies, except those invoking a waiver, must attain ARARs.

EPA proposes, however, to continue to rely on ARARs to guide the lead agency in formulating appropriate hazardous waste response alternatives. For example, an ARAR may indicate an acceptable concentration of a contaminant in soil. An alternative that includes excavation of contaminated media at a site would use that ARAR to determine the extent of excavation. Additionally, ARARs may indicate the amounts of hazardous substances that can be emitted or discharged during or after treatment. EPA recognizes, however, that there may be situations in which ARARs will not exist or will not be sufficient to protect human health and the environment.

Nonetheless, a proposed remedial alternative's attainment of ARARs does not determine whether that alternative should be chosen over another alternative that attains a different set of ARARs (or qualifies for waivers from ARARs). The decision on which alternative to select is made at the end of the process and is based on the balancing of the selection of remedy criteria. ARARs will differ depending upon the specific actions and objectives of each alternative being considered, e.g., an alternative that would remove and treat all contaminants from the site would invoke clean closure and treatment ARARs whereas an alternative that leaves waste in place would invoke only landfill closure ARARs (see ARARs preamble section below, "16.vi. Hypothetical examples of compliance with RCRA: closure requirements").

10. *Circumstances in which ARARs may be waived § 300.430(f)(3)).* CERCLA reauthorization modified somewhat the current NCP's five limited circumstances in which all ARARs need not be attained. CERCLA eliminated the "enforcement exception," basically codified the remaining four waivers, and added two new waivers—one for circumstances in which a State standard has been inconsistently applied in other remedial actions within a particular State, and another for circumstances in which the same level of protectiveness offered by an ARAR may be achieved by using a different method or technology with an equivalent standard of performance. These waivers apply only to meeting ARARs with respect to remedial activities occurring on-site. A waiver must be invoked for each ARAR that will not be attained or exceeded. Other statutory requirements, such as that remedies are to be protective of human health and the environment, and that remedies must be cost-effective, cannot be waived. The waivers provided by CERCLA section 121(d)(4), some circumstances under which each waiver might be invoked, and criteria for invoking the waivers are discussed below.

i. *Interim Measures.*

> [T]he remedial action selected is only part of a total remedial action that will attain such level or standard of control when completed. CERCLA section 121(d)(4)(A).

This waiver will generally be applicable to interim measures that are expected to be followed within a

reasonable time by complete measures that will attain ARARs. The interim measures waiver may apply to sites at which a total site remedy is divided into several smaller actions.

For example, the selected remedy at a site may include excavation and treatment of the source. However, the treatment method may require treatability testing or time for set-up or construction. During this time, an interim measure involving stabilization of the source, such as by use of a cap, may be appropriate. In such a circumstance, the interim measure waiver would allow the temporary stabilization actions at the site to constitute the initial components of a phased remedial response; these actions would not be required to attain landfill closure ARARs because the response would not be complete.

Factors that are appropriate for invoking this waiver include:

a. *Potential for exacerbation of site problems.* The interim measure should not directly cause additional migration of contaminants, complicate the site response, or present an immediate threat to human health or the environment; and

b. *Noninterference with final remedy.* The interim measure selected must not interfere with, preclude, or delay the final remedy, consistent with EPA's priorities for taking further action.

EPA invites comment on its interpretation of this waiver and on these factors.

ii. *Greater Risk to Health and the Environment.*

[C]ompliance with such requirement at the facility will result in greater risk to human health and the environment than alternative options. CERCLA section 121(d)(4)(B).

EPA suggests that this waiver be invoked when compliance with an ARAR poses greater risks than noncompliance with that ARAR. This waiver could be used for a remedial alternative that would otherwise cause greater environmental damage or health risks solely because a particular ARAR had to be attained. For example, an alternative may include cleanup of PCBs at a site. However, attaining the ambient concentration level for PCBs spread throughout river sediment might require widespread dredging of the sediments, causing an unacceptable release of the pollutant to the water body and damaging or disrupting the ecosystem. Waiving the ARAR for ambient PCB concentrations in the river sediment would eliminate the need to conduct such harmful dredging.

Meeting an ARAR could also pose greater risks to workers or residents. For example, excavation of a particularly toxic, volatile, or explosive waste to meet an ARAR could pose high, short-term risks. If protective measures were not practicable for such excavation, use of this waiver might be appropriate.

Specific factors that may be considered in invoking the waiver for preventing greater risks include:

a. *Magnitude of adverse impacts.* The risk posed or the likelihood of present or future risks posed by the remedy using the waiver should be significantly less than that posed by the totally compliant remedy posing the risk;

b. *Duration of adverse impacts.* The more long lasting the risks from the totally compliant remedy, the more this waiver becomes appropriate; and

c. *Reversibility of adverse impacts.* This waiver is especially appropriate if the risks posed by meeting the ARAR could cause irreparable damage.

Remedies protective of human health and the environment but not meeting all ARARs should be compared to the remedy meeting ARARs that causes the minimum adverse impacts. The additional public health and environmental benefits of not meeting all ARARs must be weighed against the adverse impacts caused by meeting all ARARs. Only the ARARs that cause the greater risk are eligible to be waived.

iii. *Technical Impracticability.*

[C]ompliance with such requirement is technically impracticable from an engineering perspective. CERCLA section 121(d)(4)(C).

The term "impracticable" implies an unfavorable balance of engineering feasibility and reliability. EPA believes that the term "engineering perspective" used in the statute implies that cost, although a factor, is not generally the major factor in the determination of technical impracticability. However, a remedial alternative that is feasible might be deemed technically impracticable if it could only be accomplished at an inordinate cost.

Furthermore, the use of the term "impracticable" implies that remedies that are not demonstrated but that are thought to be feasible cannot be eliminated because of this waiver. Thus, EPA suggests using this waiver for cases where: (a) neither existing nor innovative technologies can reliably attain the ARAR in question, or (b) attainment of the ARAR in question would be illogical or infeasible from an engineering perspective.

EPA suggests that the technical impracticability waiver should be invoked when either of the following specific criteria are met:

(1) *Engineering feasibility.* The current engineering methods necessary to construct and maintain an alternative that will meet the ARAR cannot reasonably be implemented.

(2) *Reliability.* The potential for the alternative to continue to be protective into the future is low, either because the continued reliability of technical and institutional controls is doubtful, or because of inordinate maintenance costs.

iv. *Equivalent Standard of Performance.*

[T]he remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, criteria, or limitation, through use of another method or approach. CERCLA section 121(d)(4)(D).

EPA proposes to use this waiver in situations where an ARAR stipulates use of a particular design or operating standard, but equivalent or better remedial results (e.g., contaminant levels or reliability) could be achieved using an alternative design or method of operation. For instance, an alternative may involve reduction of either the mobility or toxicity of a hazardous substance through a specified form of treatment. The waiver may be invoked where a substitute form of treatment from that specified by an ARAR (e.g., fixation instead of incineration) achieves comparable reductions in either mobility or toxicity.

The CERCLA Reauthorization Conference Committee's Statement of Managers makes the following point with regard to this waiver:

Subsection [121](d)(4)(D) allows the selection of a remedial action that does not comply with a particular Federal or State standard or requirement of environmental law, where an alternative provides the same level of control as that standard or requirement through an alternative means of control. This allows flexibility in the choice of technology but does not allow any lesser standard or any other basis (such as a risk-based calculation) for determining the required level of control. However, an alternative standard may be risk-based if the original standard was risk-based. H. Rep. 99-962, 99th Cong., 2d Sess. 249.

EPA invites comments on the following necessary conditions for invoking this waiver:

a. Degree of protection of health, welfare, and the environment (e.g., environmental concentration achieved) is equal to or greater than that under the original ARAR;

b. The level of performance achieved is equal to or better than that specified by the ARAR (e.g., concentration of residual);

c. The potential for the alternative ARAR to continue to be protective into

the future is equal to or greater than that afforded by the ARAR to be waived; and

d. The time required to achieve beneficial results using the alternative remedy is not significantly more than the original ARAR. An alternative that achieves similar results in significantly less time should be considered as advantageous.

v. *Inconsistent Application of State Requirements.*

[W]ith respect to a State standard, requirement, criteria, or limitation, the State has not consistently applied (or demonstrated the intention to consistently apply) the standard, requirement, criteria, or limitation in similar circumstances at other remedial actions. CERCLA section 121(d)(4)(E).

This waiver is intended to prevent unjustified or unreasonable restrictions from being imposed on remedial actions. The issues raised by this waiver are closely tied to those involved in the definition of "promulgated" (see ARARs preamble section above, "7. State ARARs").

EPA envisions using this waiver in two situations. First, State requirements may have been developed and promulgated but never applied because of a lack of applicability in past situations. EPA believes that such requirements should not be applied in CERCLA actions where there is evidence that the State does not intend to apply them elsewhere. Second, State standards that have been variably applied or inconsistently enforced may give reason to invoke the inconsistent application waiver. A standard is presumed to have been consistently applied unless there is evidence to the contrary.

Consistency of application may be determined by:

a. Similarity of sites or response circumstances (nature of contaminants or media affected, characteristics of waste and facility, degree of danger or risk, other hazardous waste management programs, etc.);

b. Proportion of noncompliance cases (including enforcement actions);

c. Reason for noncompliance;

d. Intention to consistently apply future requirements as demonstrated by policy statements, legislative history, site remedial planning documents, or State responses to Federal-lead sites; newly promulgated requirements shall be presumed to embody this intention unless there is contrary evidence.

vi. *Fund Balancing.*

[I]n the case of a remedial action to be undertaken solely under Section 104 using the Fund, selection of a remedial action that attains such level or standard of control will not provide a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threats. CERCLA section 121(d)(4)(F).

The Fund-balancing waiver may be invoked when meeting an ARAR would entail such cost in relation to the added degree of protection or reduction of risk afforded by that standard that remedial action at other sites would be jeopardized. (Even with this waiver, the remedy must still comply with the statutory requirement to be protective of human health and the environment.)

EPA suggests that the Fund-balancing waiver be used when attainment of the ARAR would significantly reduce the availability of Fund monies for other sites (considering the number of other sites and the expected cost of remediations). Projections should show that significant imminent threats from other sites may not be addressed under the current Fund if the ARAR were attained.

EPA intends to establish the use of a dollar threshold for routinely considering invoking the Fund-balancing waiver. The threshold would be based on an amount significantly higher than the average cost of remediating sites with problems similar to those at the site under consideration, e.g., large municipal landfills. Further, EPA intends to develop specific criteria for invoking the waiver. EPA solicits comment on the proposal to establish a dollar threshold and on what other specific criteria should be established for invoking the waiver.

11. *When and where ARARs and TBCs associated with cleanup levels must or should be attained.* This section discusses the place and the time EPA intends that ARARs or TBCs related to contaminant levels or performance or design standards be achieved, i.e., the point of compliance.

i. *When ARARs must and TBCs should be attained.* Although not compelled by statute, EPA is proposing that the applicable or relevant and appropriate requirements of other laws pertinent to a remedial action itself must be met during the conduct of the remedial action as well as at the completion of the remedial action unless a waiver is invoked (see § 300.435(b)[2]). Some examples of potential ARARs for the conduct of remedial activities include the RCRA treatment, storage, and disposal requirements, restrictions on emissions discharges based upon the Clean Air Act national ambient air quality standards, and CWA effluent discharge limitations.

ii. *Where ARARs must and TBCs should be attained.* Sometimes the ARAR itself will specify where the requirement should be attained. For example, the Clean Water Act requirement to apply best available technology controls to discharges of toxic pollutants to receiving waters is measured for compliance at the discharge point (i.e., the "end-of-the-pipe").

However, at sites where an ARAR does not specify where it is to be attained or where a TBC value is used to set an acceptable level of exposure, the lead agency has the discretion to determine where the level shall be attained to ensure protectiveness.

Generally, EPA's policy is to attain ARARs and TBCs pertaining either to contaminant levels or to performance or design standards so as to ensure protection at all points of potential exposure. This means that any waste left in place should either be brought to levels that allow for unrestricted use and unlimited exposure or managed according to performance or design specifications; if active measures are not practicable and cost-effective, exposure to the waste must be controlled through legally enforceable institutional means. (See Subpart E, § 300.430 RI/FS and selection of remedy preamble introductory section for discussion regarding institutional controls.) Depending on the site circumstances, exposure pathways may include ingestion of ground or surface water, contact with or ingestion of soil, and inhalation. At each potential point of exposure, EPA assumes a maximum reasonable exposure scenario and sets the goals that will ensure protectiveness for each response. For instance, if any hazardous substances remain at a site, exposure by direct contact should be considered in fashioning a protective remedy. Hazardous substances that present a direct contact threat should be treated or covered to the appropriate degree. If a waste management area is left at a site, ground water should attain the appropriate cleanup levels at the edge of the area.

12. *Addressing new ARARs or other information after the initiation of the remedial action.* EPA recognizes that subsequent to the initiation of the remedial action new standards based on new scientific information or awareness may be developed and that these standards may differ from the cleanup standards on which the remedy was based.

EPA believes that such new ARARs or other information should be considered as part of the review conducted at least every five years under CERCLA section 121(c) for sites where hazardous substances remain on-site. The review requires EPA to assure that human health and the environment are being protected by the remedial action. Hence, the remedy should be examined in light of any new standards that would be applicable or relevant and appropriate to the circumstances at the site and in light of any other pertinent new information in order to ensure that the remedy is still protective. In certain situations, new standards or the information on which they are based may indicate that the site presents a significant threat to health or environment. If such information comes to light at times other than at the five-year reviews, EPA will consider the necessity of acting to modify the remedy at such times.

13. *CERCLA-specified relevant and appropriate requirements*—i. *Safe Drinking Water Act standards.* CERCLA section 121(d)(2)(A) states that a remedial action will attain a level or standard of control established under the Safe Drinking Water Act (SDWA), among other statutes, where such level or control is applicable or relevant and appropriate to any hazardous substance, pollutant, or contaminant that will remain on-site. The enforceable standards under the SDWA are maximum contaminant levels (MCLs), which represent the maximum permissible level of a contaminant in water which is delivered to any user of a public water system. Section 121(d)(2)(A) also states that such remedial action shall require a level or standard of control which at least attains Maximum Contaminant Level Goals (MCLG) established under the SDWA where relevant and appropriate under the circumstances of the release or threatened release. The following discussion addresses how to choose between these two standards.

Under the SDWA, MCLGs are health-based goals set at levels at which no adverse health effects may arise, with a margin of safety. An MCL is required to be set as close as feasible to the respective MCLG, taking into consideration the best technology, treatment techniques, and other factors (including cost). As the enforceable standard for public water supplies, MCLs are fully protective of human health and, for carcinogens, fall within an acceptable individual lifetime risk range of 10^{-4} to 10^{-7}. For noncarcinogens, which are the majority of chemicals to be controlled, MCLs will nearly always be set at MCLGs. Therefore, in many cases, the MCL will be equivalent to the MCLG.

In a guidance document published last year in the **Federal Register**, "Superfund Program: Interim Guidance on Compliance with Applicable or Relevant and Appropriate Requirements," 52 FR 32496 (August 27, 1987), EPA stated its policy that for surface or ground water that is or may be used for drinking, MCLs are generally relevant and appropriate as cleanup standards. The basis for this policy was that MCLs are protective of human health and represent the level of water quality that EPA believes is acceptable for over 200 million Americans to consume every day from public drinking water supplies.

EPA recognizes that there may be special circumstances where protection of human health requires more stringent standards than MCLs, as with multiple contaminants or pathways of exposure. In such cases, EPA will make a site-specific determination whether risk posed by such multiple contaminants or pathways is in excess of 10^{-4} and, therefore, of the need for more stringent standards, considering MCLGs, EPA's policy on use of appropriate risk ranges for carcinogens, levels of quantification, and other pertinent guidelines.

Many commenters agreed with EPA because MCLs are fully protective of human health. Comments in support of the guidance noted that the range of risk for MCLs is within EPA's acceptable risk range and that MCLGs are often not achievable given current technology because many MCLGs are set at the zero risk level. Further, requiring MCLGs at CERCLA sites would impose a more restrictive requirement than exists for the drinking water consumed by most households in the country. Also noted was that MCLs are legally applicable at the point of use, generally the tap or at a well used for supplying drinking water. Application of MCLs to cleanup of ground water at a CERCLA site that is or may be used for drinking, therefore, imposes a more stringent standard than exists under the SDWA.

Other commenters on the interim ARARs guidance disagreed with EPA's proposal and asserted that section 121 required that MCLGs generally be the cleanup standards for ground water at CERCLA sites. Some opponents argued that section 121 specifically prohibited consideration of cost-effectiveness in choosing a relevant and appropriate cleanup standard until after a standard that protects human health and the environment is selected. Therefore, they argued, application of MCLs as the relevant and appropriate standard is inconsistent with the statute because cost and available technology factors are considered in the development of MCLs.

In summary, the commenters presented divergent opinions on this specific issue. After review of comments, EPA believes that the interpretation articulated in the interim ARARs guidance is correct and that section 121 permits the use of MCLs as generally relevant and appropriate cleanup standards for the following reasons. Under section 121, it is EPA's responsibility to determine what standards are applicable or relevant and appropriate at a site, a determination made on a case-by-case basis within general EPA program guidelines. Although section 121(d)(2)(A) does not specifically refer to cleanup of contaminated ground water to its beneficial uses, CERCLA actions will generally use SDWA standards for ground water that is or could be used for drinking. EPA believes that MCLs, the enforceable standards under the SDWA, are the appropriate standard because they represent the level of quality for the nation's drinking water supplies. (The application of SDWA standards to the cleanup of ground water is also discussed in the § 300.430 preamble section above, "E. EPA's Approach for Ground-Water Remediation under the Superfund Program.")

Using MCLs as relevant and appropriate standards is consistent with EPA's use of a risk range to determine acceptable levels of residuals of carcinogens. CERCLA does not require that EPA eliminate all risk. Therefore, EPA believes that generally a risk range of 10^{-4} to 10^{-7} incremental individual lifetime cancer risk for carcinogens fulfills its statutory mandate to protect human health and the environment. MCLs for carcinogens are set within this risk range. For noncarcinogens, MCLs will nearly always be set at MCLGs, thus assuring that even sensitive populations will experience no adverse health effects. Since the majority of chemicals encountered at sites are noncarcinogens, there will be no difference in the protectiveness of MCLGs and MCLs for most contaminants.

Furthermore, even though cost and available technology may be considered when setting an MCL, an MCL is protective and therefore achieving an MCL complies with CERCLA's mandate to protect human health and the environment.

(See also EPA's interpretation of CERCLA section 121(d)(2)(B)(ii)

regarding the use of alternate concentration limits (ACLs) as cleanup standards for ground water that is or may be used for drinking in the § 300.430 preamble section above, "E. EPA's Approach for Ground-Water Remediation under the Superfund Program.")

ii. *Federal Water Quality Criteria.* EPA develops two kinds of Federal Water Quality Criteria (FWQC), one for protection of human health and another for protection of aquatic life. FWQC are non-enforceable guidelines used by the States to set Water Quality Standards (WQS) for surface water. FWQC, which identify threshold level concentrations for noncarcinogens and concentrations equating to various risk levels for carcinogens, guide States in assessing the toxicity of a contaminant. States designate the use of a given water body based on its current and potential use and apply the FWQC to set pollutant levels that are protective of that use. State WQS, which can be narrative or expressed as a numerical concentration limit, are subject to EPA approval.

If a State has promulgated a numerical WQS that applies to the contaminant and the designated use of the surface water at a site, the WQS will generally be applicable or relevant and appropriate for determining cleanup levels, rather than an FWQC. A WQS represents a determination by the State, based on the FWQC, of the level of contaminant which is protective in that surface water body, a determination subject to EPA approval.

CERCLA 121(d)(2) requires that, in determining whether an FWQC is relevant and appropriate, the latest information available be considered. Thus, an FWQC may be relevant but not appropriate if its scientific basis is not current. EPA's recommended RfDs and cancer potency factors, which are based on the EPA's evaluation of the latest information, should be used when an FWQC does not reflect current information.

CERCLA 121(d)(2) also requires that the designated or potential use of the surface or ground water and the purposes for which the criteria were developed be considered in determining whether a FWQC is relevant and appropriate.

The purpose of the FWQC for human health is to identify protective levels from two routes of exposure—exposure from drinking the water and from consuming aquatic organisms, primarily fish. There are levels provided for exposure from both routes, and from fish consumption alone. Whether a FWQC is relevant and appropriate, and which form of the criteria is appropriate, depends on whether exposure via either or both of these routes is likely to occur, and thus on the designated use of the water body.

As discussed in the section above, MCLs represent the level of quality EPA has determined to be safe for drinking and thus are generally relevant and appropriate for ground water that is or may be used for drinking and for surface water designated as a current or potential drinking water supply. Therefore, when a promulgated MCL exists, the FWQC for that constituent would not be relevant and appropriate. However, when MCLs are not available, a FWQC may be relevant and appropriate in water that is a potential drinking water source.

Since MCLs only reflect exposure from drinking the water, a FWQC for consumption of aquatic organisms may be appropriate in addition to the MCL, resulting in a more stringent cleanup level, when that route is also a concern at the site.

FWQC without modification are not relevant and appropriate in selecting cleanup levels in ground water, where consumption of contaminated fish is not a concern. However, a FWQC may be adjusted to reflect only exposure from drinking the water. Alternatively, the use of EPA-recommended RfDs and cancer potency factors, following a methodology similar to that used to develop the drinking water portion of the FWQC, could serve as a guideline for cleanup if the FWQC is not current.

A FWQC adjusted for drinking water could also be relevant and appropriate in surface water designated for drinking water purposes, since the FWQC is specifically designed to be protective of that use. Whether a FWQC that also includes fish consumption should be selected depends on the likelihood of exposure occurring from this route and on whether fishing is included in the State's designated use.

If the State has designated a water body for recreation, a FWQC reflecting fish consumption only, not drinking the water, may be relevant and appropriate if fishing is included in that designation.

Generally, FWQC are not relevant and appropriate for other uses, such as industrial or agricultural use, since exposures reflected in the FWQC are not likely to occur.

A FWQC for protection of aquatic life may be relevant and appropriate for a remedy involving surface waters (or ground-water discharges to surface water) when the designated use requires protection of aquatic life or when environmental concerns exist at the site. If protection of human health and aquatic life are both a concern, the more stringent standard or criteria should generally be applied.

A State numerical WQS is essentially a site-specific adaptation of a FWQC, subject to EPA approval, and, when available, is generally the appropriate standard for the specific water body, rather than a FWQC. If both an MCL and numerical State WQS exist for the same constituent where the water is designated for drinking, the State WQS should be used if it is more stringent, as required by CERCLA section 121(d)(2)(A)(ii).

In sum, a FWQC, or component of the FWQC, may be relevant and appropriate when the FWQC is intended to protect the uses designated for the water body at the site, or when the exposures for which the FWQC are protective are likely to occur. To be considered relevant and appropriate, FWQC must also reflect current scientific information. In addition, whether a FWQC is relevant and appropriate depends on the availability of standards, such as an MCL or WQS, specific for the constituent and use.

14. *ARARs for investigation-derived waste.* EPA believes that the CERCLA section 121 requirement that remedial activities comply with Federal and State ARARs applies not only to the implementation of the remedy selected for a site, but also to the handling, treatment, or disposal of investigation-derived wastes produced during remedial activities, such as the SI or RI/FS.

Specifically, there are several ways that investigation-derived wastes may result from such remedial activities. Examples include the following: (i) Ground water or surface water samples that must be disposed of after analysis; (ii) drill cuttings or core samples from soil boring or monitoring well installations; (iii) purge water removed from sampling wells before ground water samples are collected; (iv) water, solvents, or other fluids used to decontaminate field equipment such as backhoes, drilling rigs, and pipes; (v) condensate from pipes used for gas sampling in landfills; and (vi) waste produced by on-site pilot-scale facilities constructed to test technologies best suited for remediation of the site.

The handling, treatment, or disposal of any such investigation-derived wastes must satisfy Federal and State requirements that are applicable or relevant and appropriate to the site location and the amount and concentration of the hazardous substances, pollutants, or contaminants involved. EPA intends that field investigation teams use best

professional judgment in determining when investigation-derived wastes may contain hazardous substances and to handle such substances in accordance with all Federal and State ARARs. For example, if ground-water samples containing hazardous substances are to be disposed of by discharge into surface water, they may require treatment before disposal so that water quality standards are not violated. Also, if it is known or suspected that purge waters are drawn from an area with significant dioxin contamination, EPA expects that such investigation-derived wastes will be containerized, tested, and disposed of in accordance with all ARARs. (Consistent with established practice, investigation-derived materials may remain on-site until the remedial action commences.) In contrast, the routine containerization and testing of large volumes of drilling muds and purge waters which are not suspected to contain hazardous substances may be unnecessary because they result only in delays to the investigation with no attendant public health or environmental benefit.

15. *Substantive versus administrative requirements.* CERCLA section 121(d) requires that remedial actions shall require a level or standard of control for hazardous substances, pollutants, or contaminants which attains ARARs. Levels or standards of control are basic performance objectives for the remedial action (e.g., acceptable exposure levels after the remedial action is completed). These basic performance objectives are defined by substantive ARARs. Examples of substantive ARARs include acceptable concentrations for specific chemicals under the Safe Drinking Water Act which define cleanup levels for ground water that is or may be used for drinking water, technology-based requirements under RCRA for the management of hazardous wastes which define, for example, the physical characteristics of a new landfill if waste is to be closed in place, and restrictions on activities in certain locations which define, for example, the conduct of excavation in order to minimize potential harm to wetlands.

Requirements which do not in and of themselves define a level or standard of control are considered administrative. Administrative requirements include the approval of, or consultation with, administrative bodies, issuance of permits, documentation, and, generally, reporting and recordkeeping. The Superfund program imposes its own reporting and recordkeeping requirements to ensure that substantive levels or standards of control are being met. Compliance with similar requirements of other environmental statutes would be redundant and unduly burdensome.

This interpretation is consistent with CERCLA section 121(e) which exempts on-site activities from obtaining permits. The purpose of this exemption is to allow CERCLA response actions to proceed expeditiously without the delays that could result while waiting for other offices or agencies to issue a permit. The substantive requirements that would be imposed by a permit still must be stated in Superfund documents, but the redundancy of stating such standards in a permit issued by another office or agency is avoided.

In most cases, the classification of a particular requirement as substantive or administrative will be clear, but some requirements may fall into a gray area between the provisions related primarily to program administration and those concerned primarily with environmental and human health goals. Several factors may be considered when it is not readily apparent whether a requirement is substantive or administrative; for example, the basic purpose of the requirement, any adverse effect on the ability of the action to protect human health and the environment if the requirement were not met, the existence of other requirements (e.g., CERCLA procedures) at the site that would provide functionally equivalent compliance, and classification of similar or identical requirements as substantive or administrative in other situations. The determination of whether a requirement is substantive or administrative need not be documented.

16. *Potential ARARs of the Resource Conservation and Recovery Act (RCRA).* CERCLA compliance with the regulations promulgated pursuant to RCRA is a special concern within the broader context of CERCLA compliance with other environmental and public health laws. Because the RCRA Subtitle C regulations address the ongoing treatment, storage, and disposal of hazardous waste, and because CERCLA response actions often involve treatment, storage, and disposal of hazardous waste, many RCRA requirements will be applicable or relevant and appropriate to CERCLA response actions. The current RCRA Subtitle C regulations are codified at 40 CFR Subchapter I.

The purpose of this discussion is to provide a general overview of CERCLA compliance with the potential ARARs of RCRA, including the requirements of the Hazardous and Solid Waste Amendments of 1984 (HSWA). Although the determination of which requirements are applicable or relevant and appropriate is always made on a site-by-site basis, it is possible to make some general statements about compliance with RCRA.

i. *The potential ARARs of RCRA Subtitle C.* RCRA Subtitle C is the authority for regulations which establish standards for hazardous waste management. Pursuant to RCRA Subtitle C, EPA has promulgated requirements and standards for generators and transporters of hazardous waste and for owners and operators of hazardous waste treatment, storage, and disposal facilities. These regulations contain numerous potential ARARs for CERCLA remedial actions, each requirement having its own unique set of jurisdictional prerequisites.

In general, RCRA Subtitle C requirements for the treatment, storage, or disposal of hazardous waste will be applicable if a combination of the following conditions is met:

a. The waste is a listed or characteristic waste under RCRA; and

b. Either: (1) The waste was treated, stored, or disposed after the effective date of the RCRA requirements under consideration; or (2) The activity at the CERCLA site constitutes treatment, storage, or disposal as defined by RCRA.

Listed hazardous wastes under RCRA are found in 40 CFR Part 261, Subpart D. Some RCRA requirements apply to hazardous wastes as defined in RCRA section 1004(5). Characteristic hazardous wastes under RCRA are described in 40 CFR Part 261, Subpart C. Testing methods and protocols for characteristic determinations are contained in Test Methods for Evaluating Solid Waste, 3rd edition, Volume 1C, Laboratory Manual (SW-846).

There are two scenarios under which RCRA requirements may be applicable to CERCLA sites. First, if the lead agency determines that RCRA listed or characteristic hazardous waste is present and the waste was treated, stored, or disposed at the site after the effective date of the requirements under consideration, then the pertinent RCRA requirements will be applicable to the waste activity. Generally, traditional RCRA regulated facilities that have been listed on the NPL may fall into this category, even if the proposed CERCLA action would not involve treatment, storage, or disposal. For example, if a RCRA landfill or a hazardous waste incinerator operated at the site after the effective date of the RCRA closure requirements, then the lead agency

would need to comply with the applicable closure requirements for those units in completing the remedial action. Second, if the lead agency determines that RCRA listed or characteristic hazardous waste is present at the site (even if the waste was disposed before the effective date of the requirement) and the proposed CERCLA action involves treatment, storage, or disposal as defined under RCRA, then RCRA requirements related to those actions would be applicable.

These two scenarios are contingent upon determinations that RCRA Subtitle C hazardous waste is present and on the identification of the period of waste management. To determine whether a waste is a listed waste under RCRA, it is often necessary to know the source. However, at many CERCLA sites no information exists on the source of the wastes nor are references available citing the date of disposal. The lead agency should use available site information, manifests, storage records, and vouchers in an effort to ascertain the source of these contaminants. When this documentation is not available, the lead agency may assume that the wastes are not listed RCRA hazardous wastes, unless further analysis or information becomes available which allows the lead agency to determine that the wastes are listed RCRA hazardous wastes. If the lead agency assumes the wastes are not listed RCRA hazardous wastes and it is determined that the wastes are not characteristic wastes under RCRA (see discussion below, 17.i.) RCRA requirements would not be applicable to CERCLA actions, but may be relevant and appropriate if the CERCLA action involves treatment, storage or disposal and/or if the wastes are similar or identical to RCRA hazardous waste.

Under certain circumstances, although no historical information exists about the waste and when it was treated, stored, or disposed, it may be possible to identify the wastes as RCRA characteristic wastes. With respect to hazardous characteristics, (ignitability, corrosivity, reactivity, or EP toxicity), it is the responsibility of the generator (in this case, the lead agency or PRP conducting the action) to determine if the wastes exhibit any of these characteristics (defined in 40 CFR 261.21 through 24). The lead agency must use best professional judgment to determine, on a site-specific basis, if testing for hazardous characteristics is necessary. Testing is required unless it can be determined, by "applying knowledge of the hazard characteristic in light of the materials or process used," that the waste does not have hazardous characteristics (40 CFR 262.11(c)).

In determining whether to test for the toxicity characteristic using the Extraction Procedure (EP) Toxicity Test, it may be possible to assume that certain low concentrations of waste are not toxic. For example, if the total waste concentration is 20 times or less the EP Toxicity concentration, the waste cannot be characteristic hazardous waste. In such a case RCRA requirements would not be applicable and would not likely be relevant or appropriate unless the waste also contained other RCRA hazardous wastes and the CERCLA action involved treatment, storage, or disposal.

If the wastes exhibit hazardous characteristics, RCRA requirements are potentially applicable if the wastes also were either treated, stored, or disposed after the effective date of the applicable RCRA requirement or if the CERCLA actions will involve treatment, storage, or disposal.

ii. *Actions constituting treatment, storage, or disposal.* Many CERCLA actions occur in areas of contamination that contain waste treated, disposed of, or stored prior to November 19, 1980. If left untouched, wastes in such areas are not currently regulated under Subtitle C of RCRA. (Solid waste management units at RCRA facilities are regulated by the 3004(u) corrective action requirements.) However, certain physical movement, alteration, or disturbance of RCRA hazardous waste associated with a remedial action may meet the RCRA definition of treatment, storage, or disposal. For instance, treatment has occurred when the CERCLA remedial action uses "any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, dispose of; or amenable for recovery, amenable for storage, or reduced in volume." 40 CFR 260.10.

Similarly, storage occurs when a CERCLA remedial action involves the "holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere." 40 CFR 260.10.

Land disposal occurs when RCRA hazardous waste is placed into a land disposal unit, including a "landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave." RCRA section 3004(k).

Movement of hazardous waste entirely within a unit does not constitute "land disposal" under Subtitle C of RCRA. However, movement of hazardous waste into a unit (i.e., across the boundary of a unit) does constitute "land disposal."

In many cases CERCLA sites contain areas of contamination (with differing levels of concentration, including hot spots, of hazardous substances, pollutants, or contaminants) that may be characterized as a unit, usually a landfill, under RCRA. In such cases where RCRA hazardous waste is moved into the area of contamination, RCRA disposal requirements are applicable to the disturbed waste and certain land disposal requirements (such as for closure) may be applicable to the area where the waste is received.

Therefore, the following activities constitute land disposal under RCRA Subtitle C where the waste involved is RCRA hazardous waste:

a. Wastes from different units are consolidated into one unit;

b. Waste is removed and treated outside a unit and redeposited into the same or another unit; or

c. Waste is picked up from the unit and treated within the area of contamination in an incinerator, surface impoundment, or tank and then redeposited into the unit (does not include in-situ treatment).

In contrast, an example of an activity that does not constitute "land disposal" is the mere consolidation of RCRA hazardous wastes within a unit. Similarly, the covering and sealing off of hazardous waste, called "capping with waste in place," is also not considered "land disposal" and RCRA Subtitle C requirements would not be applicable. If some of the waste at a site is moved into another unit, but other waste is left behind in the original unit (the unit in which such waste was found), "land disposal" applies only with regard to the waste that is moved into another unit. Under these examples, however, certain RCRA land disposal requirements might nevertheless be relevant and appropriate to such waste. (See ARARs preamble sections below, 16.iii. and 17.)

iii. *Hypothetical examples of compliance with RCRA: land disposal restrictions.* Land disposal restrictions under RCRA sections 3004 (d) through (k) are triggered whenever there is placement of RCRA hazardous wastes subject to land disposal restrictions ("banned waste") into a land-based unit. Such land disposal does not occur when

hazardous waste is merely moved around within a unit.

Certain activities, e.g., placement, involving specific wastes may be subject to the special restrictions on land disposal of hazardous wastes. (Placement into a unit is defined identically to land disposal, see above.) The land disposal restrictions (LDR) regulations establish treatment standards to be achieved based on the best demonstrated available treatment technology (BDAT) before specific wastes may be land disposed. For example, land disposal restrictions require that a remedial action that involves the excavation and movement of banned waste into a unit (i.e., placement) must meet BDAT levels before the waste is placed into the unit. Similarly, the land disposal restrictions also apply where the remedial action involves excavation of banned waste from its original unit, treatment of that waste at another unit, and placement of that waste back into the original unit or another unit. However, land disposal restrictions are not applicable where banned waste is moved, graded, stabilized, or treated in-situ, entirely within the original unit, because placement has not occurred. Furthermore, the temporary staging of waste within the unit prior to further remedial action is not placement (however, storage restrictions may apply). Land disposal restrictions are not applicable but may be relevant and appropriate where the remedial action involves placement of CERCLA waste similar in composition to RCRA banned waste. (See ARARs preamble section below, "17. Hypothetical Examples of Relevant and Appropriate Requirements.")

iv. *Hypothetical examples of compliance with RCRA: design and operating requirements.* The RCRA 40 CFR Part 264 regulations require certain design and operating standards (minimum technology requirements) for the construction of new land disposal units, and for the construction of replacements for, expansions of, or lateral extensions to existing land disposal facilities. If, for instance, the remedial action involves the placement of RCRA hazardous waste into a newly built or expanded landfill, then the 40 CFR Part 264 design and operating standards for landfills will be applicable to the remedial action, unless an exemption is justified under the provisions of the design and operating standards. Double liners and leachate collection and return systems will thus be required as a part of construction and operation.

v. *Hypothetical examples of compliance with RCRA: corrective action requirements.* EPA's ground-water protection regulations, 40 CFR Part 264, Subpart F, include corrective action requirements. EPA is currently developing regulations for corrective action requirements imposed by RCRA sections 3004 (u) and (v) (added by HSWA).

The Subpart F corrective action provisions require cleanup of ground water for each hazardous constituent to either the background level, a SDWA maximum contaminant level (MCL), or an alternate concentration limit (ACL) set by the Regional Administrator. The RCRA ground water protection standards (40 CFR Part 264 Subpart F) do not contain all of the current SDWA MCLs. Where no MCL exists under RCRA, the ground-water protection standard will be set at background or at an ACL if the proper ACL demonstrations can be made to the satisfaction of the Regional Administrator.

The Subpart F corrective action standards for regulated units are applicable where the release being addressed is from certain specified land disposal units to the environment and the unit received RCRA hazardous waste after July 26, 1982 (the publication date of Subpart F).

The RCRA corrective action requirements added by HSWA regulate releases of RCRA hazardous constituents to the environment from solid waste management units at RCRA facilities, regardless of the date on which the hazardous or solid waste was received by the unit. EPA is currently developing more detailed regulations to implement these HSWA requirements that will establish procedures and standards for corrective action. EPA expects that the existing and new regulations, when promulgated, will generally be applicable to Superfund actions whenever a remedial action involves treatment, storage, or disposal of RCRA hazardous waste. These regulations will be particularly significant for CERCLA because they will reflect standards EPA has found specifically appropriate to remedial actions.

EPA anticipates that, for the most part, only the requirements in the corrective action regulation that establish standards for cleanup and hazardous waste management will be applicable to CERCLA actions.

Some of the remedy selection standards may be equivalent to or subsumed by the standards for remedies established in the NCP. For these standards, meeting the NCP standards would automatically ensure that the applicable RCRA requirements are met. A clear example of this is the protectiveness standard, since both RCRA corrective action rules and the NCP require that remedies must be protective of human health and the environment. Other standards may need to be addressed on a site-specific basis. A more specific determination of how the corrective actions standards must be addressed will be made when the RCRA regulations are promulgated.

The corrective action regulations are likely to establish a corrective action process. These parts of the rule will establish procedures, criteria, and definitions to implement corrective action. For example, the rule is likely to establish when investigations and detailed study of alternatives are required and how those assessments will be conducted. These requirements will not be applicable because they are the equivalent of administrative requirements in that they prescribe methods and procedures to implement the corrective action program.

EPA has, through the NCP, established procedures that it believes will achieve the same result as the RCRA corrective action process. For example, the use of action levels to trigger the full corrective action process parallels CERCLA's Hazard Ranking System, which brings sites under the remedial process. Another example is RCRA's definition of "facility," which differs from the statutory definition provided in CERCLA. Attempting to apply RCRA's distinct, but essentially equivalent, procedures and definitions would cause significant confusion and provide little environmental gain under the Superfund program.

vi. *Hypothetical examples of compliance with RCRA: closure requirements.* Although 40 CFR Part 264 includes potentially applicable or relevant and appropriate requirements addressing closure and post-closure care for the various types of units regulated in the several subparts of Part 264 (e.g., Subparts G, K, and N), these various subparts contain only two basic closure options that can be potentially applicable or relevant and appropriate to the completion of operable units during CERCLA response actions. The two closure options are best exemplified by the regulations for closure of surface impoundments. For instance, owners and operators desiring to decommission (i.e., close) an operating surface impoundment have two options. The first option, "closure by removal" (or "clean closure"), requires that all waste

residues and contaminated liners and subsoils be removed or decontaminated. A recent amendment to the interim status regulations for closure and post-closure care for hazardous waste surface impoundments, 52 FR 8704, March 19, 1987, further clarifies that this closure option involves the removal of enough contaminated soil such that contamination is reduced to concentration levels that attain promulgated standards and/or EPA's health-based advisory levels in the actual area of contamination (i.e., this does not allow for environmental fate and transport modeling to determine exposure levels outside the area of contamination). The level of cleanup required has been interpreted to be "drinkable leachate" and "edible soils." No post-closure requirements exist for an owner/operator who has chosen the closure option because EPA has adopted the strict clean standards. The strict standards ensure that the public and the environment will be safe from all exposure pathways (i.e., dermal, inhalation, and direct soil and water ingestion) after the owner/operator of a RCRA facility has left the RCRA regulatory system (the clean closure regulations allow an owner/operator to leave the RCRA regulatory system after verification of the attainment of clean closure levels for 180 days).

The second option, "closure with waste in place" or "landfill closure," where contaminated materials remain after closure, requires final cover over the unit and post-closure care, such as maintenance of the final cover, ground-water monitoring, and corrective action if the ground-water protection standards are violated. Thus, a significant difference between clean closure and landfill closure is that after landfill closure the unit must be maintained and monitored, corrective action taken if needed, a notice provided in the deed and plat that the site was used for hazardous waste, and permission must be obtained to build over the site. Clean closure does not include such additional requirements because hazardous constituents have been removed to sufficiently low levels that no further action is necessary to be protective.

Thus, the determination of whether clean closure or landfill closure requirements are potential ARARs depends upon the contemplated remedial activities, i.e., whether the activity is treatment, storage, or disposal of hazardous waste and whether all contamination will be removed from that unit or whether hazardous wastes will remain at the closed unit. (See also ARARs preamble section below, "17. Hypothetical examples of relevant and appropriate requirements.")

Even where not applicable, portions of the closure requirements may be relevant and appropriate depending upon the site. If portions of the closure requirements are found relevant and appropriate, the lead agency may combine relevant and appropriate requirements from clean and landfill closure options that are suitable for a particular site. Rather than having only two options for addressing contaminated soil at a site (i.e., either excavate basically all of the waste and contaminated soil to clean closure levels, or cap), the lead agency may combine relevant and appropriate requirements to form a hybrid closure option. (EPA is considering a hybrid closure regulation for the RCRA program; however, the discussion below refers to the use of hybrid closure in the Superfund program.)

The Superfund program has been using several different types of hybrid closure (where RCRA closure is not applicable) that give the decisionmaker additional choices for the long-term management of hazardous substances as well as treated residuals. Alternate clean closure and alternate land disposal closure are the two hybrid closures most frequently used. The alternate clean closure approach is similar to clean closure in that engineering controls are not required. However, limited fate and transport modeling and site information may be used to establish cleanup levels for contaminated soils and waste materials remaining at the site. For example, the ground-water route of exposure would be protected by determining a level in the soils that would be consistent with the levels established for ground water. Typically, monitoring will be necessary after the completion of the remedial measure to verify that the levels established at the site are protective of ground water and other routes of exposure. After the verification period, no monitoring at the site would be required. A deed notice may be desirable in some cases.

The alternate land disposal closure is the second type of hybrid closure that is used by the Superfund program. This type of closure is identical to RCRA landfill disposal closure except that the cover requirements are relaxed because the wastes being contained do not pose a threat to ground water. Direct contact and surface water threats, as well as other threats, can be adequately addressed with a soil cover. This type of closure is usually appropriate for wastes at low concentrations but still above "walk-away" levels. EPA has found this type of closure to be useful in addressing wide areas of contaminated soils in a relatively inexpensive but very reliable manner.

If clean closure or landfill closure requirements are applicable, alternate closure may be implemented only if an ARAR waiver can be invoked.

17. *Hypothetical examples of relevant and appropriate requirements.* The criteria to be used in determining whether a requirement is relevant and appropriate to a CERCLA remedial action are listed in § 300.400(g)(2). The discussion below illustrates the use of the criteria by providing hypothetical, but typical, situations where requirements from RCRA and other laws may be both relevant and appropriate, i.e., the circumstances addressed in the requirement are pertinent to those of the CERCLA action or release and the requirement is well-suited to the circumstances at the site.

i. *CERCLA waste similar to RCRA hazardous waste.* The source or prior use of many wastes at CERCLA sites cannot be positively identified. Yet the CERCLA waste may be similar in composition to a listed RCRA waste derived from a known source or use. If such a CERCLA waste would not otherwise exhibit the characteristics that would make it a RCRA hazardous waste under 40 CFR Part 261 Subpart C, the RCRA regulations for hazardous waste would not be applicable to management of the CERCLA waste. However, certain RCRA regulations, such as the design and operating requirements, may be relevant and appropriate to management of such CERCLA waste when warranted by the circumstances of the release or other site-specific factors (see ARARs preamble section above, "16.i. The potential ARARs of RCRA Subtitle C").

If, for example, CERCLA waste were to be disposed in a new land disposal unit, the minimum technology requirements in the RCRA design and operating requirements for land disposal facilities (set forth at 40 CFR Part 264, Subparts K, L, M, and N) would be relevant and could be appropriate, depending on the site-specific circumstances. The action or facility regulated by the requirement—construction of a new land disposal unit—is identical to the proposed remedial action, and the objective of creating secure containment facilities where land disposal is necessary is the same for both RCRA and CERCLA. If the CERCLA waste presents hazards that warrant secure disposal, the

minimum technology requirements may be appropriate for use at the site.

ii. *CERCLA situations similar to regulated situation.* Even where the substance found at a CERCLA site is legally identical to the substance addressed in a regulation, the situation at a CERCLA site may not technically match the situation addressed by the regulation. Nevertheless, if the two situations are sufficiently similar, such that the requirement is well-suited to the CERCLA situation, the regulation may still be both relevant and appropriate to the CERCLA site. Examples of such potentially relevant and appropriate requirements are given below from RCRA and other laws.

For example, if RCRA hazardous waste disposed of before the effective date is located on a CERCLA site in a unit of size and character similar to RCRA-type units, and the remedial action is designed essentially to leave the waste in place, a portion of one or more of the closure requirements may be relevant and appropriate. Depending on site circumstances, such as the extent and mobility of contamination and hydrogeologic characteristics, either disposal closure or "hybrid" closure (i.e., portions of the existing closure requirements) may be relevant and appropriate. The determination for either would be based on an evaluation of similarity between these additional pertinent factors: the objective of the RCRA requirement and the CERCLA action, and the action and facility under consideration at the CERCLA site and those regulated by the RCRA closure requirement for disposal units. If there is sufficient similarity between these factors so that the requirement suits the CERCLA site circumstances, the requirement is relevant and appropriate.

Taking landfill closure standards for the sake of simplicity, the objective of the closure requirements as stated above matches that of the CERCLA action: waste left at a site must be secured to prevent further releases or direct contact. The substances at the site in this example are RCRA hazardous wastes. The remaining pertinent criteria are whether the action and the facility contemplated at the CERCLA site are sufficiently similar to those regulated by the RCRA landfill closure requirements. Since hazardous waste above levels that allow for unrestricted use and unlimited exposure is being left at the site in a unit which, though not regulated under the landfill closure standards of RCRA, is similar in size and character to such a unit, the substantive closure requirements pertinent to the specific kind of unit on the site (i.e., landfill) as contained in 40 CFR Part 264, Subpart N would directly suit the CERCLA action. Thus, it is relevant and appropriate to attain the specified cover system and post-closure care.

If, however, the waste is widely dispersed and not contained in a RCRA-type unit, use of RCRA closure may not be appropriate. For instance, RCRA Subtitle C covers may not be appropriate under certain circumstances for large municipal landfills or large mining waste sites, if the waste is generally of low toxicity and the contamination is dispersed over a large area that bears little resemblance to the discrete units regulated under RCRA Subtitle C. (See draft CERCLA Compliance with Other Laws Manual, Chapter 2, OSWER Directive No. 9234.1–01, for more discussion on this issue.) The administrative requirements in the closure regulations are not relevant and appropriate for on-site actions under any circumstances. (See ARARs preamble section above, "15. Substantive versus administrative requirements.")

Even if they are not applicable, portions of RCRA requirements for tanks (40 CFR Part 264, Subpart J) may be relevant and appropriate for sites where temporary storage in tanks is required. For example, the requirement that tanks have sufficient minimum shell thickness and pressure controls to prevent collapse or rupture may be relevant and appropriate, since the purpose of the requirement is to ensure that the tank does not create additional environmental problems due to its own failure. RCRA regulations also require that tanks have an inner lining or coating, or an alternative means of protection such as cathodic protection or corrosion inhibitors, in order to ensure that the tank is safe throughout its effective life. This requirement, although relevant, may not be appropriate in many situations. For example, if the tanks were to be used only for relatively short periods, the full RCRA Subpart J standards, which were designed for long-term storage, may not be appropriate.

Another example of a CERCLA situation which is similar to a regulated situation concerns the cleanup of certain kinds of asbestos waste. Emissions of asbestos fibers are controlled by a National Emission Standard for Hazardous Air Pollutants (NESHAP) under the Clean Air Act. The NESHAP in Subpart M of 40 CFR Part 61 includes requirements for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations (40 CFR 61.153), for active waste disposal sites (40 CFR 61.156), and for waste disposal for demolition and renovation operations (40 CFR 61.152), but no requirements for inactive waste disposal sites for demolition and renovation operations. Therefore, the NESHAP will not be applicable to cleanup of an inactive waste disposal site unless it was owned or operated by an asbestos mill, manufacturer, or fabricator, or contains waste from such sources. However, the NESHAP specified in 40 CFR Part 61, Subpart M may be relevant and appropriate to the control of emissions and access under CERCLA at an inactive waste disposal site for demolition and renovation operations because the situations may be sufficiently similar.

The finding of relevance and appropriateness is based on several factors that are sufficiently similar in the NESHAP and the CERCLA situation and the suitability of the NESHAP to the specific site circumstances. Both the requirement and the remedial action are intended to protect human health from exposure to a hazardous substance; the specific remedial action, like the specific requirements in the NESHAP, seeks to control harmful emissions from or contact with asbestos materials at a disposal site through proper management and mitigation measures. The media of concern are the same for both air contamination and direct contact with waste. The activity and facility involve in both cases the management or disposal of asbestos waste at a land disposal site. The only difference between the CERCLA situation and the NESHAP concerns the regulated substance and entity, for the NESHAP does not cover asbestos from demolition and renovation operations at inactive sites. However, the problems from such asbestos may be very similar to those encountered at, for example, inactive sites for mills and manufacturing: fugitive emissions of asbestos particles may need to be eliminated and public access to the site controlled. Hence, it may be relevant and appropriate at the CERCLA site to comply with such NESHAP requirements as elimination of visible emissions (or capping of waste) and installation of warning signs and fencing.

G. Examples of Potential Federal and State ARARs and TBCs

Potential ARARs and TBCs include, but are not limited to, the following:

1. *Federal requirements which may be potential applicable or relevant and appropriate requirements.*

i. EPA's Office of Solid Waste administers, inter alia, the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. 6901). Potentially applicable or relevant and appropriate requirements pursuant to that Act are:

a. Open Dump Criteria Pursuant to RCRA Subtitle D criteria for classification of solid waste disposal facilities (40 CFR Part 257). Note: Only relevant to nonhazardous wastes.

b. RCRA Subtitle C requirements governing standards for owners and operators of hazardous waste treatment, storage, and disposal facilities (40 CFR Part 264, for permitted facilities, and 40 CFR Part 265, for interim status facilities):

(1) Ground-Water Protection and Monitoring (40 CFR 264.90–264.101).

(2) Closure and Post Closure (40 CFR 264.110–264.120).

(3) Containers (40 CFR 264.170–264.178).

(4) Tanks (40 CFR 264.190–264.200).

(5) Surface Impoundments (40 CFR 264.220–264.249).

(6) Waste Piles (40 CFR 264.250–264.269).

(7) Land Treatment (40 CFR 264.270–264.299).

(8) Landfills (40 CFR 264.300–264.339).

(9) Incinerators (40 CFR 264.340–264.999).

(10) Land Disposal Restrictions (40 CFR 268.1–268.50).

(11) Dioxin-containing wastes (50 FR 1978).

(12) Standards of performance for storage vessels for petroleum liquids (40 CFR Part 60, Subparts K and K(a)).

(13) Codification rule for 1984 RCRA amendments (50 FR 28702, July 15, 1985; 53 FR 45788, December 1, 1987).

ii. EPA's Office of Water administers several potentially applicable or relevant and appropriate statutes and regulations issued thereunder:

a. Section 14.2 of the Public Health Service Act as amended by the Safe Drinking Water Act, as amended, (42 U.S.C. 300(f)).

(1) Maximum Contaminant Levels (for all sources of drinking water exposure) (40 CFR 141.11–141.16).

(2) Maximum Contaminant Level Goals (40 CFR 141.50–141.51, 50 FR 46936).

(3) Underground Injection Control Regulations (40 CFR Parts 144, 145, 146, 147).

b. Clean Water Act, as amended, (33 U.S.C. 1251).

(1) Requirements established pursuant to sections 301, 302, 303 (including State water quality standards), 304, 306, 307 (including Federal pretreatment requirements for discharge into a publicly owned treatment works), 308, 402, 403 and 404 of the Clean Water Act (33 CFR Parts 320–329, 40 CFR Parts 122, 123, 125, 131, 230, 231, 233, 400–469).

(2) Available Federal Water Quality Criteria documents are listed at 45 FR 79318, November 28, 1980; 49 FR 5831, February 15, 1984; 50 FR 30784, July 29, 1985; 51 FR 8012, March 7, 1986; 51 FR 22978, June 28, 1986; 51 FR 43665, December 3, 1986; 52 FR 6213, March 2, 1987.

(3) Clean Water Act section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material (40 CFR Part 230).

(4) Procedures for Denial or Restriction of Disposal Sites for Dredged Material (Clean Water Act section 404(c) Procedures, 33 CFR Parts 320–329, 40 CFR Part 231).

c. Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1401).

(1) Incineration at sea requirements (40 CFR Parts 220–225, 227, 228. See also 40 CFR 125.120–125.124).

iii. EPA's Office of Pesticides and Toxic Substances administers the Toxic Substances Control Act (15 U.S.C. 2601). Potentially applicable or relevant and appropriate requirements pursuant to that Act are:

PCB requirements generally: 40 CFR Part 761; Manufacturing, Processing, Distribution in Commerce, and Use of PCBs and PCB Items (40 CFR 761.20–761.30); Markings of PCBs and PCB Items (40 CFR 761.40–761.45); Storage and Disposal (40 CFR 761.60–761.79); Records and Reports (40 CFR 761.180–761.185). See also 40 CFR 129.105, 750.

iv. EPA's Office of External Affairs administers potentially applicable or relevant and appropriate requirements regarding requirements for floodplains and wetlands (40 CFR Part 6, Appendix A).

v. EPA's Office of Air and Radiation administers several potentially applicable or relevant and appropriate statutes and regulations issued thereunder:

a. The Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 2022) and Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings (40 CFR Part 192).

b. Clean Air Act (42 U.S.C. 7401).

(1) National Primary and Secondary Ambient Air Quality Standards (40 CFR Part 50).

(2) Standards for Protection Against Radiation (10 CFR Part 20). See also 10 CFR Parts 10, 40, 60, 61, 72, 960, 961.

(3) National Emission Standard for Hazardous Air Pollutants (40 CFR Part 61). See also 40 CFR 427.110–427.116, 763.

(4) New source performance standards (40 CFR Part 60).

vi. Other Federal requirements:

a. OSHA requirements for workers engaged in response activities are codified under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651). The relevant regulatory requirements are included under:

(1) Occupational Safety and Health Standards (General Industry Standards) (29 CFR Part 1910).

(2) The Safety and Health Standards for Federal Service Contracts (29 CFR Part 1926).

(3) The Health and Safety Standards for Employees Engaged in Hazardous Waste Operations (29 CFR 1910.120).

b. National Historic Preservation Act (16 U.S.C. 470). Compliance with NHPA required pursuant to 7 CFR Part 650. Protection of Archaeological Resources: Uniform Regulations—Department of Defense (32 CFR Part 229), Department of the Interior (43 CFR Part 7).

c. D.O.T. Rules for the Transportation of Hazardous Materials, 49 CFR Parts 107, 171, 172.

d. The following requirements are also potentially ARAR for Fund-financed actions:

(1) Endangered Species Act of 1973 (16 U.S.C. 1531). Generally, 50 CFR Parts 81, 225, 402.

(2) Wild and Scenic Rivers Act (16 U.S.C. 1271).

(3) Fish and Wildlife Coordination Act (16 U.S.C. 661 note).

(4) Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135) 40 CFR Part 165.

(5) Wilderness Act (16 U.S.C. 1131).

(6) Coastal Barriers Resources Act (16 U.S.C. 3501).

(7) Surface Mining Control and Reclamation Act (30 U.S.C. 1201).

(8) Coastal Zone Management Act of 1972 (16 U.S.C. 1451). Generally, 15 CFR Part 930 and 15 CFR 923.45 for Air and Water Pollution Control Requirements.

(9) Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(10) Marine Mammal Protection Act (16 U.S.C. 1361 et seq.).

2. *Examples of potential State ARARs.*

i. State requirements for disposal and transport of radioactive wastes.

ii. State approval of water supply system additions or developments.

iii. State ground-water withdrawal approvals.

iv. Requirements of authorized (Subtitle C of RCRA) State hazardous waste programs.

v. State Implementation Plans (SIPs) and delegated programs under the Clean Air Act.

vi. Approved State NPDES program under the Clean Water Act.

vii. Approved State underground injection control (UIC) programs under the Safe Drinking Water Act.

viii. Approved State wellhead protection programs.

ix. State water quality standards.

x. State air toxics regulations.

3. *Other Federal criteria, advisories, and guidance, to be considered.*

i. Federal Criteria, Advisories, and Procedures.

a. Health Effects Assessments (HEAs) and Proposed HEAs ("Health Effects Assessment for (Specific Chemical)"), ECAO, USEPA, 1985).

b. Reference Doses (RfDs), ("Verified Reference Doses of USEPA," ECAO–CIN–475, January 1986).

c. Carcinogen Potency Factors (CPFs), (Table 11, "Health Assessment Document for Tetrachloroethylene (Perchloroethylene)," USEPA, OHEA/600882/005F, July 1985).

d. Pesticide registrations and registration data.

e. Pesticide and food additive tolerances and action levels. **Note:** Germane portions of tolerances and action levels may be pertinent and therefore are to be considered in certain situations.

f. PCB Spill Cleanup Policy (52 FR 10688, April 2, 1987).

g. Waste load allocation procedures (40 CFR Parts 125, 130).

h. Federal sole source aquifer requirements (52 FR 6873, March 5, 1987).

i. Public health basis for the decision to list pollutants as hazardous under section 112 of the Clean Air Act.

j. EPA's Ground-Water Protection Strategy.

k. Guidance on Remedial Actions for Contaminated Ground Water at Superfund sites (Draft, October 1986) establishes criteria for the use of background concentrations and ACLs.

l. Superfund Public Health Evaluation Manual.

m. TSCA health data.

n. TSCA chemical advisories.

o. ATSDR Toxicological Profiles.

p. Advisories issued by FWS and NWFS under the Fish and Wildlife Coordination Act.

q. TSCA Compliance Program Policy ("TSCA Enforcement Guidance Manual Policy Compendium," USEPA, OECM, OPTS, March 1985).

r. Health Advisories, EPA Office of Water.

s. EPA/DOT Guidance Manual on Hazardous Waste Transportation.

ii. USEPA RCRA Guidance Documents.

a. Alternate Concentration Limits (ACL) Guidance (draft).

b. EPA's RCRA Design Guidelines

(1) Surface Impoundments—Liner Systems, Final Cover, and Freeboard Control.

(2) Waste Pile Design—Liner Systems.

(3) Land Treatment Units.

(4) Landfill Design—Liner Systems and Final Cover.

c. Permitting Guidance Manuals.

(1) Permit Applicant's Guidance Manual for Hazardous Waste Land Treatment, Storage, and Disposal Facilities.

(2) Permit Applicant's Guidance Manual for the General Facility Standards of 40 CFR Part 264.

(3) Permit Writer's Guidance Manual for Hazardous Waste Land Treatment, Storage, and Disposal Facilities.

(4) Permit Writer's Guidance Manual for the Location of Hazardous Waste Land Storage and Disposal Facilities: Phase I, Criteria for Location Acceptability and Existing Regulations for Evaluating Locations.

(5) Permit Writer's Guidance Manual for Subpart F.

(6) Permit Applicant's Guidance Manual for the General Facility Standards.

(7) Waste Analysis Plan Guidance Manual.

(8) Permit Writer's Guidance Manual for Hazardous Waste Tanks.

(9) Model Permit Application for Existing Incinerators.

(10) Guidance Manual for Evaluating Permit Applications for the Operation of Hazardous Waste Incinerator Units.

(11) A Guide for Preparing RCRA Permit Applications for Existing Storage Facilities.

(12) Guidance Manual on Closure and Post-Closure Interim Status Standards.

d. Technical Resource Documents (TRDs).

(1) RCRA Ground-Water Monitoring Technical Enforcement Guidance Document.

(2) Evaluating Cover Systems for Solid and Hazardous Waste.

(3) Hydrologic Simulation of Solid Waste Disposal Sites.

(4) Landfill and Surface Impoundment Performance Evaluation.

(5) Lining of Water Impoundment and Disposal Facilities.

(6) Management of Hazardous Waste Leachate.

(7) Guide to the Disposal of Chemically Stabilized and Solidified Waste.

(8) Closure of Hazardous Waste Surface Impoundments.

(9) Hazardous Waste Land Treatment.

(10) Soil Properties, Classification, and Hydraulic Conductivity Testing.

e. Test Methods for Evaluating Solid Waste.

(1) Solid Waste Leaching Procedure Manual.

(2) Methods for the Prediction of Leachate Plume Migration and Mixing.

(3) Hydrologic Evaluation of Landfill Performance (HELP) Model Hydrologic Simulation and Solid Waste Disposal Sites.

(4) Procedures for Modeling Flow Through Clay Liners to Determine Required Liner Thickness.

(5) Test Methods for Evaluating Solid Wastes.

(6) A Method for Determining the Compatability of Hazardous Wastes.

(7) Guidance Manual on Hazardous Waste Compatability.

iii. USEPA Office of Water Guidance Documents.

a. Pretreatment Guidance Documents.

(1) 304(g) Guidance Document on Revised Pretreatment Guidelines (3 volumes).

b. Water Quality Guidance Documents.

(1) Ecological Evaluation of Proposed Discharge of Dredged Material into Ocean Waters (1977).

(2) Technical Support Manual: Waterbody Surveys and Assessments for Conducting Use Attainability Analyses (1983).

(3) Water-Related Environmental Fate of 129 Priority Pollutants (1979).

(4) Water Quality Standards Handbook (1983).

(5) Technical Support Document for Water Quality-Based Toxics Control.

(6) Developing Requirements for Direct and Indirect Discharges of CERCLA Wastewater (1987).

c. NPDES Guidance Documents.

(1) NPDES Best Management Practices Guidance Manual (June 1981).

(2) Case studies on toxicity reduction evaluation (May 1983).

d. Ground Water/UIC Guidance Documents.

(1) Designation of a USDW.

(2) Elements of Aquifer Identification.

(3) Definition of major facilities.

(4) Corrective action requirements.

(5) Requirements applicable to wells injecting into, through, or above an aquifer that has been exempted pursuant to 40 CFR 146.104(b)(4).

(6) Guidance for UIC implementation on Indian lands.

e. Clean Water Act Guidance Documents.

f. Guidance for Applicants for State Well Head Protection Program Assistance Funds under the Safe Drinking Water Act (Office of Ground-Water Protection, June 1987).

iv. USEPA Manuals from the Office of Research and Development.

a. EW 846 methods—laboratory analytic methods.

b. Lab protocols developed pursuant to Clean Water Act section 304(h).

v. Other.

a. Data Quality Objectives, Volumes I and II.

b. Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA (Draft).

c. Guidance on Preparing Superfund Decision Document: The Proposed Plan and Record of Decision (Draft).

d. Standard Operating Safety Guides.

H. Community Relations

By adding section 117, "Public Participation," to CERCLA, Congress clearly indicated its intention that affected communities be informed about and involved in the decisions regarding the Superfund program's response to hazardous releases. Congress directed EPA to ensure that affected communities would be involved from the outset in developing and selecting the actions necessary at a site. EPA strongly believes that community relations is an integral part of the Superfund program and encourages a coordinated effort among Federal agencies and States as well as among technical, enforcement, and community relations staff to ensure that the concerns of the public are considered and addressed.

Today, EPA proposes to revise the community relations requirements of the NCP to reflect the public participation provisions of CERCLA. The current NCP explains in a single section (§ 300.67) the requirements for community relations. EPA proposes to intersperse community relations requirements throughout the NCP in conjunction with the actions to which they apply: during removal actions (§ 300.415) and remedial actions (§§ 300.430 and 300.435), including enforcement-related community relations activities. The major substantive changes in these requirements, summarized below, are either dictated by the 1986 amendments to CERCLA or are the result of procedures developed under the community relations program over the past seven years. Guidance for meeting Superfund community relations requirements is contained in "Community Relations in Superfund: A Handbook," EPA No. 9230.0–3A (March 1986).

1. *Public comment period during removal actions (§ 300.415(n)).* The proposed rule provides for notice in a local newspaper of general circulation to announce a minimum 30-calendar day comment period for Fund-financed and enforcement sites where there is a planning period of at least six months from the determination, based on the site evaluation, that a removal is appropriate. This gives the public, including PRPs, an opportunity to review and comment on the document describing the removal activities proposed for the site, i.e., the Engineering Evaluation/Cost Analysis (EE/CA) or its equivalent in non-time-critical situations. The lead agency shall prepare responses to significant comments. The proposed rule also provides for a comment period, where appropriate, for time-critical removal actions. (See Subpart I for administrative record requirements.)

2. *Other community relations requirements during removal actions (§ 300.415(n)).* EPA proposes to add a requirement that three major community relations activities be initiated for non-time-critical or time-critical removal actions where on-site removal activities will last longer than 120 calendar days. First, EPA proposes that interviews with State and local officials, residents, public interest groups, or other interested or affected parties, as appropriate, be conducted within the community. The purpose of the interviews is to identify firsthand the specific information needs and site-specific methods for encouraging dialogue with the community. Second, EPA proposes that a formal community relations plan (CRP) be developed from the information obtained during the community interviews. The CRP specifies the community relations activities the lead agency expects to undertake during the response action. Third, EPA proposes that at least one information repository be established at or near the facility. (See community relations preamble section below, "4. Information repository for removal and remedial actions.")

In the current NCP, a CRP must be developed if the response activities are expected to exceed 45 days; neither community interviews nor an information repository are required. The additional time allocation in the proposed regulation (120 days) provides more flexibility, allows for more effective use of lead agency resources, and also provides a more realistic time period for assessing the community's specific needs.

In the case of removals lasting less than 120 days, the lead agency is still responsible for ensuring that a spokesperson is designated, that accurate and timely information is provided to the public, and that public concerns are considered, whenever possible.

3. *Community interviews and Community Relations Plan during removal and remedial actions (§ 300.415(n) and (§ 300.430(c)).* Community interviews have been required since 1983 as a matter of EPA policy and were discussed in the preamble to the proposed 1985 revisions to the NCP in relation to remedial actions. The requirement that community interviews be conducted for certain removals and all remedial actions is consistent with existing guidance for remedial actions and reflects EPA's experience that such interviews have considerable value in identifying community-specific interests that should be reflected in the CRP to assure that community concerns are considered in managing the response action. Experience has also shown that these interviews assist in gathering information that is useful in conducting the response action at the site, e.g., in identifying potentially responsible parties. However, EPA has deliberately chosen not to specify in the proposed NCP how the interviews should be conducted or who should be interviewed.

The lead agency, in consultation with the support agency, will decide the number and type of interviews that are appropriate to accomplish the objective of developing an accurate picture of community needs and concerns when preparing the CRP. How many and what kind of interviews to conduct generally depends on whether the lead agency is already aware of community concerns through prior interaction with the community and interested parties, e.g., through public participation related to permitting a unit of a facility which later requires CERCLA response action. Interviews may range from formal question and answer sessions requesting the opinions of many citizens about a variety of aspects of a site history and community values to only a few, informal discussions in person or by telephone with selected, well-informed individuals who clearly represent the community. Only a few selected interviews or informal discussions may need to be conducted to verify information and ask questions on specific issues where the lead agency already is largely aware of community concerns through prior interaction with the community and interested parties. In these cases, interviews with a local official, the facility owner/operator, or a leader of the local interest group, as appropriate, may be used to round out information already available to the lead agency.

4. *Information repository for removal and remedial actions (§§ 300.415(n) and 300.430(c)).* Items made available for

public information are to be kept in an information repository and shall be available for public inspection and copying at or near the facility at issue. EPA proposes that at least one information repository be established at or near each site in order to fulfill this requirement. The purpose of the information repository is to provide members of the community easier access to site-related documents. Further, one copy of the administrative record file for selection of response action may be kept in one of the information repositories, as specified in Subpart I.

For non-time-critical or time-critical removal actions where on-site removal activities will last longer than 120 days, at least one information repository will be established at or near the location of the action. For remedial actions, EPA is proposing that the information repository be established when the final remedial investigation/feasibility study workplan is available to the public. EPA proposes that the lead agency shall inform interested parties of the establishment of the information repository.

5. *Public participation during remedial actions (§ 300.430(f)).* Sections 117 (a) and (d) of CERCLA require that the proposed plan, which briefly analyzes the remedial action alternatives studied in the feasibility study (FS) and describes a preferred remedial action alternative, be made available to the public, including PRPs, at or near the facility at issue. The information repositories will be used to meet this requirement. The statute also requires that a notice of availability and a brief analysis of the proposed plan be published in a major local newspaper of general circulation. The notice of availability and brief analysis published in the newspaper shall include sufficient information to provide a reasonable explanation of the proposed plan and alternatives considered. EPA also proposes to require that the FS be made available to the public at the information repositories.

The proposed regulation also requires that the lead agency provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting regarding the RI/FS, the proposed plan, and any proposed waivers under section 121(d)(4) relating to cleanup standards. EPA is proposing that this public comment period shall be no less than 30 calendar days. This is consistent with comment periods for NPL additions, deletions, and consent decrees. This proposal is an extension of the 21-calendar-day public comment period in the current NCP.

The proposed regulation further requires that the lead agency keep a transcript of the public meeting on the proposed plan and the supporting analysis and information held during the public comment period pursuant to section 117(a) and make the transcript available to the public. Transcripts are required for formal public meetings only. Additional formal and/or informal public meetings held pursuant to section 117(a) during the public comment period where the lead agency is present and there is a discussion of the FS, the proposed plan, and proposed waivers to cleanup standards should also be documented in an appropriate form. Any further substantive oral communications regarding these issues which are received by any other means such as phone calls or meetings with individuals or small groups during the public comment period should also be documented by the lead or support agency. In all cases where EPA receives documents or comments that are relevant to selection of the response action, the documents and a summary of the comments should be prepared and placed in the administrative record.

6. *Responsiveness summaries after public comment periods (§§ 300.415(n), 300.425(d), 300.425(e), 300.430(f), 300.815(b), 300.820(b)).* CERCLA requires the lead agency to develop a response to significant comments, criticisms, and new data received in written or oral form during the public comment period on the proposed plan pursuant to section 117(a). In the proposed regulation, EPA also requires public comment periods for removal actions (see above, paragraph 1.), proposed additions and deletions to the National Priorities List, issuance of a revised proposed plan, and ROD amendments.

The purpose of the requirement to respond is to document how public comments have been considered during the decisionmaking process and provide answers, if possible, to major questions. A responsiveness summary can be used to respond to comments. The responsiveness summary should be a concise summary of significant comments received during the comment period from the support agency and the public, and the lead agency's response to these comments. It should not be a point-by-point recitation and rebuttal of each comment. Rather, extensive comments should be summarized, and similar comments should be grouped together for a single response.

7. *Addressing significant changes prior to the adoption of the final remedial action plan (§ 300.430(f)).* The lead agency will need to identify and address significant changes that may occur from the time that the preferred alternative was presented in the proposed plan to the adoption of the selected alternative in the Record of Decision (ROD). If significant changes do occur during this period, the lead agency shall provide, as required by section 117(b) of CERCLA, "a discussion of any significant changes (and the reasons for such changes)" in the ROD. In addition to this statutory requirement, today's proposal specifies the limited circumstances where additional public comment would be necessary prior to final adoption of the alternative in the ROD.

The determination of whether a significant change has occurred is a site-specific determination which shall be made by the lead agency. Typically, significant changes that occur after the public comment period will affect the scope, performance, or cost of the final alternative. Today's proposal focuses on significant changes affecting these aspects of the final remedial alternative.

In the event that a significant change has been identified, the lead agency will need to determine whether the public could have reasonably anticipated the significant change based on the information presented in the RI/FS report and the proposed plan. Where the lead agency determines that the public could have reasonably anticipated the change, the lead agency need only document the change in the ROD, as proposed in § 300.430(f)(2)(A). Where the lead agency determines that the change could not have been reasonably anticipated by the public, the lead agency will reissue the proposed plan and solicit further public comment in accordance with § 300.430(f)(2)(B). A responsiveness summary may also be developed to document comments and agency responses.

8. *Notice of availability of the ROD (§ 300.430(f)).* This section provides that a notice of the signed ROD shall be published in a major local newspaper of general circulation and that the ROD will be made available to the public at the information repositories before commencement of any remedial action.

9. *Changes to the ROD after its adoption (§ 300.435(c)).* This section incorporates the requirements of section 117(c) of CERCLA that the lead agency publish an explanation of the significant differences when significant changes occur after the ROD is signed and the section 117(d) requirement that a notice summarizing the significant changes be published in a major local newspaper of

general circulation. In addition, this section proposes to distinguish between an explanation of significant differences, which announces a significant change in the selected remedy, and a ROD amendment, which fundamentally alters the remedy selected in the ROD. The lead agency will need to make this determination whenever the remedial action under section 104 or 120, enforcement action under section 106, or settlement or consent decree under section 106 or 122, differs significantly from the selected remedy in the ROD. The lead agency will decide whether to issue an explanation of significant differences or to propose a ROD amendment, based on site-specific information and the impact the significant change has with respect to scope, performance, or cost on the remedy selected in the ROD. During this decision process, the lead agency should notify and consult with the support agency, as appropriate.

The lead agency must identify when a remedial action, settlement, or decree differs significantly from the ROD. If the identified remedial action, enforcement action, consent decree, or settlement does not fundamentally alter the remedy selected in the ROD with respect to scope, performance, or cost, the lead agency will issue an explanation of significant differences to announce the significant change. For example, the lead agency may determine that the attainment of a newly promulgated ARAR is necessary, based on new scientific evidence, because the existing ARAR is no longer protective. Where this new ARAR would affect a basic feature of the remedy, such as timing or cost, but not fundamentally alter the remedy specified in the ROD, the lead agency would need to issue an explanation of significant differences announcing the change.

If the action, decree, or settlement fundamentally alters the ROD in such a manner that the proposed action, with respect to scope, performance, or cost, is no longer reflective of the selected remedy in the ROD, the lead agency will propose an amendment to the ROD. For example, the lead agency may have selected an innovative technology as the waste management approach in the ROD. Studies conducted during remedial design may subsequently indicate that the innovative technology will not achieve the remediation levels specified as protective of human health and the environment in the ROD. The lead agency, based on this information, may determine that a more conventional technology, such as thermal destruction, should be used at the site. In this event, the lead agency will propose to amend the ROD.

Section 122(d)(1)(A) of CERCLA provides that whenever EPA enters into an agreement with any PRP to undertake a remedial action, the agreement shall be entered as a judicial consent decree. Section 122(d)(2) requires that DOJ provide the public with an opportunity to comment on the proposed consent decree at least 30 days prior to its entry. Where the proposed consent decree fundamentally alters the ROD, EPA contemplates that it will issue a proposed ROD amendment concurrent with the proposed consent decree, and that the public comment period provided pursuant to section 122(d)(2) shall satisfy the requirements for additional public comment for a ROD amendment.

When an explanation of significant differences is issued, the lead agency will consult with the support agency (unless a SMOA, cooperative agreement, or Superfund State contract requires concurrence) prior to notifying the public in a major local newspaper of general circulation. This public notice will summarize the explanation of significant differences by identifying the significant changes and the reasons for the changes. The lead agency will also place the explanation of significant differences and information supporting the decision in the information repository and administrative record file.

When the lead agency determines that the ROD should be amended, the lead agency will propose a ROD amendment and make this document and supporting information available for public comment, following the requirements specified in §§ 300.430(f) (1) and (2) of today's proposed rule. In addition, where the lead agency proposes to amend a ROD that was signed prior to the enactment of the 1986 amendments to CERCLA, the proposed amendment shall be subject to the requirements specified in CERCLA section 121.

EPA believes that the appropriate threshold for amending a ROD is when a fundamentally different approach to managing hazardous wastes at a site is proposed. As a result, EPA has determined that a ROD amendment decision should be made after consideration of public comments and should undergo the same public and support agency involvement as a proposed plan.

10. *Community relations during enforcement actions (§ 300.430(c)).* The proposed revisions clarify the respective roles of lead agencies and responsible parties during enforcement actions. The proposed regulation provides that the lead agency for an enforcement action comply with the same community relations requirements as under Fund-financed actions (i.e., §§ 300.155, 300.415(n), 300.430 (c) and (f), and 300.435(c)). At the discretion of the lead agency, responsible parties may implement aspects of the government's community relations program under the oversight and direction of the lead agency. Responsible parties may, of course, initiate their own additional community relations activities, e.g., preparing fact sheets and/or conducting public meetings. However, the lead agency is still responsible for planning and implementing the government's community relations program.

For enforcement actions, EPA believes that it may be appropriate to hold meetings with the public, including PRPs, in order that concerns about the remedy can be raised and discussed among all parties.

Section 300.67(f) of the current NCP, which allows the community relations plan to be modified or adjusted at the direction of a Federal district court, has been deleted. The public participation requirements of sections 113(k) and 117 of CERCLA contemplate a community relations effort that is outside of the jurisdiction of the Federal district courts. In addition, CERCLA's statutory scheme of remedy selection is one of an administrative process with full public participation prior to the filing of an action under CERCLA section 106. Given those factors, EPA has determined that it is most appropriate to delete that section of the current NCP.

11. *Community relations during remedial design/remedial action (§ 300.435(c)).* It is EPA's intent to continuously undertake activities that involve affected communities and interested parties in actions taken at a site. To that end, EPA proposes in § 300.435(c) to add a requirement for community relations after adoption of the ROD, and solicits comment on other potential community relations requirements during the remedial design (RD) and remedial action (RA) phases of site activity.

EPA proposes that the lead agency shall revise the community relations plan (CRP) as necessary to address community concerns during the RD/RA phases of action, if not already addressed by the CRP. It is recommended that, whenever possible, this revision be based on interviews with local officials, citizens, interest groups, PRPs, or others in the affected community, as appropriate, based on the judgment and experience of the lead agency. Revising the CRP ensures that

citizen concerns about the remedy design and construction are addressed through appropriate community relations activities throughout the implementation of the final remedial action.

EPA is considering including other community relations requirements during RD/RA and solicits comments on the advisability of doing so. For example, the lead agency could be required to prepare a fact sheet or other public information document on the proposed remedial design which would inform the public about the design prior to its completion. The public could be notified of the availability of the fact sheet or document through a variety of techniques, such as a mailing to those on the site mailing list or an advertisement placed in a local newspaper of general circulation. Another example could be to require the lead agency to provide an opportunity for a public information briefing prior to the initiation of on-site activity. Construction activities and workplans could be explained with a discussion of any short- and long-term benefits and impacts of the construction and final remedy on the surrounding community. The public could be notified of such a meeting through a mailing, an advertisement, or other techniques chosen by the lead agency. Another example would be to require notification to the public of the beginning and end of the remedial action phase. Again, this notification could be done through the method determined by the lead agency to be most effective for reaching members of the public interested in the specific site.

12. *Other person participation (§ 300.700).* Section 300.700(c) proposes that private parties undertaking response actions shall, in order to be consistent with the NCP, comply with either the public participation requirements for Fund-financed response actions (including §§ 300.155, 300.415(n), 300.430 (c) and (f), and 300.435(c)) or State and local requirements which provide a substantially equivalent opportunity for public involvement in the choice of remedy.

Section 300.435 Remedial Design/ Remedial Action/Operation and Maintenance.

This section is entirely new. EPA proposes to add this section to the NCP because, as discussed earlier, EPA is reorganizing the NCP to make it correspond more accurately with the order in which response actions are usually implemented. The current NCP does not address the activities discussed in this section. The purpose of remedial design (RD) is to design and draft the specifications for the remedy selected under § 300.430. The purpose of remedial action (RA) is to implement the remedy selected. The purpose of operation and maintenance (O&M) is to maintain the integrity of remedial actions when the remedial action is complete. EPA today proposes to codify this last portion of the response process.

The following discussion generally follows the outline of the proposed regulatory language and explains significant points paragraph by paragraph.

1. *General and RD/RA activities (§§ 300.435 (a) and (b)).* Paragraph (a) of § 300.435 gives a general description of RD/RA and O&M to assist the reader in understanding these activities.

Paragraph (b)(1) states that RD/RA activities must be consistent with the language of the ROD regarding those activities. Although the ROD may not specify all of the details of RD/RA activities, the implementation of RD/RA activities must flow from the remedy selected in the ROD and not be inconsistent with, or substantively different from, the remedy and the intent stated in the ROD.

Paragraph (b)(2) states that all Federal and State ARARs identified for the specific site, or that the conditions of any waivers of ARARs must be met during the RD/RA. Note that the ARARs preamble section also discusses ARARs that may be identified during the RD (paragraph F.12).

2. *Community relations.* See Subpart E, § 300.430 preamble section "H. Community Relations," for discussion of § 300.435(c) and all other community relations requirements.

3. *Contractor conflict of interest (§ 300.435(d)).* This paragraph addresses remedial action contractors who are potentially responsible parties at a site. Frequently, these contractors will have a conflict of interest which prevents them from serving the best interests of the State or Federal government in the capacity of remedial action contractors carrying out CERCLA section 104 activities. This paragraph requires the lead agency to include in the bidding documents language requiring potential contractors to disclose all pertinent information regarding their status as potentially responsible parties, including the status of their parent companies, their affiliates, and their subcontractors. Furthermore, the potential contractors must certify that they have disclosed all such information or that no information exists regarding their status as potentially responsible parties.

The new paragraph also requires the lead agency to follow certain procedures during the awarding of remedial action contracts to safeguard against contractor conflict of interest. The lead agency must verify prior to awarding the contract that the potential contractor and subcontractors do not have any conflicts of interest that would affect their performance. The proposed regulatory language would allow the lead agency the discretion to opt for actions less severe than denial of the contract award for situations in which the contractor's role at the site has been very minor or is not yet determined. In such a situation, the lead agency may, in the interest of saving time and money, elect to proceed with a contract award, and ensure enhanced government oversight of the remedial action. The new paragraph provides that, in case the low bidder on a contract does have a conflict of interest that prevents the contractor from serving the best interests of the lead agency, the lead agency may declare the bidder nonresponsible.

4. *Recontracting for additional work (§ 300.435(e)).* EPA proposes this new language to conform to the CERCLA amendments. Occasionally, as new information is generated by the RD/RA process, changes need to be made to the scope of the work in the contract for Fund-financed remedial actions. Contract law generally requires the contract to be terminated when changes to the scope of work are needed. Section 300.435(e) incorporates the provisions of CERCLA section 104(c)(8) and applies to all Fund-financed remedial actions. The purpose is to avoid disruption of a remedial action when recontracting is required for remedial services, such as when additional contamination requiring a different response procedure is found. Situations requiring contract termination are handled differently, depending on whether EPA or the State has the lead for the site. Where EPA has the lead, EPA may extend the existing contract to conduct interim work necessary to address a hazard to human health or the environment until EPA can reopen the bidding process and recontract to complete the remedial action. Where a State has the lead, the State must consult with EPA, and the cooperative agreement must be amended to address the new situation. The paragraph also repeats the $2 million statutory restriction of such interim actions.

5. *Operation and maintenance (§ 300.435(f)).* Section 300.430(f) addresses O&M, which is the final step in the remedial process. (See § 300.510(c)

for State assurances on O&M.) Most of paragraph (f) is proposed to focus on the O&M provision in CERCLA section 104(c)(6). This provision defines as remedial action the operation of measures to restore contaminated ground or surface water for a period of up to ten years after the commencement of operation of such measures (or until a protective level is achieved, if less than ten years). The practical effect of this is that the Fund will pay 90 percent (or 50 percent for a publicly operated site) of the costs of measures to restore the ground or surface water for a period of up to ten years.

EPA also proposes to clarify in the NCP that the 10-year provision does not apply in two situations. The first situation is where source control maintenance measures are initiated to prevent further contamination of ground or surface waters and continued O&M is needed to control the source. Source control maintenance, although it may prevent further contamination of ground and surface waters, is separate and distinct from ground and surface water restoration activities. For example, leachate control systems for containment units constitute a form of source control maintenance and do not constitute the restoration of an aquifer. EPA proposes that, upon completion of construction of a source control system, and once the system is operational and functioning properly, EPA's funding obligations cease.

To illustrate, suppose that a Fund-financed site has contaminated soil, surface impoundment sludge, and contaminated ground water. The remedy selected includes placing the soil and sludge in an on-site, RCRA compliant land disposal facility with a leachate collection/treatment system and operating a system to pump and treat the contaminated ground water. Under this scenario, EPA would pay 90 percent of the cost of pumping and treating the ground water for up to ten years but the State would be responsible for operating and maintaining the leachate system. It should be noted that this example assumes that the source control remedy has been completed and meets protective levels.

Source control measures that are ongoing and have not yet achieved the protective levels indicated in the ROD are remedial action, not O&M. If, for example, the selected remedy is to land-farm soils for several years, the land-farming costs would be paid for by the Fund until the cleanup levels in the soils stipulated in the ROD have been achieved. Only if O&M is required for the soils (e.g., erosion control) after these cleanup levels have been achieved would the State be responsible for the costs.

The second situation where the 10-year provision does not apply is where measures are initiated for the primary purpose of providing a drinking water supply. Ground or surface water measures initiated for reasons other than restoration would not be subject to the 10-year provision. For example, in some situations a determination may be made that restoration of ground or surface water is infeasible or not cost-effective and, therefore, the drinking water source in the ground or surface water cannot be brought to drinking water standards. If the most cost-effective means of providing the drinking water is to pump and treat the contaminated water and directly supply it to the affected population, EPA would pay for the construction of a treatment system designed to meet the population's water needs and any operational costs up to one year to verify that the treatment system is operational and functional. Situations where the selected remedy is to pump and treat to restore the ground or surface water drinking water source as well as to provide drinking water will be addressed on a case-by-case basis. In making a determination in these cases EPA will take into account how separable the costs are and other relevant factors.

EPA solicits comments on its interpretation of "restore ground and surface water quality" and on the merits of the alternatives that EPA has not adopted. Specifically, EPA requests comment on whether the 10-year provision for Federal funding of O&M should extend to situations where the primary purpose of ground-water treatment is to provide drinking water supplies from water contaminated at the site without restoring it.

Subpart F—State Involvement in Hazardous Substances Response

Proposed Subpart F is completely new. It combines concepts described in the current NCP § 300.62 on State role and § 300.68 on State involvement in remedial action. The proposed new subpart codifies in one place all regulatory requirements for State participation and involvement in CERCLA-authorized response activities. It also includes the minimum requirements EPA will follow to ensure that all States are provided an opportunity for "substantial and meaningful" involvement in remedial and enforcement actions, as mandated by CERCLA section 121(f)(1). The following preamble discussion gives an overview of the Subpart.

A. Summary of Subpart F Sections

1. *General overview and context (§ 300.500).* CERCLA section 104(d)(1) permits EPA to transfer Federal funds and to authorize States to undertake CERCLA response activities via a cooperative agreement. Under this agreement, the State is the lead agency for conduct of response actions at that site. For State-lead Fund-financed remedial and enforcement actions, the cooperative agreement is also used by EPA to obtain the required State cost-share and other CERCLA section 104(c) assurances. In a Federal-lead response, EPA leads the response with the State acting in a support agency role. For Federal-lead Fund-financed remedial actions, a Superfund State contract is the mechanism used by EPA to obtain the required State cost-share and other CERCLA section 104 assurances.

Regardless of the lead agency designation, CERCLA section 121(f)(1) requires State involvement in pre-remedial, remedial, and enforcement response activities. To meet the requirements of CERCLA and strengthen the EPA/State partnership, Subpart F establishes comparable processes for EPA's involvement in State-lead response and State involvement in EPA-lead response. Subpart F, therefore, is applicable both to EPA and the State when either is in a lead or a support agency role. The concept of lead and support agency as defined in Subpart A is integral to the approach taken in Subpart F to ensure close coordination and cooperation during response at all sites listed on the NPL. The term partnership does not imply that EPA and a State enter into formal legal partnership arrangements.

Subpart F introduces the EPA/State Superfund Memorandum of Agreement (SMOA) as a vehicle for establishing an effective EPA/State working relationship. SMOAs are intended to strengthen EPA/State interaction by specifying in advance how EPA and each State will conduct response activities in keeping with the concept of partnership. SMOAs are encouraged but they are not mandatory for a Fund-financed action unless the State wishes to recommend the remedy for EPA concurrence, or to be recognized as the lead agency for a non-Fund-financed action at an NPL site. The Region will enter into a SMOA if the State requests it to do so and the State has demonstrated the capability to take the lead for response. EPA solicits comments on the appropriateness of

requiring in the regulation that Regions enter into SMOAs if States request them and have demonstrated capability to take the lead for response action.

Specific provisions of a SMOA may vary or EPA Regions/States may find that SMOAs are not appropriate to their particular circumstances. However, in those situations where a cooperative agreement is not necessary or desired, the SMOA must be the mechanism for establishing the State as lead agency. States may still use a letter to recognize Federal lead for RI/FS and remedial design at privately operated sites. Such a letter is necessary for EPA to initiate action at a site if a site-specific agreement has not been signed and a SMOA does not exist.

SMOAs are intended to define and facilitate communication between EPA and a State on all aspects of the response process. SMOAs are not legally binding, do not delegate or transfer authorities, and do not convey funds. For example, a SMOA may address in general EPA/State interaction at Federal facilities but the SMOA cannot impose requirements nor obligations on the Federal agencies concerned or provide any authorities to States with respect to the Federal facilities. The SMOA is simply intended to delineate the procedures that EPA and the State will follow to ensure mutually satisfactory communications.

Subpart F does not establish specific oversight requirements for EPA's role during State-lead Fund-financed response, since all Fund-financed response actions must comply with CERCLA and the NCP. Instead, EPA expects technical oversight to be addressed by a SMOA or by site-specific documents, such as a cooperative agreement.

2. *Cross-references for various forms of State participation (§ 300.500(b)).* This paragraph provides cross-references to the specific paragraphs in Subpart F that address the different types of State participation.

3. *EPA/State superfund memorandum of agreement (§ 300.505).* This section of the NCP describes what EPA and a State may agree to include in a SMOA. The consultation process described in this section is the key to a strong EPA/State partnership dedicated to the remediation of as many hazardous waste sites as possible by utilizing the combined resources of States and EPA and avoiding duplication of effort while protecting the interests of both parties.

The primary goals of the SMOA are to: (i) Provide maximum flexibility to EPA and States in planning and implementing response actions; (ii) ensure an equitable EPA/State partnership during response; (iii) reduce or eliminate misunderstandings by clarifying EPA and State expectations; and (iv) designate lead agency status for States in the absence of a cooperative agreement.

Although § 300.525 discusses State involvement in removals, the removal program is not included in the NCP discussion of the SMOA. There is concern that the nature of the removal program requires that there be maximum flexibility in determining how each removal activity will be conducted. EPA Regional offices and States agree that the current EPA/State removal interaction is effective.

However, where practicable, a SMOA may include general provisions for EPA/State interaction on removal actions by specifying: (a) The process to be followed by EPA and a State to notify each other of a determination that a removal action is necessary; (b) the procedures to be followed by EPA and a State to consult and comment upon the nature of any proposed removal action; and (c) the procedure to be followed to provide for post-removal site control as described in § 300.415(1). Generally, the SMOA provision should specify that responsibility for post-removal site control should be discussed and provided for before the implementation of the removal action. The definition of the consultation process is intended to facilitate EPA/State agreement on the nature and extent of any removal action before the removal action is initiated.

To ensure EPA and State accountability for adherence to the terms of the SMOA, the Regional Administrator and the responsible State agency head must sign this agreement. It is a State-specific, general agreement that should remain applicable for several years, needing modifications only as changes in legislation, regulation, policy, or guidance occur that affect the EPA/State partnership. The SMOA should be implemented through more detailed site-specific documents which should be updated or revised annually or otherwise as necessary. EPA and the State will meet annually to designate who will be the lead agency for specific sites.

The SMOA sets forth overall understandings that should be used as a base from which to operate when developing site-specific cooperative agreements and Superfund State contracts. Cooperative agreements and Superfund State contracts will continue to be the documents for delineating EPA and State site-specific responsibilities and obtaining State assurances as required by CERCLA section 104. However, because a cooperative agreement will not exist for State-lead non-Fund-financed actions, a SMOA will be required for EPA to designate the State as lead agency for a non-Fund-financed response at an NPL site. The SMOA will be supplemented by site-specific enforcement agreements between EPA and the State which specify schedules and EPA involvement.

SMOAs may address both non-Fund-financed State response actions and Fund-financed actions at NPL sites. Non-Fund-financed State response actions do not have to comply with CERCLA, unless a State wishes to recover costs under section 107 of CERCLA or to receive credit per section 104(c)(5) of CERCLA for its remedial action expenditures if the site is on the NPL or subsequently listed on the NPL. However, it is EPA's opinion that non-Fund-financed State response actions at NPL sites should comply with CERCLA, as amended, to promote national consistency, avoid additional Federal response actions, and expedite deletion of a site from the NPL upon completion of the response action. Possible consequences of States not complying with section 121 of CERCLA or not being consistent with the NCP are discussed below in paragraph 9 of this Subpart F preamble.

The SMOA may identify which documents prepared in the course of response activities require review, comment, or approval by the support agency prior to the lead agency proceeding with further work at the site. Because of wide variations in complexity at site responses, the documents designated for support agency review, comment, or approval may be altered by mutual agreement in the cooperative agreement or Superfund State contract covering a specific site.

See Subpart F preamble, paragraph 11 below, for a description of requirements in the absence of a SMOA or if the SMOA does not address the requirements specified in § 300.515(h).

4. *State assurances (§ 300.510).* Section 300.510(b)(1) addresses State cost-share requirements, including the codification of the statutory provisions for use of credits to offset a State's required cost-share. CERCLA continues to authorize credit for State or political subdivision expenditures or obligations for cost-eligible response actions taken at NPL sites from 1978 to 1980. From October 16, 1986, forward, CERCLA section 104(c)(5) limits credit to State expenditures only for remedial action. States may now receive credit toward their cost-share obligation for remedial action expenditures at NPL sites when taken pursuant to a cooperative agreement

and remedial action expenditures at non-NPL sites which are later listed on the NPL and documented in a cooperative agreement or a Superfund State contract with EPA. States that contributed 50 percent toward Fund-financed response actions at publicly owned but not operated NPL sites pursuant to a cooperative agreement or Superfund State contract in effect between the enactment of CERCLA and the enactment of the 1986 amendments to CERCLA may receive a credit for that amount of the cost share supplied over 10 percent.

Sections 300.510 (c) and (d) read that States must provide assurances for operation and maintenance and off-site disposal, when required. Section 300.510(e) addresses the CERCLA section 104(c)(9) assurance on 20-year capacity on all hazardous wastes (not just hazardous waste from CERCLA sites) generated within a State. EPA will provide more details on how the assurance will be made and how EPA will determine the adequacy of a State's assurance at a later date. Currently, these issues are being addressed by an EPA task force.

Section 300.510(f) addresses the CERCLA section 104(j) assurance for acquiring an interest in real property in order to conduct a response action. In the case of permanent relocations and certain other response actions, where it is necessary to acquire ownership or some lesser interest in real property, EPA will determine when an acquisition of any property interest is necessary. Generally, the States will carry out the required acquisition and hold title to the property interest. However, there may be instances in which the State lacks authority to condemn or otherwise acquire property or is unable to do so in an expeditious manner. The United States Government may then agree to acquire the necessary interest, but only if the response cannot proceed without the acquisition and if the State first agrees to accept transfer of the acquired interest. The State must accept transfer at the conclusion of the response as earlier if EPA determines it to be necessary to facilitate the response, as appropriate under the particular circumstances.

5. *Requirements for State involvement in remedial response (§ 300.515).* This section combines existing language from §§300.62 and 300.68 of the current NCP with new language that describes how EPA intends to satisfy requirements for State involvement established by the 1986 amendments to CERCLA.

6. *General (§ 300.515(a)).* In order to determine whether the State is the appropriate agency to assume the lead agency responsibilities at an NPL site, EPA is considering various criteria that would assist EPA Regional Offices and the States in making such decisions. Some of the criteria under consideration are: overall expertise, legal authorities, administrative and contracting capability, financial management systems (according to the applicable assistance agreement regulation), availability of general resources, complexity of the site, availability of site-specific resources, workload and expertise, past Federal or State actions at the site, and past State cleanup activities. EPA solicits comment on these possible criteria and whether further criteria should be added.

As described in the Subpart E, § 300.425 preamble section, "D. Deferral Policies," EPA is considering a policy which would provide the States with the opportunity to request that a site be deferred from listing on the NPL. Deferral to State authorities is part of an overall proposed policy to allow EPA to defer listing sites on the NPL where other Federal or State authorities and their implementing programs can address problems at those sites. As a part of this proposal, EPA describes criteria it is considering for deferring listing of sites on the NPL for response under State authorities. The deferral criteria are not identical to the above criteria for lead agency designation; the above criteria are intended solely for State-lead actions under CERCLA.

7. *Applicability of State involvement requirements to Indian Tribes (§ 300.515(b)).* CERCLA requires EPA to afford to Indian Tribes substantially the same treatment as it would to States. Therefore, an Indian Tribe may be authorized to undertake the lead for Fund-financed response activities via a cooperative agreement if: (i) The Indian Tribe is Federally-recognized; (ii) the Tribal governing body is currently performing governmental functions to promote the health, safety, and welfare of its affected population or environment; (iii) the Indian Tribe can demonstrate an ability to carry out the response actions (with the exception of criminal enforcement actions) which it seeks authority to perform in accordance with the criteria and priorities established by the NCP; (iv) the Indian Tribe can demonstrate that the functions to be performed are within the scope of its jurisdiction; and (v) the Indian Tribe can demonstrate a reasonable ability to effectively administer a cooperative agreement, including having accounting and procurement procedures that comply with the applicable assistance agreement regulation. The reason for excluding criminal enforcement actions from Fund-financed response actions is that Tribes do not have criminal enforcement jurisdiction over non-Indians.

EPA proposes to provide for EPA interaction with Federally-recognized Indian Tribes when an NPL site is on Indian lands. When this occurs, a separate SMOA may be developed and, in some instances, the SMOA may be a three-party agreement between EPA, the State, and the Federally-recognized Indian Tribe. Under CERCLA section 104(c)(3), Federally-recognized Indian Tribes do not have to provide CERCLA 104(c) assurances. The definition of "State" in Subpart A of the NCP is proposed to include Indian Tribes and, therefore, unless specified otherwise, Federally-recognized Indian Tribes generally may have the same roles and responsibilities under the NCP as do States.

8. *State involvement in the PA/SIs and NPL listing and deletion process (§ 300.515(c)).* The intent of Subpart F is to ensure significant State involvement in the pre-remedial and remedial phases of Superfund responses. It is EPA's position that cooperation with the States throughout the response process will assist in meeting the national goal of maximizing the number of responses. One step in the response process where State involvement is necessary is at the pre-remedial phase of response in which potential sites are evaluated, scored, and listed on the NPL. States have the option of performing PA/SIs.

EPA proposes to ensure significant State involvement in the NPL listing process by requiring EPA to consult with the State on EPA-initiated draft Hazard Ranking System scoring packages. EPA would then provide a 20- to 30-day review period for States to comment on the proposed listing of sites in that State. The State's comments, which may include new or additional information on the site, would be reviewed by EPA and taken into consideration prior to publication of the proposed listing.

In addition, § 300.515(c)(3) contains requirements for State involvement in the NPL deletion process. In accordance with the amendments to CERCLA, EPA must obtain State concurrence in order to delete a site from the NPL.

9. *EPA and State consultation in remedial planning and selection of remedy process (§§ 300.515 (d) and (e)).* Section 300.515(d)(2) establishes a process for lead and support agency consultation and solicitation of their respective identified ARARs and other criteria, guidance, and advisories to be considered (TBC) which may be helpful

in establishing protective cleanup levels. (See general discussion of ARARs and TBCs in § 300.430 preamble section, "F. Compliance with applicable or relevant and appropriate requirements of other laws.") This process is ongoing throughout the remedial response process, and is effective only if lead and support agencies work together at each of several key points. This communication/consultation process should ensure that all responses comply with all ARARs and, where appropriate, that other criteria, guidance, and advisories are considered.

Sections 300.515(d) (1) and (2) make the lead agency responsible for: (i) Identifying its own ARARs and TBCs; and (ii) soliciting from the support agency its ARARs and TBCs. The lead agency is also responsible for providing to the support agency information about the site and nature of the contamination, as well as the remedial alternatives being considered. The support agency will identify its ARARs and TBCs for the lead agency in as detailed and comprehensive a manner as possible on a site-specific basis. Each agency is responsible for coordinating ARAR and TBC identification with other offices or agencies within its own organization. If a Region and State have entered into a SMOA, the SMOA may contain a provision on the process to be followed for identifying Federal and State ARARs as required in § 300.515(d)(2).

Furthermore, CERCLA section 121(d)(2) provides that State ARARs must be met if they are communicated to EPA in a timely manner. EPA proposes a general definition of timely manner in § 300.515(d)(1), which requires that the lead and support agencies identify their respective ARARs and TBCs and communicate them to each other so that sufficient time is available for the lead agency to consider and incorporate such ARARs and TBCs into the remedy selection process without inordinate delays and duplication of effort. EPA proposes to apply this requirement to both the lead and support agency because it is in keeping with the concept of a Federal/State partnership and will ensure that information is shared in a timely manner. EPA proposes that the SMOA may specify that the identification/solicitation process occur within certain mutually agreed upon timeframes. These timeframes may be modified as necessary on a site-specific basis in cooperative agreements or Superfund State contracts. The SMOA may also define lead and support agency roles in the ARARs identification process that are more comprehensive than what EPA has proposed today for the new Subpart F. This allows more flexibility in soliciting ARARs and TBCs and will enable changes in the process to be made as experience is gained.

The ARARs solicitation process established in the SMOA will identify the appropriate EPA/State management staff level for communication and solicitation of ARARs and TBCs. This process should identify at least one written lead agency request for ARAR/TBC identification and requires a minimum of one written response from the support agency. This documentation should be included in the administrative record.

In the absence of a SMOA, EPA proposes in § 300.515(h)(2) to establish minimum points where the lead and support agencies must identify and communicate in writing their respective ARARs and TBCs. This will ensure that the lead agency has sufficient data and time to consider the ARARs and TBCs in developing and selecting the preferred remedy.

Whether or not a SMOA is in place, EPA expects that the focus of solicitations will be toward requesting the specific kinds of ARARs and TBCs needed at a specific time (e.g., contaminant- or location-specific ARARs/TBCs after site characterization information becomes available, and action-specific ARARs during the early stages of the comparative analysis of remedial alternatives). Alternatively, the lead agency could make a preliminary ARAR determination to which the support agency can respond and/or elaborate.

Procedures and time periods for State notification, review, and concurrence regarding a remedy that either waives State ARARs or that attains ARARs other than those identified by the State are proposed in §§ 300.515(d)(3) and (4). EPA expects its Regional offices and the States (with assistance from EPA Headquarters as necessary) to negotiate and resolve differences of opinion regarding ARARs, and all other areas of disagreement (e.g., preferred alternatives or alternatives to be evaluated). The dispute resolution process adopted by the Region and the State should be used to resolve any differences that might impede the response process. Differences should be addressed at the staff level first and raised to management if a mutually acceptable solution is not attained. If necessary, the Region and the State can jointly raise the dispute to the Assistant Administrator for Solid Waste and Emergency Response for a final determination. If the Region and the State prefer to establish a different dispute resolution process in their SMOA, that process will be followed.

Section 300.515(e)(1) addresses lead agency responsibilities with respect to the proposed plan. The lead agency and support agency will consult and attempt to reach agreement on the proposed plan. The proposed plan will include a statement of the support agency's opinion on the proposed plan. Agreement between the lead and support agencies on the proposed plan is not required prior to publishing the public notice but such agreement is highly encouraged. If the State is the lead agency for a Fund-financed action but EPA cannot concur with the State's proposed plan after all efforts at resolving differences have failed, EPA will assume the lead for the proposed plan and preparation of the ROD. If EPA is the lead agency, and the State cannot support EPA's proposed plan, EPA may publish the plan, but must include the State's objection and concerns and state why EPA disagrees with the State.

Section 300.515(e)(2) discusses the roles of EPA and the State in the selection of remedy process. It reflects the evolution of the EPA/State partnership in recent years by providing the State, when it is the lead agency, with responsibilities in the selection of remedy process. This new concept would be applicable to both Fund-financed and non-Fund-financed actions (e.g., enforcement sites) in which the State as lead agency would recommend the remedy and provide EPA an opportunity to concur with and adopt the remedy. Concurrence is in keeping with the statutory requirement to provide substantial and meaningful involvement in the initiation, development, and selection of remedial actions.

The concept of concurrence by EPA is designed to further the EPA/State partnership, optimize the use of governmental resources, and increase the number of response actions. Under the current NCP, EPA has significant involvement in and oversight of activities at State-lead Fund-financed sites. Conversely, EPA has limited involvement at State-lead non-Fund-financed sites. States currently have limited responsibilities during selection of remedy at EPA-lead sites. Concurrence increases EPA involvement at State-lead non-Fund-financed sites and provides for a greater State role in the selection of remedy process at Fund-financed sites.

Under this approach, a State can recommend a remedy for EPA concurrence and adoption only when a

SMOA is established. Through the annual planning process, EPA and the States will designate at which State-lead Fund-financed and non-Fund-financed sites the State will prepare the ROD for EPA concurrence and adoption.

EPA intends to implement selectively the process of State preparation of RODs for EPA concurrence and adoption at State-lead Fund-financed sites, since this process is not necessarily applicable to all States, nor for all sites within a State. Moreover, States are not required to accept this responsibility. Sites will be selected where the circumstances at the particular site warrant less EPA involvement and the State has demonstrated its capability to conduct remedial response actions in an effective and responsible manner. EPA concurrence in and adoption of a remedy recommended by the State may not be appropriate at Fund-financed sites where the State has not demonstrated that it possesses the necessary capabilities or where the particular circumstances indicate that greater EPA involvement is necessary.

Under the proposed concurrence process, EPA can select the remedy at EPA–lead sites even when a State neither responds nor concurs with the recommended remedy. However, the State must provide the assurances required by CERCLA section 104 before EPA can proceed with the remedial action.

When a State is the lead agency at a Fund-financed site for developing the RI/FS and preparing the ROD, the State may prepare the proposed plan (if agreed to by EPA), publish the notice of availability, prepare the responsiveness summary, and develop the ROD, thereby recommending a remedy for EPA concurrence and adoption. Additionally, the State is responsible for compiling and maintaining the administrative record for selection of the response action and documenting and providing necessary information for cost recovery. A State cannot proceed with Fund-financed response without EPA's concurrence in and adoption of the remedy. Silence by EPA shall not be construed as concurrence or adoption.

EPA and a State may agree that certain sites will be designated as non-Fund-financed State-lead enforcement actions (i.e., the State is responding pursuant to its own authorities). At such sites, a State may proceed without further EPA concurrence. However, the State may select the remedy, prepare the ROD, and seek EPA concurrence with the remedy in order to: (a) Promote effective use of Federal and State resources; (b) promote national consistency in responses; (c) avoid the need for additional Federal response actions; (d) induce PRPs to agree to perform necessary response actions; and (e) expedite deletion of the site from the NPL at the completion of the response action.

At non-Fund-financed State-lead enforcement sites, the State is responsible for proper implementation of the remedial action so that the site will meet criteria for deletion from the NPL. However, even when EPA concurs with the remedy selected and implemented by the State, EPA may still proceed under its own CERCLA authorities if necessary to ensure compliance with CERCLA section 121 and other pertinent provisions of CERCLA.

Subpart F does not require that States select remedies for non-Fund-financed State-lead enforcement sites in conformance with CERCLA section 121 and the remedy selection process specified in the NCP. However, where a State-selected remedy does not so conform, States and/or PRPs may be at risk in several ways, including, but not limited to the following: (1) EPA will not concur with the recommended remedy; (2) EPA may refuse to designate the State as lead agency for any subsequent response activities; (3) States and PRPs may be deprived of the assurance that EPA will not find it necessary later to seek to compel further response actions; (4) EPA may be unable to delete a site from the NPL and/or (5) State cost recovery efforts may be hindered.

If disputes arise with respect to concurrence, the dispute resolution procedure discussed above or, as otherwise specified in a SMOA, should be invoked so that EPA and the State can reach a mutually acceptable decision on the appropriate remedy.

Section 300.515(f) addresses State funding of substantive requirements beyond the scope of the selected remedy, including procedures for attainment of State standards which EPA has determined not to be ARARs or which EPA has determined to waive. EPA intends this section to apply to State-funded additional elements of the basic remedy selected or concurred upon by EPA. The State may be required to assume the lead for remedial design and implementation of such remedial actions or EPA may maintain the lead if the EPA Region determines that financial responsibility and related issues do not present obstacles to EPA-lead remedial action. Another option is State assumption of the lead for only the State-funded addition if those additional requirements can be done as a separate operable unit.

EPA encourages States to participate in EPA-lead enforcement negotiations as provided for in section 121(f)(1) of CERCLA and proposed in § 300.520 of the NCP and to conduct State-lead enforcement actions consistent with CERCLA and the NCP. To maximize PRP responses through State-lead enforcement actions, Federal financial assistance may be provided to support these actions.

During EPA-lead enforcement actions, EPA intends to provide States with opportunities for review, consultation, and concurrence. As with Fund-financed response, the general degree of State involvement in EPA-lead enforcement actions should be outlined in SMOAs. Although opportunities for State involvement are provided in this subpart, EPA may determine that substantive State standards are not ARARs, or may waive State ARARs pursuant to CERCLA section 121(d)(4) for remedies proposed by EPA during a Federal-lead enforcement action. In those circumstances, pursuant to CERCLA section 121(f)(2)(A), States are provided an opportunity to concur or nonconcur with the remedy selected by EPA. Procedures for seeking the modification of the remedy to conform to State ARARs are found in section 121(f)(2)(B) of CERCLA.

During State-financed or State-lead enforcement actions at NPL sites, States should provide EPA with an opportunity for the review of key documents and consultation during the remedial response process. For State-lead enforcement sites, the State will prepare the ROD (generally, EPA will not prepare the ROD at State-lead enforcement sites unless the State and EPA agree otherwise). The general degree of EPA involvement may be outlined in the SMOA. EPA's oversight and involvement in State-lead enforcement actions where EPA is providing financial assistance will be delineated in site-specific cooperative agreements. EPA does not intend to be routinely involved in negotiations at State-financed enforcement sites; however, EPA expects that States will notify EPA of negotiations with potentially responsible parties and provide opportunities for involvement to facilitate EPA concurrence with recommended remedies when the State seeks EPA concurrence. It is recognized that due to workload and resource constraints associated with EPA-lead projects, EPA may not have adequate staff or resources to review certain plans and that EPA will not be bound to any decisions made by the State if EPA fails to respond. Settlements achieved

will normally be between the State and potentially responsible parties. Also, the requirements outlined in § 300.515 for Fund-financed remedial response will be applicable to Fund-financed State-lead enforcement actions. For State-lead enforcement sites, the State should request that EPA provide: (A) Identified Federal ARARs; (B) a review of the State or potentially responsible parties' FS and proposed plan; (C) a response to comments on waivers to, or disagreements about, Federal ARARs; and (D) concurrence in RODs.

10. *State involvement in remedial action (§ 300.515(g)).* A key point for EPA/State interaction during Fund-financed remedial action will be the joint inspection of the remedy as specified in § 300.515(g). The purpose of this inspection is to ensure that the remedy has been constructed in accordance with the ROD and the remedial design.

11. *Requirements for State involvement in the absence of a SMOA (§ 300.515(h)).* Section 300.515(h) describes categories of requirements that must be met in the absence of a SMOA: annual consultations; identification of ARARs and TBCs; and State review and comment on EPA-lead RI/FS, proposed plan, ROD, ARAR/TBC determinations, and remedial design. These requirements also apply where a SMOA is negotiated but does not address a specific category. For example, a SMOA may include requirements for annual consultations and State review but not identification of ARARs and TBCs. In this case, the requirements in § 300.515(h) regarding identification of ARARs and TBCs must be complied with. If a SMOA does address a particular category, the SMOA may specify requirements different from those stated in § 300.515(h) except that, at a minimum, the SMOA must include the ARARs identification requirements specified in § 300.515(h)(2). For example, a SMOA may include requirements regarding State review of EPA-lead documents but specify shorter or longer timeframes for that review.

12. *Administrative record (§ 300.515(i)).* The administrative record is an important aspect of the response process. The purpose of this paragraph is to remind the reader that the SMOA can address the procedures for compiling and maintaining the administrative record. It also directs the reader to Subpart I for more information.

13. *State involvement in EPA-lead enforcement negotiations (§ 300.520).* CERCLA section 121(f)(2) requires EPA to provide notice to States regarding negotiations with PRPs. Accordingly, EPA is proposing this section to implement the CERCLA mandate. Although this section focuses on State notification and involvement in remedial investigations/feasibility studies (RI/FS) and remedial design and remedial action (RD and RA) PRP negotiations, EPA does not intend to preclude notification to and involvement of States as appropriate in other enforcement actions.

14. *State involvement in removal actions (§ 300.525).* This section addresses State involvement with EPA in the removal program. Although the USCG also works closely with the States when undertaking CERCLA response, Subpart F requirements do not apply to State involvement in USCG responses. Statutory requirements for removals are not the same as those for remedial and enforcement response; therefore, State involvement differs significantly. Although § 300.515(a) is generally applicable to State-lead removals, § 300.525 notes the specific differences in State involvement in removals from remedial actions. Except as provided in § 300.525, the rest of § 300.515 on pre-remedial and remedial response is not generally applicable to EPA-lead removals.

Although EPA and States actively coordinate during removal actions to assure timely and efficient response, most Fund-financed removal actions are EPA-lead. However, in some circumstances States are required to share in the cost of the removal. (See § 300.510(b)(1).) Proposed Subpart F encourages States to undertake Fund-financed removal actions via cooperative agreements, if EPA determines that it will result in the most efficient method of threat mitigation. In either situation, States are encouraged to assume responsibility for post-removal site control activities, if required (see § 300.415(1)).

EPA will encourage State-lead removals to the extent practicable. The statutory limits for removals, now $2,000,000 and twelve months, will apply to State-lead, Fund-financed removal actions unless the second statutory exemption (consistency with the remedial action to be taken) is invoked. The first exemption (continuing emergency) for extending the removal action beyond the statutory limitation will generally not be applicable to State-lead removals because of their less critical nature. (See § 300.415.)

15. *Consultation with States regarding removal actions (§ 300.525(e)).* This paragraph contains a general statement that EPA will consult with the State when conducting removal actions within that State.

B. Points of Clarification

1. *Applicability of State involvement requirements to political subdivisions.* Subpart F does not address EPA interaction with political subdivisions of a State, although a political subdivision may take the lead for certain response actions via a cooperative agreement if the State provides the required assurances at the time of remedial action. EPA, the State, and the political subdivision are required to establish a written agreement that sets forth roles and responsibilities of each party. The cooperative agreement will specify the requirements associated with a political subdivision lead. Such Fund-financed actions must comply with CERCLA and the NCP.

2. *Applicability of Subpart F to Federal facility responses.* As provided in CERCLA section 120(f), the substantive requirements of Subpart F do apply to Federal facility responses, and the Federal facility must meet the requirements for involving the States in remedial response actions taken at Federal facilities. EPA intends to further address State involvement at Federal facilities in the proposed Subpart K to be drafted. Note that CERCLA section 120(g) does not allow the transfer of the EPA's authority to the States.

3. *State requirements or siting laws.* CERCLA section 121(d)(2)(C) specifically limits the applicability of State requirements or siting laws for hazardous waste facilities that could result in a State wide ban on land disposal. In order to be treated as potential ARARs, such laws must:

i. Be of general applicability and be formally adopted;

ii. Be based only on technical (e.g., hydrogeologic) or other relevant considerations; and

iii. Not be intended to preclude land disposal for reasons other than protection of health or the environment.

In addition, the State must arrange and pay for additional costs for out-of-State or other disposal made necessary by such a law. EPA believes that the factors used in evaluating such criteria should include the nature of the technical considerations and the history of health and environmental legislation in the State.

Subpart G—Trustees for Natural Resources

Section 107(a)(4)(C) of CERCLA imposes responsible party liability for the injury, destruction, or loss of a natural resource, including the costs of a natural resources damage assessment. Section 107(f)(1) of CERCLA provides

that only properly designated Federal trustees, authorized representatives of an affected State, or Indian Tribes can pursue a section 107(a)(4)(C) action.

Subpart G designates Federal trustees to act on behalf of the President in assessing damages to natural resources from discharges of oil or releases of hazardous substances, pollutants, or contaminants, and outlines the responsibilities of trustees under the NCP. Although the CERCLA amendments necessitated few changes to Subpart G, the major objective for this proposed revision is to make the subpart more readable and understandable to those who are not familiar with trustee agency authorities. Because the primary purpose of this subpart is to designate trustees, the proposed changes reflect an overriding concern that trustee jurisdictions be described as accurately as possible.

Section 301(c) of CERCLA requires the promulgation of rules for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance under CERCLA and the Clean Water Act. The responsibility to promulgate these regulations has been delegated to the Department of the Interior (DOI). The use of the procedures described in DOI's rule, 43 CFR Part 11, is optional. However, the results of an assessment performed in accordance with the DOI rule by a Federal or State trustee, or Indian Tribe, if reviewed by a Federal or State trustee, shall be given the status of a rebuttable presumption in an action to recover damages for injuries to, destruction of, or loss of natural resources. Whether or not the procedures in 43 CFR Part 11 are followed, a trustee should proceed in conformance with the responsibilities described in this subpart.

A. Major Revisions

1. *Specific designation of trustees and consultation (§ 300.600).* In the proposed revisions, EPA has attempted to clarify and define as accurately as possible the Federal agencies responsible for specific resources. EPA has attempted to do this by delineating in the paragraph headings the Federal agency or type of Federal agency responsible for natural resources. In addition, EPA has changed the narrative to describe in more detail the resources that agencies manage and to give examples of the types of resources that might be under an agency's trusteeship.

It should be noted that although the Departments of Commerce and the Interior are listed under separate headings, the division of authorities between them, and that between them and other agencies, is complex. For this reason, parallel construction of the sections describing trustee designations is not possible. The proposed revisions use the terms of the authorities under which each trustee operates.

A related change is made to § 300.600(b)(1), which designates the Secretary of Commerce as a trustee. The revision explains that the Secretary will act with the concurrence of other Federal agencies when the resources or authorities of other agencies are involved. This situation may arise because the trusteeship of the Secretary of Commerce is sometimes described geographically, i.e., within certain marine and coastal areas. However, specific natural resources in these same areas may also be managed or protected under statutes administered by other Federal agencies. Thus, the regulation states that the Secretary of Commerce will act with the concurrence of other Federal agencies when any of their resources are affected. It is appropriate that Federal trustees seek concurrence when they plan to act with respect to resources under the management or protection of other agencies. The concurrence need not be lengthy or cumbersome. A similar provision is not included in the regulatory section describing the Secretary of the Interior's trusteeship because DOI's authority is not defined in terms of particular geographical areas. Rather, Federal statutes administered by the Secretary of the Interior describe the specific natural resources to be managed or protected by DOI.

Another major change involves the description of certain natural resources. Section 300.72 of the current NCP designates the Secretary of Commerce as trustee for "waters of the contiguous zone and parts of the high seas * * *". In the proposed revision, the following are included as under the Secretary's jurisdiction: "waters of the contiguous zone, the exclusive economic zone, and the outer continental shelf * * *". The contiguous zone includes the area from three to twelve miles from the shore. The exclusive economic zone, defined by Proclamation 5030 (March 10, 1983) and subsequently incorporated in the Magnuson Fishery Conservation and Management Act, is the area up to two hundred miles from the shore. The outer continental shelf extends beyond two hundred miles in some places.

The current NCP's exclusions of lands or resources in or under U.S. waters (§ 300.72 (a) and (b)) are proposed to be deleted. Federal trusteeship derives from authority to manage or protect the affected resources regardless of where these resources are located. To the extent that these resource management jurisdictions are concurrent or contiguous, trustees are expected to work together pursuant to § 300.615.

2. *Indian Tribes (§ 300.610).* The amendments to CERCLA provide that an Indian Tribe may bring an action for injury to, destruction of, or loss of "natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation." In those instances where the United States acts on behalf of an Indian Tribe, the Secretary of the Interior shall function as the trustee of those natural resources for which the Indian Tribe would otherwise act as trustee. The revisions in § 300.610 reflect these statutory changes.

Section 300.72(d) of the current Subpart G designates the Secretary of the Interior as trustee to recover "[d]amages to natural resources protected by treaty (or other authority pertaining to Native American tribes) or located on lands held by the United States in trust for Native American communities or individuals." Because this quoted language is inconsistent with the language on "natural resources" in section 107 of CERCLA, as amended, it has been deleted from the proposed revisions to Subpart G.

3. *Responsibilities of trustees (§ 300.615).* EPA proposes to reorganize and make substantive changes to the existing NCP § 300.74. The section has been reorganized by changing the order in which some information appears (e.g., discussion of multiple trustees appears first, instead of last) and by changing the format in which some information appears (e.g., listing the responsibilities of the trustees so that their responsibilities are easier to read and understand).

Several new provisions are proposed to be added to this section to provide better information on the actions trustees can take to carry out their responsibilities. The first addition notes that trustees may list in each Regional contingency plan (see § 300.210(b)) the appropriate contacts to ensure that the trustees are notified of potential or actual damage to natural resources. In addition, the proposed section provides that when trustees are notified of or discover possible damage to natural resources, they may conduct a preliminary survey of the area to determine if natural resources under their trust are affected.

Although a trustee may be responsible for certain natural resources affected or potentially affected by a release, it is important that only one person (i.e., the lead agency OSC or RPM) manage activities at the site of a release or potential release. The OSC/RPM shall coordinate responsibilities for CERCLA section 104 assessments, investigations, and planning, including Federal trustees' participation in negotiations with PRPs as provided under CERCLA section 122(j)(1). Close communication and coordination between OSCs/RPMs and trustees is essential. When there are multiple trustees, it is recommended that a lead authorized official be designated to coordinate all aspects of the assessment.

The trustee actions authorized under existing NCP § 300.74(b) are proposed to be changed in the following ways. First, the trustee is authorized to conduct CERCLA section 104(e) activities such as entering and inspecting any relevant vessels, facilities, or other properties, or inspecting or obtaining samples of any suspected hazardous substances, pollutants, or contaminants. This addition to this section reflects authorities delegated to trustees under Executive Order 12580. In exercising this authority, trustees must consult with the lead agency to ensure efficient response actions and to avoid duplication of effort. Second, a new provision of CERCLA, section 104(e)(5)(B), provides that the President (or Federal trustees by delegation under EO 12580) may request that the Attorney General initiate civil actions against PRPs in order to compel compliance with orders regarding information gathering and access.

Finally, in discussing trustee responsibilities, the option of pursuing claims against the Fund has been deleted. This change reflects the provision in SARA that prohibits expenditures from the Fund to pay trustees' claims for natural resources damages assessment and restoration of natural resources. Although section 111(a)(3) of CERCLA provides for claims against the Fund for assessment and restoration of natural resources, section 517 of the Superfund taxing provisions in Title V of SARA (Superfund Revenue Act of 1986), by necessary implication, eliminates authority to pay for such assessments or restoration. The proposed deletion of existing NCP § 300.74(b)(4) reflects this change in the law.

Subpart H—Participation by Other Persons

The focus of this subpart is on those authorities of CERCLA that allow persons other than governments to respond to releases and to recover those response costs. Although this subpart is new, it revises and consolidates provisions from current NCP § 300.25 on Nongovernment Participation and § 300.71 on Other Party Responses into one place in the NCP. Subpart H also incorporates the new authorities from CERCLA, as amended, which address participation by other persons.

A. Major Revisions

1. *Reorganization of authorities regarding participation by other persons (§ 300.700).* EPA proposes to combine the closely related concepts of current NCP §§ 300.25(d) and 300.71 into a new subpart to clarify NCP authorities regarding responses undertaken by persons other than the Federal government, States or Indian Tribes. Accordingly, § 300.700(a) states that any person may undertake a response action to reduce or eliminate a release of a hazardous substance, or pollutant, or contaminant. Section 300.700(b) then sets forth the following summary of the mechanisms for the recovery of response costs:

i. *CERCLA section 107(a)(4)(B).* Awards of response costs from liable parties to other persons who undertake response actions consistent with the NCP;

ii. *CERCLA section 111(a)(2).* Claims by other persons against the Fund for reimbursement for actions consistent with EPA's prior approval;

iii. *CERCLA section 106(b)(2).* Petitions against the Fund for reimbursement of costs incurred in compliance with a section 106(a) order, issued after October 17, 1986, where the petitioner was not liable for the release, or if the petitioner was liable, to the extent that the action ordered was arbitrary and capricious, or not otherwise in accordance with the law; and

iv. *CERCLA section 123.* Claims by a general purpose unit of local government for reimbursement of temporary emergency measures costs (see 40 CFR Part 310).

In order for a person to recover the costs of his or her response action from the Fund or from another person, several conditions must be met. The remainder of the paragraphs in the new subpart examine each of the above cost recovery mechanisms and give a more in-depth description of the conditions that must be met.

2. *Consistency with the NCP for the purpose of cost recovery.* Section 107(a)(4)(B) authorizes parties other than the Federal government, States, or Indian Tribes to recover from liable parties response costs which they incurred consistent with the NCP. Proposed NCP § 300.700(c) revises current NCP § 300.71(a)(2) and contains a list of NCP sections that these other persons (except for other persons acting pursuant to orders issued under CERCLA sections 104 and 106) must comply with in order for their response actions to be considered consistent with the NCP for the purpose of cost recovery from other third parties. The exception is made for section 104 and 106 actions because the administrative order or consent decree issued under these sections determines the scope and requirements of the response action. Today EPA proposes to list the following NCP sections that EPA believes other persons must comply with in order for their response actions to be considered consistent with the NCP:

i. Section 300.150 (on worker health and safety);

ii. Section 300.160 (on documentation and cost recovery);

iii. Section 300.400(c)(1), (4), (5), and (7) (on determining the need for a Fund-financed action), (e) (on permit requirements), and (g) (on identification of ARARs);

iv. Section 300.405(b), (c), and (d) (on reports of releases to the NRC);

v. Section 300.410 (on removal site evaluation) except (e)(5) and (6) and the reference to listing releases in CERCLIS in (h), which are uniquely Federal determinations;

vi. Section 300.415 (on removal actions) except (a)(2), (b)(2)(vii), (b)(5), and (g);

vii. Section 300.420 (on remedial site evaluation);

viii. Section 300.430 (on RI/FS and selection of remedy) except paragraph (f)(3)(iv)(F) which applies only to Fund-financed responses; and

ix. Section 300.435 (on remedial design/remedial action, operation and maintenance).

These sections have been chosen to assure protection of human health and the environment. EPA has omitted those NCP sections that pertain to organizational matters and other areas of concern that are unique to the government.

In addition, the regulation specifically states that other persons must provide an opportunity for public comment concerning the selection of the response action. The regulation identifies the sections of the proposed NCP regarding public participation (except administrative record and information repository requirements stated therein)

that a response action must comply with in order to be consistent with the NCP:

a. Section 300.155 (on public information and community relations);

b. Section 300.415(n) (on community relations during removal actions);

c. Section 300.430(c) (on community relations during RI/FS and selection of remedy) except (5);

d. Section 300.430(f)(1), (2), and (5) (on community relations during RI/FS and selection of remedy); and

e. Section 300.435(c) (on community relations during RD/RA and operation and maintenance).

Alternatively, EPA intends that a response action will be considered consistent with NCP public participation requirements if the person taking the response action complies with appropriate State or local requirements which provide a substantially equivalent opportunity for public involvement in the choice of remedy.

Further, the regulation suggests that other persons consider the methods of remedying releases listed in Appendix D when selecting the appropriate remedial action.

The requirements listed above are to be complied with where pertinent to the particular response action. By setting forth these requirements, EPA wishes to clarify that it is not EPA's objective to limit the discretion of Federal courts in determining what constitutes substantial compliance with the NCP or making CERCLA cost recovery awards. The courts, rather than EPA, will make the ultimate determination of what response costs parties may recover pursuant to CERCLA section 107. Nevertheless, as the primary agency charged with the implementation of the statute, EPA has an interest in this matter, and believes that its interpretation of the statute merits judicial deference. EPA believes it has an obligation, in promulgating the NCP, to explain when actions by non-governmental entities are consistent with the NCP. This obligation is particularly important given the widespread confusion and conflicting judicial interpretations of the issue. See e.g., *Walls v. Waste Resources Corp.*, 761 F.2d 311 (6th Cir. 1985); *Pinole Point Properties, Inc. v. Bethlehem Steel Corp.*, 596 F. Supp. 283 (N.D. Cal. 1984); *Bulk Distribution Centers, Inc. v. Monsanto Co.*, 589 F. Supp. 1437, 1442–44 (S.D. Fla. 1984); *Jones v. Inmont Corp.*, 584 F. Supp. 1425, 1430 (S.D. Ohio 1984); *City of Philadelphia v. Stepan Chemical Co.*, 544 F. Supp. 1135 (E.D. Pa. 1982).

Moreover, EPA intends that providing a list of requirements to be complied with in order to be consistent with the NCP will enhance the probability of a successful cost recovery action, thus providing an incentive to other persons to undertake response actions.

3. *Deletion of requirements regarding response actions that are "not inconsistent with the NCP."* EPA is proposing to delete the language of current NCP § 300.71(a)(2) regarding which sections of the NCP must be complied with for governmental response actions to be "not inconsistent with the NCP." EPA believes that CERCLA contemplates a different standard of proof for actions conducted by the Federal government, States, or Indian Tribes. EPA does not propose to define what actions are "not inconsistent with the NCP," and would leave that determination to case-by-case decisionmaking.

4. *Summary of revisions to language regarding consistency with the NCP.* In today's proposed rule, as well as in the current NCP, EPA makes it absolutely clear that no Federal approval of any kind is required for a cost recovery action under CERCLA section 107. The main effect of today's proposed revisions to current NCP § 300.71(a)(2) is to specify in further detail what other persons must do in order to act consistently with the NCP.

5. *Deletion of certification authorities from the NCP.* EPA proposes to delete current NCP § 300.71(c) regarding certification of organizations to conduct site response activities because EPA believes that preauthorization of each response claim is a sufficient means of determining the capability of applicants to perform proposed response actions. EPA is also concerned that its certification of organizations would be used as a marketing tool, possibly leading to public misperceptions regarding the quality of performance by certified firms. Today's proposed revisions incorporate that earlier proposed change.

6. *Additional statutory authorities for the recovery of response costs.* Subpart H refers to new mechanisms for reimbursement of response costs added by the 1986 CERCLA amendments:

i. Section 106(b), whereby a person who has complied with a section 106(a) enforcement order issued after October 17, 1986 may petition the Fund for reimbursement of response costs if he or she is not liable for the release, or, if liable for the release, can subsequently demonstrate that the order, or a portion thereof, was arbitrary and capricious, or not otherwise in accordance with the law; and

ii. Section 123, which authorizes any general purpose unit of local government to petition the Fund for expenses incurred in providing temporary emergency measures. Such reimbursement may not exceed $25,000 for a single response. EPA has issued an interim final regulation (see 52 FR 39396, October 21, 1987) establishing procedures for such actions.

B. Other Revisions

1. *Clarification and reorganization of requirements for preauthorization of responses by other persons.* The language in current NCP § 300.25(d) has, for the most part, been retained. However, the language has been reorganized, and minor clarifications and amplifications to existing language are proposed. Preauthorization is an established requirement. EPA is not considering revising it and does not solicit comment on the requirement itself.

The proposed revisions clarify that in order to receive EPA's prior approval, the applicant must demonstrate not only the technical and other capabilities necessary to respond safely and effectively to releases, but also establish that the action will be consistent with the NCP as established by this section. The capability of an applicant to perform a proposed action will be evaluated on a case-by-case basis, since an application for preauthorization must be filed with respect to each proposed action. EPA intends to propose a separate regulation setting forth the procedures for applying for preauthorization and for presenting a claim for reimbursement of response costs.

2. *Impact of new CERCLA section 122 settlement provisions on other party response.* Section 122(b) of CERCLA adds a provision that allows potentially responsible parties to be reimbursed through "mixed funding" agreements. Mixed funding agreements permit EPA to reimburse parties to settlement agreements for certain response actions that the parties have agreed to perform and that EPA has agreed to finance in part. EPA proposes to add a new paragraph to the section on claims to state that a claim by a party determined by EPA to be potentially liable under section 107 of CERCLA, including a State or a political subdivision thereof, will receive EPA's prior approval to submit claims only in accordance with an order issued pursuant to section 106 of CERCLA, or a settlement with the Federal government in accordance with section 122 of CERCLA. Consequently, a State or its political subdivision can submit claims under these sections in the context of enforcement actions taken by EPA. Where such persons are not determined by EPA to be potentially liable under section 107 of CERCLA, but

act in their capacity as a unit of government, they may receive funds from the Fund for section 104 response action as authorized by section 111(a)(1) of CERCLA. A political subdivision of a State is treated as a State for the purpose of section 107.

3. *Grants for technical assistance.* Current NCP § 300.25(d) refers to cooperative agreements and contracts. Amendments to CERCLA section 111 authorize technical assistance grants pursuant to section 117(e). Cooperative agreements and grants, when taken together, are generally referred to as "assistance agreements." EPA is proposing to revise § 300.25(d) to refer to "procurement contracts or assistance agreements."

Subpart I—Administrative Record for Selection of Response Action

Proposed Subpart I of the NCP is entirely new. It implements CERCLA requirements concerning the establishment of an administrative record. Section 113(k)(1) of CERCLA requires the establishment of an administrative record that contains the documents that form the basis for the selection of a CERCLA response action. In addition, section 113(k)(2) requires the promulgation of regulations establishing procedures for the participation of interested persons in the development of the administrative record.

EPA is proposing regulations regarding the administrative record that include procedures for public participation. This will ensure the development of a complete and accurate record by all parties responsible for compiling records, because procedures for establishing and maintaining the record are closely related to the procedures governing public participation.

Because this subpart is entirely new, the following discussion is not divided into major revisions, other revisions, and points of clarification. Instead, it explains the purpose of the administrative record and then generally provides a paragraph by paragraph explanation of the proposed regulations.

A. Background and Purpose

Under CERCLA, the administrative record established under section 113(k) serves two primary purposes. First, under section 113(j), judicial review of any issue concerning the adequacy of a response action is limited to the administrative record. Second, section 113(k) requires that the administrative record be used as a vehicle for public participation in the selection of the response action, ensuring that EPA has considered all relevant factors in selecting the response and that interested parties have been given adequate notice and an opportunity to participate in that selection.

1. *Judicial review.* Section 113(j)(1) of CERCLA provides that judicial review of any issues concerning the adequacy of any response action shall be limited to the administrative record. Section 113(j)(2) provides that the court shall uphold the selection of a response action unless the objecting party can demonstrate, based on the administrative record, that the decision was arbitrary and capricious, or otherwise not in accordance with law. These statutory provisions codify well-established principles of administrative law concerning the applicable standard and scope of review for informal agency actions. The legislative history of section 113 demonstrates that it is intended to clarify and confirm the applicability of these administrative law principles to CERCLA response selection. (See S. Rep. 99–11, 99th Cong., 1st Sess. 57 (1985); H.R. Rep. 99–253, 99th Cong., 1st Sess. 82 (1985); Cong. Rec. H 11084 (daily ed. Dec. 5, 1985)).

Limiting judicial review of the selection of a response action to the administrative record ensures that litigation on the selection of the response action focuses on the selection in light of the information available to the decisionmaker at the time the response was selected. Judicial review limited to the administrative record contributes to the overwhelming public interest in effecting the expeditious cleanup of potentially health- and environment-threatening hazardous waste sites and ensures that all interested persons may participate equally in the administrative decisionmaking process. The principal effect of limiting judicial review to the administrative record is that courts will not engage in de novo fact-finding during their review of a challenge to the decision to select a certain response. Thus, record review of response selection decisions would mean that persons challenging the response decision could not depose, examine or cross-examine on-scene coordinators (OSCs), remedial project managers (RPMs), government consultants, or decisionmakers with respect to the response decision or engage in any other discovery activities. Also, the imposition of long and costly trial-type procedures in section 106 actions would greatly delay response.

2. *Public participation.* Sections 113(k)(2) (A) and (B) of CERCLA require the promulgation of regulations establishing procedures for the participation of interested persons in the development of the administrative record. Participation by interested persons, where appropriate, will ensure that EPA has considered the concerns of the public, including potentially responsible parties (PRPs), in selecting the response action. In addition, for purposes of administrative and judicial review, the administrative record can contain documents that reflect the views of the public, including PRPs and those not party to any judicial proceeding, concerning the selection of a response action.

For remedial actions, section 113(k)(2)(B) of CERCLA establishes the following minimum procedures for public participation:

i. Notice to potentially affected persons and the public, accompanied by a brief analysis of the plan and alternative plans that were considered;

ii. A reasonable opportunity to comment and provide information regarding the plan;

iii. An opportunity for a public meeting in the affected area, in accordance with section 117(a)(2) of CERCLA;

iv. A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations; and

v. A statement of the basis and purpose of the selected action.

These requirements are virtually the same as those required by section 117 of CERCLA concerning public participation for remedial actions. These public participation requirements are proposed for codification today in § 300.430 of Subpart E of the NCP. Subpart I expands on the public participation requirements of Subpart E.

Because the nature of removal actions often involves the need for prompt action, the procedures proposed today for public participation in removal actions are quite different from those for remedial actions. Removal authority allows the lead agency to move quickly in situations where prompt lead agency action is warranted. Section 113(k)(2)(A) of CERCLA requires that there be "appropriate" participation of interested persons in the development of the administrative record supporting removal actions. The legislative history of this section states that these public participation requirements "are not intended to hamper emergency removal actions. Nonetheless, the Administrator is directed to develop appropriate participation procedures for removal actions and should follow these requirements to the maximum extent practicable." (H.R. Rep. 99–253, 99th

Cong, 1st Sess., 1985, at 82). Public participation requirements for removal actions are addressed in § 300.415(n) of today's proposed regulations. Additional public participation procedures in the development of an administrative record for a removal action are addressed in § 300.820. The public participation procedures are designed to ensure an appropriate level of public involvement for removal actions without causing unnecessary delay. In general, where there is time to solicit public comment before the selection of a removal action, the lead agency will do so. Public participation procedures for removal actions are described in greater detail below.

B. Current Record Requirements

Section 113(k)(2)(C) of CERCLA states that until regulations on the participation of interested persons in the development of the administrative record are promulgated, the administrative record shall consist of all items developed and received pursuant to current procedures for selection of the response action, including procedures for the participation of interested parties and the public. Current procedures on public participation in the selection of response actions include an extensive community relations program through which interested persons have notice of information through notices in local newspapers, community relations mailings, public meetings, and letters, including notice letters to potentially responsible parties. An adequate record should be compiled and maintained through use of current procedures for sites where the remedial investigation or removal action has already begun prior to promulgation of these regulations. These proposed administrative record requirements build upon and formalize existing procedures for the exchange of information on the selection of a response action.

The cutoff date for the applicability of these regulations is based on when the administrative record file must first be made available under these regulations. The lead agency may not be able to fully comply with regulations concerning compilation of the record which are promulgated after a record has already been compiled and made available at or near a site. Thus, at such sites, the lead agency will comply with these regulations to the extent practicable.

C. Summary of New Subpart I

1. *Establishment of an administrative record (§ 300.800).* As explained earlier, section 113(k) requires the establishment of an administrative record consisting of the documents that form the basis for the selection of a response action. An administrative record is the compilation of documents considered or relied on by the agency in making a decision; in this case, the selection of the response action for the site. Proposed § 300.800(a) codifies this statutory provision and provides that such establishment is the responsibility of the lead agency. The regulation also uses the term "administrative record file" to refer to documents which the lead agency anticipates will be included in the administrative record when the decision on response action selection is made. The administrative record file contains a body of documents which increases as documents are added and does not necessarily constitute the final administrative record.

The term "documents," also used in the preamble and proposed regulations, is intended to be very broad. It includes writings, drawings, graphs, charts, photographs, and data compilations from which information can be obtained. It does not include physical samples.

Section 300.800(b) addresses administrative records for Federal facilities. Executive Order 12580 authorizes Federal agencies to establish the administrative record for selection of response actions for Federal facilities under their jurisdiction, custody, or control. EPA, however, is required to promulgate regulations establishing procedures for the participation of interested parties in the development of the record. Federal agencies must compile and maintain records as required by this subpart, as finally promulgated. Section 300.800(b) also clarifies that although the Federal agency is responsible for compiling and maintaining the administrative record, EPA may furnish documents which the Federal agency is to place in the administrative record file to ensure that the administrative record includes all documents which form the basis for the selection of the response action.

Section 300.800(b)(2) provides that when EPA (or the United States Coast Guard (USCG)) is the lead agency at a Federal facility, EPA (or USCG) shall compile and maintain the record. Executive Order 12580 delineates cases in which EPA (or USCG) is the lead agency. EPA is the lead agency, for example, at Federal facilities conducting on-site emergency removal actions (other than at DOD or DOE Facilities). The USCG can be the lead agency at Federal facilities with on-site emergency removal actions in the coastal zone.

Section 300.800(b)(3) requires that when EPA is involved in the selection of a response action at a Federal facility on the NPL, the Federal agency shall provide EPA with a copy of the index of documents included in the administrative record file, the RI/FS workplan, the RI/FS released for public comment, the proposed plan, any public comments received on the RI/FS and proposed plan, and any other documents requested by EPA on a case-by-case basis. EPA is involved in the selection of a response action when it is jointly selecting the response action with the Federal agency, as delineated in Executive Order 12580. Such joint selection occurs, for example, for all remedial actions at Federal facilities on the NPL. In such cases, EPA must be sufficiently familiar with the contents of the administrative record to be able to select jointly the response action.

EPA considered other options for involvement in the development of the administrative record for Federal facilities, such as periodic visits to the Federal facility to review the administrative record file as it is compiled, receipt of the entire contents of the record file for all NPL sites, and receipt of the entire contents of the record file for all response actions at all Federal facilities. EPA has tentatively rejected these options as being overly burdensome. EPA believes that the preferred option allows enough flexibility for EPA to ensure that the response action selected by the Federal agency adequately accounts for the concerns of the public, is consistent with response action selection at non-Federal facilities, and allows EPA to be sufficiently involved in the decision when it is jointly selecting the response action. EPA solicits comments on alternative procedures for EPA's involvement in the development of the administrative record for Federal facilities.

Section 300.800(c) specifies that it is the responsibility of the State to compile and maintain administrative records at a State-lead site. Section 300.800(c) applies only if EPA and the State formally designate the State as the lead agency for a site as specified in Subpart A under the definition of lead agency. The requirements for State-lead sites are similar to those for Federal agencies compiling administrative records for Federal facilities at which EPA is involved in the selection of the response action. EPA is proposing that the State provide EPA, commencing at the time the administrative record file is first made available to the public, with the index of documents included in the administrative record file. The issues relating to this requirement are similar to those outlined above for Federal

facilities. Additionally, EPA may require that States place additional documents in the record file to ensure that the administrative record includes all documents which form the basis for the selection of the response action.

Section 300.800(d) provides that Subpart I applies to all response actions taken under section 104 of CERCLA or sought, secured, or ordered administratively or judicially under section 106 of CERCLA. The statutory language of section 113(j)(1) states that in any judicial action under this Act, judicial review of any issues concerning the adequacy of any response action taken or ordered by the President shall be limited to the administrative record. It has been argued that section 113(j)(1) of CERCLA does not apply to injunctive actions taken under section 106, and that the literal meaning of the phrase "taken or ordered by the President" does not include section 106 actions for injunctive relief unless an administrative order is issued.

The statutory language of sections 113(j) (1) and (2), when read together, indicates that this narrow interpretation of section 113(j) is incorrect. Together, sections 113(j) (1) and (2) provide that judicial review of any response action is limited to the administrative record. In addition, section 121 of CERCLA expressly provides that the President shall select all remedial actions to be carried out by EPA under section 104 of CERCLA or secured under section 106. No exception for section 106 injunctive actions was made.

Accordingly, consistent with the statutory language and congressional intent, EPA is clarifying that limiting judicial review of response action selection to the administrative record applies to all actions taken under section 104 of CERCLA, or sought, secured, or ordered administratively or judicially under section 106 of CERCLA.

Section 300.800(d) further provides that Subpart I only applies to those sites at which the remedial investigation commences or the action memorandum is signed after the promulgation of these regulations. For those sites grandfathered by paragraph (d), paragraph (e) provides that the lead agency shall comply with these regulations to the extent practicable on a case-by-case basis. This does not mean that administrative records are not required for these sites or that judicial review of the selection of a response action at these sites will not be limited to the administrative record. Rather, as explained earlier, this provision simply recognizes that there will be ongoing actions at which the final regulations cannot be complied with in full. The public participation procedures for remedial actions outlined in section 113(k)(2)(B) and 117 of the statute and discussed earlier in this preamble, however, are applicable to any Record of Decision (ROD) signed after October 17, 1986, the date that, in general, the amendments to CERCLA took effect.

Subpart I does not apply to third party cleanups, i.e., those not undertaken pursuant to sections 104, 106, or 111 of CERCLA. Under this proposal, such cleanups need not comply with these administrative record requirements. Section 300.800(d) does not require that State actions for cost recovery under section 107 of CERCLA, where the State used only its own authorities to conduct a response action, comply with this subpart. If a State is seeking to recover costs from responsible parties under section 107 of CERCLA, EPA may wish to require that States comply with this subpart to expedite judicial proceedings in such circumstances. EPA solicits comments on whether these regulations should apply to those situations.

2. *Location of the administrative record (§ 300.805).* Section 113(k)(1) of CERCLA requires that "the administrative record shall be available to the public at or near the facility at issue. The President also may place duplicates of the administrative record at any other location." EPA proposes to require that the administrative record file generally be located in two places. First, as provided by the statute, the record file shall be located at or near the facility at issue. (To conform to the terminology of the rest of the NCP, the term "site" will be used in this subpart as a substitute for the term "facility" used in the statute.)

In addition, EPA proposes that the administrative record file be located at an office of the lead agency or other central location. Examples of central locations include an EPA Regional Office, an EPA field office, a Federal agency equivalent to an EPA Regional office, or, for State lead sites, a State environmental agency office. EPA considered making the central location requirement optional, but concluded that the lead agency has more control over the maintenance of the necessary documents at the central location than at or near the site. As described below, the file at or near the site should contain a copy of most of the documents included in the administrative record file at the central location.

Under § 300.805, the file at the central location must contain all documents which are part of the administrative record except certain verified sampling data, quality control and quality assurance documents, chain of custody forms, and publicly available technical literature. These documents, which are part of the record, may be located elsewhere, as provided in § 300.805 (a) and (c), and explained further below.

The administrative record file at or near the site at issue should be located at one of the information repositories which may already exist for community relations purposes. The information respository, maintained by the community relations coordinator, may contain additional information which is of interest to the public, but which does not form a basis for the response action decision. Examples of such information include newspaper articles, press releases, and information concerning the NPL listing. If there is no existing community relations information repository, or the information repository is inadequate for maintaining the administrative record file, the file may be located in some other publicly accessible place. EPA is considering and seeks comments on limiting the information which much be available at or near the site in situations where the record is too voluminous for the publicly accessible location. Typically, local libraries, town halls, or public schools are used as publicly accessible locations.

EPA may make the administrative record file available to the public in microform. EPA may microform-copy documents that form the basis for the selection of a CERCLA response action in the regular course of business. The microform copying will be done in accordance with technical regulations concerning micrographics of Federal Government records and EPA records management procedures.

EPA proposes that some information need not be physically located at or near the site because of the substantial administrative burden this would pose. The information not available at or near the site would, however, always be available to the public at another location. For example, § 300.805(a) provides that certain types of technical information may be located in the central location or elsewhere, such as a contract laboratory or field office. The index to the administrative record file, which will be included in the administrative record file both at or near the site and at the central location, must indicate where the information is located and how it can be obtained for inspection. Thus, such information continues to be easily accessible to interested persons. Examples of such information include validated sampling data, which are normally summarized in

data summary sheets and are quite voluminous, documentation of quality assurance and quality control which is normally summarized in the remedial investigation/feasibility study (RI/FS), and chain of custody forms. These types of documents may be stored in the EPA Regional office, contract laboratory office that conducted the testing, State environmental agency office, or elsewhere, as appropriate.

Section 300.805(b) provides that guidance documents not generated for the particular site for which an administrative record is being compiled may be maintained in a library at the central location. The guidance documents need not be in each site-specific administrative record file at the central location or at or near the site at issue. EPA anticipates that each EPA Regional office will maintain a central library of guidance documents which are frequently cited as a basis for selecting a response action. This approach eliminates the need for reproducing copies of the same document for each site record. The term guidance document includes issue-specific policy memoranda as well as formal guidance documents. Examples of such guidance documents and issue-specific memoranda include the RI/FS guidance document, guidance on risk/exposure assessments, guidance on applicable or relevant and appropriate requirements, memoranda on maximum contaminant levels, and guidance on testing for specific contaminants.

Guidance documents and memoranda which are generated for a particular site must be placed in the site-specific administrative record file. (For example a document on dioxin contamination at XYZ site must be placed in the XYZ site-specific administrative record file. If it is also used as a guidance document on the cleanup of dioxin at other sites, it may be located only in the central library rather than physically in the administrative record file at those other sites.) The central library of guidance documents will be available to the public.

EPA proposes in § 300.805(c) that publicly available technical literature not generated for a site at issue need not be located at or near the site at issue, in the central library of guidance documents or in the site-specific administrative record file, provided that it is listed in the index to the administrative record. Copyright laws may bar the copying of these materials without specific approvals. EPA believes that expending Superfund resources on obtaining copies of publicly available technical literature is not appropriate. Examples of publicly available technical literature include widely used engineering handbooks on ground-water monitoring, and articles from technical journals, which are readily available in technical libraries. The index must list these documents separately and indicate information on their availability, or, the literature may already be cited in a document included in the record.

Technical literature, however, which is not generally available should be included in the site-specific administrative record file. Because these documents are by definition not easily obtainable, they should not simply be indexed. They generally will not be used for many sites; therefore, it is also not appropriate to include them in the central library of guidance documents. The library should be reserved for documents which are frequently used to select response actions. Examples of technical literature not generally available include articles from technical journals or unpublished documents not available through the Library of Congress or not circulated to technical libraries.

Section 300.805(d) provides that documents included in the confidential portion of the administrative record file shall be located only in the central location. Since the public cannot review the confidential and privileged information, there is no reason to require that such information be maintained at or near the site.

EPA is proposing in § 300.805(b)(5) that, for reasons of administrative feasibility, an administrative record file for emergency removal actions where on-site activities cease within 30 days of initiation need only be available for public inspection at the central location. Emergencies are those actions with little or no lead time and generally of very short duration—for example, a highway spill. The benefits of placing the record file at or near the site are outweighed by the administrative burden on the response to such emergencies. Where feasible, a notice may be placed at the site explaining that the administrative record file will be available for public inspection at the EPA Regional office (or other central location).

3. *Contents of the administrative record (§ 300.810).* The administrative record under section 113(k) consists of documents which form the basis for the selection of a response action at a particular site. In determining which documents form the basis for the response action, i.e., what constitutes a complete record, the lead agency shall include all documents considered by the decisionmaker, including those relied upon by the decisionmaker in selecting the response action.

It should be noted that documents constituting the administrative record for selection of a response action are only a subset of documents that the lead agency may have compiled with respect to a particular site. The lead agency will also have general files consisting of documents relevant to other aspects of a site.

Section 300.810 discusses generally what should be contained in the administrative record file for response selection and what should be excluded. Section 300.810(a) states that it should contain factual information; data; analysis of the factual information and data; guidance documents; technical literature; site-specific policy memoranda; documents received, published, or made available to the public under §§ 300.815 and 300.820 of this subpart; decision documents; and enforcement orders. In addition, an index listing the documents contained in the administrative record file should be included at the beginning of the record file.

The following is a list of documents which typically, but not in all cases, should be part of the administrative record for selection of a remedial or removal action. (For purposes of this subpart, an RI/FS should be included as a component of a remedial action record.) Only documents within each category which form a basis for selecting the response action will be part of the record (i.e., although correspondence is listed under public participation, correspondence on liability issues is not part of the record). This list is intended to be illustrative, but not necessarily required at each site or complete.

i. *Contents of Remedial Action Administrative Record.*

(a) *Factual Information/Data.*

Sampling plan.

Validated sampling and analysis data.

Chain of custody forms.

Project plan or program plan (QAPP).

Preliminary assessment report.

Site investigation report.

Inspection reports.

RI/FS final workplan.

Amendments to final RI/FS workplan.

Summary of remedial action alternatives (used in conjunction with early special notice letters).

Data summary sheets.

RI/FS.

Technical studies.

Factual information submitted by the public, including PRPs.

Documents supporting the lead agency's determination of imminent and substantial endangerment.
(b) *Policy and Guidance.*
Memoranda on policy decisions (site-specific and issue-specific).
Guidance documents.
Technical literature.
(c) *Public Participation.*
Correspondence.
Public notices.
Public comments.
Community relations plan.
Notice letters to PRPs.
Proposed plan.
Transcript of meeting on RI/FS and proposed plan, and waivers under section 121(d) of CERCIA.
Documentation of other public meetings.
Response to significant comments.
(d) *Other Party Information.*
ATSDR health assessment.
Natural Resource Trustees finding of fact and final reports.
Documentation of State involvement.
(e) *Decision Documents.*
Record of Decision, including responsiveness summary.
(f) *Enforcement Documents.*
Administrative orders.
Consent decrees.
Affidavits.
Response to notice letters containing relevant factual information.
(g) *Index.*
ii. *Contents of Removal Action Administrative Record.*
(a) *Factual Information/Data.*
Sampling plan.
Validated sampling and analysis data.
Chain of custody forms.
Preliminary assessment report.
Site investigation report.
Inspection reports.
Engineering evaluation/Cost analysis report (EE/CA).
Technical studies performed for the site.
Factual information submitted by the public, including PRPs.
Documents supporting the lead agency's determination of imminent and substantial endangerment.
(b) *Policy and Guidance.*
Memoranda on policy decisions (site-specific and issue-specific).
Guidance documents.
Technical literature.
(c) *Public Participation.*
Correspondence.
Public notices.
Public comments.
Community relations plan.
Notice letters to PRPs.
Documentation of other meetings.
Response to significant comments.
(d) *Other Party Information.*
ATSDR health assessment.
Natural Resource Trustees finding of fact and final reports.
Documentation of State involvement.
(e) *Decision Documents.*
EE/CA approval memorandum.
Action memorandum.
(f) *Enforcement Documents.*
Administrative orders.
Consent decrees.
Affidavits.
Response to notice letters containing relevant factual information.
(g) *Index.*

Several documents in the list above require further explanation. First, verified sampling data are included on the list above. Data which have undergone quality assurance/quality control and are relied on must be included in the record. Data which have been rejected as inaccurate, or will otherwise not be considered or relied upon, need not be included in the record.

Second, EPA is proposing in § 300.810(a)(1) that documents supporting the determination of an imminent and substantial endangerment be part of the administrative record. EPA and other Federal agencies have the discretion to conduct assessments to determine the extent of an imminent and substantial endangerment to the public health or welfare or the environment due to an actual or threatened release of a hazardous substance. If EPA chooses to exercise its discretion to conduct such an assessment, the assessment shall be included in the record. A determination of an imminent and substantial endangerment is based on factual information which forms a basis for the selection of the response action. As such, when a determination of an imminent and substantial endangerment is made, it is part of the record of the selection of a response action. EPA believes that judicial review of the determination that there is an imminent and substantial endangerment in actions under section 106 to enforce an order or for injunctive relief, therefore, is limited to the administrative record.

Third, for a remedial action record, the list includes a summary of remedial action alternatives. This summary will only be generated in conjunction with special notice letters EPA may issue to PRPs pursuant to section 122(e) of CERCLA if the notice letter is issued prior to the availability of an RI/FS report and it appears necessary to inform interested persons of the lead agency's direction on remedial alternatives. In this context, a summary of remedial action alternatives would be generated if necessary to enable PRPs to make an informed good faith offer to undertake the remedial design or remedial action. The summary of remedial action alternatives should be included in the administrative record file so that the public and not just the PRPs have the information.

Finally, EPA is proposing that notice letters to PRPs be included in the administrative record. EPA has recently issued guidance on the notice letters issued under section 122(e) of CERCLA, 53 FR 5298 (February 23, 1988). PRPs that receive notice letters are expected to become familiar with CERCLA, if they have not already done so. In light of notice letters and general principles of administrative law, PRPs are on notice that an administrative record file will be, or is, available for public inspection.

Section 300.810(b) addresses documents which generally will not be included in the administrative record. The type of documents referenced in § 300.810(b) are those which by definition are not appropriate for inclusion in the administrative record because they do not form a basis for the selection of the response action. These documents are specified in the regulation for purposes of clarity.

Draft documents, internal memoranda, and day-to-day notes of staff generally will not be included in the administrative record. Examples of draft documents that will be included in the administrative record are those that were considered or relied on in response action selection and never superseded by a final document, and those that contain material facts which do not appear in any other document included in the administrative record file. The general rule, however, is that only final documents will be included in the administrative record.

Examples of internal memoranda and day-to-day notes of staff which are not appropriate for inclusion in the administrative record are documents that express opinions or recommendations of staff to other staff or management, or internal pre-decisional documents that evaluate alternative viewpoints.

Section 300.810(c) addresses privileged documents. Examples of privileged documents include, but are not limited to: documents subject to attorney-client privilege and attorney work product exclusion, documents subject to deliberative process privilege, and enforcement sensitive information. Common law and other privileges may be asserted.

An assertion of confidentiality of information does not necessarily eliminate the need to make such information part of the administrative record. If confidential information which

forms a basis for the selection of a response action is not included in any other document in the administrative record, that information must be part of the administrative record. Section 300.810(d) requires that the information, to the extent feasible, must be summarized in such a manner as to make it disclosable to the public and placed in the administrative record file. If it is not feasible to summarize the information in a releasable manner, e.g., when the privilege applies directly to the information which forms a basis for the selection of the response action, such as confidential business information, the documents must be maintained by the lead agency in a confidential portion of the administrative record file. (These documents may be reviewed in camera in any subsequent judicial proceeding.) The index to the administrative record must list the confidential or privileged document even though the document will not be available for public inspection. Whether or not the information can be summarized in a releasable manner, the actual document containing confidential or privileged material must be included in the confidential portion of the administrative record file. In light of the nature of the information in the RI/FS and underlying documents and the fact that contamination levels are generally not privileged, this is not expected to occur frequently.

It should be noted that section 104(e)(7) of CERCLA governs the extent to which information may be claimed confidential by persons required to provide information under that section. Where confidential business information is claimed, EPA will proceed according to regulations set forth in 40 CFR Part 2.

4. *Administrative record for a remedial action (§ 300.815).* Section 300.815(a) provides that the documents included in the administrative record file for a remedial action shall be available for public inspection at the commencement of the remedial investigation phase. Generally, the commencement of the remedial investigation phase occurs when the final RI/FS work plan is available. The regulations do not specify when the remedial investigation phase commences because this may be a site-specific determination. EPA solicits comments on whether the regulation should specify in greater detail when the lead agency must make the administrative record file for a remedial action available for public inspection. The file at that time should contain the documents which will form a basis for the selection of the response action generated or received through the date when the administrative record file is first made available. Documents generally available when the RI/FS work plan is approved include a preliminary assessment report, site inspection report, the RI/FS work plan, underlying inspection reports, and the community relations plan. From that time until the ROD is signed (except as provided in § 300.825, described below) documents which form the basis for the selection of the remedial action, shall be added as generated or received to the administrative record file.

The lead agency may establish a system allowing for periodic review of documents where there are questions as to whether the documents must be included in the administrative record file. Quarterly or monthly updates of the administrative record file may be appropriate in given situations and allows the lead agency to analyze data and organize it in a manner that will be meaningful to the public. In addition, it may save the lead agency the time involved in making daily or weekly determinations on whether questionable documents should be added to the administrative record file. If there is no question that a document belongs in the administrative record file, e.g., the RI/FS report, the document should be placed in the record file as soon as practicable after its generation or receipt.

EPA proposes in § 300.815(a) that the lead agency publish a notice of availability of the administrative record file. The notice must be published in a major local newspaper of general circulation, as is required for the notice of availability of the proposed plan. (See § 300.430 of today's proposed rule.) EPA considered proposing that a notice be published in the **Federal Register** for wider circulation, but rejected such a requirement as unnecessary. EPA solicits comments on whether a notice of availability of the record or of commencement of the public comment period should be published in the **Federal Register**. EPA also considered proposing that a separate notification of known potentially responsible parties be made. Section 113(k)(2)(D) of CERCLA provides that the President shall make reasonable efforts to identify and notify PRPs as early as possible before selection of a response action. EPA will be issuing notice letters to PRPs under section 122(e) of CERCLA early in the process in many situations. Given these early efforts, as well as the notice in a local newspaper, EPA chose not to propose a separate notification of PRPs here.

Section 300.815(b) clarifies that interested persons may submit comments for inclusion in the administrative record file during the public comment period on the RI/FS and proposed plan described in § 300.430(f) of Subpart E. The lead agency need not, however, respond to comments that were submitted prior to the public comment period on the proposed plan, although in many instances, the lead agency will either make appropriate modifications to the response action or respond in writing to those early comments.

A written response to significant comments will be included in the administrative record file. The lead agency need not respond to any comments received during the public comment period until the close of the public comment period. Generally, responses will be included in the responsiveness summary, which is part of the ROD. In responding to significant comments, the lead agency need not respond separately to each comment but may combine comments by subject or other category in the response.

The public participation procedures for a remedial action are set forth in § 300.430. Section 300.815(c) of Subpart I requires that compliance with the requirements of § 300.430(f) be documented for inclusion in the administrative record file. The requirements of § 300.430(f) include preparation of a proposed plan; publication of a notice of availability and brief analysis of the proposed plan; placing a copy of the proposed plan in the information repository; providing an opportunity for the submission of written or oral comments on the proposed plan, RI/FS, and any waivers to cleanup standards under section 121(d)(4) of CERCLA; providing an opportunity for a public meeting on the RI/FS, proposed plan, and waivers to cleanup standards; preparing a transcript of public meetings held during the public comment period; making the transcript available to the public; discussing significant changes to the proposed plan; responding to significant comments; and soliciting additional public comment and providing for other public participation procedures at the lead agency's discretion prior to the adoption of the decision where new and substantial issues have been raised. It will generally be the practice of the lead agency that, whenever possible, documents upon which the selection decision is based will be included in the administrative record file as soon as possible after they are generated or received, and no later than when the

decision document is signed. This is intended to encourage maximum public participation in the development of the record.

Documents generated or received after the selection is made do not provide a basis for the decision and thus generally are not part of the administrative record, except as provided in § 300.825, discussed below.

5. *Administrative record for a removal action (§ 300.820).* Section 300.820 proposes requirements for administrative records for removal actions. It is divided into two parts. Paragraph (a) addresses "non-time-critical" removal actions, i.e., those for which, based on the site evaluation, the lead agency determines that a removal action is appropriate and that there is a planning period of at least six months before on-site cleanup activities must be initiated. Paragraph (b) addresses all other removal actions.

Explanations of regulatory requirements and related issues which are the same as those for remedial actions will not be repeated here. Only requirements and issues specific to removal actions will be addressed.

Section 300.820(a)(1) provides that the administrative record file for a non-time-critical removal action shall be available for public inspection when the engineering evaluation/cost analysis (EE/CA) report is made available for public comment. At that time, an administrative record file shall be established and made available to the public and shall contain all documents relevant to selection of the removal action generated up through that date. Documents generally available at that time include sampling data, a preliminary assessment report, a site inspection report, the EE/CA approval memorandum, and the EE/CA. After the EE/CA report is available and until the Action Memorandum is signed (except as provided in § 300.825, discussed below), documents relevant to the selection of the removal action shall be added to the administrative record file as discussed in the remedial action section of today's preamble.

The public participation procedures for non-time-critical removal actions are set forth in § 300.415(n)(3) of Subpart E of today's proposed regulations. Section 300.820(a)(3) requires that compliance with § 300.415(n)(3) (i) through (iii) be documented for inclusion in the administrative record. The requirements of § 300.415(n)(3) (i) through (iii) include publication of a notice of availability and brief description of the EE/CA; making the EE/CA available to the public; providing a reasonable opportunity, not less than 30 days, for submission of comments after the completion of the EE/CA; and responding to significant comments.

Section 300.820(b) provides different procedures for time-critical, including emergency, removal actions. As explained earlier, section 113(k)(2)(A) of CERCLA requires procedures for the "appropriate" participation of interested persons in the development of the administrative record for removal actions. Appropriate participation is significantly different in situations where an action must be taken on short notice. Where the exigencies of the situation demand that cleanup be initiated and often completed within short timeframes, public comment periods may delay expeditious response to the emergency. In view of Congressional intent that public participation requirements not hamper or delay emergency removal actions, EPA has considered many options for the appropriate level of public participation. EPA must balance the benefits of public involvement in advance of the selection of a removal action against the need to proceed quickly in emergency situations. EPA believes that the requirements proposed today strike the correct balance.

EPA has had to consider two questions in determining the level of participation for time-critical removals. First, at what point should the administrative record file be made available to the public, and second, should there be a formal public comment period on the record? EPA is proposing in § 300.820(b)(1) that for all time-critical removals (including emergencies), the record file should be made available to the public no later than 60 days after initiation of on-site removal activity. EPA is choosing to make the record available at this time recognizing that there will be many situations where immediate action must be undertaken to remove threats to human health and the environment before the administrative record file can be assembled and placed in a public docket for inspection. In reviewing typical removal actions, EPA found that generally containment or stabilization (i.e., those activities taken to retard, reduce, or prevent the spread of a release or threat of release and eliminate any immediate threat) at removal sites often are completed within 60 days. Clearly, where circumstances warrant, EPA should focus on addressing the threat at a site, and attend to administrative procedures later. The proposal meets both EPA's charge to protect human health and the environment and the requirement to provide for appropriate public participation, by requiring that the administrative record file be made available to the public no later than 60 days after initiation of removal activities. Making the record available involves: assembling the administrative record file, identifying a publicly accessible location for the record file at or near the site, finding an acceptable newspaper and placing an advertisement in it to notify the public, and preparing for receipt and evaluation of comments. The proposed requirement that the file be available "no later than" 60 days does not preclude making the record file available at an earlier time, if circumstances allow.

EPA is also proposing in § 300.820(b)(2) that the lead agency shall, as appropriate, provide a 30-day public comment period to begin at the time the administrative record is made available to the public. Generally, when the removal action has not been completed, a public comment period will be considered appropriate at the time the administrative record file is made available to the public. EPA requests comment on whether public comment should be solicited on activities that have already been completed at the time the record is made available.

EPA has also considered other public participation procedures for time-critical removals. They include:

i. Requiring that the record file be made available immediately upon issuing the Action Memorandum, and delaying the initiation of cleanup until after public comment is solicited and responded to. This would allow maximum public participation in selection of the removal, but it is not consistent with the need to provide prompt response for protection of human health and the environment at the site. Such an approach would also be inconsistent with the legislative history which states that administrative procedures established under section 113 should not hamper emergency removal actions.

ii. Requiring that the record be made available "promptly" after issuing the Action Memorandum, and then soliciting public comment "as time allows." EPA considered this as a way of addressing the individual nature of removals, the different timeframes that may be involved, and the need to provide meaningful opportunities for public comment in cases where time allows. As discussed earlier, EPA believes resources should first be directed toward mitigating threats at a time-critical removal site and that 60 days of on-site work will allow this. However, EPA is concerned that a

standard of "prompt" availability is too vague and would be a source of controversy at each site. Thus, EPA believes an objective standard is preferable. Similarly, while providing for public comment "as time allows" permits flexibility in the requirements, such a rule would require the exercise of judgment and would allow disputes over compliance with this requirement in individual cases. In addition, as discussed above, it is rare that there is sufficient time before beginning a time-critical action to solicit, consider and respond to comments.

iii. Delaying the availability of the record until 120 days after beginning cleanup and then soliciting public comment. This approach parallels the community relations requirements (within 120 days of cleanup for ongoing responses, a Community Relations Plan must be prepared and an information repository must be made available; see § 300.415(n)). This would increase the number of sites at which cleanup has been completed before the public is notified. EPA believes that the increased cleanup time provided under this option generally does not justify the delay in public involvement concerning response selection.

iv. Requiring that the record file be made available after performing containment or stabilization at a site where disposal is needed (over 25 percent of removals do not require disposal) and delaying disposal until public comment could be solicited, evaluated and responded to. This approach attempts to balance the need for public comment with the urgency of the response, limiting the response selection undertaken without benefit of public input to those aspects of removals which must be conducted swiftly in order to protect public health and the environment.

There are two major difficulties with this approach. The first concerns precisely defining "containment" and "stabilization" in this context and providing indicators to mark their completion. While it is possible, based on experience, to say that the containment or stabilization phase of a removal action is generally completed within 60 days of initiating work, it is much more difficult to determine such completion on a site-specific basis.

The second difficulty with such a rule is that it fails to take into account several important factors which may make such an approach infeasible in many cases. Specifically, delay of disposal activities may: (a) Create additional unnecessary risks to human health and the environment, and (b) result in needless expenditures of time and money. Site conditions, weather conditions, location, public accessibility, availability of approved disposal facilities, availability of treatment facilities and the effect of the delay on the statutory time and money limitations on removals are only some of the factors to be considered before a site-by-site determination could be made as to whether or not it was practicable to solicit public comment.

v. Making the record publicly available as in the proposal (i.e., no later than 60 days after initiation of cleanup), but not formally soliciting any public comment. Given the need for quick action on time-critical removals, that they are generally limited in scope, and few cleanup options are feasible, this may be an appropriate approach. This approach, however, would not provide the public with an opportunity for meaningful participation where it might be appropriate in specific removal situations.

EPA solicits comments on the proposed and other considered approaches to public participation on removal actions.

6. *Adding documents after selection of response action (§ 300.825).* New documents may be added to the record file after the decision document is signed only as provided in § 300.825. Documents generated or received after the decision document (e.g., Action Memorandum or ROD) is signed generally will be kept in a post-decision document file unless and until a determination is made that the document(s) should be placed in the administrative record file, pursuant to § 300.825.

Section 300.825(a) provides that the lead agency may add post-decision documents to the administrative record file in two situations. The first situation occurs when the decision document does not address or reserves a portion of the response action decision. In such cases, the lead agency will continue to add to the administrative record file documents which form the basis for that portion of the decision not addressed or reserved by the decision document. Where appropriate, the lead agency shall provide public notice that the administrative record file for this portion of the decision continues to be available for public inspection and comment. It should be noted that this exception applies to RODs that address an operable unit but leave a portion of the decision on that operable unit open.

The second situation arises when an explanation of significant differences provided for in § 300.435(c) or an amended decision document is required. An explanation of significant differences is issued when, after adoption of a final remedial action plan, the remedial action or enforcement action taken, or the settlement or consent decree entered into, significantly differs in scope, performance or cost from the final plan. The record shall include an explanation of significant differences and all documents that form the basis for the decision to modify the response selection decision. The lead agency shall publish a notice of availability of these documents, as required by section 117 of CERCLA and as proposed in § 300.435(c). If, in addition, an amended decision document is required, the record shall include the amended document and all documents that form the basis for the amended decision. The public participation procedures outlined in Subpart E on explanations of significant differences and amendments to decision documents shall apply.

Section 300.825(b) provides that the lead agency may, in its discretion, hold additional public comment periods or extend the time for submission of public comment after the decision document is signed, and may limit such comment to issues for which the lead agency has requested additional comment. This is intended to allow the lead agency to solicit additional comment on the response action whenever it determines that new information or other circumstances warrant additional input.

Section 300.825(c) governs public comments received after the close of the comment period. Under this section, the lead agency will need to consider such comments only if they could not have been submitted during the comment period and provide critical, new information relevant to the response selection which substantially supports the need to significantly alter the response action. EPA is proposing the standard set out in § 300.825(c) as providing the best balance between EPA's desire to remain open to critical, new information on the effectiveness of a selected response and the need to make final decisions in order to allow expeditious implementation of the response action. EPA solicits comment on this approach.

D. Compliance With This Subpart

As provided in section 113(j)(4) of CERCLA, in reviewing alleged procedural errors related to the administrative record, a court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

Subpart J—Use of Dispersants and Other Chemicals

Proposed Subpart J is very similar to existing Subpart H and contains only minor revisions. Section numbers and references to other sections and subparts have been changed where necessary. Technical changes and minor wording changes to improve clarity have also been made.

Definitions formerly in this section have been moved to Subpart A, and a new definition has been added for miscellaneous oil spill control agents. Accordingly, a list of data requirements for miscellaneous spill control agents is proposed to be added to § 300.915. The definition for navigable waters is as defined in 40 CFR 110.1.

Points of Clarification

Section 300.910 on "Authorization of use" specifies the conditions under which the OSC may authorize the use of dispersants and other chemicals. Authorization applies to all products on the NCP Product Schedule.

The language in § 300.910 has been modified slightly to emphasize the importance of obtaining concurrence for the use of dispersants and other chemicals from the appropriate Regional Response Team (RRT) State representative and the DOC/DOI natural resource trustees "as appropriate." "As appropriate" refers, in this case, to the fact that the decision to use a chemical is highly dependent upon specific circumstances, locations, and conditions which must be assessed by the OSC. The EPA and the State RRT representatives and DOC/DOI trustees are in a unique position to understand local conditions and to collect and coordinate quickly the necessary local information which should facilitate a correct decision. Since the decision whether to use such chemicals has far-reaching implications and must be made in a timely fashion, early involvement of the EPA and State RRT representatives and DOC/DOI trustees, as appropriate, is important. As a part of their contingency planning efforts, RRTs are further encouraged to make pre-approval determinations with respect to the use of certain dispersants or chemical agents in their area of geographical responsibility.

Sinking agents are specifically prohibited for application to oil discharges.

Appendix C to Part 300—Revised Standard Dispersant Effectiveness and Toxicity Tests

Two technical corrections have been proposed for Appendix C to Part 300. First, in the calculations sections, 2.5 and 2.6, the formulas of equations (2), (3), and (5) for concentration of oil (C_{do}) in the sample, dispersant blank correction (D), and oil blank correction (OBC) have been corrected. Second, the units of viscosity (item 3, part IX in section 4.0) have been changed from furol seconds to centistokes. Last, the new 1988 ASTM standards has been cited for reference to viscosity in centistokes.

Appendix D to Part 300—Appropriate Actions and Methods of Remedying Releases

Proposed Appendix D to Part 300 includes materials from existing § 300.68(j) on appropriate actions at remedial sites and existing § 300.70 on methods for remedying releases. The appendix describes general approaches and lists specific techniques but is not intended to be inclusive of all possible methods of addressing releases. A lead agency may respond to types of releases and employ techniques other than those that are listed, depending on the particular circumstances. EPA believes that the provisions in existing §§ 300.68(j) and 300.70 are not appropriate for inclusion in proposed Subpart E, which has been structured to focus on the sequence of response procedures. Because the materials do not impose any requirements or restrictions, they are appropriate for a proposed appendix. It is intended that parties conducting response actions should consider the information provided in Appendix D.

III. Summary of Supporting Analyses

A. Regulatory Impact Analysis of Proposed Revisions to the NCP

An economic analysis entitled, "Regulatory Impact Analysis Prepared in Support of the Proposed Revisions to the National Contingency Plan" (RIA) estimates the incremental costs associated with the proposed revisions to the NCP. The RIA is available in the Superfund Docket, Room LG at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RIA estimates total and incremental costs to the Fund, States, Federal agencies, and responsible parties of implementing the remedial and removal programs during the period FY 87 through FY 91, the duration of the 1986 reauthorization of the Superfund program. The analysis focuses on four provisions with incremental costs and benefits attributable directly to the 1986 CERCLA amendments: (1) Selection of remedy; (2) removals; (3) water restoration; and (4) publicly owned sites. The impacts of these four provisions are attributable directly to the 1986 CERCLA amendments, rather than to additional requirements imposed by EPA, because in these areas EPA chose to retain the flexibility of the statutory language; the NCP essentially codifies the statutory requirements. The RIA estimates the incremental costs of the four provisions, using the requirements of CERCLA, as specified in the 1985 NCP, as the baseline. The 1985 NCP is the proper baseline for the analysis of changes attributable to the statutory amendments because the 1985 NCP is the legal framework that defines response activities in the absence of the amendments to CERCLA. The estimated economic costs attributable to the 1986 CERCLA amendments are summarized below.

1. *Selection of remedy.* The new CERCLA preference for reducing mobility, toxicity, and volume of contaminants at a site is assumed to be a preference for remedies that use treatment as a principal element. All Superfund Records of Decision (RODs) signed during the FY 82 to FY 86 period were reviewed for information on capital and operation and maintenance (O&M) costs for treatment-based remedies and for containment-based remedies considered for a site. Many RODs, however, do not include useful cost data for purposes of this analysis. RODs that did not develop costs for both treatment-based remedies and containment-based remedies, or that presented cost information only in present value terms, without a separate presentation of the capital and O&M costs, could not be used in the analysis. The RIA estimates of selection of remedy costs, therefore, are developed using cost data from 30 RODs, the mandatory schedules in section 116 of CERCLA for 175 remedial action starts by the end of FY 89 and an additional 200 starts by FY 91, and the assumptions that the principal effect of the selection of remedy provisions in the 1986 CERCLA amendments is to increase from 32 percent to 80 percent the frequency of selection of remedies (including operable units) that use treatment to address the principal threat at a site.

The RIA estimates that the total cost of the selection of remedy provisions in the 1986 amendments to CERCLA, during the FY 87 through FY 91 period, is $9.4 billion: $4.5 billion to the Fund; $0.8 billion to States; $3.2 billion to responsible parties; and $0.9 billion to Federal agencies. The 5-year present value of the estimated incremental cost of the selection of remedy provisions over the costs imposed already by the 1985 NCP is $3.6 billion: $1.8 billion to the Fund; $0.2 billion to States; $1.2 billion to responsible parties; and $0.4

billion to Federal agencies. Changes in program administrative costs are not included in these estimates.

A sensitivity analysis is included in the RIA to determine how the cost estimates developed in the RIA change if the most important assumptions used to derive the estimates are altered. In addition to varying cost parameters used in the analysis, the frequency of use of treatment under the 1986 CERCLA amendments is varied between 50 percent of sites or operable units using treatment to 100 percent using treatment. The results of the sensitivity analysis estimates the total incremental costs of the selection of remedy provisions to be between $686 million and $8 billion, with a best estimate of $3.6 billion.

The 1986 amendments to CERCLA require remedial actions to comply with State applicable or relevant and appropriate requirements (ARARs) that are more stringent than Federal ARARs. To the extent possible, therefore, cost estimates used in the RIA are for remedies expected to comply with Federal ARARs and those State ARARs more stringent than the Federal standards. Approximately 50 percent of the RODs signed in FY 86 had selected remedies in compliance with more stringent State ARARs. This represents the baseline level of compliance with State ARARs because the FY 86 RODs were developed in compliance with the 1985 NCP. Ten of the containment-based remedies and 14 of the treatment-based remedies whose costs were used in the RIA are expected to meet more stringent State ARARs. The RIA includes a brief comparative analysis of the costs of these 24 remedies with the costs of the other remedies used in the RIA where compliance with State ARARs is not designated specifically in the ROD. This analysis indicates that compliance with more stringent State ARARs may increase the costs of a remedial action by about $6.6 million. However, one should not conclude that an additional $6.6 million will be incurred to meet State ARARs for every remedial action under CERCLA. Many RODs signed prior to the 1986 CERCLA amendments already showed evidence of compliance with State ARARs. Therefore, no incremental costs associated with such compliance would result under CERCLA as amended. In addition, many States do not have relevant standards more stringent than Federal standards and, even if a State has identified a potential ARAR that is more stringent than a Federal standard, that State standard may not be applicable at all sites within a State.

Assuming 50 percent of the Fund-financed remedial actions expected to be conducted annually over the FY 87 to FY 89 period would have chosen remedies under the provisions of the 1985 NCP in compliance with more stringent State ARARs and that the remaining 50 percent of the remedial actions will incur incremental costs under CERCLA for compliance with more stringent State ARARs, the incremental cost of compliance with the State ARARs provision in the 1986 CERCLA amendments can be estimated to be approximately $190 million per year. These costs are not additive to the total annual remedy selection costs shown above because compliance with State ARARs was captured to some extent in the ROD data used to estimate costs in the RIA.

The results of the ARAR cost analysis may be overestimated because State ARARs were not discussed in all RODs, and it is not clear if the lack of discussion implies lack of compliance with State ARARs, or the fact that there were no more stringent State ARARs that were relevant to the remedy selection process. If the latter is the case, then the number of sites that will incur incremental costs to comply with the State ARAR provisions in the 1986 amendments to CERCLA is overstated.

2. *Removals.* Incremental costs of the removal provisions in the 1986 CERCLA amendments are not quantified in the RIA due to a paucity of relevant data. Removal actions are very sensitive to budgetary fluctuations and regulatory and policy modifications. The 1986 removal data reflect the budgetary constraints resulting from the delay in the reauthorization of the Superfund; earlier removal data did not reflect the off-site policy and other recent regulatory and statutory changes that affect removal costs, such as the 1984 Hazardous Substances Waste Act amendments to the Resource Conservation and Recovery Act that prohibit land disposal of listed hazardous wastes. Although the increase is not quantified in the RIA, removals undertaken during the period from FY 87 through FY 91 are expected to have higher average costs than removals undertaken in the past because more extensive removals are allowable without a waiver and because treatability studies may be done during removal actions at NPL sites to promote consistency with long-term remedial actions.

3. *Water restoration provisions.* Under the 1985 NCP, States held primary responsibility for financing O&M costs associated with a remedial action at a Fund-lead site. During the first fiscal year after completion of the capital expenditure at a site, the Fund financed a maximum of 90 percent of the operational costs until EPA was assured that the remedy was operational and functional. In each subsequent year, the State financed 100 percent of O&M costs. The 1986 amendments to CERCLA change this funding relationship for remedial actions involving treatment to restore ground water or surface water. Long-term costs of treatment of contaminated ground water or surface water now are defined to be a component of the remedial action when treatment is being used to restore an aquifer or surface water body. Hence, this provision transfers financing responsibilities at Fund-lead sites using water restoration as part of the selected remedy from the States to the Fund. Under the new provision, the Fund finances 90 percent of the costs of water restoration for up to ten years; States finance the remaining 10 percent of costs during these years. The RIA estimates that approximately $63 million in obligations to pay for water restoration will be transferred from States to the Fund over the FY 87–91 period as a result of the provisions on ground-water and surface water restoration in the 1986 amendments to CERCLA. Because the provision results only in transfers of obligations to pay from States to the Fund, it does not give rise to real economic costs or real economic benefits.

4. *Publicly owned sites.* The 1986 amendments to CERCLA require that States pay at least 50 percent of the costs of Fund-lead remedial actions at sites operated by a "State or political subdivision thereof, either directly or through a contractual relationship." Prior to the amendments, CERCLA required States to pay at least 50 percent of costs at Fund-lead sites owned or operated by a public entity. The effect of this amendment is to transfer from States to the Fund costs incurred at publicly owned sites operated by a private entity. The RIA estimates that the publicly owned sites provision in the 1986 CERCLA amendments will result in transfers from the States to the Fund of approximately $32 million in obligations to pay for remedial actions over the FY 87–91 period. Because this provision results only in transfers from States to the Fund of obligations to pay for certain activities, it does not give rise to real economic costs or real economic benefits.

5. *Other provisions analyzed.* New CERCLA section 113(k) requires that an

administrative record of the decisionmaking process for removal actions and remedial actions be established. Subpart I in the proposed NCP revisions describes the documents that must be included in the administrative record and outlines the procedures to follow in developing the record. Essentially, the proposed NCP provision gives detail to the CERCLA requirement, and, therefore, the costs of establishing the administrative record are attributable to CERCLA rather than to additional requirements imposed by EPA. The costs of establishing the record include both the labor hours to develop and maintain the record and the capital cost for the storage space required to house the record. These costs are not quantified explicitly in the RIA, but are estimated to be small.

The RIA also includes an analysis of other incremental costs and benefits attributable to the proposed NCP revisions. These include costs and benefits where EPA exercised discretion and imposed specific requirements beyond those imposed already by the statute. The following subparts of the NCP have costs and benefits attributable to the additional requirements.

Section 300.420 of the proposed NCP establishes procedures that a petitioner must follow in petitioning for a preliminary assessment. The information required by EPA is minimal and involves no data gathering or analysis on the part of the petitioner. It is estimated that no more than one hour would be required to create the petition instrument. In §§ 300.415 and 300.430 of the proposed NCP, some new provisions are included for public participation in removal and remedial activities, respectively. Some of these new provisions reflect existing policy, others incorporate requirements of CERCLA. The costs of the new community relations provisions are expected to be small. The provisions help ensure that information is disseminated quickly and efficiently.

The post-screening field investigation is a new step added to the RI/FS process detailed in § 300.430 of the proposed revisions to the NCP. Although such field investigations are not a specific component in the 1985 NCP, these investigations have been conducted in the past at sites where treatment-based remedies were selected. As a result of CERCLA's increased emphasis on the use of treatment-based remedies, more treatability studies are expected to be conducted.

The proposed NCP provisions in § 300.500 formalize State involvement in remedial action decisionmaking using a Superfund Memorandum of Agreement (SMOA). This provision is expected to result in a clearer understanding of the EPA/State relationship and the responsibilities each party will assume. The incremental costs attributable to this provision are expected to be small.

The RIA results indicate that the proposed rule will have a significant effect on the economy. However, the majority of costs associated with the proposed revisions to the NCP are attributable to requirements in CERCLA rather than to additonal requirements imposed by EPA.

B. Executive Order No. 12291

Proposed regulations must be classified as major or nonmajor to satisfy the rulemaking protocol established by Executive Order (E.O.) No. 12291. E.O. No. 12291 establishes the following criteria for a regulation to qualify as a major rule.

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 the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Based on the RIA results summarized above, the proposed NCP is a major rule because adoption of today's proposed rule would have an annual effect on the economy of $100 million or more. This regulation has been submitted to the Office of Management and Budget for review under Executive Order Nos. 12291 and 12580.

C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, agencies must evaluate the effects of a proposed regulation on small entities. If the proposed rule is likely to have a "significant impact on a substantial number of small entities," then a Regulatory Flexibility Analysis must be performed. EPA certifies that today's rule will not have a significant impact on a substantial number of small entities.

Small businesses generally will be affected only by the proposed changes that address selection of remedy. The cost of a CERCLA response action, whether using containment-based remedies or treatment-based remedies, can be quite large and, in some cases, may be beyond the financial resources of a responsible party (RP). Because RPs can be in different industry sectors and face different market structures, each RP's ability to finance Superfund response actions could be very different. The analytical framework used in Chapter 7 of the RIA to estimate the economic effects of the CERCLA provisions on typical RPs relies heavily on publicly available financial information and makes the conservative assumption that each RP would be solely responsible for the entire remedial action cost. The analysis includes two financial tests performed on a sample of 15 firms selected randomly and varying in size. One test (the net income test) compares average response costs to the sample firm's net income or cash flow. The second test (a modified Beaver ratio) compares the sample firm's cash flow to its total liabilities, including response costs. On the basis of this analysis, EPA has determined that the proposed revisions to the NCP will not result in a significant impact on a substantial number of small businesses.

Municipalities also could be affected by the proposed revisions to the selection of remedy provisions in the NCP because municipalities can be RPs. NPL sites owned by municipalities tend to be municipal wellfields and landfills. The cleanup of wellfields is undertaken to restore drinking water to a community either by pumping and treating a contaminant plume or building an alternative water distribution system. The contaminant plume usually has not been created by municipality actions; instead, the plume may have migrated from a nearby industrial waste site. As a result, the municipality is not likely to be liable for the costs of response actions. At municipal landfill sites, or other landfill sites that have accepted municipal wastes, the municipality also is not likely to be liable for 100 percent of response costs, because other entities typically have contributed to the site problem. The range of capital costs of cleanups at municipally owned sites with RODs signed over the FY 82 to FY 86 period is from $304,000 for construction of an alternative water supply system to $23.2 million to cap a 90 acre landfill site.

The level of involvement of small municipalities in the Superfund program is not expected to change under the 1986 CERCLA amendments. The sites at which municipalities are most likely to be involved are not expected to be affected greatly by the new CERCLA selection of remedy provisions. The costs of cleaning up municipal landfills in particular are not expected to

increase substantially as a result of the CERCLA amendments because the typical size of such sites limits the implementability of treatment-based remedies.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by EPA (ICR No. 1463) and a copy may be obtained from Carl Koch, Information Policy Branch (PM-223), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or by calling 1-202-382-2739.

Public reporting burden for this collection of information is estimated to be a weighted average of 3,350 hours per respondent, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Respondent means States and other entities (excluding the Federal government) conducting required activities associated with remedial actions.

Please 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 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or any public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Hazardous substances, Incorporation by reference, Intergovernmental relations, Natural resources, Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: November 15, 1988.

Lee M. Thomas,

Administrator.

Therefore, it is proposed that 40 CFR Part 300, be amended as follows:

1. The authority citation for Part 300 is revised to read as follows:

Authority: 42 U.S.C. 9605; 33 U.S.C. 1321(c)(2); E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2923.

2. Subparts A through H of Part 300 are revised, Subparts I and J are added, and Subpart K is added and reserved to read as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

Subpart A—Introduction

Subpart B—Responsibility and Organization for Response

Subpart C—Planning and Preparedness

Subpart D—Operational Response Phases for Oil Removal

Subpart E—Hazardous Substance Response

Subpart F—State Involvement in Hazardous Substance Response

Subpart G—Trustees for Natural Resources

Subpart H—Participation by Other Persons

Subpart I—Administrative Record for Selection of Response Action

Subpart J—Use of Dispersants and Other Chemicals

Subpart K—Federal Facilities [Reserved]

Appendix A to Part 300—[Not Included]

Appendix B to Part 300—[Not Included]

Appendix C to Part 300—Revised Standard Dispersant Effectiveness and Toxicity Tests

Appendix D to Part 300—Appropriate Actions and Methods of Remedying Releases

Subpart A—Introduction

§ 300.1 Purpose and objectives.

The purpose of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) is to provide the organizational structure and

procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants.

§ 300.2 Authority and applicability.

The NCP is required by section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9605, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, (hereinafter CERCLA), and by section 311(c)(2) of the Clean Water Act (CWA), as amended, 33 U.S.C. 1321(c)(2). In Executive Order (E.O.) 12580 (52 FR 2923, January 29, 1987), the President delegated to the Environmental Protection Agency (EPA) the responsibility for the amendment of the NCP. Amendments to the NCP are coordinated with members of the National Response Team (NRT) prior to publication for notice and comment. This includes coordination with the Federal Emergency Management Agency and the Nuclear Regulatory Commission in order to avoid inconsistent or duplicative requirements in the emergency planning responsibilities of those agencies. The NCP is applicable to response taken pursuant to the authorities under CERCLA and section 311 of the CWA.

§ 300.3 Scope.

(a) The NCP applies to Federal agencies and States and is in effect for:

(1) Discharges of oil into or upon the navigable waters of the United States and adjoining shorelines, the waters of the contiguous zone, and the high seas beyond the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act). (See sections 311(b)(1) and 502(7) of the CWA.)

(2) Releases of hazardous substances into the environment, and releases of pollutants or contaminants which may present an imminent and substantial danger to public health or welfare.

(b) The NCP provides for efficient, coordinated, and effective response to discharges of oil and releases of hazardous substances, pollutants, and contaminants in accordance with the authorities of CERCLA and the CWA. It provides for:

(1) The national response organization that may be activated in response actions. It specifies responsibilities among the Federal, State, and local governments and describes resources that are available for response.

(2) The establishment of requirements for Federal regional and on-scene coordinator (OSC) contingency plans. It also summarizes State and local emergency planning requirements under SARA Title III.

(3) Procedures for undertaking removal actions pursuant to section 311 of the CWA.

(4) Procedures for undertaking response actions pursuant to CERCLA.

(5) Procedures for involving State governments in the initiation, development, selection, and implementation of response actions.

(6) Designation of trustees for natural resources for purposes of CERCLA and the CWA.

(7) Procedures for the participation of other persons in response actions.

(8) Procedures for compiling and making available an administrative record for response actions.

(9) National policies and procedures for the use of dispersants and other chemicals in removals under the CWA and response actions under CERCLA.

(c) In implementing the NCP, consideration shall be given to international assistance plans and agreements, security regulations and responsibilities based on international agreements, Federal statutes, and executive orders. Actions taken pursuant to the NCP shall conform to the provisions of international joint contingency plans, where they are applicable. The Department of State shall be consulted, as appropriate, prior to taking any action which may affect its activities.

§ 300.4 Abbreviations.

(a) Department and Agency Title Abbreviations:

ATSDR—Agency for Toxic Substances and Disease Registry
DOC—Department of Commerce
DOD—Department of Defense
DOE—Department of Energy
DOI—Department of the Interior
DOJ—Department of Justice
DOL—Department of Labor
DOS—Department of State
DOT—Department of Transportation
EPA—Environmental Protection Agency
FEMA—Federal Emergency Management Agency
HHS—Department of Health and Human Services
NIOSH—National Institute for Occupational Safety and Health
NOAA—National Oceanic and Atmospheric Administration
RSPA—Research and Special Programs Administration
USCG—United States Coast Guard
USDA—United States Department of Agriculture

(Note: Reference is made in the NCP to both the Nuclear Regulatory Commission and the National Response Center. In order to avoid confusion, the NCP will spell out Nuclear Regulatory Commission and use the abbreviation "NRC" only with respect to the National Response Center.)

(b) Operational Abbreviations:

ARARs—Applicable or Relevant and Appropriate Requirements
CERCLIS—CERCLA Information System
CRC—Community Relations Coordinator
CRP—Community Relations Plan
ERT—Environmental Response Team
FCO—Federal Coordinating Officer
FS—Feasibility Study
HRS—Hazard Ranking System
NPL—National Priorities List
NRC—National Response Center
NRT—National Response Team
NSF—National Strike Force
O&M—Operation and Maintenance
OSC—On-Scene Coordinator
PA—Preliminary Assessment
PIAT—Public Information Assist Team
RA—Remedial Action
RCP—Regional Contingency Plan
RD—Remedial Design
RI—Remedial Investigation
ROD—Record of Decision
RPM—Remedial Project Manager
RRC—Regional Response Center
RRT—Regional Response Team
SAC—Support Agency Coordinator
SI—Site Inspection
SMOA—Superfund Memorandum of Agreement
SSC—Scientific Support Coordinator

§ 300.5 Definitions.

Terms not defined in this section have the meaning given by CERCLA or the CWA.

"Activation" means notification by telephone or other expeditious manner or, when required, the assembly of some or all appropriate members of the RRT or NRT.

"Alternative water supplies" as defined by section 101(34) of CERCLA, includes, but is not limited to, drinking water and household water supplies.

"Applicable requirements" means those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under Federal or State law that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site.

"Biological additives" means microbiological cultures, enzymes, or nutrient additives that are deliberately introduced into an oil discharge for the specific purpose of encouraging biodegradation to mitigate the effects of the discharge.

"Burning agents" means those additives that, through physical or chemical means, improve the combustibility of the materials to which they are applied.

"CERCLA" is the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986.

"CERCLIS" means EPA's comprehensive data base and management system that inventories and tracks releases addressed or needing to be addressed by the Superfund program. CERCLIS is the abbreviation of the CERCLA Information System. CERCLIS consists of three distinct inventories: CERCLIS Removal Inventory, CERCLIS Remedial Inventory, and CERCLIS Enforcement Inventory. Within each of the three categories are active and inactive releases. Inactive releases are those where a determination has been made, based on available information, that no further action is needed. These are retained in the data base as a historical record of accomplishment. Active releases are those for which a lead agency has not yet had an opportunity to evaluate for response action, or to which a lead agency has responded and determined that further action is required, or where there is currently ongoing response action.

"Chemical agents" means those elements, compounds, or mixtures that coagulate, disperse, dissolve, emulsify, foam, neutralize, precipitate, reduce, solubilize, oxidize, concentrate, congeal, entrap, fix, make the pollutant mass more rigid or viscous, or otherwise facilitate the mitigation of deleterious effects or the removal of the pollutant from the water.

"Claim" as defined by section 101(4) of CERCLA, means a demand in writing for a sum certain.

"Coastal waters" for the purposes of classifying the size of discharges, means the waters of the coastal zone except for the Great Lakes and specified ports and harbors on inland rivers.

"Coastal zone" as defined for the purpose of the NCP, means all United States waters subject to the tide, United States waters of the Great Lakes, specified ports and harbors on inland rivers, waters of the contiguous zone, other waters of the high seas subject to the NCP, and the land surface or land substrata, ground waters, and ambient air proximal to those waters. The term coastal zone delineates an area of Federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in Federal regional contingency plans.

"Community relations" means EPA's program to inform and encourage public participation in the Superfund process and to respond to community concerns. The term "public" includes citizens directly affected by the site, other interested citizens or parties, organized groups, elected officials, and potentially responsible parties.

"Community relations coordinator" means lead agency staff who work with the OSC/RPM to involve and inform the public about the Superfund process and response actions in accordance with the interactive community relations requirements set forth in the NCP.

"Contiguous zone" means the zone of the high seas, established by the United States under Article 24 of the Convention on the Territorial Sea and Contiguous Zone, which is contiguous to the territorial sea and which extends nine miles seaward from the outer limit of the territorial sea.

"Cooperative agreement" means a Federal assistance agreement in which substantial EPA involvement is anticipated during the performance of the project.

"Discharge" as defined by section 311(a)(2) of the CWA, includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil, but excludes discharges in compliance with a permit under section 402 of the CWA, discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the CWA, and subject to a condition in such permit, or continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the CWA, that are caused by events occurring within the scope of relevant operating or treatment systems. For purposes of the NCP, discharge also means threat of discharge.

"Dispersants" means those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

"Drinking water supply" as defined by section 101(7) of CERCLA, means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act) or as drinking water by one or more individuals.

"Environment" as defined by section 101(8) of CERCLA, means the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson Fishery Conservation and Management Act; and any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

"Facility" as defined by section 101(9) of CERCLA, means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

"Feasibility study" (FS) means a study undertaken by the lead agency to develop and evaluate options for remedial action. The FS emphasizes data analysis and is generally performed concurrently and in an interactive fashion with the remedial investigation (RI), using data gethered during the RI. The RI data are used to define the objectives of the response action, to develop remedial action alternatives, and to undertake an initial screening and detailed analysis of the alternatives. The term also refers to a report that describes the results of the study.

"First Federal official" means the first Federal representative of a participating agency of the National Response Team to arrive at the scene of a discharge or a release. This official coordinates activities under the NCP and may initiate, in consultation with the OSC, any necessary actions until the arrival of the predesignated OSC. A State with primary jurisdiction over a site covered by a cooperative agreement will act in the stead of the first Federal official for any incident at the site.

"Fund" or "Trust Fund" means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

"Ground water" as defined by section 101(12) of CERCLA, means water in a saturated zone or stratum beneath the surface of land or water.

"Hazard Ranking System" (HRS) means the method used by EPA to evaluate the relative potential of hazardous substance releases to cause health or safety problems, or ecological or environmental damage.

"Hazardous substance" as defined by section 101(14) of CERCLA, means: any substance designated pursuant to section 311(b)(2)(A) of the CWA; any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA; any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress); any toxic pollutant listed under section 307(a) of the CWA; any hazardous air pollutant listed under section 112 of the Clean Air Act; and any imminently hazardous chemical substance or mixiture with respect to which the EPA Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance in the first sentence of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

"Indian Tribe" as defined by section 101(36) of CERCLA, means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"Inland waters," for the purposes of classifying the size of discharges, means those waters of the United States in the inland zone, waters of the Great Lakes, and specified ports and harbors on inland rivers.

"Inland zone" means the environment inland of the coastal zone excluding the Great Lakes and specified ports and harbors on inland rivers. The term inland zone delineates an area of Federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in Federal regional contingency plans.

"Lead agency" means the agency that provides the OSC/RPM to plan and implement response action under the NCP. EPA, the USCG, another Federal agency, or a State (or political subdivision of a State) operating pursuant to a contract or cooperative agreement executed pursuant to section 104(d)(1) of CERCLA, or designated pursuant to a Superfund Memorandum of Agreement (SMOA) entered into pursuant to Subpart F of the NCP or other agreements may be the lead agency for a response action. In the case of a release of a hazardous substance, pollutant, or contaminant, where the release is on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of Department of Defense (DOD) or Department of Energy (DOE), then DOD or DOE will be the lead agency. Where the release is on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of a Federal agency other than EPA, the USCG, DOD, or DOE, then that agency will be the lead agency for remedial actions and removal actions other than emergencies. The Federal agency maintains its lead agency responsibilities whether the remedy is selected by the Federal agency for non-NPL sites or by EPA and the Federal agency or by EPA alone under CERCLA section 120. The lead agency will consult with the support agency, if one exists, throughout the response process.

"Management of migration" means actions that are taken to minimize and mitigate the migration of hazardous substances or pollutants or contaminants and the effects of such migration. Measures may include, but are not limited to, management of a plume of contamination, restoration of a drinking water aquifer, or surface water restoration.

"Miscellaneous oil spill control agent" is any product, other than a dispersant, sinking agent, surface collecting agent, biological additive, or burning agent, that can be used to enhance oil spill cleanup, removal, treatment, or mitigation.

"National Priorities List" (NPL) means the list, compiled by EPA pursuant to CERCLA section 105, of uncontrolled hazardous substance facilities in the United States that need to be addressed under CERCLA authorities. Only NPL sites are eligible for Fund-financed remedial action.

"Natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone defined by the Magnuson Fishery Conservation and Management Act of 1976), any State or local government, any foreign government, any Indian Tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian Tribe.

"Offshore facility" as defined by section 101(17) of CERCLA and section 311(a)(11) of the CWA, means any facility of any kind located in, on, or under any of the navigable waters of the United States and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

"Oil" as defined by section 311(a)(1) of the CWA, means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

"Oil pollution fund" means the fund established by section 311(k) of the CWA.

"On-scene coordinator" (OSC) means the Federal official predesignated by EPA or the USCG to coordinate and direct Federal responses under Subpart D, or the official designated by the lead agency to coordinate and direct removal actions under Subpart E of the NCP.

"Onshore facility" as defined by section 101(18) of CERCLA, means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land or non-navigable waters within the United States; and, as defined by section 311(a)(10) of the CWA, means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States other than submerged land.

"On-site" for permitting purposes, means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action.

"Operable unit" means a discrete action that comprises an incremental step toward comprehensively addressing site problems. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of a release, or pathway of exposure. The cleanup of a site can be divided into a number of operable units, depending on the complexity of the problems associated with the site. Operable units may address geographical portions of a site, specific site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of a site. Operable

units will not impede implementation of subsequent actions, including final action at the site.

"Operation and maintenance" (O&M) means activities required to maintain the effectiveness of response actions.

"Person" as defined by section 101(21) of CERCLA means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States government, State, municipality, commission, political subdivision of a State, or any interstate body.

"Pollutant or contaminant" as defined by section 101(33) of CERCLA, shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under section 101(14)(A) through (F) of CERCLA, nor does it include natural gas, liquified natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas). For purposes of Subpart E of the NCP, the term pollutant or contaminant means any pollutant or contaminant that may present an imminent and substantial danger to public health or welfare.

"Preliminary assessment" (PA) means review of existing information and an off-site reconnaissance, if appropriate, to determine if a release may require additional investigation or action. A PA may include an on-site reconnaissance, if appropriate.

"Public participation," see the definition for community relations.

"Public vessel" as defined by section 311(a)(4) of the CWA, means a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

"Quality assurance project plan" (QAPP) is a written document, associated with remedial site sampling activities, which presents in specific terms the organization (where applicable), objectives, functional activities, and specific quality assurance (QA) and quality control (QC) activities designed to achieve the data quality objectives of a specific project(s) or continuing operation(s). The QAPP is prepared for each specific project or continuing operation (or group of similar projects or continuing operations). The QAPP will be prepared by the responsible program office, regional office, laboratory, contractor, recipient of an assistance agreement, or other organization. For an enforcement action, potentially responsible parties may prepare a QAPP subject to lead agency approval.

"Release" as defined by section 101(22) of CERCLA, means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes: any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons; emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or, for the purposes of section 104 of CERCLA or any other response action, any release of source, byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and the normal application of fertilizer. For purposes of the NCP, release also means threat of release.

"Relevant and appropriate requirements" means those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under Federal or State law that, while not "applicable" to a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site, address problems or situations sufficiently similar to those encountered at the CERCLA site that their use is well suited to the particular site.

"Remedial design" (RD) means the technical analysis and procedures which follow the selection of remedy for a site and result in a detailed set of plans and specifications for implementation of the remedial action.

"Remedial investigation" (RI) is a process undertaken by the lead agency to determine the nature and extent of the problem presented by the release. The RI emphasizes data collection and site characterization, and is generally performed concurrently and in an interactive fashion with the feasibility study. The RI includes sampling and monitoring, as necessary, and includes the gathering of sufficient information to determine the necessity for remedial action and to support the evaluation of remedial alternatives.

"Remedial project manager" (RPM) means the official designated by the lead agency to coordinate, monitor, or direct remedial or other response actions under Subpart E of the NCP.

"Remedy or remedial action" (RA) means those actions consistent with permanent remedy taken instead of, or in addition to, removal action in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities (including the cost of providing "alternative land of equivalent value" to an Indian Tribe pursuant to CERCLA section 126(b)) where EPA determines that, alone or in combination with other measures, such relocation is more cost-effective than, and environmentally preferable to, the transportation, storage, treatment, destruction, or secure disposition off-site of such hazardous substances, or may otherwise be necessary to protect the public health or welfare; the term includes off-site transport and off-site storage, treatment, destruction, or secure disposition of hazardous

substances and associated contaminated materials. The term also includes enforcement activities related thereto.

"Remove or removal" as defined by section 311(a)(8) of the CWA, refers to removal of oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health, welfare, or to the environment. As defined by section 101(23) of CERCLA, remove or removal means the cleanup or removal or released hazardous substances from the environment; such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment; such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances; the disposal of removed material; or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of CERCLA, and any emergency assistance which may be provided under the Disaster Relief Act of 1974. The term also includes enforcement activities related thereto.

"Respond or response" as defined by section 101(25) of CERCLA, means remove, removal, remedy, or remedial action, including enforcement activities related thereto.

"SARA" is the Superfund Amendments and Reauthorization Act of 1986. In addition to certain free-standing provisions of law, it includes amendments to CERCLA, the Solid Waste Disposal Act, and the Internal Revenue Code. Among the free-standing provisions of law is Title III of SARA, also known as the "Emergency Planning and Community Right-to-Know Act of 1986" and Title IV of SARA, also known as the "Radon Gas and Indoor Air Quality Research Act of 1986." Title V of SARA amending the Internal Revenue Code is also known as the "Superfund Revenue Act of 1986."

"Sinking agents" means those additives applied to oil discharges to sink floating pollutants below the water surface.

"Site inspection" (SI) means an on-site investigation to determine whether there is a release or potential release and the nature of the associated threats. The purpose is to augment the data collected in the preliminary assessment and to generate, if necessary, sampling and other field data to determine if further action or investigation is appropriate.

"Size classes of discharges" refers to the following size classes of oil discharges which are provided as guidance to the OSC and serve as the criteria for the actions delineated in Subpart D. They are not meant to imply associated degrees of hazard to public health or welfare, nor are they a measure of environmental injury. Any oil discharge that poses a substantial threat to public health or welfare or the environment or results in critical public concern shall be classified as a major discharge regardless of the following quantitative measures:

(a) Minor discharge means a discharge to the inland waters of less than 1,000 gallons of oil or a discharge to the coastal waters of less than 10,000 gallons of oil.

(b) Medium discharge means a discharge of 1,000 to 10,000 gallons of oil to the inland waters or a discharge of 10,000 to 100,000 gallons of oil to the coastal waters.

(c) Major discharge means a discharge of more than 10,000 gallons of oil to the inland waters or more than 100,000 gallons of oil to the coastal waters.

"Size classes of releases" refers to the following size classifications which are provided as guidance to the OSC for meeting pollution reporting requirements in Subpart B. The final determination of the appropriate classification of a release will be made by the OSC based on consideration of the particular release (e.g., size, location, impact, etc.):

(a) Minor release means a release of a quantity of hazardous substance(s), pollutant(s), or contaminant(s) that poses minimal threat to public health or welfare or the environment.

(b) Medium release means a release not meeting the criteria for classification as a minor or major release.

(c) Major release means a release of any quantity of hazardous substance(s), pollutant(s), or contaminant(s) that poses a substantial threat to public health or welfare or the environment or results in significant public concern.

"Source control remedial action" means measures that are intended to address the hazardous substances or pollutants or contaminants primarily on top of or within the ground, or in buildings or other structures. Source control measures are distinguished from management of migration measures which address contaminated ground water or hazardous substances in streams, marshes, or lakes.

"Specified ports and harbors" means those ports and harbor areas on inland rivers, and land areas immediately adjacent to those waters, where the USCG acts as predesignated on-scene coordinator. Precise locations are determined by EPA/USCG regional agreements and identified in Federal regional contingency plans.

"State" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of Northern Marianas, and any other territory or possession over which the United States has jurisdiction. For purposes of the NCP, the term includes Indian Tribes as defined in the NCP except where specifically noted. Section 126 of CERCLA provides that the governing body of an Indian Tribe shall be afforded substantially the same treatment as a State with respect to certain provisions of CERCLA. Section 300.515 of the NCP describes the requirements pertaining to Indian Tribes that wish to be treated as States.

"Superfund Memorandum of Agreement" (SMOA) means a written document executed by an EPA Regional Administrator and the head of a State agency establishing the nature and extent of EPA and State interaction during the pre-remedial, remedial, and enforcement response process. The SMOA is not a site-specific document although attachments may address specific sites. The SMOA generally defines the role and responsibilities of both the lead and the support agencies.

"Superfund State contract" means a joint agreement between the Federal agency and a State which documents any required cost share and assurances necessary to conduct a response action when the Federal agency is the lead agency for response. It is not a procurement contract as defined by the Federal Grant and Cooperative Agreement Act. The Superfund State contract may also be a three-party agreement used to establish EPA, State, and political subdivision responsibilities for political subdivision-lead activities and for States to provide assurances for political subdivision-lead actions.

"Support agency" means the agency that provides the support agency coordinator to furnish necessary data to the lead agency, review response data and documents, and provide other assistance as requested by the OSC or RPM. EPA, the USCG, other Federal agency, or a State may be the support agency for a response action if operating

pursuant to a contract executed under section 104(d)(1) of CERCLA or designated pursuant to a Superfund Memorandum of Agreement entered into pursuant to Subpart F of the NCP or other agreement. The support agency may also concur on decision documents.

"Support agency coordinator" (SAC) means the official designated by the support agency, as appropriate, to interact and coordinate with the lead agency in response actions under Subpart E of this Part.

"Surface collecting agents" means those chemical agents that form a surface film to control the layer thickness of oil.

"Threat of discharge or release," see definitions for discharge and release.

"Treatment technology" means any unit operation or series of unit operations that alters the composition of a hazardous substance or pollutant or contaminant through chemical, biological, or physical means so as to reduce toxicity, mobility, or volume of the contaminated materials being treated. Treatment technologies are an alternative to land disposal of hazardous wastes without treatment.

"Trustee" means an official of a Federal natural resources management agency designated in Subpart G of the NCP or a designated State official or Indian Tribe who may pursue claims for damages under section 107(f) of CERCLA.

"United States" when used in relation to section 311(a)(5) of the CWA, means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands. United States, when used in relation to section 101(27) of CERCLA, includes the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

"Vessel" as defined by section 101(28) of CERCLA, means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water; and, as defined by section 311(a)(3) of the CWA, means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

"Volunteer" means any individual accepted to perform services by the lead agency which has authority to accept volunteer services (examples: see 16 U.S.C. 742f(c)). A volunteer is subject to the provisions of the authorizing statute and the NCP.

§ 300.6 Use of number and gender.

As used in this regulation, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

§ 300.7 Computation of time.

In computing any period of time prescribed or allowed in these rules of practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday, or legal holiday, the stated time period shall be extended to include the next business day.

Subpart B—Responsibility and Organization for Response

§ 300.100 Duties of President delegated to Federal agencies.

In Executive Order 11735 and Executive Order 12580, the President delegated certain functions and responsibilities vested in him by the CWA and CERCLA, respectively. Responsibilities so delegated shall be responsibilities of Federal agencies under the NCP unless:

(a) Responsibility is redelegated pursuant to section 11(g) of Executive Order 12580; or

(b) Executive Order 11735 or Executive Order 12580 is amended or revoked.

§ 300.105 General organization concepts.

(a) Federal agencies should:

(1) Plan for emergencies and develop procedures for addressing oil discharges and releases of hazardous substances, pollutants, or contaminants;

(2) Coordinate their planning, preparedness, and response activities with one another;

(3) Coordinate their planning, preparedness, and response activities with affected States and local governments and private entities; and

(4) Make available such of their facilities or resources as may be useful in a response situation, consistent with agency authorities and capabilities.

(b) Three fundamental kinds of activities are performed pursuant to the NCP:

(1) Preparedness planning and coordination for response to a discharge of oil or release of a hazardous substance, pollutant, or contaminant;

(2) Notification and communications; and

(3) Response operations at the scene of a discharge or release.

(c) The organizational elements created to perform these activities are:

(1) The National Response Team (NRT), responsible for national planning for and coordination of preparedness and response actions. NRT membership consists of representatives from agencies specified in § 300.175.

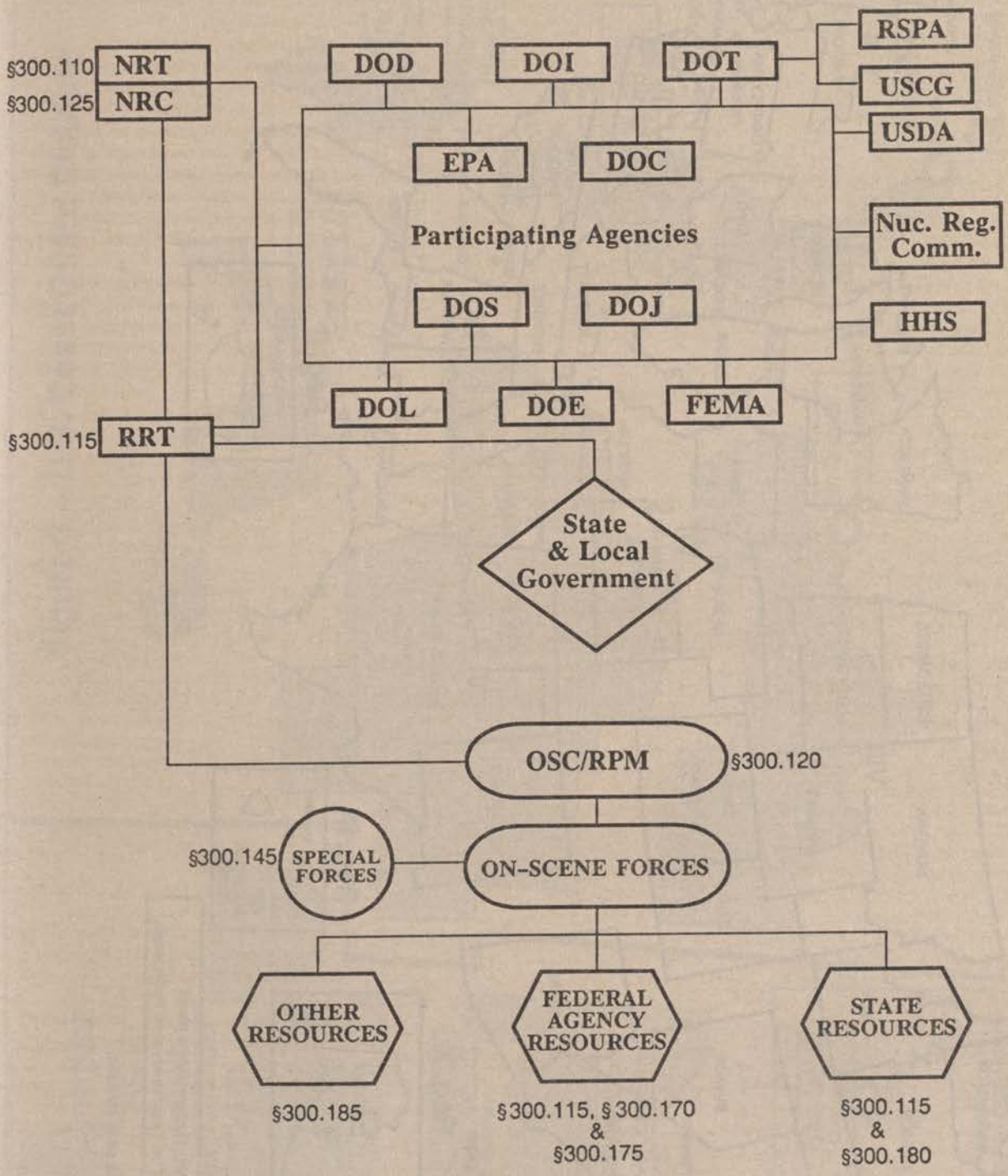
(2) Regional Response Teams (RRTs), responsible for regional planning and preparedness activities before response actions, and coordination of assistance and advice during such response actions in support of the on-scene coordinator (OSC) and remedial project manager (RPM). RRT membership consists of designated representatives from each participating Federal agency, State government, and local government (as agreed upon by the States).

(3) The OSC and the RPM, primarily responsible for directing response efforts and coordinating all other efforts at the scene of a discharge or release. The other responsibilities of OSCs and RPMs are described in § 300.135.

(d)(1) The organizational concepts of the NCP are depicted in the following Figure 1:

BILLING CODE 6560-50-M

Figure 1 -- National Contingency Plan Concepts

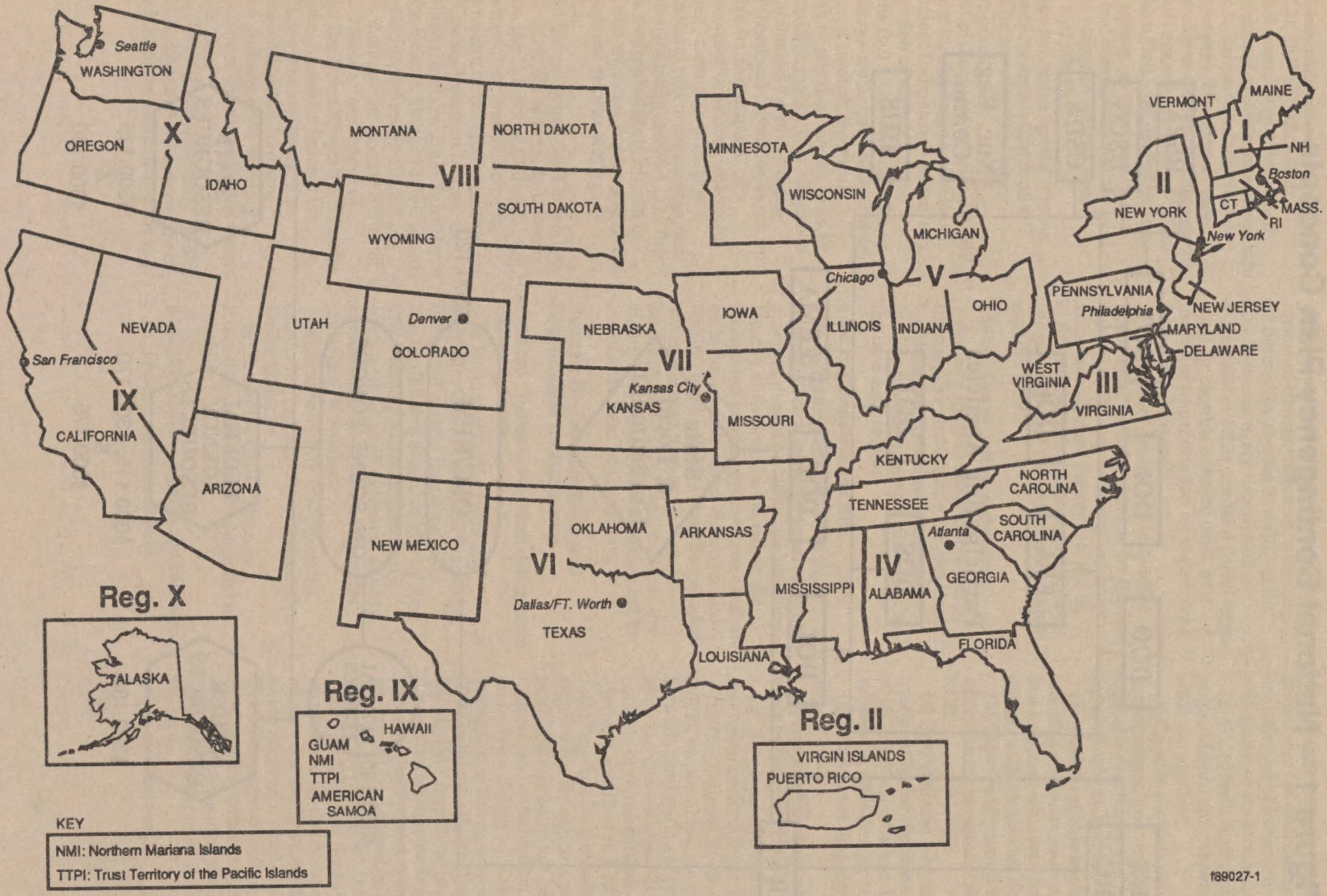


S81137-1

BILLING CODE 6560-50-C

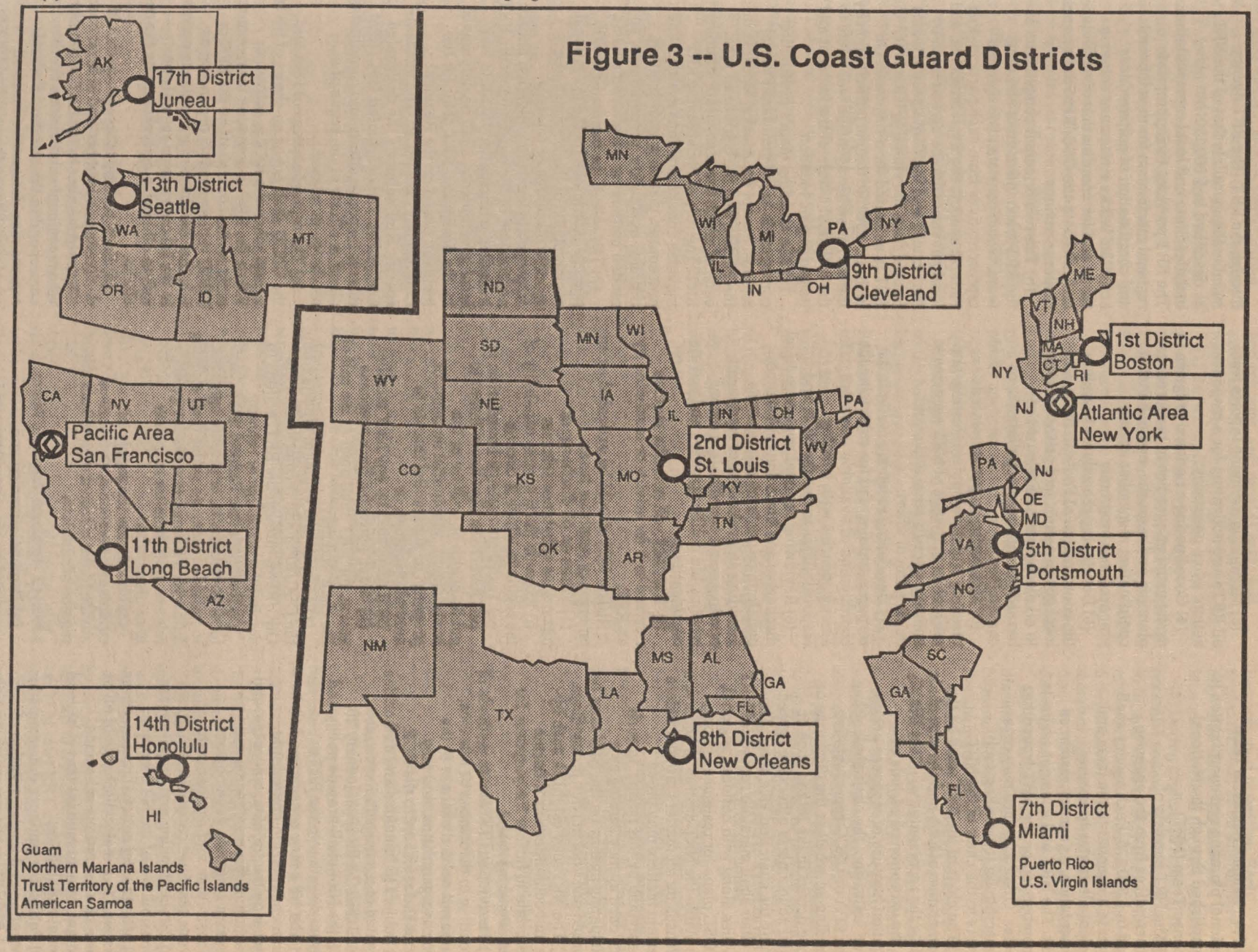
(2) The standard Federal regional boundaries are shown in the following Figure 2:

Figure 2 -- Standard Regional Boundaries for Ten Regions



BILLING CODE 6560-50-C

(3) The USCG District boundaries are shown in the following Figure 3:



BILLING CODE 6560-50-C

§ 300.110 National Response Team.

National planning and coordination is accomplished through the National Response Team (NRT).

(a) The NRT consists of representatives from the agencies named in § 300.175. Each agency shall designate a member to the team and sufficient alternates to ensure representation, as agency resources permit. The NRT will consider requests for membership on the NRT from other agencies. Other agencies may request membership by forwarding such requests to the chair of the NRT.

(b) The chair of the NRT shall be the representative of EPA and the vice chair shall be the representative of the USCG, with the exception of periods of activation because of response action. During activation, the chair shall either be the EPA or USCG representative, depending on whether the discharge or release occurs in the inland zone or coastal zone, unless otherwise agreed upon by the chair and vice chair. The vice chair shall maintain records of NRT activities along with national, regional, and OSC plans for response actions.

(c) While the NRT desires to achieve a consensus on all matters brought before it, certain matters may prove unresolvable by this means. In such cases, each agency serving as a participating agency on the NRT may be accorded one vote in NRT proceedings.

(d) The NRT may establish such by-laws and committees as it deems appropriate to further the purposes for which it is established.

(e) The NRT shall evaluate methods of responding to discharges or releases, recommend needed changes in the response organization, and may recommend revisions to the NCP.

(f) Subject to functions and authorities delegated to agencies in Executive Order 12580 (52 FR 2923, January 29, 1987), the NRT shall provide policy and program direction to the RRTs.

(g) The NRT may consider and make recommendations to appropriate agencies on the training, equipping, and protection of response teams and necessary research, development, demonstration, and evaluation to improve response capabilities.

(h) Direct planning and preparedness responsibilities of the NRT include:

(1) Maintaining national preparedness to respond to a major discharge of oil or release of a hazardous substance, pollutant, or contaminant that is beyond regional capabilities;

(2) Publishing guidance documents for preparation and implementation of SARA Title III local emergency response plans;

(3) Monitoring incoming reports from all RRTs and activating for a response action, when necessary;

(4) Coordinating a national program to assist member agencies in preparedness planning and response, and enhancing coordination of member agency preparedness programs;

(5) Developing procedures to ensure the coordination of Federal, State, and local governments, and private response to oil discharges and releases of hazardous substances, pollutants, or contaminants;

(6) Monitoring response-related research and development, testing, and evaluation activities of NRT agencies to enhance coordination and avoid duplication of effort;

(7) Developing recommendations for response training and for enhancing the coordination of available resources among agencies with training responsibilities under the NCP; and

(8) Reviewing regional responses to oil discharges and hazardous substance, pollutant, or contaminant releases, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations.

(i) The NRT will consider matters referred to it for advice or resolution by an RRT.

(j) The NRT should be activated as an emergency response team:

(1) When an oil discharge or hazardous substance release:

(i) Exceeds the response capability of the region in which it occurs;

(ii) Transects regional boundaries; or

(iii) Involves a significant threat to public health or welfare or the environment, substantial amounts of property, or substantial threats to natural resources; or

(2) If requested by any NRT member.

(k) When activated for a response action, the NRT shall meet at the call of the chair and may:

(1) Monitor and evaluate reports from the OSC/RPM and recommend to the OSC/RPM, through the RRT, actions to combat the discharge or release;

(2) Request other Federal, State, and local governments, or private agencies, to provide resources under their existing authorities to combat a discharge or release, or to monitor response operations; and

(3) Coordinate the supply of equipment, personnel, or technical advice to the affected region from other regions or districts.

§ 300.115 Regional Response Teams.

(a) Regional planning and coordination of preparedness and response actions is accomplished through the RRT. The RRT agency membership parallels that of the NRT, as described in § 300.110, but also includes State and local representation. The RRT provides the appropriate regional mechanism for development and coordination of preparedness activities before a response action is taken and for coordination of assistance and advice to the OSC/RPM during such response actions.

(b) The two principal components of the RRT mechanism are a standing team, which consists of designated representatives from each participating Federal agency, State governments, and local governments (as agreed upon by the States); and incident-specific teams formed from the standing team when the RRT is activated for a response. On incident-specific teams, participation by the RRT member agencies will relate to the technical nature of the incident and its geographic location.

(1) The standing team's jurisdiction corresponds to the standard Federal regions, except for Alaska, Oceania in the Pacific, and the Caribbean area, each of which has a separate standing RRT. The role of the standing RRT includes communications systems and procedures, planning, coordination, training, evaluation, preparedness, and related matters on a regionwide basis.

(2) The role of the incident-specific team is determined by the operational requirements of the response to a specific discharge or release. Appropriate levels of activation and/or notification of the incident-specific RRT, including participation by State and local governments, shall be determined by the designated RRT chair for the incident, based on the Regional Contingency Plan (RCP). The incident-specific RRT supports the designated OSC/RPM. The designated OSC/RPM directs response efforts and coordinates all other efforts at the scene of a discharge or release.

(c) The representatives of EPA and the USCG shall act as co-chairs of RRTs except when the RRT is activated. When the RRT is activated for response actions, the chair shall be the EPA or USCG representative, depending on whether the discharge or release occurs in the inland zone or coastal zone, unless otherwise agreed upon by the co-chairs.

(d) Each participating agency should designate one member and at least one alternate member to the RRT. Agencies whose regional subdivisions do not correspond to the standard Federal regions may designate additional representatives to the standing RRT to ensure appropriate coverage of the

standard Federal region. Participating States may also designate one member and at least one alternate member to the RRT. Indian Tribal governments may arrange for representation with the RRT appropriate to their geographical location. All agencies and States may also provide additional representatives as observers to meetings of the RRT.

(e) RRT members should designate representatives and alternates from their agencies as resource personnel for RRT activities, including RRT work planning, and membership on incident-specific teams in support of the OSCs/RPMs.

(f) Federal RRT members or their representatives should provide OSCs/RPMs with assistance from their respective Federal agencies commensurate with agency responsibilities, resources, and capabilities within the region. During a response action, the members of the RRT should seek to make available the resources of their agencies to the OSC/RPM as specified in the RCP and OSC contingency plan.

(g) RRT members should designate appropriately qualified representatives from their agencies to work with OSCs in developing and maintaining OSC contingency plans, described in § 300.210, that provide for use of agency resources in responding to discharges and releases.

(h) Affected States are encouraged to participate actively in all RRT activities. Each State governor is requested to assign an office or agency to represent the State on the appropriate RRT; to designate representatives to work with the RRT and OSCs in developing RCPs and OSC contingency plans; to plan for, make available, and coordinate State resources; and to serve as the contact point for coordination of response with local government agencies, whether or not represented on the RRT. The State's RRT representative should keep the State Emergency Response Commission (SERC), described in § 300.205(c), apprised of RRT activities and coordinate RRT activities with the SERC. Local governments are invited to participate in activities on the appropriate RRT as provided by State law or as arranged by the State's representative. Indian Tribes are also invited to participate and may contact the appropriate RRT to arrange for their participation.

(i) The standing RRT shall recommend changes in the regional response organization as needed, revise the RCP as needed, evaluate the preparedness of the participating agencies and the effectiveness of OSC contingency plans for the Federal response to discharges and releases, and provide technical assistance for preparedness to the response community. The RRT should:

(1) Review and comment, to the extent practicable, on local emergency response plans or other issues related to the preparation, implementation, or exercise of such plans upon request of a local emergency planning committee;

(2) Evaluate regional and local responses to discharges or releases on a continuing basis, considering available legal remedies, equipment readiness, and coordination among responsible public agencies and private organizations, and recommend improvements;

(3) Recommend revisions of the NCP to the NRT, based on observations of response operations;

(4) Review OSC actions to ensure that RCPs and OSC contingency plans are effective;

(5) Encourage the State and local response community to improve its preparedness for response;

(6) Conduct advance planning for use of dispersants, surface collection agents, burning agents, biological additives, or other chemical agents in accordance with Subpart J of this Part;

(7) Be prepared to respond to major discharges or releases outside the region;

(8) Conduct training and exercises as necessary to encourage preparedness activities of the response community within the region;

(9) Meet at least semiannually to review response actions carried out during the preceding period and consider changes in RCPs and OSC contingency plans; and

(10) Provide letter reports on RRT activities to the NRT twice a year, no later than January 31 and July 31. At a minimum, reports should summarize recent activities, organizational changes, operational concerns, and efforts to improve State and local coordination.

(j)(1) The RRT may be activated by the chair as an incident-specific response team when a discharge or release:

(i) Exceeds the response capability available to the OSC/RPM in the place where it occurs;

(ii) Transects State boundaries; or

(iii) May pose a substantial threat to the public health or welfare or the environment, or to regionally significant amounts of property. RCPs shall specify detailed criteria for activation of RRTs.

(2) The RRT will be activated during any discharge or release upon a request from the OSC/RPM, or from any RRT representative, to the chair of the RRT. Requests for RRT activation shall later be confirmed in writing. Each representative, or an appropriate alternate, should be notified immediately when the RRT is activated.

(3) During prolonged removal or remedial action, the RRT may not need to be activated or may need to be activated only in a limited sense, or may need to have available only those member agencies of the RRT who are directly affected or who can provide direct response assistance.

(4) When the RRT is activated for a discharge or release, agency representatives shall meet at the call of the chair and may:

(i) Monitor and evaluate reports from the OSC/RPM, advise the OSC/RPM on the duration and extent of response, and recommend to the OSC/RPM specific actions to respond to the discharge or release, subject to statutory and Executive Order authorities;

(ii) Request other Federal, State, or local governments, or private agencies, to provide resources under their existing authorities to respond to a discharge or release or to monitor response operations;

(iii) Help the OSC/RPM prepare information releases for the public and for communication with the NRT;

(iv) If the circumstances warrant, make recommendations to the regional or district head of the agency providing the OSC/RPM that a different OSC/RPM should be designated; and

(v) Submit pollution reports to the NRC as significant developments occur.

(5) At the regional level, a Regional Response Center (RRC) may provide facilities and personnel for communications information storage, and other requirements for coordinating response. The location of each RRC should be provided in the RCP.

(6) When the RRT is activated, affected States may participate in all RRT deliberations. State government representatives participating in the RRT have the same status as any Federal member of the RRT.

(7) The RRT can be deactivated when the incident-specific RRT chair determines that the OSC/RPM no longer requires RRT assistance.

(8) Notification of the RRT may be appropriate when full activation is not necessary, with systematic communication of pollution reports or other means to keep RRT members informed as to actions of potential concern to a particular agency, or to assist in later RRT evaluation of regionwide response effectiveness.

(k) Whenever there is insufficient national policy guidance on a matter

before the RRT, a technical matter requiring solution, a question concerning interpretation of the NCP, or there is a disagreement on discretionary actions among RRT members that cannot be resolved at the regional level, it may be referred to the NRT, described in § 300.110, for advice.

§ 300.120 On-scene coordinators and remedial project managers: general responsibilities.

(a) The OSC/RPM directs response efforts and coordinates all other efforts at the scene of a discharge or release. As part of the planning and preparedness for response, OSCs shall be predesignated by the regional or district head of the lead agency. EPA and the USCG shall predesignate OSCs for all areas in each region, except as provided in paragraphs (b) and (c) of this section. RPMs shall be assigned by the lead agency to manage remedial or other response actions at NPL sites, except as provided in paragraphs (b) and (c) of this section.

(1) The USCG shall provide OSCs for oil discharges, including discharges from facilities and vessels under the jurisdiction of another Federal agency, within or threatening the coastal zone. The USCG shall also provide OSCs for the removal of releases of hazardous substances, pollutants, or contaminants into or threatening the coastal zone, except as provided in paragraph (b) of this section. The USCG shall not provide predesignated OSCs for discharges or releases from hazardous waste management facilities or in similarly chronic incidents. The USCG shall provide an initial response to discharges or releases from hazardous waste management facilities within the coastal zone in accordance with DOT/EPA Instrument of Redelegation (46 FR 63294, December 31, 1981). The USCG OSC shall contact the cognizant RPM as soon as it is evident that a removal may require a follow-up remedial action, to ensure that the required planning can be initiated and an orderly transition to an EPA or State lead can occur.

(2) EPA shall provide OSCs for discharges or releases into or threatening the inland zone and shall provide RPMs for Federally-funded remedial actions, except in the case of State-lead Federally-funded response and as provided in paragraph (b) of this section. EPA will also assume all remedial actions at NPL sites in the coastal zone, even where removals are initiated by the USCG, except those involving vessels.

(b) For releases of hazardous substances, pollutants, or contaminants, when the release is on, or the sole source of the release is from, any facility or vessel, including vessels bareboat chartered and operated, under the jurisdiction, custody, or control of DOD, DOE, or other Federal agency:

(1) In the case of DOD or DOE, DOD or DOE shall provide OSCs/RPMs responsible for taking all response actions; and

(2) In the case of a Federal agency other than the USCG, EPA, DOD, or DOE, such agency shall provide OSCs for all removal actions that are not emergencies and shall provide RPMs for all remedial actions.

(c) DOD will be the removal response authority with respect to incidents involving military weapons and munitions.

(d) The OSC is responsible for developing any OSC contingency plans for the Federal response in the area of the OSC's responsibility. The planning shall, as appropriate, be accomplished in cooperation with the RRT, described in § 300.115, and designated State and local representatives.

(e) The RPM is the prime contact for remedial or other response actions being taken (or needed) at sites on the proposed or promulgated NPL, and for sites not on the NPL but under the jurisdiction, custody, or control of a Federal agency. The RPM's responsibilities include:

(1) Fund-Financed Response: The RPM coordinates, directs, and reviews the work of EPA, State, and local governments, the U.S. Army Corps of Engineers, and all other agencies and contractors to assure compliance with the NCP. Based upon the reports of these parties, the RPM recommends action for decisions by lead agency officials. The RPM's period of responsibility begins prior to initiation of the remedial investigation/feasibility study (RI/FS), described in § 300.430, and continues through design, remedial action, deletion of the site from the NPL, and the CERCLA cost recovery activity. When a removal and remedial action occur at the same site, the OSC and RPM should coordinate to ensure an orderly transition of responsibility.

(2) Federal-lead Non-Fund-Financed Response: The RPM coordinates, directs, and reviews the work of other agencies and contractors to assure compliance with the NCP. Based upon the reports of these parties, the RPM shall recommend action for decisions by lead agency officials. The RPM's period of responsibility begins prior to initiation of the RI/FS, described in § 300.430, and continues through design and remedial action, and the CERCLA cost recovery activity. The OSC and RPM shall ensure orderly transition of responsibilities from one to the other.

(3) The RPM shall participate in all decisionmaking processes necessary to ensure compliance with the NCP, including, as appropriate, agreements between EPA or other Federal agencies and the State. The RPM may also review responses where EPA has preauthorized a person to file a claim for reimbursement to determine that the response was consistent with the terms of such preauthorization in cases where claims are filed for reimbursement.

(f)(1) Where a support agency has been identified through a cooperative agreement, SMOA, or other agreement, that agency may designate a support agency coordinator (SAC) to provide assistance, as requested, by the OSC/RPM. The SAC is the prime representative of the support agency for response actions.

(2) The SAC's responsibilities may include:

(i) Providing and reviewing data and documents as requested by the OSC/RPM during the planning, design, and cleanup activities of the response action; and

(ii) Providing other assistance as requested.

(g)(1) The lead agency should provide appropriate training for its OSCs, RPMs, and other response personnel to carry out their responsibilities under the NCP.

(2) OSCs/RPMs should ensure that persons designated to act as their on-scene representatives are adequately trained and prepared to carry out actions under the NCP, to the extent practicable.

§ 300.125 Notification and communications.

(a) The NRC is the national communications center for activities related to response actions. It is located at USCG Headquarters in Washington, DC. The NRC receives and relays notices of discharges or releases to the appropriate OSC, records each notice, disseminates OSC/RPM and RRT reports to the NRT when appropriate, and provides facilities for the NRT to use in coordinating a national response action when required.

(b) The Commandant, USCG, shall provide the necessary personnel, communications, plotting facilities, and equipment for the NRC.

(c) Notice of an oil discharge or release of a hazardous substance in an amount equal to or greater than the reportable quantity must be made immediately in accordance with 33 CFR Part 153, Subpart B, and 40 CFR Part 302, respectively. Notification shall be made

to the NRC Duty Officer, HQ USCG, Washington, DC, telephone (800) 424–8802 or (202) 426–2675. All notices of discharges or releases received at the NRC will be relayed immediately by telephone to the OSC.

§ 300.130 Determinations to initiate response and special conditions.

(a) The Administrator of EPA or the Secretary of the Department in which the USCG is operating, as appropriate, is authorized to act for the United States to take response measures deemed necessary to protect the public health or welfare or environment from discharges of oil or releases of hazardous substances, pollutants, or contaminants except with respect to such releases on or from vessels or facilities under the jurisdiction, custody or control of other Federal agencies.

(b) The Administrator of EPA or the Secretary of the Department in which the USCG is operating, as appropriate, is authorized to initiate appropriate response activities when the Administrator or Secretary determines that:

(1) Any oil is discharged from any vessel or offshore or onshore facility into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under exclusive management authority of the United States;

(2) The release into the environment of a hazardous substance, pollutant or contaminant presents a threat to public health or welfare or environment; or

(3) A marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare because of a discharge or release, or an imminent discharge or release, from a vessel of large quantities of oil or hazardous substances designated pursuant to section 311(b)(2)(A) of the CWA.

(c) Whenever there is such a marine disaster, the Administrator of EPA or Secretary of the Department in which the USCG is operating may:

(1) Coordinate and direct all public and private efforts to abate the threat; and

(2) Summarily remove and, if necessary, destroy the vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds.

(d) In addition to any actions taken by a State or local government, the Administrator of EPA or the Secretary of the Department in which the USCG is operating may request the U.S. Attorney General to secure the relief necessary to abate a threat if the Administrator or Secretary determines:

(1) That there is an imminent and substantial threat to the public health or welfare or the environment because of discharge of oil from any offshore or onshore facility into or upon the navigable waters of the United States; or

(2) That there may be an imminent and substantial endangerment to the public health or welfare or the environment because of a release of a hazardous substance from a facility.

(e) Response actions to remove discharges originating from operations conducted subject to the Outer Continental Shelf Lands Act shall be in accordance with the NCP.

(f) Where appropriate, when a discharge or release involves radioactive materials, the lead or support Federal agency shall act consistent with the notification and assistance procedures described in the appropriate Federal Radiological Plan. For the purpose of the NCP, the Federal Radiological Emergency Response Plan (FRERP) (50 FR 46542, November 8, 1985) is the appropriate plan.

(g) Removal actions involving nuclear weapons should be conducted in accordance with the joint Department of Defense, Department of Energy, and Federal Emergency Management Agency Agreement for Response to Nuclear Incidents and Nuclear Weapons Significant Incidents (January 8, 1981).

(h) If the situation is beyond the capability of State and local governments and the statutory authority of Federal agencies, the President may, under the Disaster Relief Act of 1974, act upon a request by the governor and declare a major disaster or emergency and appoint a Federal Coordinating Officer (FCO) to coordinate all Federal disaster assistance activities. In such cases, the OSC/RPM would continue to carry out OSC/RPM responsibilities under the NCP, but would coordinate those activities with the FCO to ensure consistency with other Federal disaster assistance activities.

§ 300.135 Response operations.

(a) The OSC/RPM, consistent with §§ 300.120 and 300.125, shall direct response efforts and coordinate all other efforts at the scene of a discharge or release, as provided for in Executive Order 11735 and Executive Order 12580. As part of the planning and preparation for response, the OSCs/RPMs shall be predesignated by the regional or district head of the lead agency.

(b) The first Federal official affiliated with an NRT member agency to arrive at the scene of a discharge or release should coordinate activities under the NCP and is authorized to initiate, in consultation with the OSC, any necessary actions normally carried out by the OSC until the arrival of the predesignated OSC. This official may initiate Federal Fund-financed actions only as authorized by the OSC or, if the OSC is unavailable, the authorized representative of the lead agency.

(c) The OSC/RPM shall, to the extent practicable, collect pertinent facts about the discharge or release, such as its source and cause; the identification of potentially responsible parties; the nature, amount, and location of discharged or released materials; the probable direction and time of travel of discharged or released materials; the pathways to human and environmental exposure; the potential impact on human health, welfare, and safety and the environment; the potential impact on natural resources and property which may be affected; priorities for protecting human health and welfare, and the environment; and appropriate cost documentation.

(d) The OSC's/RPM's efforts shall be coordinated with other appropriate Federal, State, local, and private response agencies. OSCs/RPMs may designate capable persons from Federal, State, or local agencies to act as their on-scene representatives. State and local governments, however, are not authorized to take actions under Subparts D and E of the NCP that involve expenditures of CWA section 311(k) or CERCLA funds unless an appropriate contract or cooperative agreement has been established.

(e) The OSC-RPM should consult regularly with the RRT in carrying out the NCP and keep the RRT informed of activities under the NCP.

(f) The OSC/RPM shall advise the support agency as promptly as possible of reported discharges or releases.

(g) The OSC/RPM shall immediately notify FEMA of situations potentially requiring evacuation, temporary housing, or permanent relocation. In addition, the OSC/RPM shall evaluate incoming information and immediately advise FEMA of potential major disaster situations.

(h) In those instances where a possible public health emergency exists, the OSC/RPM should notify the HHS representative to the RRT. Throughout response actions, the OSC/RPM may

call upon the HHS representative for assistance in determining public health threats and call upon the Occupational Safety and Health Administration and HHS for advice on worker health and safety problems.

(i) All Federal agencies should plan for emergencies and develop procedures for dealing with oil discharges and releases of hazardous substances, pollutants, or contaminants from vessels and facilities under their jurisdiction. All Federal agencies, therefore, are responsible for designating the office that coordinates response to such incidents in accordance with the NCP and applicable Federal regulations and guidelines.

(j) The OSC/RPM shall promptly notify the trustees for natural resources of discharges or releases that are injuring or may injure natural resources under their jurisdiction. The OSC or RPM should consult with the natural resource trustees in determining such effects and shall coordinate, as appropriate, all response activities with natural resource trustees.

(k) Where the OSC/RPM becomes aware that a discharge or release may adversely affect any endangered or threatened species, or result in destruction or adverse modification of the habitat of such species, the OSC/RPM should consult with the DOI or DOC (NOAA).

(l) The OSC/RPM is responsible for addressing worker health and safety concerns at a response scene, in accordance with § 300.150.

(m) The OSC, and the RPM as appropriate, shall submit pollution reports to the RRT and other appropriate agencies as significant developments occur during response actions, through communications networks or procedures agreed to by the RRT and covered in the RCP.

(n) OSCs/RPMs should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response, to the extent practicable, consistent with the requirements of § 300.155 of this Part.

§ 300.140 Multi-regional responses.

(a) If a discharge or release moves from the area covered by one RCP or OSC contingency plan into another area, the authority for response actions should likewise shift. If a discharge or release affects areas covered by two or more RCPs, the response mechanisms of both may be activated. In this case, response actions of all regions concerned shall be fully coordinated as detailed in the RCPs.

(b) There shall be only one OSC and/or RPM at any time during the course of a response operation. Should a discharge or release affect two or more areas, EPA, the USCG, DOD, DOE, or other lead agency, as appropriate, shall give prime consideration to the area vulnerable to the greatest threat, in determining which agency should provide the OSC and/or RPM. The RRT shall designate the OSC and/or RPM if the RRT member agencies who have response authority within the affected areas are unable to agree on the designation. The NRT shall designate the OSC and/or RPM if members of one RRT or two adjacent RRTs are unable to agree on the designation.

(c) Where the USCG has initially provided the OSC for response to a release from hazardous waste management facilities located in the coastal zone, responsibility for response action shall shift to EPA, in accordance with EPA/USCG agreements, or to another Federal agency, as appropriate under Executive Order 12580.

§ 300.145 Special teams and other assistance available to OSCs/RPMs.

(a) Strike Teams, collectively known as the National Strike Force (NSF), are established by the USCG on the Pacific coast and Gulf coast (covering the Atlantic and Gulf coast regions), to provide assistance to the OSC/RPM.

(1) Strike Teams can provide communications support, advice, and assistance for oil and hazardous substances removal. These teams also have knowledge of shipboard damage control, are equipped with specialized containment and removal equipment, and have rapid transportation available. When possible, the Strike Teams will provide training for emergency task forces to support OSCs/RPMs and assist in the development of RCPs and OSC contingency plans.

(2) The OSC/RPM may request assistance from the Strike Teams. Requests for a team may be made directly to the Commanding Officer of the appropriate team, the USCG member of the RRT, the appropriate USCG Area Commander, or the Commandant of the USCG through the NRC.

(b) Each USCG OSC manages emergency task forces trained to evaluate, monitor, and supervise pollution responses. Additionally, they have limited "initial aid" response capability to deploy equipment prior to the arrival of a cleanup contractor or other response personnel.

(c)(1) The Environmental Response Team (ERT) is established by EPA in accordance with its disaster and emergency responsibilities. The ERT has expertise in treatment technology, biology, chemistry, hydrology, geology, and engineering.

(2) The ERT can provide access to special decontamination equipment for chemical releases and advice to the OSC/RPM in hazard evaluation; risk assessment; multimedia sampling and analysis program; on-site safety, including development and implementation plans; cleanup techniques and priorities; water supply decontamination and protection; application of dispersants; environmental assessment; degree of cleanup required; and disposal of contaminated material.

(3) The ERT also provides both introductory and intermediate level training courses to prepare response personnel.

(4) OSC/RPM or RRT requests for ERT support should be made to the EPA representative on the RRT; EPA Headquarters, Director, Emergency Response Division; or the appropriate EPA regional emergency coordinator.

(d) Scientific support coordinators (SSCs) are available, at the request of OSCs/RPMs, to assist with actual or potential responses to discharges of oil or releases of hazardous substances, pollutants, or contaminants. The SSC will also provide scientific support for the development of RCPs and OSC contingency plans. Generally, SSCs are provided by NOAA in coastal and marine areas, and by EPA in inland regions.

(1) During a response, the SSC serves under the direction of the OSC/RPM and is responsible for providing scientific support for operational decisions and for coordinating on-scene scientific activity. Depending on the nature of the incident, the SSC can be expected to provide certain specialized scientific skills and to work with governmental agencies, universities, community representatives, and industry to compile information that would assist the OSC/RPM in assessing the hazards and potential effects of discharges and releases and in developing response strategies.

(2) If requested by the OSC/RPM, the SSC will serve as the principal liaison for scientific information and will facilitate communications to and from the scientific community on response issues. The SSC, in this role, will strive for a consensus on scientific issues surrounding the response but will also ensure that any differing opinions within the community are communicated to the OSC/RPM.

(3) The SSC will assist the OSC/RPM in responding to requests for assistance

from State and Federal agencies regarding scientific studies and environmental assessments. Details on access to scientific support shall be included in the RCPs.

(e) For marine salvage operations, OSCs/RPMs with responsibility for monitoring, evaluating, or supervising these activities should request technical assistance from DOD, the Strike Teams, or commercial salvors as necessary to ensure that proper actions are taken. Marine salvage operations generally fall into five categories: afloat salvage; offshore salvage; river and harbor clearance; cargo salvage; and rescue towing. Each category requires different knowledge and specialized types of equipment. The complexity of such operations may be further compounded by local environmental and geographic conditions. The nature of marine salvage and the conditions under which it occurs combine to make such operations imprecise, difficult, hazardous, and expensive. Thus, responsible parties or other persons attempting to perform such operations without adequate knowledge, equipment, and experience could aggravate, rather than relieve, the situation.

(f) Radiological Assistance Teams have been established by EPA's Office of Radiation Programs (ORP) to provide response and support for incidents or sites containing radiological hazards. Expertise is available in radiation monitoring, radionuclide analysis, radiation health physics and risk assessment. Radiological Assistance Teams can provide on-site support including mobile monitoring laboratories for field analyses of samples and fixed laboratories for radiochemical sampling and analyses. Requests for support may be made 24 hours a day to the Radiological Response Coordinator. Assistance is also available from the Department of Energy and other Federal agencies.

(g) The USCG Public Information Assist Team (PIAT) is available to assist OSCs/RPMs and regional or district offices to meet the demands for public information and participation. Its use is encouraged any time the OSC/RPM requires outside public affairs support. Requests for the PIAT may be made through the NRC.

§ 300.150 Worker health and safety.

(a) Requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) (OSH Act) and under the laws of States with plans approved under section 18 of the OSH Act (State OSH laws), as well as other applicable safety and health requirements, will be applied to response activities under the NCP. These requirements are subject to enforcement by the appropriate Federal and State agencies. Federal OSH Act requirements include, among other things, all OSH Act General Industry (29 CFR Part 1910, in particular, § 1910.120 Hazardous Waste Operations and Emergency Response), Construction (29 CFR Part 1926), Shipyard (29 CFR Part 1915), and Longshoring (29 CFR Part 1918) standards wherever they are relevant, as well as OSH Act recordkeeping and reporting regulations (29 CFR Part 1904). Employers at response actions under the NCP will also be subject to the general duty requirements of section 5(a)(1) of the OSH Act (29 U.S.C. 654(a)(1)). No action by the lead agency with respect to response activities under the NCP constitutes an exercise of statutory authority within the meaning of section 4(b)(1) of the OSH Act. All governmental agencies and private employers are directly responsible for the health and safety of their own employees.

(b) In a response action taken by a responsible party, the responsible party must assure that an occupational safety and health program is made available for the protection of workers at the response site, and that workers entering the response site are apprised of the response site hazards and provisions of the safety and health program.

(c) In a response taken under the NCP by a lead agency, the lead agency must assure that a program for occupational safety and health is made available for the protection of workers at the response site, and that workers entering the response site are appraised of site hazards and provisions of the safety and health program. Any contract relating to a response action under the NCP shall contain assurances that the contractor at the response site will comply with this program and with any applicable provision of the OSH Act and State OSH laws.

(d) When a State, or political subdivision of a State, without an OSHA-approved State plan is the lead agency for response, the State or political subdivision must comply with standards promulgated by EPA pursuant to section 126(f) of SARA.

§ 300.155 Public information and community relations.

(a) When an incident occurs, it is imperative to give the public prompt, accurate information on the nature of the incident and the actions underway to mitigate the damage. OSCs/RPMs and community relations personnel should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response. They should coordinate with available public affairs/community relations resources to carry out this responsibility.

(b) An on-scene news office may be established to coordinate media relations and to issue official Federal information on an incident. Whenever possible, it will be headed by a representative of the lead agency. The OSC/RPM determines the location of the on-scene news office, but every effort should be made to locate it near the scene of the incident. If a participating agency believes public interest warrants the issuance of statements and an on-scene news office has not been established, the affected agency should recommend its establishment. All Federal news releases or statements by participating agencies should be cleared through the OSC/RPM.

(c) The community relations requirements specified in §§ 300.415, 300.430, and 300.435 apply to removal, remedial, and enforcement actions and are intended to promote active communication between communities affected by discharges or releases and the lead agency responsible for response actions. Community Relations Plans (CRPs) are required by EPA for certain response actions. The OSC/RPM should ensure coordination with such plans which may be in effect at the scene of a discharge or release or which may need to be developed during followup activities.

§ 300.160 Documentation and cost recovery.

(a) For releases of a hazardous substance, pollutant, or contaminant, the following provisions apply:

(1) During all phases of response, the lead agency shall complete and maintain documentation to support all actions taken under the NCP and to form the basis for cost recovery. In general, documentation shall be sufficient to provide the source and circumstances of the release, the identity of responsible parties, the response action taken, accurate accounting of Federal, State, or private party costs incurred for response actions, and impacts and potential impacts to the public health and welfare and the environment. Where applicable, documentation shall state when the NRC received notification of a release of a reportable quantity.

(2) The information and reports obtained by the lead agency for Fund-financed response actions shall, as

appropriate, be transmitted to the chair of the RRT. Copies can then be forwarded to the NRT, members of the RRT, and others as appropriate. In addition, OSCs shall report as required by § 300.165 for all major releases and all Fund-financed removal actions taken.

(3) The lead agency shall make available to the trustees of affected natural resources information and documentation that can assist in the determination of actual or potential natural resource injuries.

(b) For discharges of oil, documentation and cost recovery provisions are described in § 300.315.

(c) Response actions undertaken by the participating agencies shall be carried out under existing programs and authorities when available. Federal agencies are to make resources available, expend funds, or participate in response to discharges and releases under their existing authority. Interagency agreements may be signed when necessary to ensure that the Federal resources will be available for a timely response to a discharge or release. The ultimate decision as to the appropriateness of expending funds rests with the agency that is held accountable for such expenditures. Further funding provisions for discharges of oil are described in § 300.335.

(d) The Administrator of EPA and the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR) shall assure that the costs of health assessment or health effect studies conducted under the authority of CERCLA section 104(i) are documented in accordance with standard EPA procedures for cost recovery. Documentation shall include information on the nature of the hazardous substances addressed by the research, information concerning the locations where these substances have been found, and any available information on response actions taken concerning these substances at the location.

§ 300.165 OSC reports.

(a) Within 90 days after completion of removal activities at a major discharge of oil, a major hazardous substance, pollutant, or contaminant release, or when requested by the RRT, the OSC/RPM shall submit to the RRT a complete report on the removal operation and the actions taken. The OSC/RPM shall at the same time send a copy of the report to the Secretary of the NRT. The RRT shall review the OSC report and send to the NRT a copy of the OSC report with its comments or recommendations within 30 days after the RRT has received the OSC report.

(b) The OSC report shall record the situation as it developed, the actions taken, the resources committed, and the problems encountered.

(c) The format for the OSC report shall be as follows:

(1) Summary of Events—a chronological narrative of all events, including:

(i) The location of the hazardous substance, pollutant, or contaminant release or oil discharge, including, for oil discharges, an indication of whether the discharge was in connection with activities regulated under the Outer Continental Shelf Lands Act (OCSLA), the Trans-Alaska Pipeline Authority Act, or Deepwater Port Act;

(ii) The cause of the discharge or release;

(iii) The initial situation;

(iv) Efforts to obtain response by responsible parties;

(v) The organization of the response, including State participation;

(vi) The resources committed;

(vii) Comments on whether the discharge or release affected natural resources;

(viii) Comments on Federal or State damage assessment activities and efforts to replace or restore damaged natural resources;

(ix) Details of any threat abatement action taken under CERCLA or under section 311 (c) or (d) of the CWA;

(x) Treatment/Disposal/Alternative Technology approaches pursued and followed; and

(xi) Public information/community relations activities.

(2) Effectiveness of removal actions taken by:

(i) The responsible party(ies);

(ii) State and local forces;

(iii) Federal agencies and special forces; and

(iv) Contractors, private groups, and volunteers, if applicable.

(3) Difficulties Encountered—A list of items that affected the response, with particular attention to issues of intergovernmental coordination.

(4) Recommendations—OSC/RPM recommendations, including at a minimum:

(i) Means to prevent a recurrence of the discharge or release;

(ii) Improvement of response actions; and

(iii) Any recommended changes in the NCP, RCP, OSC contingency plan, and, as appropriate, plans developed under section 303 of SARA and other local emergency response plans.

§ 300.170 Federal agency participation.

Federal agencies listed in § 300.175 have duties established by statute, executive order, or Presidential directive which may apply to Federal response actions, following, or in prevention of, the discharge of oil or release of a hazardous substance, pollutant, or contaminant. Some of these agencies also have duties relating to the rehabilitation, restoration, or replacement of natural resources injured or lost as a result of such discharge or release as described in Subpart G of this Part. The NRT and RRT organizational structure, the NCP, the Federal Regional Contingency plans (RCPs) and OSC contingency plans, described in § 300.210, provide for agencies to coordinate with each other in carrying out these duties.

(a) Federal agencies may be called upon by an OSC/RPM during response planning and implementation to provide assistance in their respective areas of expertise as described in § 300.175, consistent with the agencies' capabilities and authorities.

(b) In addition to their general responsibilities, Federal agencies should:

(1) Make necessary information available to the Secretary to the NRT, RRTs, and OSCs/RPMs.

(2) Provide representatives to the NRT and RRTs and otherwise assist RRTs and OSCs, as necessary, in formulating RCPs and OSC contingency plans.

(3) Inform the NRT and RRTs, consistent with national security considerations, of changes in the availability of resources that would affect the operations implemented under the NCP.

(c) All Federal agencies are responsible for reporting releases of hazardous substances, pollutants, or contaminants or discharges of oil from facilities or vessels which are under their jurisdiction or control in accordance with section 103 of CERCLA.

§ 300.175 Federal agencies: additional responsibilities and assistance.

(a) During preparedness planning or in an actual response, various Federal agencies may be called upon to provide assistance in their respective areas of expertise as indicated in paragraph (b) of this section, consistent with agency legal authorities and capabilities.

(b) The Federal agencies include:

(1) The United States Coast Guard (USCG), as provided in 14 U.S.C. 1–3, is an agency in the Department of Transportation (DOT), except when operating as an agency in the United

States Navy in time of war. The USCG provides the NRT vice chair, co-chairs for the standing RRTs, and predesignated OSCs for the coastal zone as described in § 300.120(a)(1). The USCG maintains continuously manned facilities which can be used for command, control, and surveillance of oil discharges and hazardous substance releases occurring in the coastal zone. The USCG also offers expertise in domestic and international fields of port safety and security, maritime law enforcement, ship navigation and construction, and the manning, operation and safety of vessels and marine facilities.

(2) The Environmental Protection Agency (EPA) chairs the NRT and co-chairs, with the USCG, the standing RRTs; provides predesignated OSCs for the inland zone and RPMs for remedial actions except as otherwise provided; and generally provides the SSC for responses in the inland zone. EPA provides expertise on environmental effects of oil discharges or releases of hazardous substances, pollutants, or contaminants, and environmental pollution control techniques. EPA also provides legal expertise on the interpretation of CERCLA and other environmental statutes. EPA may enter into a contract or cooperative agreement with the appropriate State in order to implement a response action.

(3) The Federal Emergency Management Agency (FEMA) provides guidance, policy and program advice, and technical assistance in hazardous materials and radiological emergency preparedness activities (planning, training, and exercising). In a response, FEMA provides advice and assistance to the lead agency on coordinating relocation assistance and mitigation efforts with other Federal agencies, State and local governments, and the private sector. FEMA may enter into a contract or cooperative agreement with the appropriate State or political subdivision in order to implement relocation assistance in a response. In the event of a hazardous materials incident at a major disaster or emergency declared by the President, the lead agency shall coordinate hazardous materials response with the Federal Coordinating Officer (FCO) appointed by the President.

(4) The Department of Defense (DOD) has responsibility to take all action necessary with respect to releases where either the release is on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of DOD. DOD may also, consistent with its operational requirements and upon request of the OSC, provide locally deployed United States Navy oil spill equipment and provide assistance to other Federal agencies on request. The following two branches of DOD have particularly relevant expertise:

(i) The United States Army Corps of Engineers has specialized equipment and personnel for maintaining navigation channels, for removing navigation obstruction, for accomplishing structural repairs, and for performing maintenance to hydropower electric generating equipment. The Corps can also provide design services, perform construction, and provide contract writing and contract administrative services for other Federal agencies.

(ii) The United States Navy (USN) is the Federal agency most knowledgeable and experienced in ship salvage, shipboard damage control, and diving. The USN has an extensive array of specialized equipment and personnel available for use in these areas as well as specialized containment, collection, and removal equipment specifically designed for salvage-related and open sea pollution incidents.

(5) The Department of Energy (DOE), except as otherwise provided in Executive Order 12580, provides designated OSCs/RPMs that are responsible for taking all response actions with respect to releases where either the release is on, or the sole source of the release is from, any facility or vessel under its jurisdiction, custody or control, including vessels bareboat chartered and operated. In addition, under the Federal Radiological Emergency Response Plan (FRERP), DOE provides advice and assistance to other OSCs/RPMs for emergency actions essential for the control of immediate radiological hazards. Incidents that qualify for DOE radiological advice and assistance are those believed to involve source, by-product, or special nuclear material or other ionizing radiation sources, including radium, and other naturally occurring radionuclides, as well as particle accelerators. Assistance is available through direct contact with the appropriate DOE Radiological Assistance Coordinating Office.

(6) The Department of Agriculture (USDA) has scientific and technical capability to measure, evaluate, and monitor, either on the ground or by use of aircraft, situations where natural resources including soil, water, wildlife, and vegetation have been impacted by fire, insects and diseases, floods, hazardous substances, and other natural or man-caused emergencies. The USDA may be contacted through Forest Service emergency staff officers who are the designated members of the RRT. Agencies within USDA have relevant capabilities and expertise as follows:

(i) The Forest Service has responsibility for protection and management of National Forests and National Grasslands. The Forest Service has personnel, laboratory, and field capability to measure, evaluate, monitor, and control as needed, releases of pesticides and other hazardous substances on lands under its jurisdiction.

(ii) The Agriculture Research Service (ARS) administers an applied and developmental research program in animal and plant protection and production; the use and improvement of soil, water, and air; the processing, storage and distribution of farm products; and human nutrition. The ARS has the capabilities to provide regulation of, and evaluation and training for, employees exposed to biological, chemical, radiological, and industrial hazards. In emergency situations, the ARS can identify, control, and abate pollution in the areas of air, soil, wastes, pesticides, radiation, and toxic substances for ARS facilities.

(iii) The Soil Conservation Service (SCS) has personnel in nearly every county in the nation knowledgeable in soil, agronomy, engineering, and biology. These personnel can predict the effects of pollutants on soil and their movements over and through soils. Technical specialists can assist in identifying potential hazardous waste sites and provide review and advice on plans for remedial measures.

(iv) The Animal and Plant Health Inspection Service (APHIS) can respond in an emergency to regulate movement of diseased or infected organisms to prevent spread and contamination of nonaffected areas.

(v) The Food Safety and Inspection Service (FSIS) has responsibility to prevent meat and poultry products contaminated with harmful substances from entering human food channels. In emergencies, the FSIS works with other Federal and State agencies to establish acceptability for slaughter of exposed or potentially exposed animals and their products. In addition they are charged with managing the Federal Radiological Emergency Response Program for the USDA.

(7) The Department of Commerce (DOC), through NOAA, provides scientific support for responses and contingency planning in coastal and marine areas, including assessments of

the hazards that may be involved, predictions of movement and dispersion of oil and hazardous substances through trajectory modeling and information on the sensitivity of coastal environments to oil or hazardous substances; provides scientific expertise on living marine resources for which it is responsible and their habitats, including endangered species and marine mammals; provides information on actual and predicted meteorological, hydrologic, ice, and oceanographic conditions for marine, coastal, and inland waters; and furnishes tide and circulation information for coastal and territorial waters and for the Great Lakes.

(8) The Department of Health and Human Services (HHS) is responsible for providing assistance on matters related to the assessment of health hazards at a response, and protection of both response workers and the public's health. HHS is delegated authorities under section 104(b) of CERCLA relating to a determination that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant. HHS programs and services may be carried out through grants, contracts, or cooperative agreements. The basic research programs shall be coordinated with the Superfund research, demonstration, and development program conducted by EPA and DOD through the mechanisms provided for in CERCLA. Agencies within HHS have relevant responsibilities, capabilities, and expertise as follows:

(i) The Agency for Toxic Substances and Disease Registry (ATSDR), under section 104(i) of CERCLA, is required to: establish appropriate disease/exposure registries; provide medical care and testing of exposed individuals in cases of public health emergencies; develop, maintain, and provide information on health effects of toxic substances; maintain a list of areas restricted or closed because of toxic substances contamination; conduct research to determine relationships between exposure to toxic substances and illness; conduct health assessments at all NPL sites; conduct a health assessment in response to a petition or provide a written explanation why an assessment will not be conducted; together with EPA, identify the most hazardous substances related to CERCLA sites; together with EPA, develop guidelines for toxicological profiles for hazardous substances; develop a toxicological profile for all such substances; and develop educational materials related to health effects of toxic substances for health professionals.

(ii) The National Institutes for Environmental Health Sciences (NIEHS) has been given the responsibilities under section 311(a) of CERCLA, to conduct and support programs of basic research, development, and demonstration; and to establish short course and continuing education programs, and graduate or advanced training. In addition, section 126(g) of SARA authorizes NIEHS to administer grants for training and education of workers who are or may be engaged in activities related to hazardous waste removal, containment, or emergency responses.

(9) The Department of the Interior (DOI) may be contacted through Regional Environmental Officers (REO), who are the designated members of RRTs. Department land managers have jurisdiction over the National Park System, National Wildlife Refuges and Fish Hatcheries, the public lands, and certain water projects in western States. In addition, bureaus and offices have relevant expertise as follows:

(i) Fish and Wildlife Service: fish and wildlife, including endangered and threatened species, migratory birds, and certain marine mammals; contaminants affecting habitat resources; and laboratory research facilities.

(ii) Geological Survey: geology, hydrology (ground water and surface water), and natural hazards.

(iii) Bureau of Land Management: minerals, soils, vegetation, wildlife, habitat, archaeology, and wilderness; and hazardous materials.

(iv) Minerals Management Service: manned facilities for Outer Continental Shelf (OCS) oversight.

(v) Bureau of Mines: analysis and identification of inorganic hazardous substances and technical expertise in metals and metallurgy relevant to site cleanup.

(vi) Office of Surface Mining: coal mine wastes and land reclamation.

(vii) National Park Service: biological and general natural resources expert personnel at Park units.

(viii) Bureau of Reclamation: operation and maintenance of water projects in the West; engineering and hydrology; and reservoirs.

(ix) Bureau of Indian Affairs: coordination of activities affecting Indian lands; assistance in identifying Indian Tribal government officials.

(x) Office of Territorial Affairs: assistance in implementing the NCP in American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(10) The Department of Justice (DOJ) can provide expert advice on complicated legal questions arising from discharges or releases, and Federal agency responses. In addition, the DOJ represents the Federal government, including its agencies, in litigation relating to such discharges or releases.

(11) The Department of Labor (DOL), through the Occupational Safety and Health Administration (OSHA) and the States operating plans approved under section 18 of the Occupational Safety and Health Act of 1970 (OSH Act), has authority to conduct safety and health inspections of hazardous waste sites to assure that employees are being protected and to determine if the site is in compliance with:

(i) Safety and health standards and regulations promulgated by OSHA (or the States) in accordance with section 126 of SARA and all other applicable standards; and

(ii) Regulations promulgated under the Occupational Safety and Health (OSH) Act and its General Duty Clause. OSHA inspections may be self-generated, consistent with its program operations and objectives, or may be conducted in response to requests from EPA or another lead agency. OSHA may also conduct inspections in response to accidents or employee complaints. OSHA may also conduct inspections at hazardous waste sites in those Plan States that choose not to exercise their jurisdiction to inspect such sites. On request, OSHA will provide advice and assistance to EPA and other NRT/RRT agencies as well as to the OSC/RPM regarding hazards to persons engaged in response activities. Technical assistance may include review of site safety plans and work practices, assistance with exposure monitoring, and help with other compliance questions. OSHA may also take any other action necessary to assure that employees are properly protected at such response activities. Any questions about occupational safety and health at these sites should be referred to the OSHA Regional Office.

(12) The Department of Transportation (DOT) provides response expertise pertaining to transportation of oil or hazardous substances by all modes of transportation. Through the Research and Special Programs Administration (RSPA), DOT offers expertise in the requirements for packaging, handling, and transporting regulated hazardous materials.

(13) The Department of State (DOS) will lead in the development of international joint contingency plans. It will also help to coordinate an

international response when discharges or releases cross international boundaries or involve foreign flag vessels. Additionally, DOS will coordinate requests for assistance from foreign governments and U.S. proposals for conducting research at incidents that occur in waters of other countries.

(14) The Nuclear Regulatory Commission will respond, as appropriate, to releases of radioactive materials by its licensees, in accordance with the NRC Incident Response Plan (NUREG–0728) to monitor the actions of those licensees and assure that the public health and environment are protected and adequate recovery operations are instituted. The Nuclear Regulatory Commission will keep EPA informed of any significant actual or potential releases in accordance with procedural agreements. In addition, the Nuclear Regulatory Commission will provide advice to the OSC/RPM when assistance is required in identifying the source and character of other hazardous substance releases where the Nuclear Regulatory Commission has licensing authority for activities utilizing radioactive materials.

§ 300.180 State and local participation in response.

(a) Each State Governor is requested to designate one State office/representative to represent the State on the appropriate RRT. The State's office/representative may participate fully in all activities of the appropriate RRT. Each State governor is also requested to designate a lead State agency that will direct State-lead response operations. This agency is responsible for designating the RPM for State-lead response actions, designating SACs for Federal-lead response actions, and coordinating/communicating with any other State agencies, as appropriate. Local governments are invited to participate in activities on the appropriate RRT as may be provided by State law or arranged by the State's representative. Indian Tribes wishing to participate should assign one person or office to represent the tribal government on the appropriate RRT.

(b) In addition to meeting the requirements for local emergency plans under SARA section 303, State and local government agencies are encouraged to include contingency planning for responses, consistent with the NCP and the RCP, in all emergency and disaster planning.

(c) For facilities not subject to response actions under the NCP, States are encouraged to undertake response actions themselves or to use their authorities to compel potentially responsible parties to undertake response actions.

(d) States are encouraged to enter into cooperative agreements pursuant to section 104(c)(3) and (d) of CERCLA to enable them to undertake actions authorized under Subparts D and E of the NCP. Requirements for entering into these agreements are included in Subpart F of the NCP. A State agency that acts pursuant to such agreements is referred to as the lead agency. In the event there is no cooperative agreement, the lead agency can be designated in a SMOA or other agreement.

(e) Since State and local public safety organizations would normally be the first government representatives at the scene of a discharge or release, they are expected to initiate public safety measures necessary to protect public health and welfare, and are responsible for directing evacuations pursuant to existing State or local procedures.

§ 300.185 Nongovernmental participation.

(a) Industry groups, academic organizations, and others are encouraged to commit resources for response operations. Specific commitments should be listed in the RCP and OSC contingency plans.

(b) The technical and scientific information generated by the local community, along with information from Federal, State and local governments, should be used to assist the OSC/RPM in devising response strategies where effective standard techniques are unavailable. The SSC shall act as liaison between the OSC/RPM and such interested organizations.

(c) OSC contingency plans shall establish procedures to allow for well-organized, worthwhile, and safe use of volunteers, including compliance with § 300.150 regarding worker health and safety. OSC contingency plans should provide for the direction of volunteers by the OSC/RPM or by other Federal, State, or local officials knowledgeable in contingency operations and capable of providing leadership. OSC contingency plans also should identify specific areas in which volunteers can be used, such as beach surveillance, logistical support, and bird and wildlife treatment. Unless specifically requested by the OSC/RPM, volunteers generally should not be used for physical removal or remedial activities. If, in the judgment of the OSC/RPM, dangerous conditions exist, volunteers shall be restricted from on-scene operations.

(d) Nongovernmental participation must be in compliance with the requirements of Subpart H of this Part if any recovery of costs will be sought.

Subpart C—Planning and Preparedness

§ 300.200 General.

This subpart summarizes emergency preparedness activities relating to hazardous chemicals and substances; describes the Federal, State, and local planning structure; provides for three levels of Federal contingency plans; and cross-references State and local emergency preparedness activities under SARA Title III, also known as the "Emergency Planning and Community Right-to-Know Act of 1986" but referred to herein as "Title III". Regulations implementing Title III are codified at 40 CFR Subchapter J.

§ 300.205 Planning and coordination structure.

(a) *National.* As described in § 300.110, the NRT is responsible for national planning and coordination.

(b) *Regional.* As described in § 300.115, the RRTs are responsible for regional planning and coordination.

(c) *State.* As provided by sections 301 and 303 of SARA, the State emergency response commission (SERC) of each State, appointed by the Governor, is to designate emergency planning districts, appoint local emergency planning committees (LEPC), supervise and coordinate their activities, and review local emergency response plans, described in § 300.215. The SERC also is to establish procedures for receiving and processing requests from the public for information generated by Title III reporting requirements and to designate an official to serve as coordinator for information.

(d) *Local.* As provided by sections 301 and 303 of SARA, emergency planning districts are designated by the SERC in order to facilitate the preparation and implementation of emergency plans. Each LEPC is to prepare a local emergency response plan for the emergency planning district and establish procedures for receiving and processing requests from the public for information generated by Title III reporting requirements. The LEPC is to appoint a chair and establish rules for the LEPC. The LEPC is to designate an official to serve as coordinator for information.

§ 300.210 Federal contingency plans.

There are three levels of Federal contingency plans: the National Contingency Plan, Regional contingency plans (RCPs), and OSC contingency plans. These plans are available for inspection at EPA Regional offices or USCG district offices. Addresses and

telephone numbers for these offices may be found in the United States Government Manual, issued annually, or in local telephone directories.

(a) *The National Contingency Plan.* The purpose and objectives, authority, and scope of the NCP are described in §§ 300.1 through 300.3.

(b) *Regional contingency plans.* The RRTs, working with the States, shall develop Federal RCPs for each standard Federal region, Alaska, Oceania in the Pacific, and the Caribbean to coordinate timely, effective response by various Federal agencies and other organizations to discharges of oil or releases of hazardous substances, pollutants, or contaminants. RCPs shall, as appropriate, include information on all useful facilities and resources in the region, from government, commercial, academic, and other sources. To the greatest extent possible, RCPs shall follow the format of the NCP and coordinate with State emergency response plans, OSC contingency plans, described in § 300.210(c), and Title III local emergency response plans, described in § 300.215. RCPs shall contain lines of demarcation between the inland and coastal zones, as mutually agreed upon by USCG and EPA.

(c)(1) *OSC contingency plans.* In order to provide for a coordinated, effective Federal, State, and local response, each OSC, in consultation with the RRT, may develop an OSC contingency plan for response in the OSC's area of responsibility. OSC contingency plans shall be developed in all areas in the coastal zone, because OSCs in the coastal zone have responsibility for discharges and releases offshore, which often exceed the jurisdiction and capabilities of other responders. Boundaries for OSC contingency plans shall coincide with those agreed upon among EPA, USCG, DOE, and DOD, subject to functions and authorities delegated in Executive Order 12580, to determine OSC areas of responsibility and should be clearly indicated in the RCP. Jurisdictional boundaries of local emergency planning districts established by States, described in § 300.205(c), shall, as appropriate, be considered in determining OSC areas of responsibility. OSC areas of responsibility may include several such local emergency planning districts, or parts of such districts. In developing the OSC contingency plan, OSCs shall coordinate with SERCs and LEPCs affected by the OSC area of responsibility.

(2) The OSC contingency plan shall provide for a well-coordinated response that is integrated and compatible with all appropriate response plans of State, local, and other non-Federal entities, and especially with Title III local emergency response plans, described in § 300.215, or the OSC area of responsibility. The OSC contingency plan shall, as appropriate, identify the probable locations of discharges or releases; the available resources to respond to multi-media incidents; where such resources can be obtained; waste disposal methods and facilities consistent with local and State plans developed under the Solid Waste Disposal Act, 42 U.S.C. 6901 et seq.; and a local structure for responding to discharges or releases.

§ 300.215 Title III local emergency response plans.

This section describes and cross-references the regulations that implement Title III of SARA. These regulations are codified at 40 CFR Part 355.

(a) Each LEPC is to prepare an emergency response plan in accordance with section 303 of SARA Title III and review the plan once a year, or more frequently as changed circumstances in the community or at any subject facility may require. Such Title III local emergency response plans should be closely coordinated with applicable Federal OSC contingency plans and State emergency response plans.

(b) A facility, as defined in 40 CFR Part 355, is subject to emergency planning requirements if an extremely hazardous substance, as defined in 40 CFR Part 355, is present at the facility in an amount equal to or in excess of the threshold planning quantity established for such substance. In addition, for the purposes of emergency planning, a Governor or SERC may designate additional facilities that shall be subject to planning requirements, if such designation is made after public notice and opportunity for comment. EPA may revise the list of extremely hazardous substances and threshold planning quantities, taking into account the toxicity, reactivity, volatility, dispersability, combustibility, or flammability of a substance. Facility owners or operators are to name a facility representative who participates in the planning process as a facility emergency coordinator.

(c) In accordance with section 303 of SARA, each local emergency response plan is to include, but is not limited to, the following:

(1) Identification of facilities subject to Title III emergency planning requirements that are within the emergency planning district; routes likely to be used for the transportation of substances on the list of extremely hazardous substances; and any additional facilities, such as hospitals or natural gas facilities, contributing or subjected to additional risk due to their proximity to facilities subject to Title III emergency planning requirements;

(2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release, as defined in 40 CFR Part 355, of extremely hazardous substances;

(3) Designation of a community emergency coordinator and a facility emergency coordinator for each facility subject to Title III emergency planning requirements, who will make determinations necessary to implement the emergency response plan;

(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency response plan, and to the public, that a release has occurred;

(5) Methods for determining the occurrence of a release and the area or population likely to be affected by such a release;

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to Title III emergency planning requirements, including an identification of the persons responsible for such equipment and facilities;

(7) Evacuation plans, including provisions for precautionary evacuation and alternative traffic routes;

(8) Training programs, including schedules for training of local emergency response and medical personnel; and

(9) Methods and schedules for exercising the emergency response plan.

(d) In accordance with section 303 of SARA, the SERC of each State is to review the emergency response plan developed by the LEPC of each emergency planning district and make recommendations to the LEPC on revisions that may be necessary to ensure coordination of the plan with emergency response plans of other emergency planning districts. RRTs may review a local emergency response plan at the request of the LEPC.

(e) Title III establishes reporting requirements that provide useful information in developing emergency plans.

(1) Upon request from the LEPC, facility owners or operators shall provide promptly to such LEPC information necessary for developing

and implementing the emergency response plan.

(2) Facilities required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, as defined in 40 CFR Part 370, under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., and regulations promulgated under that Act, shall submit a MSDS for each hazardous chemical or a list of hazardous chemicals to the appropriate SERC, LEPC, and local fire department in accordance with 40 CFR Part 370.

(3) Facilities subject to the requirements of paragraph (e)(2) of this section shall also submit an inventory form containing an estimate of the maximum amount of hazardous chemicals present at the facility during the preceding year, an estimate of the average daily amount of hazardous chemicals at the facility, and the location of these hazardous chemicals at the facility in accordance with 40 CFR Part 370.

(4) Certain facilities with ten or more employees and which manufacture, process, or use a toxic chemical, as defined in 40 CFR Part 372, in excess of a statutorily-prescribed quantity, shall submit annual information on the chemical and releases of the chemical into the environment to EPA and the State in accordance with 40 CFR Part 372.

(f) Immediately after a release of an extremely hazardous substance, or a hazardous substance subject to the notification requirements of CERCLA section 103(a), the owner or operator of a facility, as defined in 40 CFR Part 355, shall notify the community emergency coordinator for the appropriate LEPC and the appropriate SERC in accordance with 40 CFR Part 355. As soon as practicable after such a release has occurred, the facility owner or operator shall provide a written follow-up emergency notice, or notices, if more information becomes available, setting forth and updating the information contained in the initial release notification and including additional information with respect to response actions taken, health risks associated with the release, and, where appropriate, advice regarding medical attention necessary for exposed individuals. For releases of hazardous substances subject to the notification requirements of CERCLA section 103(a), immediate notification must also be made to the NRC, as provided in § 300.405(b).

(g) Title III requires public access to information submitted pursuant to its reporting requirements. Each emergency response plan, MSDS, inventory form, toxic chemical release form, and follow-up emergency release notification is to be made available to the general public during normal working hours at the location(s) designated by the EPA Administrator, Governor, SERC, or LEPC, as appropriate.

§ 300.220 Related Title III issues.

Other related Title III requirements are found in 40 CFR Part 355.

Subpart D—Operational Response Phases for Oil Removal

§ 300.300 Phase I—Discovery or notification.

(a) A discharge of oil may be discovered through:

(1) A report submitted by the person in charge of a vessel or facility in accordance with statutory requirements;

(2) Deliberate search by patrols;

(3) Random or incidental observation by government agencies or the public; or

(4) Other sources.

(b) Any person in charge of a vessel or a facility shall, as soon as he or she has knowledge of any discharge from such vessel or facility in violation of section 311(b)(3) of the Clean Water Act, immediately notify the NRC. If direct reporting to the NRC is not practicable, reports may be made to the USCG or EPA predesignated OSC for the geographic area where the discharge occurs. The EPA predesignated OSC may also be contacted through the Regional 24-hour emergency response telephone number. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or predesignated OSC immediately, reports may be made immediately to the nearest Coast Guard unit, provided that the person in charge of the vessel or facility notifies the NRC as soon as possible.

(c) Any other person shall, as appropriate, notify the NRC of a discharge of oil.

(d) Upon receipt of a notification of discharge, the NRC shall promptly notify the OSC. The OSC shall proceed with the following phases as outlined in the RCP and OSC contingency plan.

§ 300.305 Phase II—Preliminary assessment and initiation of action.

(a) The OSC is responsible for promptly initiating a preliminary assessment.

(b) The preliminary assessment shall be conducted using available information, supplemented where necessary and possible by an on-scene inspection. The OSC shall undertake actions to:

(1) Evaluate the magnitude and severity of the discharge or threat to public health or welfare or the environment;

(2) Assess the feasibility of removal;

(3) To the extent practicable, identify potentially responsible parties; and

(4) Ensure that authority exists for undertaking additional response actions.

(c) The OSC, in consultation with legal authorities when appropriate, shall make a reasonable effort to have the discharger voluntarily and promptly perform removal actions. The OSC shall ensure adequate surveillance over whatever actions are initiated. If effective actions are not being taken to eliminate the threat, or if removal is not being properly done, the OSC shall, to the extent practicable under the circumstances, so advise the responsible party. If the responsible party does not take proper removal actions, or is unknown, or is otherwise unavailable, the OSC shall, pursuant to section 311(c)(1) of the CWA, determine whether authority for a Federal response exists, and, if so, take appropriate response actions. Where practicable, continuing efforts should be made to encourage response by responsible parties.

(d) If natural resources are or may be injured by the discharge, the OSC shall ensure that State and Federal trustees of affected natural resources are promptly notified in order that the trustees may initiate appropriate actions, including those identified in Subpart G. The OSC shall seek to coordinate, as appropriate, assessments, evaluations, investigations, and planning with State and Federal trustees.

§ 300.310 Phase III—Containment, countermeasures, cleanup, and disposal.

(a) Defensive actions shall begin as soon as possible to prevent, minimize, or mitigate threat(s) to public health or welfare or the environment. Actions may include but are not limited to: analyzing water samples to determine the source and spread of the oil; controlling the source of discharge; measuring and sampling; source and spread control or salvage operations; placement of physical barriers to deter the spread of the oil and to protect natural resources; control of the water discharged from upstream impoundment; and the use of chemicals and other materials in accordance with Subpart J of this Part to restrain the spread of the oil and mitigate its effects.

(b) As appropriate, actions shall be taken to recover the oil or mitigate its effects. Of the numerous chemical or physical methods that may be used, the chosen methods shall be the most consistent with protecting public health

and welfare and the environment. Sinking agents shall not be used.

(c) Oil and contaminated materials recovered in cleanup operations shall be disposed of in accordance with the RCP and OSC contingency plan and any applicable laws, regulations, or requirements.

§ 300.315 Phase IV—Documentation and cost recovery.

(a) Documentation shall be collected and maintained to support all actions taken under the CWA and to form the basis for cost recovery. Whenever practicable, documentation shall be sufficient to prove the source and circumstances of the incident, the responsible party or parties, and impact and potential impacts to public health and welfare and the environment. When appropriate, documentation shall also be collected for scientific understanding of the environment and for the research and development of improved response methods and technology. Damages to private citizens, including loss of earnings, are not addressed by the NCP. Evidentiary and cost documentation procedures and requirements are specified in the USCG Marine Safety Manual (Commandant Instruction M16000.11) and 33 CFR Part 153.

(b) OSCs shall submit OSC reports to the RRT as required by § 300.165.

(c) OSCs shall ensure the necessary collection and safeguarding of information, samples, and reports. Samples and information shall be gathered expeditiously during the response to ensure an accurate record of the impacts incurred. Documentation materials shall be made available to the trustees of affected natural resources.

(d) Information and reports obtained by the EPA or USCG OSC shall be transmitted to the appropriate offices responsible for follow-up actions.

§ 300.320 General pattern of response.

(a) When the OSC receives a report of a discharge, actions normally should be taken in the following sequence:

(1) When the reported discharge is an actual or potential major discharge, immediately notify the RRT, including the affected State, if appropriate, and the NRC.

(2) Investigate the report to determine pertinent information such as the threat posed to public health or welfare or the environment, the type and quantity of polluting material, and the source of the discharge.

(3) Officially classify the size of the discharge and determine the course of action to be followed.

(4) Determine whether a discharger or other person is properly carrying out removal. Removal is being done properly when:

(i) The cleanup is fully sufficent to minimize or mitigate threat(s) to public health and welfare and the environment. Removal efforts are improper to the extent that Federal efforts are necessary to minimize further or mitigate those threats; and

(ii) The removal efforts are in accordance with applicable regulations, including the NCP.

(5) Determine whether a State or political subdivision has the capability to carry out response actions and whether a contract or cooperative agreement has been established with the appropriate fund administrator for this purpose.

(6) Notify the trustees of affected natural resources in accordance with the applicable RCP.

(b) The preliminary inquiry will probably show that the situation falls into one of four categories. These categories and the appropriate response to each are outlined below:

(1) If the investigation shows that no discharge occurred, or it shows a minor discharge with no removal action required, the case may be closed for response purposes.

(2) If the investigation shows a minor discharge with the responsible party taking proper removal action, contact shall be established with the party. The removal action shall, whenever possible, be monitored to ensure continued proper action.

(3) If the investigation shows a minor discharge with improper removal action being taken, the following measures shall be taken:

(i) An immediate effort shall, as appropriate, be made to stop further pollution and remove past and ongoing contamination.

(ii) The responsible party shall be advised of what action will be considered appropriate.

(iii) If the responsible party does not properly respond, the party shall be notified of potential liability for Federal response performed under the CWA. This liability includes all costs of removal and may include the costs of assessing and restoring damaged natural resources and other actual or necessary costs of a Federal response.

(iv) The OSC shall notify appropriate State and local officials, keep the RRT advised, and initiate Phase III operations, as described in § 300.310, as conditions warrant.

(v) Information shall be collected for possible recovery of response costs in accordance with § 300.315.

(4) When the investigation shows that an actual or potential medium or major oil discharge exists, the OSC shall follow the same general procedures as for a minor discharge. If appropriate, the OSC shall recommend activation of the RRT.

§ 300.330 Waterfowl conservation.

The DOI and State representatives to the RRT shall arrange for the coordination of professional and volunteer groups permitted and trained to participate in waterfowl dispersal, collection, cleaning, rehabilitation, and recovery activities, consistent with 16 U.S.C. 703–712 and applicable State laws. The RCP and OSC contingency plans shall, to the extent practicable, identify organizations or institutions that are permitted to participate in such activities and operate such facilities. Waterfowl conservation activities will normally be included in Phase III response actions, described in § 300.310.

§ 300.335 Funding.

(a) If the person responsible for the discharge does not act promptly or take proper removal actions, or if the person responsible for the discharge is unknown, Federal discharge removal actions may begin under section 311(c)(1) of the CWA. The discharger, if known, is liable for costs of Federal removal in accordance with section 311(f) of the CWA and other Federal laws.

(b) Actions undertaken by the participating agencies in response to pollution shall be carried out under existing programs and authorities when available. Federal agencies will make resources available, expend funds, or participate in response to oil discharges under their existing authority. Authority to expend resources will be in accordance with agencies' basic statutes and, if required, through interagency agreements. Where the OSC requests assistance from a Federal agency, that agency may be reimbursed in accordance with the provisions of 33 CFR 153.407. Specific interagency reimbursement agreements may be signed when necessary to ensure that the Federal resources will be available for a timely response to a discharge of oil. The ultimate decisions as to the appropriateness of expending funds rest with the agency that is held accountable for such expenditures.

(c) The OSC shall exercise sufficient control over removal operations to be able to certify that reimbursement from the following funds is appropriate:

(1) The oil pollution fund, administered by the Commandant, USCG, has been established pursuant to section 311(k) of the CWA. Regulations

governing the administration and use of the fund are contained in 33 CFR Part 153.

(2) The fund authorized by the Deepwater Port Act is administered by the Commandant, USCG. Governing regulations are contained in 33 CFR Parts 136 and 150.

(3) The fund authorized by the Outer Continental Shelf Lands Act, as amended, is administered by the Commandant, USCG. Governing regulations are contained in 33 CFR Parts 136 and 150.

(4) The fund authorized by the Trans-Alaska Pipeline Authorization Act is administered by a Board of Trustees under the purview of the Secretary of the Interior. Governing regulations are contained in 43 CFR Part 29.

(d) Response actions other than removal, such as scientific investigations not in support of removal actions or law enforcement, shall be provided by the agency with legal responsibility for those specific actions.

(e) The funding of a response to a discharge from a Federally operated or supervised facility or vessel is the responsibility of the operating or supervising agency.

(f) The following agencies have funds available for certain discharge removal actions:

(1) EPA may provide funds to begin timely discharge removal actions when the OSC is an EPA representative.

(2) The USCG pollution control efforts are funded under "operating expenses." These funds are used in accordance with agency directives.

(3) The Department of Defense has two specific sources of funds that may be applicable to an oil discharge under appropriate circumstances. This does not consider military resources that might be made available under specific conditions.

(i) Funds required for removal of a sunken vessel or similar obstruction of navigation are available to the Corps of Engineers through Civil Works Appropriations, Operations and Maintenance, General.

(ii) The U.S. Navy may conduct salvage operations contingent on defense operational commitments, when funded by the requesting agency. Such funding may be requested on a direct cite basis.

(4) Pursuant to section 311(c)(2)(H) of the CWA, the State or States affected by a discharge of oil may act where necessary to remove such discharge and may, pursuant to 33 CFR Part 153, be reimbursed from the oil pollution fund for the reasonable costs incurred in such a removal.

(i) Removal by a State is necessary within the meaning of section 311(c)(2)(H) of the CWA when the OSC determines that the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs does not effect removal properly, or is unknown, and that:

(A) State action is required to minimize or mitigate significant threat(s) to the public health or welfare or the environment that Federal action cannot minimize or mitigate, or

(B) Removal or partial removal can be done by the State at a cost that is less than or not significantly greater than the cost that would be incurred by the Federal agencies.

(ii) State removal actions must be in compliance with the NCP in order to qualify for reimbursement.

(iii) State removal actions are considered to be Phase III actions, described in § 300.310, under the same definitions applicable to Federal agencies.

(iv) Actions taken by local governments in support of Federal discharge removal operations are considered to be actions of the State for purposes of this section. The RCP and OSC contingency plan shall show what funds and resources are available from participating agencies under various conditions and cost arrangements. Interagency agreements may be necessary to specify when reimbursement is required.

Subpart E—Hazardous Substance Response

§ 300.400 General.

(a) This subpart establishes methods and criteria for determining the appropriate extent of response authorized by CERCLA:

(1) When there is a release of a hazardous substance into the environment; or

(2) When there is a release into the environment of any pollutant or contaminant that may present an imminent and substantial endangerment to the public health or welfare.

(b) *Limitations on response.* Unless the lead agency determines that a release constitutes a public health or environmental emergency and no other person with the authority and capability to respond will do so in a timely manner, a Fund-financed removal or remedial action shall not be undertaken in response to a release:

(1) Of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

(2) From products that are part of the structure of, and result in exposure within, residential buildings or business or community structures; or

(3) Into public or private drinking water supplies due to deterioration of the system through ordinary use.

(c) *Fund-financed action.* In determining the need for and in planning or undertaking Fund-financed action, the lead agency shall, to the extent practicable:

(1) Engage in prompt response;

(2) Provide for State participation in response actions, as described in Subpart F of this Part;

(3) Conserve Fund monies by encouraging private party response;

(4) Be sensitive to local community concerns;

(5) Consider using treatment technologies;

(6) Involve the RRT in both removal and remedial response actions at appropriate decisionmaking stages;

(7) Encourage the involvement and sharing of technology by industry and other experts; and

(8) Encourage the involvement of organizations to coordinate responsible party actions, foster site response, and provide technical advice to the public, Federal and State governments, and industry.

(d) *Entry and access.* (1) For purposes of determining the need for response, or choosing or taking a response action, or otherwise enforcing the provisions of CERCLA, EPA, or the appropriate Federal agency, and a State or political subdivision operating pursuant to a contract or cooperative agreement under CERCLA section 104(d)(1) has the authority to enter any vessel, facility, establishment or other place, property, or location described in paragraph (d)(2) and conduct, complete, operate, and maintain any response actions authorized by CERCLA or these regulations.

(2)(i) Under the authorities described in paragraph (d)(1) of this section, EPA, or the appropriate Federal agency, and a State or political subdivision operating pursuant to a contract or cooperative agreement under CERCLA 104(d)(1) may enter:

(A) Any vessel, facility, establishment, or other place or property where any hazardous substance or pollutant or contaminant may be or has been generated, stored, treated, disposed of, or transported from;

(B) Any vessel, facility, establishment, or other place or property from which, or to which, a hazardous substance or pollutant or contaminant has been, or

may have been, released or where such release is or may be threatened;

(C) Any vessel, facility, establishment, or other place or property where entry is necessary to determine the need for response or the appropriate response or to effectuate a response action; or

(D) Any vessel, facility, establishment, place, property, or location adjacent to those vessels, facilities, establishments, places or properties described in paragraphs (d)(2)(i) (A), (B), or (C) of this section.

(ii) Entry is not restricted to those vessels, facilities, establishments, places, properties, or locations, or portions thereof, where there is a reasonable basis to believe there may be a release of a hazardous substance or pollutant or contaminant. Once a determination has been made that there is a reasonable basis to believe that there may be a release, EPA, or the appropriate Federal agency, and a State or political subdivision operating pursuant to a contract or cooperative agreement under CERCLA section 104(d)(1) is authorized to enter all vessels, facilities, establishments, places, properties, or locations specified in paragraph (d)(2)(i) of this section, in responding to that release.

(3) The lead agency may designate, among others, a potentially responsible party as its representative solely for the purpose of access, and EPA, or the appropriate Federal agency, may exercise the authority contained in section 104(e) of CERCLA to obtain access for the potentially responsible party. A potentially responsible party may only be designated as a representative of the lead agency where that potentially responsible party has agreed to conduct response activities pursuant to an administrative order or consent decree.

(4)(i) If consent is not granted under the authorities described in paragraph (d)(1) of this section, EPA, or the appropriate Federal agency, may issue an order pursuant to section 104(e)(5) of CERCLA directing compliance with the request for access made under § 300.400(d)(1) and seek judicial enforcement of such order; or commence a civil action in Federal court to enjoin interference with the requested action.

(ii) EPA reserves the right to proceed, where appropriate, under applicable authority other than CERCLA.

(iii) The administrative order may direct compliance with a request to enter or inspect any vessel, facility, establishment, place, property, or location described in paragraph (d)(2) of this section.

(iv) Each order shall contain:

(A) A determination by EPA, or the appropriate Federal agency, that it is reasonable to believe that there may be a release or threat of a release of a hazardous substance or pollutant or contaminant and a statement of the facts upon which the determination is based;

(B) A description, in light of CERCLA response authorities, of the purpose and estimated scope and duration of the entry, including a description of the specific anticipated activities to be conducted pursuant to the order;

(C) A provision advising the person who failed to consent that an officer or employee of the agency that issued the order will be available to confer with respondent prior to effective date of the order; and

(D) A provision advising the person who failed to consent that a court may impose a penalty of up to $25,000 per day for unreasonable failure to comply with the order.

(v) Orders shall be served upon the person who failed to consent prior to their effective date. Force shall not be used to compel compliance with an order.

(vi) Orders may not be issued for any criminal investigations.

(e) *Permit requirements.* (1) No Federal, State, or local permits are required for on-site response actions conducted pursuant to CERCLA sections 104, 106, or 122. The term "on-site," for permitting purposes, shall include the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action.

(2) Permits, if required, shall be obtained for all response activities conducted off-site.

(f) *Health assessments.* Health assessments shall be performed by ATSDR at facilities on or proposed to be listed on the NPL and may be performed at other releases or facilities in response to petitions made to ATSDR. Where available, these health assessments may be used by the lead agency to assist in determining whether response actions should be taken and/or to identify the need for additional studies to assist in the assessment of potential human health effects associated with releases or potential releases of hazardous substances.

(g) *Identification of applicable or relevant and appropriate requirements.* (1) The lead and support agencies shall identify applicable requirements based upon an objective determination of whether the requirement specifically addresses a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site.

(2) If, based upon the criteria in paragraph (g)(1) of this section, it is determined that a requirement is not applicable to a specific release, then the requirement shall be examined to determine if it is both relevant and appropriate to the circumstances of the release. The criteria in paragraphs (g)(2)(i) through (ix) of this section shall be weighed, where pertinent, to determine whether a requirement addresses problems or situations sufficiently similar to the circumstances of the release or remedial action contemplated that it is relevant and appropriate. The pertinence of each of the following factors will depend, in part, on whether a requirement addresses a chemical, location, or action.

(i) Whether the purpose for the statute and regulations under which the requirement was created are similar to the specific objectives of the CERCLA action;

(ii) Whether the media regulated or affected by the requirement are similar to the media contaminated or affected at the CERCLA site;

(iii) Whether the substances regulated by the requirement are similar to the substances found at the CERCLA site;

(iv) Whether the entities or interests affected or protected are similar to the entities or interests affected by the CERCLA site;

(v) Whether the actions or activities regulated by the requirement are similar to the remedial action contemplated at the CERCLA site;

(vi) Whether any variances, waivers, or exemptions of the requirement are available for the circumstances of the CERCLA site or CERCLA action;

(vii) Whether the type of place regulated is similar to the type of place affected by the CERCLA site or CERCLA action;

(viii) Whether the type and size of structure or facility regulated is similar to the type and size of structure or facility affected by the release or contemplated by the CERCLA action; and

(ix) Whether any consideration of use or potential use of affected resources in the requirement is similar to the use or potential use of the affected resource.

(3) In addition to applicable or relevant and appropriate requirements, the lead and support agencies shall, as appropriate, identify other advisories, criteria, and guidance to be considered for a particular release. The "to be considered" (TBC) category consists of advisories, criteria, and guidance that were developed by EPA, other Federal

agencies, or States and that may be useful in developing CERCLA remedies.

(4) Only those State standards that are promulgated and more stringent than Federal requirements may be applicable or relevant and appropriate. For purposes of identification and notification of promulgated State standards, the term "promulgated" means that the standards are of general applicability and are legally enforceable.

(5) The lead agency shall identify its applicable or relevant and appropriate requirements. The support agency shall identify its applicable or relevant and appropriate requirements. These agencies shall notify each other, in a timely manner as described in § 300.515(d)(2)(i), of the requirements they have determined to be applicable or relevant and appropriate.

(6) The procedures and timeframes for notification of ARARs specified in § 300.515 (d)(2) and (h)(2) shall be used.

(h) *Oversight.* The lead agency may provide oversight for actions taken by potentially responsible parties to ensure that a response is conducted consistent with this Part. The lead agency may also monitor the actions of third parties preauthorized under Subpart H of this Part.

(i) *Other.* (1) This subpart does not establish any preconditions to enforcement action by either the Federal or State governments to compel response actions by potentially responsible parties.

(2) While much of this subpart is oriented toward Federally-funded response actions, this subpart may be used as guidance concerning methods and criteria for response actions by other parties under other funding mechanisms. Except as provided in Subpart H of this Part, nothing in this part is intended to limit the rights of any person to seek recovery of response costs from responsible parties pursuant to CERCLA section 107.

(3) Activities by the Federal and State governments in implementing this subpart are discretionary governmental functions. This subpart does not create in any private party a right to Federal response or enforcement action. This subpart does not create any duty of the Federal government to take any response action at any particular time.

§ 300.405 Discovery or notification.

(a) A release may be discovered through:

(1) A report submitted in accordance with section 103(a) of CERCLA, i.e., reportable quantities codified at 40 CFR Part 302;

(2) A report submitted to EPA in accordance with section 103(c) of CERCLA;

(3) Investigation by government authorities conducted in accordance with section 104(e) of CERCLA or other statutory authority;

(4) Notification of a release by a Federal or State permit holder when required by its permit;

(5) Inventory or survey efforts or random or incidental observation reported by government agencies or the public;

(6) Submission of a citizen petition to EPA or the appropriate Federal facility requesting a preliminary assessment, in accordance with section 105(d) of CERCLA; and

(7) Other sources.

(b) Any person in charge of a vessel or a facility shall report releases as described in paragraph (a)(1) of this section to the National Response Center (NRC). If direct reporting to the NRC is not practicable, reports may be made to the USCG OSC for the geographic area where the release occurs. The EPA predesignated OSC may also be contacted through the Regional 24-hour emergency response telephone number. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or predesignated OSC immediately, reports may be made immediately to the nearest Coast Guard unit, provided that the person in charge of the vessel or facility notifies the NRC as soon as possible.

(c) All other reports of releases described under paragraph (a) of this section, except releases reported under paragraphs (a) (2) and (6) of this section, shall, as appropriate, be made to the NRC.

(d) Reporting under paragraphs (b) and (c) of this section shall not be delayed due to incomplete notification information. The NRC will generally need information that will help to characterize the release. This will include, but not be limited to: location of the release; type(s) of material(s) released; an estimate of the quantity of material released; possible source of the release; date and time of the release.

(e) Upon receipt of a notification of a release, the NRC shall promptly notify the appropriate OSC. The OSC shall notify the Governor, or designee, of the State affected by the release.

(f)(1) When the OSC is notified of a release that may require response pursuant to § 300.415(b), a removal site evaluation shall, as appropriate, be promptly undertaken pursuant to § 300.410.

(2) When notification indicates that removal action pursuant to § 300.415(b) is not required, remedial site evaluation shall, if appropriate, be undertaken by the lead agency pursuant to § 300.420, if one has not already been performed, and the release will be listed in the CERCLIS Remedial Inventory.

(3) If radioactive substances are present in a release, the EPA Radiological Response Coordinator should be notified for evaluation and assistance. See also §§ 300.130(f) and 300.145(f).

(g) Release notification made to the NRC under this section does not relieve the owner/operator of a facility from any obligations under SARA Title III or State law. In particular, it does not relieve the owner/operator from the requirements of section 304 of SARA Title III and 40 CFR Part 355 and § 300.215(f) of this Part for notifying the community emergency coordinator for the appropriate local emergency planning committee of all affected areas and the State emergency response commission of any State affected that there has been a release.

§ 300.410 Removal site evaluation.

(a) A removal site evaluation includes a removal preliminary assessment and, if warranted, a removal site inspection.

(b) A removal site evaluation of a release identified for possible CERCLA response pursuant to § 300.415 shall, as appropriate, be undertaken by the lead agency as promptly as possible. Pursuant to § 300.420(b)(5), the lead agency may perform a preliminary assessment in response to petitions submitted by a person who is, or may be, affected by a release of a hazardous substance, pollutant, or contaminant.

(c)(1) The lead agency shall, as appropriate, base the removal preliminary assessment on readily available information. A removal preliminary assessment may include, but is not limited to:

(i) Identification of the source and nature of the release or threat of release;

(ii) Evaluation by ATSDR or by other sources, for example, State public health agencies, of the threat to public health;

(iii) Evaluation of the magnitude of the threat;

(iv) Evaluation of factors necessary to make the determination of whether a removal is necessary; and

(v) Determination of whether a non-Federal party is undertaking proper response.

(2) A removal preliminary assessment of releases from hazardous waste management facilities may include collection or review of data such as site management practices, information from generators, photographs, analysis of

historical photographs, literature searches, and personal interviews conducted as appropriate.

(d) A removal site inspection may be performed if more information is needed. Such inspection may include a perimeter (off-site) or on-site inspection taking into consideration whether such inspection can be performed safely.

(e) A removal site evaluation shall be terminated when the OSC or lead agency determines:

(1) There is no release;

(2) The source is neither a vessel nor a facility as defined in § 300.5 of the NCP;

(3) The release involves neither a hazardous substance, nor a pollutant or contaminant that may present an imminent and substantial danger to public health or welfare;

(4) The release consists of a situation specified in § 300.400(b) subject to limitations on response;

(5) The amount, quantity, or concentration released does not warrant Federal response;

(6) A party responsible for the release, or any other person, is providing appropriate response, and on-scene monitoring by the government is not required; or

(7) The removal site evaluation is completed.

(f) The results of the removal site evaluation shall be documented.

(g) If natural resources are or may be injured by the release, the OSC or lead agency shall ensure that State and Federal trustees of the affected natural resources are promptly notified in order that the trustees may initiate appropriate actions, including those identified in Subpart G of this Part. The OSC or lead agency shall seek to coordinate, as appropriate, necessary assessments, evaluations, investigations, and planning with such State and Federal trustees.

(h) If the removal site evaluation indicates that removal action under § 300.415 is not required, but that remedial action under § 300.430 may be necessary, the lead agency shall, as appropriate, initiate remedial site evaluation pursuant to § 300.420. If a remedial site evaluation is performed, the release will be listed in the CERCLIS remedial inventory, if not already included.

§ 300.415 Removal action.

(a)(1) In determining the appropriate extent of action to be taken in response to a given release, the lead agency shall first review the removal site evaluation, any information produced through a remedial site evaluation, if any has been done previously, and the current site conditions to determine if removal action is appropriate.

(2) Where the responsible parties are known, an effort initially shall be made, to the extent practicable, to determine whether they can and will perform the necessary removal action promptly and properly.

(3) This section does not apply to removal actions taken pursuant to section 104(b) of CERCLA. The criteria for such actions are set forth in section 104(b) of CERCLA.

(b)(1) At any release, regardless of whether the site is included on the National Priorities List, where the lead agency makes the determination, based on the factors in paragraph (b)(2) of this section, that there is a threat to public health or welfare or the environment, the lead agency may take any appropriate action to abate, minimize, stabilize, mitigate, or eliminate the release or the threat of release.

(2) The following factors shall be considered in determining the appropriateness of a removal action pursuant to this section:

(i) Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants;

(ii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iii) Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;

(iv) High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;

(v) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;

(vi) Threat of fire or explosion;

(vii) The availability of other appropriate Federal or State response mechanisms to respond to the release; and

(viii) Other situations or factors that may pose threats to public health or welfare or the environment.

(3) If the lead agency determines that a removal action is appropriate, actions shall, as appropriate, begin as soon as possible to prevent, minimize, or mitigate the threat to public health or welfare or the environment. The lead agency shall, at the earliest possible time, also make any necessary determinations pursuant to paragraph (b)(4) of this section.

(4) Whenever a planning period of at least six months exists before on-site activities must be initiated, and the lead agency determines, based on a site evaluation, that a removal action is appropriate, the lead agency shall conduct an engineering evaluation/cost analysis (EE/CA) or its equivalent. The EE/CA is an analysis of removal alternatives for a site.

(5) Fund-financed removal actions, other than those authorized under section 104(b) of CERCLA, shall be terminated after $2 million has been obligated for the action or twelve months have elapsed from the date that removal activities begin on-site, unless the lead agency determines that:

(i) There is an immediate risk to public health or welfare or the environment; continued response actions are immediately required to prevent, limit, or mitigate an emergency; and such assistance will not otherwise be provided on a timely basis; or

(ii) Continued response action is otherwise appropriate and consistent with the remedial action to be taken.

(c) Removal actions shall, to the extent practicable, contribute to the efficient performance of any anticipated long-term remedial action with respect to the release concerned.

(d) The following removal actions are, as a general rule, appropriate in the types of situations shown; however, this list is not exhaustive and is not intended to prevent the lead agency from taking any other actions deemed necessary in response to any situation or preclude lead agency deferral of response action to other appropriate Federal or State enforcement or response authorities:

(1) Fences, warning signs, or other security or site control precautions—where humans or animals have access to the release;

(2) Drainage controls, for example, run-off or run-on diversion—where needed to reduce migration of hazardous substances or pollutants or contaminants off-site or to prevent precipitation or run-off from other sources, for example, flooding, from entering the release area from other areas;

(3) Stabilization of berms, dikes, or impoundments or drainage or closing of lagoons—where needed to maintain the integrity of the structures;

(4) Capping of contaminated soils or sludges—where needed to reduce migration of hazardous substances or pollutants or contaminants into soil, ground water, or air;

(5) Using chemicals and other materials to retard the spread of the release or to mitigate its effects—where the use of such chemicals will reduce the spread of the release;

(6) Excavation, consolidation, or removal of highly contaminated soils from drainage or other areas—where such actions will reduce the spread of, or direct contact with, the contamination;

(7) Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances or pollutants or contaminants—where it will reduce the likelihood of spillage; leakage; exposure to humans, animals, or food chain; or fire or explosion;

(8) Containment, treatment, disposal, or incineration of hazardous materials—where needed to reduce the likelihood of human, animal, or food chain exposure; or

(9) Provision of alternative water supply—where necessary immediately to reduce exposure to contaminated household water and continuing until such time as local authorities can satisfy the need for a permanent remedy.

(e) When a Fund-financed removal action is initiated, the release shall be listed in the CERCLIS removal inventory.

(f) When necessary to protect public health or welfare, the lead agency shall request that FEMA conduct a temporary relocation or that State/local officials conduct an evacuation.

(g) If the lead agency determines that the removal action will not fully address the threat posed by the release and the release may require remedial action, the lead agency shall ensure an orderly transition from removal to remedial response activities.

(h) Removal actions conducted by States under cooperative agreements, described in Subpart F of this Part, shall comply with all requirements of this section.

(i) Facilities operated by a State or political subdivision at the time of disposal require a State cost share of at least 50 percent of Fund-financed response costs if a Fund-financed remedial action is conducted.

(j) Fund-financed removal actions under CERCLA section 104 and removal actions pursuant to CERCLA section 106 shall, to the extent practicable considering the exigencies of the situation, attain or exceed applicable or relevant and appropriate Federal and State requirements. Other Federal and State criteria, advisories, and guidance shall, as appropriate, be considered in formulating the removal action. The waivers from attaining applicable or relevant and appropriate Federal and State requirements, described in § 300.430(f)(3), may be used for removal actions.

(k) Removal actions pursuant to section 106 or 122 of CERCLA are not subject to the following requirements of this section:

(1) Section 300.415(a)(2) requirement to locate responsible parties and have them undertake the response;

(2) Section 300.415(b)(2)(vii) requirement to consider the availability of other appropriate Federal or State response and enforcement mechanisms to respond to the release;

(3) Section 300.415(b)(5) requirement to terminate response after $2 million has been obligated or twelve months have elapsed from the date of the initial response; and

(4) Section 300.415(g) requirement to assure an orderly transition from removal to remedial action.

(l) To the extent practicable, provision for post-removal site control at both NPL and non-NPL sites is encouraged to be made prior to the initiation of the removal action. Such post-removal site control includes actions necessary to insure the effectiveness and integrity of the removal action after the completion of the on-site removal action or after the $2 million or 12 month statutory limits are reached for sites that do not meet the exemption criteria in paragraph (b)(5) of this section. Post-removal site control may be conducted by:

(1) The affected State or political subdivision thereof or local units of government for any removal;

(2) Potentially responsible parties; or

(3) EPA's remedial program for some Federal-lead Fund-financed responses at NPL sites.

(m) OSCs/RPMs conducting removal actions shall submit OSC reports to the RRT as required by § 300.165.

(n) *Community relations in removal actions.* (1) In the case of all removal actions taken pursuant to § 300.415 or enforcement actions to compel response analogous to § 300.415, a spokesperson shall be designated by the lead agency. The spokesperson shall inform the community of actions taken, respond to inquiries, and provide information concerning the release. All news releases or statements made by participating agencies shall be coordinated with the OSC/RPM. The spokesperson shall notify, at a minimum, immediately affected citizens, State and local officials and, when appropriate, civil defense or emergency management agencies.

(2) For actions where, based on the site evaluation, the lead agency determines that a removal is appropriate, and that less than six months exists before on-site removal activity must begin, the lead agency shall:

(i) Publish a notice of availability of the administrative record file established pursuant to § 300.820 in a major local newspaper or general circulation within 60 days of initiation of on-site removal activity;

(ii) Provide a public comment period, as appropriate, of not less than 30 days from the time the administrative record file is made available for public inspection, pursuant to § 300.820(b)(2); and

(iii) Prepare a written response to significant comments pursuant to § 300.820(b)(3).

(3) For all removal actions where on-site action is expected to extend beyond 120 days from the initiation of on-site removal activities, the lead agency shall by the end of the 120-day period:

(i) Conduct interviews with local officials, community residents, public interest groups, or other interested or affected parties, as appropriate, to solicit their concerns, information needs, and how or when citizens would like to be involved in the Superfund process;

(ii) Prepare a formal community relations plan (CRP) based on the community interviews and other relevant information, specifying the community relations activities that the lead agency expects to undertake during the reponse; and

(iii) Establish at least one local information repository at or near the location of the response action. The information repository shall contain items made available for public information. Further, an administrative record file established pursuant to Subpart I for all removal actions shall be available for public inspection in at least one of the repositories. The lead agency shall inform the public of the establishment of the information repository and provide notice of availability of the administrative record file for public review. All items in the repository shall be available for public inspection and copying.

(4) Where, based on the site evaluation, the lead agency determines that a removal action is appropriate and that a planning period of at least six months exists prior to initiation of the on-site removal activities, the lead agency shall at a minimum:

(i) Comply with the requirements set forth in paragraphs (n)(3) (i), (ii), and (iii) of this section, prior to the completion of the engineering evaluation/cost analysis (EE/CA), or its equivalent, except that the information repository and the administrative record file will be established no later than when the EE/CA Approval Memorandum is signed;

(ii) Publish a notice of availability and brief description of the EE/CA in a

major local newspaper of general circulation pursuant to § 300.820;

(iii) Provide a reasonable opportunity, not less than 30 calendar days, for submission of written and oral comments after completion of the EE/CA pursuant to § 300.820(a); and

(iv) Prepare a written response to significant comments pursuant to § 300.820(a).

§ 300.420 Remedial site evaluation.

(a) *General.* The purpose of this section is to describe the methods, procedures, and criteria the lead agency shall use to collect data, as required, and evaluate releases of hazardous substances, pollutants, or contaminants. The evaluation may consist of two steps: a remedial preliminary assessment (PA) and a remedial site inspection (SI).

(b) *Remedial preliminary assessment.* (1) The lead agency shall perform a remedial PA on all sites in the CERCLIS remedial inventory as defined in § 300.5 to:

(i) Eliminate from further consideration those sites that pose no threat to public health or the environment;

(ii) Determine if there is any potential need for removal action;

(iii) Set priorities for site inspections; and

(iv) Gather existing data to facilitate later evaluation of the release pursuant to the Hazard Ranking System (HRS) if warranted.

(2) A remedial PA shall consist of a review of existing information about a release such as information on the pathways of exposure, exposure targets, and source and nature of release. A PA shall also include an off-site reconnaissance as appropriate. A PA may include an on-site reconnaissance where appropriate.

(3) If the remedial PA indicates that a removal action may be warranted, the lead agency shall initiate removal evaluation pursant to § 300.410.

(4) In performing a PA, the lead agency may complete the EPA Preliminary Assessment form, available from EPA Regional offices, or its equivalent, and prepare a PA report, which shall include:

(i) A description of the release;

(ii) A description of the probable nature of the release; and

(iii) A recommendation on whether further action is warranted, which lead agency should conduct further action, and whether an SI or removal action should be undertaken.

(5) Any person may petition EPA or the appropriate Federal agency (the lead Federal agency) in the case of a release or suspected release from a Federal facility, to perform a PA of a release when such person is, or may be, affected by a release of a hazardous substance, pollutant, or contaminant. Such petitions shall be addressed to the EPA Regional Administrator for the Region in which the release is located, except that petitions for PAs involving Federal facilities should be addressed to the head of the appropriate Federal agency.

(i) Petitions shall be signed by the petitioner and shall contain the following:

(A) The full name, address, and phone number of petitioner;

(B) A description, as precisely as possible, of the location of the release.

(C) How the petitioner is or may be affected by the release.

(ii) Petitions should also contain the following information to the extent available:

(A) What type of substances were or may be released;

(B) The nature of activities that have occurred where the release is located; and

(C) Whether local and State authorities have been contacted about the release.

(iii) The lead Federal agency shall complete a remedial or removal PA within one year of the date of receipt of a complete petition pursuant to paragraph (b)(5) of this section, if one has not been performed previously unless the lead Federal agency determines that a PA is not appropriate. Where such a determination is made, the lead Federal agency shall notify the petitioner and will provide a reason for the determination.

(iv) When determining if performance of a PA is appropriate, the lead Federal agency shall take into consideration:

(A) Whether there is information indicating that a release has occurred or there is a threat of a release of a hazardous substance, pollutant, or contaminant; and

(B) Whether the release is eligible for response under CERCLA.

(c) *Remedial site inspection.* (1) The lead agency shall perform a remedial SI as appropriate to:

(i) Eliminate from further consideration those releases that pose no significant threat to public health or the environment;

(ii) Determine the potential need for removal action;

(iii) Collect or develop additional data, as appropriate, to evaluate the release pursuant to the HRS; and

(iv) Collect data in addition to that required to score the release pursuant to the HRS, as appropriate, to better characterize the release for more effective and rapid initiation of the RI/FS or response under other authorities.

(2) The remedial SI shall build upon the information collected in the remedial PA. The remedial SI shall involve, as appropriate, both on- and off-site field investigatory efforts, and sampling.

(3) If the remedial SI indicates that removal action may be appropriate, the lead agency shall initiate removal site evaluation pursuant to § 300.410.

(4) Prior to conducting field sampling as part of site inspections, a site-specific sampling plan shall be prepared that:

(i) Addresses the objectives of the sampling effort and the quality of data necessary to fulfill those objectives;

(ii) Identifies the number, type, and approximate location of sampling points and the procedures for collecting samples; and

(iii) Incorporates the appropriate field QA/QC samples.

(5) Upon completion of a remedial SI, the lead agency shall prepare a report that includes the following:

(i) A description/history/nature of waste handling;

(ii) A description of known contaminants;

(iii) A description of pathways of migration of contaminants;

(iv) An identification and description of human and environmental targets; and

(v) A recommendation on whether further action is warranted.

§ 300.425 Establishing remedial priorities.

(a) *General.* The purpose of this section is to identify the criteria as well as the methods and procedures EPA uses to establish its priorities for remedial actions.

(b) *National Priorities List.* The NPL is EPA's list of priority releases for long-term remedial response.

(1) Only those releases included on the NPL shall be considered eligible for Fund-financed remedial action. Remedial planning activities pursuant to CERCLA section 104(b) are not considered remedial action and are not limited to NPL sites.

(2) Inclusion of a release on the NPL does not imply that monies will be expended, nor does the rank of a release on the NPL establish the precise priorities for the allocation of Fund resources. Responsible parties shall pay for or implement response actions to the fullest extent practicable. EPA may also pursue other appropriate authorities to remedy the release. A site's rank on the NPL serves, along with other factors, including enforcement actions, as a basis to guide the allocation of Fund resources among releases.

(3) Federal facilities that meet the criteria identified in paragraph (c) of this section are eligible for inclusion on the NPL. Except as provided by CERCLA sections 111(e)(3) and 111(c), Federal facilities are not eligible for Fund-financed remedial actions.

(4) Inclusion on the NPL is not a precondition to action by the lead agency under CERCLA sections 106 or 122 or to action under CERCLA section 107 for recovery of non-Fund-financed costs or Fund-financed costs other than Fund-financed remedial construction costs.

(c) *Methods for determining eligibility for NPL.* A release may be included on the NPL if the release meets one of the following criteria:

(1) The release scores sufficiently high pursuant to the Hazard Ranking System described in Appendix A to this Part.

(2) A State has designated a release as its highest priority. States may make only one such designation; or

(3) The release satisfies all of the following criteria:

(i) The Agency for Toxic Substances and Disease Registry has issued a health advisory that recommends dissociation of individuals from the release;

(ii) EPA determines that the release poses a significant threat to public health; and

(iii) EPA anticipates that it will be more cost-effective to use its remedial authority than to use removal authority to respond to the release.

(d) *Procedures for placing sites on the NPL.* Lead agencies may submit candidates to EPA by scoring the release using the HRS and providing the appropriate backup documentation.

(1) Lead agencies may submit HRS scoring packages to EPA anytime throughout the year.

(2) EPA shall review lead agencies' HRS scoring packages and revise them as appropriate. EPA shall develop any additional HRS scoring packages on releases known to EPA.

(3) EPA shall compile the NPL based on the methods identified in paragraph (c) of this section.

(4) EPA shall update the NPL at least once a year.

(5) To ensure public involvement during the proposal to add a release to the NPL, EPA shall:

(i) Publish the proposed rule in the **Federal Register** and solicit comments through a public comment period; and

(ii) Publish the final rule in the **Federal Register** with a response to each significant comment and any significant new data submitted during the comment period.

(e) *Deletion from the NPL.* Releases may be deleted from or recategorized on the NPL where no further response is appropriate.

(1) EPA shall consult with the State on proposed deletions from the NPL prior to developing the Notice of Intent to delete. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria has been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment, and therefore, taking of remedial measures is not appropriate.

(2) Releases shall not be deleted from the NPL until the State in which the release was located has concurred on the proposed deletion. EPA shall provide the State a minimum of 20 calendar days and a maximum of 30 calendar days for review of the deletion notice prior to its publication in the **Federal Register.**

(3) All releases deleted from the NPL are eligible for further Fund-financed remedial actions should future conditions warrant such action. Whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the HRS.

(4) To ensure public involvement during the proposal to delete a release from the NPL, EPA shall:

(i) Publish a Notice of Intent to Delete in the **Federal Register** and solicit comment through a public comment period of a minimum of 30 calendar days;

(ii) In a major local newspaper of general circulation at or near the release that is proposed for deletion, publish a notice of availability of the Notice of Intent to Delete;

(iii) Place copies of information supporting the proposed deletion in the information repository, described in § 300.430(c)(2)(iii), at or near the release proposed for deletion. These items shall be available for public inspection and copying; and

(iv) Respond to each significant comment and new data submitted during the comment period and include this response document in the final deletion package.

(5) EPA shall place the final deletion package in the local information repository once the notice of final deletion has been published in the **Federal Register.**

§ 300.430 Remedial investigation/feasibility study and selection of remedy.

(a) *General*—(1) *Introduction.* The purpose of the remedial action process is to implement remedies that reduce, control, or eliminate risks to human health and the environment. The process generally will include a remedial investigation and feasibility study (RI/FS), a remedy selection decision, engineering design, and implementation of the remedial action. Remedial actions may include: actions initiated early in the RI/FS process where there is a need or opportunity to reduce or control risk or prevent further environmental degradation; final actions to control threats posed by a part of a site or specific pathway of migration; or actions that address the total site. The remedial action process at a site may be conducted through the use of an operable unit initiated at any time prior, during, or after the RI/FS when sufficient information is available to support selection of a remedy to address a particular site problem, a specific portion of a site, or the entire site. All remedial action will require evaluation of the nine criteria described in paragraph (e)(9) of this section, State review, development of a proposed plan, public participation, and selection of a remedy documented in a record of decision as described in paragraph (f) of this section. Site-specific data needs, the evaluation of alternatives, and the documentation of the selected remedy should reflect the scope and complexity of the site problems being addressed.

(2) *RI/FS.* The purpose of the RI/FS is to assess site conditions and evaluate alternatives to the extent necessary to select a remedy. Developing and conducting an RI/FS generally shall include the following activities: project scoping, data collection, risk assessment, and analysis of alternatives. The scope and timing of these activities should be tailored to the nature and complexity of the problem and the response alternatives being considered.

(b) *Project scoping.* The lead agency or its designee shall examine available information and develop workplans that describe the scope and content of the RI/FS needed to select and implement response actions. Workplans shall identify the data needed to support those decisions and the methods by which these data will be obtained and analyzed. The investigative and analytical studies should be tailored to site circumstances so that the scope of

the analysis is appropriate to the complexity of site problems or the problem to be addressed. Based on the available information, the lead agency shall:

(1) Assemble and evaluate existing data on the site, including the results of any removal actions, remedial preliminary assessment and site inspections, and the NPL listing process, to begin to define potential pathways and associated impacts on human and environmental receptors and to initiate any response actions that may be indicated.

(2) Begin to formulate remedial alternatives, consistent with available information.

(3) Undertake limited data collection efforts or studies where this information will assist in scoping the RI/FS or accelerate response actions, and begin treatability studies, as appropriate.

(4) Prepare site-specific health and safety plans that shall specify, at a minimum, employee training and protective equipment, medical surveillance requirements, standard operating procedures, and a contingency plan that conforms with 29 CFR 1910.120 (l)(1) and (l)(2).

(5) Develop sampling and analysis plans that shall provide a process for obtaining data of sufficient quality to support decisions during remedial response. The sampling and analysis plans shall describe the number, type, and location of samples; the type of analyses; and quality assurance objectives and measures. Sampling and analysis plans shall be reviewed and approved by EPA.

(6) If natural resources are or may be injured by the release, ensure that State and Federal trustees of the affected natural resources are promptly notified in order that the trustees may initiate appropriate actions, including those identified in Subpart G of this Part. The lead agency shall seek to coordinate, as appropriate, necessary assessments, evaluations, investigations, and planning with such State and Federal trustees.

(7) Initiate a dialogue with the support agency regarding identification of potential ARARs and other criteria, advisories, or guidance to be considered.

(8) Initiate development of remedial action objectives, as appropriate.

(c) *Community relations.* (1) The community relations requirements described in this section apply to all remedial activities undertaken pursuant to CERCLA section 104 and to section 106 or section 122 consent orders or decrees, or section 106 administrative orders.

(2) The lead agency shall provide for the conduct of the following community relations activities, to the extent practicable, prior to commencing field work for the remedial investigation:

(i) Conducting interviews with local officials, community residents, public interest groups, or other interested or affected parties, as appropriate, to solicit their concerns and information needs, and to learn how and when citizens would like to be involved in the Superfund process;

(ii) Preparing a formal Community Relations Plan (CRP), based on the community interviews and other relevant information, specifying the community relations activities that the lead agency expects to undertake during the remedial response; and

(iii) Establishing at least one local information repository at or near the location of the response action. Each information repository shall contain a copy of each item made available to the public. The lead agency shall inform interested parties of the establishment of the information repository.

(3) For PRP actions, the lead agency shall plan and implement the community relations program at a site. Potentially responsible parties may participate in aspects of the community relations program at the discretion of and with oversight by the lead agency.

(4) The lead agency may conduct technical discussions involving potentially responsible parties and the public. These technical discussions may be held separately from, but contemporaneously with, the negotiations/settlement discussions.

(5) In addition, the following provisions specifically apply to enforcement actions:

(i) Lead agencies entering into an enforcement agreement with de minimis parties under CERCLA section 122(g) or cost recovery settlements under section 122(h) shall publish a notice of the proposed agreement in the **Federal Register** at least 30 days before the agreement becomes final, as required by section 122(i). The notice must identify the name of the facility and the parties to the proposed agreement and must allow an opportunity for comment and consideration of comments; and

(ii) Where the enforcement agreement is embodied in a consent decree, public notice and opportunity for public comment shall be provided in accordance with 28 CFR 50.7.

(d) *Remedial investigation.* (1) The purpose of the remedial investigation (RI) is to collect data necessary to adequately characterize the site for the purpose of a remedy selection decision. To characterize the site, the lead agency shall, as appropriate, conduct field investigations, conduct a baseline risk assessment, and initiate treatability studies. The remedial investigation provides information to assess the risks to human health and the environment and to support the development, evaluation, and selection of appropriate response alternatives. Site characterization may be conducted in one or more phases to focus sampling efforts and increase the efficiency of the investigation. Because estimates of actual or potential exposures and associated impacts on human and environmental receptors may be refined throughout the phases of the RI as new information is obtained, site characterization activities should be fully integrated with the development and evaluation of alternatives in the feasibility study. Bench- or pilot-scale treatability studies shall be conducted, when appropriate, to provide additional data for the detailed analysis and to support engineering design of remedial alternatives.

(2) The following activities, as appropriate, shall be considered to characterize and assess the extent to which the release poses a threat to human health or the environment or to support the analysis and design of potential response actions:

(i) Physical characteristics of the site, including important surface features, soils, geology, hydrogeology, meteorology, and ecology;

(ii) Characteristics or classifications of air, surface water, and ground water;

(iii) The general characteristics of the waste, including quantities, state, concentration, toxicity, propensity to bioaccumulate, persistence, and mobility;

(iv) The extent to which the source can be adequately identified and characterized;

(v) Potential exposure pathways through environmental media;

(vi) Potential exposure routes, for example, inhalation and ingestion; and

(vii) Other factors, such as sensitive populations, that pertain to the characterization of the site or support the analysis of potential remedial action alternatives.

(3) The lead and support agency shall identify their respective ARARs, pertinent criteria, advisories, or guidance related to the location of and contaminants at the site in a timely manner.

(4) Using the data developed under paragraphs (d)(1) and (2) of this section, the lead agency shall conduct a site-specific baseline risk assessment to characterize the current and potential

threats to human health and the environment that may be posed by contaminants migrating to ground water or surface water, releasing to air, leaching through soil, remaining in the soil, and bioaccumulating in the food chain. The results of the baseline risk assessment will help establish acceptable exposure levels for use in developing remedial alternatives in the FS, as described in paragraph (e) of this section.

(e) *Feasibility study.* (1) The primary objective of the feasibility study (FS) is to ensure that appropriate remedial alternatives are developed and evaluated such that relevant information concerning the waste management options can be presented to a decisionmaker and an appropriate remedy selected. The lead agency may develop a feasibility study to address a specific site problem or the entire site. The development and evaluation of alternatives shall reflect the scope and complexity of the remedial action under consideration and the site problems being addressed. Development of alternatives shall be fully integrated with the site characterization activities of the remedial investigation described in paragraph (d) of this section. Typically, treatment alternatives will be evaluated consistent with the nature of the threat being addressed and the purpose of the response action. The lead agency shall include an alternatives screening step, when needed, to select a reasonable number of alternatives for detailed analysis.

(2) Alternatives shall be developed that protect human health and the environment by eliminating, reducing, and/or controlling risks posed through each pathway by a site. The number and type of alternatives to be analyzed shall be determined at each site, taking into account the scope, characteristics, and complexity of the site problem that is being addressed. In developing and, as appropriate, screening the alternatives, the lead agency shall:

(i) Establish remedial action objectives specifying contaminants and media of concern, potential exposure pathways, and remediation goals. Final remediation goals will be determined when the remedy is selected. Remediation goals that establish acceptable exposure levels that are protective of human health and the environment shall be developed considering the following:

(A) Applicable or relevant and appropriate Federal and State environmental requirements, if available, and the following factors:

(*1*) For systemic toxicants, acceptable exposure levels shall represent concentration levels to which the human population, including sensitive subgroups, is expected to be exposed without appreciable risk of significant adverse effect during a lifetime;

(*2*) For known or suspected carcinogens, acceptable exposure levels are generally concentration levels that represent an excess upperbound lifetime cancer risk to an individual of between 10^{-4} and 10^{-7} using information on the relationship between dose and response.[1] The 10^{-6} risk level shall be used as the point of departure for determining remediation goals for alternatives when ARARs are not available or are not sufficiently protective;

(*3*) Presence of multiple contaminants at a site or multiple pathways of exposure;

(*4*) Factors related to technical limitations such as detection/quantification limits for contaminants;

(*5*) Factors related to uncertainty; and

(*6*) Other pertinent information.

(B) Maximum contaminant levels promulgated under the Safe Drinking Water Act shall generally be considered relevant and appropriate standards when determining acceptable exposure for ground water and surface water that is a current or potential source of drinking water. In cases involving multiple contaminants or pathways that present risks in excess of 10^{-4}, maximum contaminant level goals may be considered when determining acceptable exposures, along with the criteria in paragraph (e)(2)(i)(A) of this section.

(C) For threats to the environment, appropriate risk analyses will be performed.

(ii) Identify and evaluate potentially suitable technologies, including innovative technologies;

(iii) Assemble suitable technologies into alternative remedial actions.

(3) For source control actions, the lead agency shall develop, as appropriate:

(i) A range of alternatives that employ treatment that reduces the toxicity, mobility, or volume of the hazardous substances, pollutants, or contaminants as their principal element. As appropriate, this range shall include an alternative that removes or destroys hazardous substances, pollutants, or contaminants to the maximum extent feasible eliminating or minimizing, to the degree possible, the need for long-term management. The lead agency also shall develop, as appropriate, other alternatives which, at a minimum, treat the principal threats posed by the site but vary in the degree of treatment employed and the quantities and characteristics of the treatment residuals and untreated waste that must be managed; and

(ii) One or more alternatives that involve little or no treatment, but provide protection of human health and the environment primarily by preventing or controlling exposure to hazardous substances, pollutants, or contaminants, through engineering controls, for example, containment, and, as necessary, institutional controls to protect human health and the environment and to assure continued effectiveness of the response action.

(4) For ground water response actions, the lead agency shall develop a limited number of remedial alternatives that attain site-specific remediation levels within different restoration time periods utilizing one or more different technologies.

(5) The lead agency shall develop one or more innovative treatment technologies for further consideration if there is a reasonable belief that they offer potential for better treatment performance or implementability; fewer or lesser adverse impacts than other available approaches; or lower costs for similar levels of performance than demonstrated treatment technologies.

(6) The no-action alternative, which may be no further action, shall be developed.

(7) As appropriate, and to the extent sufficient information is available, the short- and long-term aspects of the following three criteria shall be used to guide the development and screening of remedial alternatives:

(i) *Effectiveness.* This criterion focuses on the degree to which an alternative minimizes residual risks and affords long-term protection, minimizes short-term impacts, and how quickly protection can be achieved. Alternatives providing significantly less effectiveness than other, more promising alternatives may be eliminated. Alternatives that do not provide adequate protection of human health and the environment shall be eliminated from further consideration.

(ii) *Implementability.* This criterion focuses on the technical feasibility and availability of the technologies each alternative would employ and the administrative feasibility of implementing the alternative. Alternatives that are technically or administratively infeasible or that would require equipment, specialists, or facilities that are not available within a

[1] While a 10^{-4} to 10^{-7} risk range is proposed, EPA is very interested in comments on alternatives to this risk range for the reasons discussed in the Subpart E preamble, § 300.430, paragraph B.3.i.

reasonable period of time may be eliminated from further consideration.

(iii) *Cost.* The costs of construction and any long-term costs to operate and maintain the alternatives shall be considered. Alternatives providing effectiveness and implementability similar to that of other alternatives, but at greater cost, may be eliminated. The relationship of costs as compared to the overall effectiveness of alternatives may also be considered as one of several factors used to eliminate alternatives.

(8) The lead agency shall notify the support agency of the alternatives that will be evaluated in detail to facilitate the identification of ARARs and pertinent standards, criteria, and advisories to be considered.

(9) *Detailed analysis of alternatives.* (i) A detailed analysis shall be conducted on the limited number of alternatives that represent viable hazardous waste management approaches. ARARs and other standards, criteria, and advisories related to specific actions must be identified in a timely manner and no later than the early stages of the comparative analysis.

(ii) The detailed analysis consists of an assessment of individual alternatives against each of nine evaluation criteria and a comparative analysis that focuses upon the relative performance of each alternative against those criteria.

(iii) The analysis of alternatives under review shall reflect the scope and complexity of site problems and alternatives being evaluated and consider the relative significance of the factors within each criteria. The nine evaluation criteria are as follows:

(A) *Overall protection of human health and the environment.* Alternatives shall be assessed as to whether they can adequately protect human health and the environment from unacceptable risks posed by hazardous substances, pollutants, or contaminants present at the site by eliminating, reducing, or controlling exposures to levels established during development of remediation goals. This is a threshold requirement and the primary objective of the remedial program.

(B) *Compliance with ARARs.* The alternatives shall be assessed as to whether they attain applicable or relevant and appropriate requirements of other Federal and State environmental and public health laws or provide grounds for invoking one of the waivers under paragraph (f)(3)(iv) of this section.

(C) *Long-term effectiveness and permanence.* Alternatives shall be assessed for the long-term effectiveness and permanence they afford, along with the degree of certainty that the alternative will prove successful. Factors that shall be considered, as appropriate, include the following:

(*1*) Nature and magnitude of total residual risks in terms of amounts; potential for exposure of human and environmental receptors; concentrations of hazardous substances, pollutants, or contaminants remaining following implementation of a remedial alternative, considering the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents;

(*2*) The type, degree, and adequacy of long-term management required for untreated substances and treatment residuals, including engineering controls (such as containment technologies), institutional controls, monitoring, and operation and maintenance;

(*3*) Long-term reliability of the engineering and institutional controls, including uncertainties associated with land disposal of untreated hazardous substances, pollutants, and contaminants, and treatment residuals; and

(*4*) Potential need for replacement of the remedy, as well as the continuing need for repairs to maintain the performance of the remedy.

(D) *Reduction of toxicity, mobility, or volume.* The degree to which alternatives employ treatment that reduces toxicity, mobility, or volume shall be assessed. Alternatives which, at a minimum, address the principal threats posed by the site through treatment shall also be identified. Factors that shall be considered, as appropriate, include the following:

(*1*) The treatment processes the alternatives employ and materials they will treat;

(*2*) The amount of hazardous substances, pollutants or contaminants that will be destroyed or treated;

(*3*) The degree of expected reduction in toxicity, mobility, or volume, including how the principal threat is addressed through treatment;

(*4*) The degree to which the treatment is irreversible; and

(*5*) The residuals that will remain following treatment, considering the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents.

(E) *Short-term effectiveness.* The short-term impacts of alternatives shall be assessed considering the following:

(*1*) Short-term risks that might be posed to the community during implementation of an alternative;

(*2*) Potential impacts on workers during remedial action and the effectiveness and reliability of protective measures;

(*3*) Potential environmental impacts of the remedial action and the effectiveness and reliability of mitigative measures during implementation; and

(*4*) Time until protection is achieved.

(F) *Implementability.* The ease or difficulty of implementing the alternatives shall be assessed by considering the following types of factors as appropriate:

(*1*) Degree of difficulty or uncertainty associated with construction and operation of the technology;

(*2*) Expected operational reliability of the technologies the alternatives utilize and the ability to undertake additional action, if required;

(*3*) Ability and time required to obtain any necessary approvals and permits from other agencies;

(*4*) Availability of necessary equipment and specialists;

(*5*) Available capacity and location of needed treatment, storage, and disposal services; and

(*6*) Timing of the availability of prospective technologies that may be under consideration.

(G) *Cost.* The types of costs that shall be assessed include the following:

(*1*) Capital costs, including contingency and engineering fees;

(*2*) Operation and maintenance costs; and

(*3*) Net present value of capital and O&M costs.

(H) *State acceptance.* Assessment of State concerns may not be completed until comments on the RI/FS are received and may be discussed, to the extent possible, in the proposed plan issued for public comment. The State concerns that shall be assessed include the following:

(*1*) The State's position and key concerns related to the preferred alternative and other alternatives; and

(*2*) State comments on ARARs or the proposed use of waivers.

(I) *Community acceptance.* This assessment includes determining which components of the alternatives interested persons in the community support, have reservations about, or oppose. This assessment may not be completed until comments on the proposed plan are received.

(f) *Selection of remedy*—(1) *The proposed plan.* Prior to initiating a remedial action, the lead agency, in conjunction with the support agency, shall prepare a proposed plan that briefly describes the remedial alternatives analyzed by the lead agency, proposes a preferred remedial

action alternative, and summarizes the information relied upon to select the preferred alternative. The selection of remedy process for an operable unit may be initiated at any time during the remedial action process. The purpose of the proposed plan is to supplement the RI/FS and provide the public with a reasonable opportunity to comment on the preferred alternative for remedial action, as well as alternative plans under consideration, and to participate in the selection of remedial action at a site. At a minimum, the proposed plan shall:

(i) Provide a brief summary description of the remedial alternatives evaluated in the detailed analysis established under paragraph (e)(9) of this section;

(ii) Identify and provide a discussion of the rationale that supports the preferred alternative;

(iii) Provide a summary of any formal comments received from the support agency; and

(iv) Provide a summary explanation of any proposed waiver identified under paragraph (f)(3)(iv) of this section from applicable or relevant and appropriate requirements.

(2) *Community relations to support the selection of remedy.* (i) The lead agency, after preparation of the proposed plan and review by the support agency, shall conduct the following activities:

(A) Publish a notice of availability and brief analysis of the proposed plan in a major local newspaper of general circulation;

(B) Make the proposed plan and supporting analysis and information available in the administrative record required under Subpart I of this Part;

(C) Provide a reasonable opportunity, not less than 30 calendar days, for submission of written and oral comments on the proposed plan and the supporting analysis and information located in the information repository, including the RI/FS;

(D) Provide the opportunity for a public meeting to be held during the public comment period at or near the site at issue regarding the proposed plan and the supporting analysis and information;

(E) Keep a transcript of the public meeting held during the public comment period pursuant to CERCLA section 117(a) and make such transcript available to the public; and

(F) Prepare a written summary of significant comments, criticisms, and new relevant information submitted during the public comment period and the lead agency response to each issue. This responsiveness summary shall be made available with the record of decision.

(ii) After publication of the proposed plan and prior to adoption of the selected remedy in the record of decision, if new information is made available that significantly changes the basic features of the remedy with respect to scope, performance, or cost, such that the remedy significantly differs from the original proposal in the proposed plan and the supporting analysis and information, the lead agency shall:

(A) Include a discussion in the record of decision of the significant changes and reasons for such changes, if the lead agency determines such changes could be reasonably anticipated by the public based on the alternatives and other information available in the proposed plan or the supporting analysis and information in the administrative record; or

(B) Seek additional public comment on a revised proposed plan, when the lead agency determines the change could not have been reasonably anticipated by the public based on the information available in the proposed plan or the supporting analysis and information in the administrative record. The lead agency shall, prior to adoption of the selected remedy in the record of decision, issue a revised proposed plan, which shall include a discussion of the significant changes and the reasons for such changes, in accordance with the public participation requirements described in paragraph (f)(2)(i) of this section.

(3) *Selecting the remedy.* (i) Remedies selected shall reflect the scope and purpose of the actions being undertaken and how the action relates to long-term, comprehensive response at the site, giving appropriate weight to specific factors within each criterion, as noted in paragraph (e)(9)(iii) of this section, that are most relevant to the circumstances at the site.

(ii) Remedies selected shall be protective of human health and the environment and attain ARARs or provide grounds for invoking a waiver.

(iii) The requirement to utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable while meeting the cost-effectiveness requirement shall be fulfilled by selecting the alternative that satisfies (f)(3)(ii) of this section and provides the best balance of trade-offs among alternatives in terms of the following criteria noted in paragraph (e)(9)(iii) of this section: long-term effectiveness factors; reduction of toxicity, mobility or volume factors; short-term effectiveness factors; implementability factors; and cost factors. The balancing shall take into account the preference for treatment as a principal element and consider State and community acceptance, respectively.

(iv) An alternative that does not meet applicable or relevant and appropriate Federal or State public health or environmental requirements may be selected under the following circumstances:

(A) The alternative is an interim measure and will become part of a total remedial action that will attain the applicable or relevant and appropriate Federal or State requirements;

(B) Compliance with the requirements will result in greater risk to human health and the environment than other alternatives;

(C) Compliance with the requirements is technically impracticable from an engineering prespective;

(D) The alternative will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, or limitation through use of another method or approach;

(E) With respect to a State requirement, the State has not consistently applied, or demonstrated the intention to consistently apply, the promulgated requirement in similar circumstances at other remedial actions within the State; or

(F) For Fund-financed response actions only, an alternative that attains ARARs will not provide a balance between the need for protection of human health and the environment at the site and the availability of Fund monies to respond to other sites that may present a threat to human health and the environment.

(v) If a remedial action is selected that results in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure, the lead agency shall determine that a review shall be initiated no less often than every five years after implementation of the selected remedial action.

(vi) The process for selection of a remedial action at a Federal facility on the NPL, pursuant to CERCLA section 120, will entail:

(A) Joint selection of remedial action by the head of the relevant department, agency, or instrumentality and EPA; or

(B) If mutual agreement on the remedy is not reached, selection of the remedy is made by EPA.

(4) *Documenting the decision.* (i) To support the selection of a remedial action, all facts, analyses of facts, and site-specific policy determinations considered in the course of carrying out activities in this section shall be documented, as appropriate, in a record of decision for inclusion in the administrative record required under Subpart I of this Part. Documentation shall explain how the evaluation criteria in paragraph (e)(9)(iii) of this section were used to select the remedy.

(ii) The record of decision shall describe the following statutory requirements as they relate to the scope and objectives of the action:

(A) How the selected remedy is protective of human health and the environment, explaining how the remedy eliminates, reduces, or controls exposures to human and environmental receptors;

(B) The Federal and State requirements that are applicable or relevant and appropriate to the site that the remedy will attain;

(C) The applicable or relevant and appropriate requirements of other Federal and State laws that the remedy will not meet, the waiver invoked, and the justification for invoking the waiver;

(D) How the remedy is cost-effective, i.e., explaining how the remedy provides overall effectiveness proportional to its costs;

(E) How the remedy utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and

(F) Whether the preference for remedies employing treatment which permanently and significantly reduces the toxicity, mobility, or volume of the hazardous substances, pollutants, or contaminants as a principal element is or is not satisfied by the selected remedy. If this preference is not satisfied, the record of decision must explain why a remedial action involving such reductions in toxicity, mobility, or volume was not selected.

(iii) The record of decision also shall:

(A) Indicate, as appropriate, the remediation levels that the remedy is expected to achieve. Performance shall be measured at appropriate locations in the ground water, surface water, soils, air, and other affected environmental media. Measurement relating to the performance of the treatment processes and the engineering controls may also be identified, as appropriate;

(B) Discuss significant changes and the response to comments described in paragraph (f)(2)(i)(F) of this section.

(C) Describe whether hazardous substances, pollutants, or contaminants will remain at the site such that a review of the remedial action under paragraph (f)(3)(v) of this section no less often than every five years shall be required; and

(D) When appropriate, provide a commitment for further analysis and selection of long-term response measures within an appropriate timeframe.

(5) *Community relations when the record of decision is signed.* After the record of decision is signed, the lead agency shall:

(i) Publish a notice of the availability of the record of decision in a major local newspaper of general circulation; and

(ii) Make the record of decision available for public inspection and copying at or near the facility at issue prior to the commencement of any remedial action.

§ 300.435 Remedial design/remedial action, operation and maintenance.

(a) *General.* The RD/RA stage of remedial response includes the development of the actual design of the selected remedy and implementation of the remedy through construction. A period of operation and maintenance may follow the RA activities.

(b) *RD/RA activities.* (1) All RD/RA activities shall be in conformance with the remedy selected and set forth in the ROD or other decision document for that site.

(2) During the course of the RD/RA, the lead agency shall be responsible for ensuring that all Federal and State applicable requirements and relevant and appropriate requirements identified for the action being taken are met. If waivers from any ARARs are involved, the lead agency shall be responsible for ensuring that the conditions of the waivers are met.

(c) *Community relations.* (1) Prior to the initiation of remedial design (RD), the lead agency shall revise the CRP to address community concerns anticipated during the RD/RA process, if not already addressed by the CRP.

(2) After the adoption of the ROD, if the remedial action or enforcement action taken, or the settlement or consent decree entered into, differs significantly from the selected remedy in the ROD with respect to scope, performance, or cost, the lead agency shall consult with the support agency, as appropriate, and shall either:

(i) Publish an explanation of significant differences when the differences in the remedial or enforcement action, settlement, or consent decree significantly change but do not fundamentally alter the remedy selected in the ROD with respect to scope, performance, or cost. To issue an explanation of significant differences, the lead agency shall:

(A) Make the explanation of significant differences and supporting information available to the public in the administrative record established under § 300.825 and the information repository; and

(B) Publish a notice that briefly summarizes the explanation of significant differences, including the reasons for such differences, in a major local newspaper of general circulation; or

(ii) Propose an amendment to the ROD if the differences in the remedial or enforcement action, settlement, or consent decree fundamentally alter the basic features of the selected remedy with respect to scope, performance, or cost. To amend the ROD, the lead agency, in conjunction with the support agency, as provided in § 300.515(e), shall:

(A) Issue a notice of availability and brief description of the proposed amendment to the ROD in a major local newspaper of general circulation;

(B) Make the proposed amendment to the ROD and information supporting the decision available for public comment;

(C) Provide a reasonable opportunity, not less than 30 calendar days, for submission of written or oral comments on the amendment to the ROD;

(D) Provide the opportunity for a public meeting to be held during the public comment period at or near the facility at issue;

(E) Keep a transcript of comments received at the public meeting held during the public comment period;

(F) Include in the amended ROD a brief explanation of the amendment and the response to each of the significant comments, criticisms, and new relevant information submitted during the public comment period;

(G) Publish a notice of the availability of the amended ROD in a major local newspaper of general circulation; and

(H) Make the amended ROD and supporting information available to the public in the administrative record and information repository prior to the commencement of the remedial action affected by the amendment.

(d) *Contractor conflict of interest.* (1) For RD/RA and O&M activities which are not privately funded, the lead agency shall:

(i) Include appropriate language in the bid solicitation requiring potential contractors to provide information on their status and that of their parent companies, affiliates, and

subcontractors as potentially responsible parties at the site.

(ii) Require potential contractors to certify that, to the best of their knowledge, they have disclosed all such information or that no such information exists, and that any such information discovered after submission of their bid or proposal or contract award will be disclosed immediately.

(2) Prior to contract award, the lead agency shall evaluate the information provided by the potential contractor and subcontractors and:

(i) Determine that they do not have conflicts of interest that would affect their performance; or

(ii) If a member of the contract team has a conflict of interest which prevents the team from serving the best interests of the State and Federal government in the capacity of RA contractor under Fund-financed actions, the bidder may be declared nonresponsible in accordance with appropriate acquisition regulations and the contract awarded to the next eligible bidder.

(e) *Recontracting.* (1) If a Fund-financed contract must be terminated because additional work outside the scope of the contract is needed, EPA is authorized to take appropriate steps to continue interim RAs as necessary to reduce risks to public health and the environment. Appropriate steps may include extending an existing contract for a Federal-lead RA or amending a cooperative agreement for a State-lead RA. Until the lead agency can reopen the bidding process and recontract to complete the RA, EPA may take such appropriate steps as described above to cover interim work to reduce such risks, where:

(i) Additional work is found to be needed as a result of such unforeseen situations as newly discovered sources, types, or quantities of hazardous substances at a facility; and

(ii) Performance of the complete RA requires the lead agency to rebid the contract because the existing contract does not encompass this newly discovered work.

(2) The cost of such interim actions shall not exceed $2 million.

(f) *Operation and maintenance.* (1) O&M activities are initiated after the remedy is operational and functional. A State must provide its assurance to assume responsibility for O&M under § 300.510 (c).

(2) For Fund-financed remedial actions involving treatment or other measures to restore contaminated ground or surface water quality to a level that assures protection of human health and the environment, the operation of such treatment or measures for a period up to 10 years after the construction or installation and commencement of operation will be considered part of remedial action. Activities required to maintain the effectiveness of such treatment or measures following the 10-year period, or after remedial action is complete, whichever is earlier, shall be considered O&M.

(3) The following shall not be deemed to constitute treatment or other measures to restore contaminated ground or surface water:

(i) Source control measures initiated to prevent contamination of ground or surface waters; and

(ii) Ground or surface water measures initiated for the primary purpose of providing a drinking water supply, not for the purpose of restoring ground water.

(4) The 10-year period will begin once the ROD has been signed, construction activities have been completed, and the remedy is operational and functional.

§ 300.440 [Reserved]

Subpart F—State Involvement in Hazardous Substances Response

§ 300.500 General.

(a) EPA shall ensure meaningful and substantial State involvement in hazardous substance response as specified in this subpart. EPA shall provide an opportunity for State participation in pre-remedial and remedial and enforcement response. EPA shall encourage States to enter into an EPA/State Superfund Memorandum of Agreement (SMOA) under § 300.505 to increase State involvement and strengthen the EPA/State partnership.

(b) EPA shall encourage States to participate in Fund-financed response in two ways. Pursuant to § 300.515(a), States may either assume the lead through a cooperative agreement for the response action or may be the support agency in EPA-lead remedial response. Section 300.515 sets forth requirements for State involvement in EPA-lead remedial and enforcement response and also addresses comparable requirements for EPA involvement in State-lead remedial and enforcement response. Section 300.520 specifies requirements for State involvement in EPA-lead enforcement negotiations. Section 300.525 specifies requirements for State involvement in removal actions.

§ 300.505 EPA/State Superfund Memorandum of Agreement (SMOA).

(a) A SMOA is not required unless a State requests to be designated as lead agency for non-Fund-financed actions at NPL sites or to recommend a remedy for EPA concurrence for Fund-financed actions. If a SMOA is executed, the following may be addressed:

(1) The SMOA may establish the nature and extent of EPA and State interaction during EPA-lead and State-lead response. Similar agreements may be developed with Federally-recognized Indian Tribes for specific actions at NPL sites on Indian lands if Fund-financed remedial response is contemplated.

(2) The SMOA may define the role and responsibilities of the lead agency for pre-remedial, remedial, and enforcement response and describe the roles and the responsibilities of the support agency.

(3) The SMOA may describe general requirements for EPA oversight. Oversight requirements may be more specifically defined in cooperative agreements.

(4)(i) The SMOA may describe the general nature of lead and support agency interaction regarding the review of key documents and/or decision points in pre-remedial, remedial, and enforcement response. The requirements for EPA and State review of each other's key documents when each is serving as the support agency shall be equivalent to the extent practicable.

(ii) Site-specific lead/support agency interaction may be established in cooperative agreements or State Superfund contracts entered into pursuant to section 104(d)(1) of CERCLA and shall be consistent with the interaction established in the SMOA.

(iii) The SMOA may be modified if EPA and the State agree that the lead and support agency roles and responsibilities have changed, or if modifications are required to achieve the desired goals.

(5) The SMOA and any modifications thereto shall be executed by the EPA Regional Administrator and the head of the State agency designated as lead agency for State implementation of CERCLA.

(b)(1) The SMOA may describe the timeframe and process for EPA and State consultation to determine priorities and make lead and support agency designations for pre-remedial and remedial and enforcement response to be conducted during the next fiscal year and to discuss future priorities and long-term requirements for response. These consultations shall include the exchange of information on both Fund- and non-Fund-financed response activities.

(2) The following activities shall be discussed in the EPA/State consultations established in the SMOA,

or otherwise initiated and documented in writing in the absence of a SMOA, on a site-specific basis with EPA and the State identifying the lead agency for each response action discussed:

(i) Pre-remedial response actions, including preliminary assessments and site inspections;

(ii) Hazard Ranking System scoring and NPL listing and deletion activities;

(iii) Remedial response, including remedial investigation/feasibility study, identification of potential applicable or relevant and appropriate requirements (ARARs) under Federal and State laws and other criteria, guidance, and advisories to be considered (TBCs) on a site-specific basis, proposed plan, ROD, remedial design, remedial action, and operation and maintenance;

(iv) Enforcement actions including potentially responsible party (PRP) searches, notices to PRPs, response to information requests, PRP negotiations, administrative and judicial enforcement, and oversight of PRPs;

(v) Compilation and maintenance of the administrative record for selection of a response action as required by Subpart I of this Part;

(vi) Related site support activities; and

(vii) State ability to share in the cost and timing of payments.

(3) If a SMOA designates a State as the lead agency for a non-Fund-financed action at an NPL site, the SMOA shall be supplemented by site-specific enforcement agreements between EPA and the State which specify schedules and EPA involvement.

(4) Requirements in the absence of a SMOA, or if the SMOA does not address the categories of requirements specified in § 300.515(h), are described in § 300.515(h).

§ 300.510 State assurances.

(a) A Fund-financed remedial action undertaken pursuant to section 104(a) cannot proceed unless a State provides its applicable required assurances. The assurances must be provided by the State prior to the initiation of remedial action pursuant to a Superfund State contract for EPA-lead (or political subdivision-lead) remedial action or pursuant to a cooperative agreement for a State-lead remedial action. The SMOA may not be used for this purpose. Federally-recognized Indian Tribes are not required to provide CERCLA section 104(c) assurances for Fund-financed response actions.

(b)(1) The State is not required to share in the cost of State- or EPA-lead Fund-financed removal actions or remedial planning activities associated with remedial actions conducted pursuant to CERCLA section 104 unless the facility was operated by the State or a political subdivision thereof at the time of disposal of hazardous substances therein and a remedial action is ultimately undertaken at the site. Such remedial planning activities include, but are not limited to, remedial investigations (RI), feasibility studies (FS), and remedial design (RD). States shall be required to share 50 percent, or greater, in the cost of all Fund-financed response actions if the facility was publicly operated at the time of the disposal of hazardous substances. For other facilities, except Federal facilities, the State shall be required to share ten percent of the cost of the remedial action.

(2) CERCLA section 104(c)(5) provides that EPA shall grant a State credit for reasonable, direct, out-of-pocket, non-Federal expenditures during the specific time periods or circumstances specified in CERCLA section 104(c)(5). For a State to apply credit toward its cost share, it must enter into a cooperative agreement or Superfund State contract. The State must submit as soon as possible, but no later than at the time CERCLA section 104 assurances are provided for a remedial action, its accounting of eligible credit expenditures for EPA verification.

(3) Credit may be applied to a State's future cost share requirements at NPL sites for response expenditures or obligations incurred by the State or a political subdivision from January 1, 1978, to December 11, 1980, and for the remedial action expenditures incurred by the State only after October 17, 1986.

(4) Credit that exceeds the required cost share at the site for which the credit is granted may be transferred to another site to offset a State's required remedial action cost share.

(c)(1) Prior to remedial action, the State must also provide its assurance in accordance with CERCLA section 104(c) to assume responsibility for operation and maintenance of implemented remedial actions for the expected life of such actions. The State and EPA shall consult on a plan for operation and maintenance prior to the initiation of a remedial action.

(2) After a joint EPA/State inspection of the implemented Fund-financed remedial action under § 300.515(g), EPA may share, for a period of up to one year, in the cost of the operation of the remedial action to ensure that the remedy is operational and functional. In the case of the restoration of ground or surface water, EPA shall share in the cost of the State's operation of ground or surface water restoration remedial actions as specified in § 300.435(f).

(d) If off-site storage, destruction, treatment, or disposal is required, the State must provide its assurance before the remedial action begins on the availability of a hazardous waste disposal facility that is in compliance with section 121(d)(3) and is acceptable to EPA.

(e) Effective October 17, 1989, EPA shall not provide any remedial action pursuant to section 104 of CERCLA, unless the State in which the release first occurs has provided its assurance to EPA's satisfaction that it has adequate capacity for the destruction, treatment, or secure disposal of all hazardous wastes, including CERCLA wastes, expected to be generated within the State in the 20-year period following the assurance.

(f) EPA may determine that an interest in real property must be acquired in order to conduct a response action. As a general rule, the State in which the property is located must agree to acquire and hold the necessary property interest. If it is necessary for the United States government to acquire the interest in property to permit implementation of the response, the State must agree to accept transfer of the acquired interest on or before the completion of the response action.

§ 300.515 Requirements for State involvement in remedial and enforcement response.

(a) *General.* (1) States are encouraged to undertake actions authorized under Subpart E. Section 104(d)(1) of CERCLA authorizes EPA to enter into cooperative agreements or contracts with a State, political subdivision, or a Federally-recognized Indian Tribe to carry out Fund-financed response actions authorized under CERCLA, when EPA determines that the State, the political subdivision, or Federally-recognized Indian Tribe has the capability to undertake such actions. EPA will use a cooperative agreement to transfer funds to those entities to undertake Fund-financed response activities.

(2) For EPA-lead Fund-financed remedial planning activities, including, but not limited to, remedial investigations, feasibility studies, and remedial designs, the State agency acceptance of the support agency role during an EPA-lead response shall be documented in a letter or a SMOA. Superfund State contracts are unnecessary for this purpose.

(3) Cooperative agreements or Superfund State contracts are generally unnecessary for non-Fund-financed response actions unless a State intends to seek credit for remedial action

expenses under § 300.510. However, a SMOA will be required for a State to recommend the remedy to EPA for a Fund-financed action or for EPA to designate a State as the lead agency to carry out non-Fund-financed response actions.

(b) *Designation of Indian Tribe as lead agency.* An Indian Tribe may be authorized to undertake the lead for Fund-financed response actions in a cooperative agreement if:

(1) The Indian Tribe is Federally-recognized;

(2) The Indian Tribe has a tribal governing body that is currently performing governmental functions to promote the health, safety and welfare of the affected population or environment within a defined geographic area;

(3) The Indian Tribe demonstrates an ability to carry out response actions in accordance with the criteria and priorities established by the NCP;

(4) The Indian Tribe demonstrates that the functions to be performed in Fund-financed response actions are within the scope of its jurisdiction; and

(5) The Indian Tribe demonstrates a reasonable ability to administer effectively a cooperative agreement by the existence of the appropriate management and technical skills; by a history of successful managerial performance of public health/environmental programs; and by acceptable accounting and procurement procedures that comply with applicable assistance agreement regulations.

(c) *State involvement in PA/SI and NPL process.* EPA shall ensure State involvement in the listing and deletion process by providing States opportunities for review, consultation, or concurrence specified in this section.

(1) EPA shall consult with States as appropriate on the information to be used in developing HRS scores for sites.

(2) EPA shall provide the State a minimum of 20 calendar days and a maximum of 30 calendar days to review sites or facilities which were scored by EPA and which will be proposed for listing on the National Priorities List (NPL).

(3) EPA shall provide the State a minimum of 20 calendar days and a maximum of 30 calendar days to review and concur on the Notice of Intent to Delete a site from the NPL. Section 300.425 describes the EPA/State consultation and concurrence process for deleting sites from the NPL.

(d) *State involvement in RI/FS process.* A key component of the EPA/State partnership shall be the communication of potential Federal and State ARARs and TBCs.

(1) In accordance with §§ 300.400(g) and 300.430, the lead and support agencies shall identify their respective potential ARARs and TBCs and communicate them to each other in a timely manner and no later than the early stages of the comparative analysis, such that sufficient time is available for the lead agency to consider and incorporate all potential ARARs and TBCs without inordinate delays and duplication of effort.

(2) When a State and EPA have entered into a SMOA, the SMOA may specify a consultation process which requires the lead agency to solicit potential ARARs and TBCs at specified points in the remedial planning and remedy selection processes. At a minimum, the SMOA shall include the points specified in § 300.515(h)(2). The SMOA shall specify timeframes for support agency response to lead agency requests to ensure that potential ARARs and TBCs are identified and communicated in a timely manner.

(3) If EPA in its statement of a proposed plan intends to waive any State-identified ARARs, or does not agree with the State that a certain State standard is an ARAR, it shall formally notify the State when it submits the RI/FS report for State review or responds to the State's submission of the RI/FS report.

(4) EPA shall respond to State comments on waivers from or disagreements about State ARARs, as well as the preferred alternative when making the RI/FS report and proposed plan available for public comment.

(e) *State involvement in selection of remedy.* (1) At the conclusion of the RI/FS, the lead agency, in conjunction with the support agency, shall develop a proposed plan. The support agency shall have an opportunity to comment on the plan and the lead agency shall publish a notice of availability of the RI/FS report and a brief analysis of the proposed plan pursuant to §§ 300.430(e) and (f). Included in the proposed plan shall be a statement that the lead and support agencies have reached agreement or, where this is not the case, a statement explaining the concerns of the support agency with the lead agency's proposed plan.

(2)(i) EPA and the State shall identify, at least annually, sites for which RODs will be prepared during the next fiscal year, in accordance with § 300.515(h)(1). For all EPA-lead sites, EPA shall prepare the ROD and provide the State an opportunity to concur with the recommended remedy. For Fund-financed State-lead sites, EPA and the State shall designate sites for which the State shall prepare the ROD and seek EPA's concurrence and adoption of the remedy specified therein and sites for which EPA shall prepare the ROD and seek the State's concurrence. For non-Fund-financed State-lead enforcement response actions taken at NPL sites, EPA and the State may designate sites for which the State shall prepare the ROD and seek EPA's concurrence in and adoption of the remedy specified therein. Either EPA or the State may choose not to designate a site as State-lead.

(ii) Both EPA and the State shall be involved in preliminary discussions on the alternatives addressed in the FS prior to preparation of the proposed plan and ROD. State concurrence on a ROD is not a prerequisite to EPA's selecting a remedy, i.e., signing a ROD, nor is EPA's concurrence a prerequisite to a State selecting a remedy at a non-Fund-financed State-lead enforcement site. Unless EPA concurs in writing with a State-prepared ROD, EPA shall not be deemed to have approved the State decision. A State may not proceed with a Fund-financed response action unless EPA has first concurred in and adopted the ROD. Section 300.510(a) specifies limitations on EPA proceeding with a remedial action without State assurances.

(iii) The lead agency shall provide the support agency with a copy of the signed ROD for remedial actions to be conducted pursuant to sections 104, 106, or 122 of CERCLA.

(iv) On State-lead sites identified for EPA concurrence, the State generally shall be expected to maintain its lead agency status through the completion of the remedial action.

(f) *Procedures for application of State ARARs waived by EPA or enhancement of remedy.* (1) If a State determines that a proposed Fund-financed remedial action should comply with substantive State standards that EPA has determined are not ARARs, or with State ARARs which EPA has determined to waive pursuant to CERCLA section 121(d)(4), the State shall fund the entire additional cost associated with compliance with such ARARs. The State may be required to continue the lead for RD/RA or for the additional requirements if it is a State-lead Fund-financed project or to assume the lead for remedial design and construction, or for the additional requirements only, if the project is Federal-lead.

(2) If a State determines that a Fund-financed remedial action should exceed the scope of the selected remedy, for example, enhancement of the selected remedy, the State shall fund the entire

additional cost associated with such enhancement. The State may be required to assume the lead for the remedial design and construction of the remedy or only the State-funded enhancement if that enhancement can be a separate phase or activity.

(3) If a State determines that an enforcement action under sections 106 or 122 of CERCLA should attain State requirements that EPA or a Federal District Court have determined need not be met in accordance with criteria in CERCLA section 121(d)(4), the State shall fund the additional requirements. The State may be required to undertake this work.

(g) *State involvement in remedial action.* For Fund-financed remedial actions, the lead and support agencies shall conduct a joint inspection at the conclusion of construction of the remedial action to determine that the remedy has been constructed in accordance with the ROD and with the remedial design.

(h) *Requirements for State involvement in absence of SMOA.* In the absence of a SMOA, or in the event that a SMOA does not address any or all of the following categories of requirements for State involvement in remedial and enforcement response, the following shall be applicable in addition to all other requirements of this subpart:

(1) *Annual consultations.* EPA shall conduct consultations with States at least annually to establish priorities and identify and document in writing the lead for remedial and enforcement response for each NPL site within the State for the upcoming fiscal year. States shall be given the opportunity to participate in long-term planning efforts for remedial and enforcement response during these annual consultations.

(2) *Identification of ARARs and TBCs.* The lead and support agencies shall discuss potential ARARs and TBCs during the scoping of the RI/FS. The lead agency shall request potential ARARs and TBCs from the support agency no later than the time that the site characterization data are available. The support agency shall communicate in writing those potential ARARs to the lead agency within 30 working days of receipt of the lead agency request for these ARARs. After the initial screening of alternatives has been completed but prior to initiation of the comparative analysis conducted during the detailed analysis phase of the FS, the lead agency shall request that the support agency communicate any additional requirements that are applicable or relevant and appropriate to the alternatives contemplated within 30 working days of receipt of this request. The lead agency shall consult the support agency during the remedial design to ensure that identified ARARs and TBCs are updated as needed.

(3) *State review of EPA-lead documents.* EPA shall provide an opportunity for States to review and comment on the EPA-lead RI/FS, proposed plan, ROD, and remedial design, and any proposed determinations on potential ARARs and TBCs. The State shall have a minimum of 10 working days and a maximum of 15 working days to provide comments to EPA on the RI/FS, ROD, ARAR/TBC determinations, and remedial design. The State shall have a minimum of 5 working days and a maximum of 10 working days to comment on the proposed plan.

(i) *Administrative record requirements.* The State, where it is the lead agency for a Fund-financed site, shall compile and maintain the administrative record for selection of a response action under Subpart I of this Part unless specified otherwise in the SMOA.

§ 300.520 State involvement in EPA-lead enforcement negotiations.

(a) EPA shall notify States of response action negotiations to be conducted by EPA with potentially responsible parties during each fiscal year.

(b) The State must notify EPA of such negotiations in which it intends to participate.

(c) The State may be a party to such settlements in which it is a participant in the negotiations.

§ 300.525 State involvement in removal actions.

(a) States may undertake Fund-financed removal actions pursuant to a cooperative agreement with EPA. State-lead removal actions taken pursuant to cooperative agreements must be conducted in accordance with § 300.415 on removal actions and applicable assistance regulations.

(b) States are not required under section 104(c)(3) of CERCLA to share in the cost of a Fund-financed removal action, unless the removal is conducted at an NPL site that was publicly operated at the time of disposal of hazardous substances therein and a Fund-financed remedial action is ultimately undertaken at the site. In this situation, States are required to share, 50 percent or greater, in the cost of all removal, remedial planning, and remedial action costs at the time of the remedial action.

(c) States are encouraged to provide for post-removal site control as discussed in § 300.415(l) for all Fund-financed removal actions.

(d) States shall be responsible for identifying potential State ARARs for all Fund-financed removal actions and for providing such ARARs to EPA in a timely manner for all EPA-lead removal actions.

(e) EPA shall consult with States on all removal actions to be conducted in a State.

Subpart G—Trustees for Natural Resources

§ 300.600 Designation of Federal trustees.

(a) The President is required to designate in the National Contingency Plan those Federal officials who are to act on behalf of the public as trustees for natural resources. Federal officials so designated will act pursuant to section 107(f) of CERCLA and section 311(f)(5) of the Clean Water Act. Natural resources include:

(1) Natural resources over which the United States has sovereign rights; and

(2) Natural resources within the territory, contiguous zone, exclusive economic zone, and outer continental shelf belonging to, managed by, held in trust by, appertaining to, or otherwise controlled (hereinafter referred to as "managed or protected") by the United States.

(b) The following individuals shall be the designated trustee(s) for general categories of natural resources. They are authorized to act when there is injury to, destruction of, loss of, or threat to natural resources as a result of a release of a hazardous substance or a discharge of oil. Notwithstanding the other designations in this section, the Secretaries of Commerce and the Interior shall act as trustees of those resources subject to their respective management or protection.

(1) *Secretary of Commerce.* The Secretary of Commerce shall act as trustee for natural resources that are managed or protected by Federal agencies and that are found in or under waters navigable by deep draft vessels, in or under tidally influenced waters, or waters of the contiguous zone, the exclusive economic zone, and the outer continental shelf, and in upland areas serving as habitat for marine mammals and other protected species. However, before the Secretary takes an action with respect to an affected resource under the management or protection of another Federal agency, the concurrence of that other Federal agency is required. Examples of the Secretary's trusteeship include marine fishery resources and their supporting ecosystems;

anadromous fish; certain endangered species and marine mammals; and National Marine Sanctuaries and Estuarine Research Reserves.

(2) *Secretary of the Interior.* The Secretary of the Interior shall act as trustee for natural resources managed or protected by the Department of the Interior. Examples of the Secretary's trusteeship include migratory birds; certain anadromous fish, endangered species, and marine mammals; Federally-owned minerals; and certain Federally-managed water resources. The Secretary of the Interior shall also be trustee for those natural resources for which an Indian Tribe would otherwise act as trustee in those cases where the United States acts on behalf of the Indian Tribe.

(3) *Secretary for the land managing agency.* For natural resources located on, over, or under land administered by the United States, the trustee shall be the head of the Department in which the land managing agency is found. The trustees for the principal Federal land managing agencies are the Secretaries of the Department of the Interior, the Department of Agriculture, the Department of Defense, and the Department of Energy.

(4) *Head of authorized agencies.* For natural resources located in the United States but not otherwise described in this section, the trustee shall be the head of the Federal agency or agencies authorized to manage or protect those resources.

§ 300.605 State trustees.

State trustees shall act on behalf of the public as trustees for natural resources within the boundary of a State or belonging to, managed by, controlled by, or appertaining to such State. For the purposes of Subpart G of this Part, the definition of the term "State" does not include Indian Tribes.

§ 300.610 Indian Tribes.

The Tribal chairmen (or heads of the governing bodies) of Indian Tribes, as defined in § 300.5, or a person designated by the Tribal officials, shall act on behalf of the Indian Tribes as trustees for the natural resources belonging to, managed by, controlled by, or appertaining to such Indian Tribe, or held in trust for the benefit of such Indian Tribe, or belonging to a member of such Indian Tribe, if such resources are subject to a trust restriction on alienation. The Tribal chairmen or heads of the Tribal governing bodies shall notify the President of such designations. Such officials are authorized to act when there is injury to, destruction of, loss of, or threat to natural resources as a result of a release of a hazardous substance or a discharge of oil.

§ 300.615 Responsibilities of trustees.

(a) Where there are multiple trustees, because of coexisting or contiguous natural resources or concurrent jurisdictions, they shall coordinate and cooperate in carrying out these responsibilities.

(b) Trustees are responsible for designating to the RRTs, for inclusion in the Regional Contingency Plan, appropriate contacts to receive notifications from the OSCs/RPMs of potential damages to natural resources.

(c) Upon notification or discovery of injury to, destruction of, loss of, or threat to, natural resources, trustees may, as appropriate:

(1) Conduct a preliminary survey of the area affected by the discharge or release to determine if trust resources under their jurisdiction are, or potentially may be, affected;

(2) Cooperate with the OSC/RPM in coordinating assessments, investigations, and planning;

(3) Carry out damage assessments; or

(4) Devise and carry out a plan for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources. In assessing damages to natural resources, the Federal, State, and Indian Tribe trustees have the option of following the procedures for natural resource damage assessments located at 43 CFR Part 11.

(d) Federal trustees have the authority to:

(1) Request that the Attorney General seek compensation from the responsible parties for the damages assessed and for the costs of an assessment and of restoration planning; and

(2) Participate in negotiations between the United States and potentially responsible parties (PRPs) to obtain PRP-financed or PRP-conducted assessments and restorations for injured resources or protection for threatened resources.

(3) Require, in consultation with the lead agency, any person to comply with the requirements of CERCLA section 104(e) regarding information gathering and access.

(e) Actions which may be taken by any trustee include, but are not limited to, any of the following:

(1) Requesting that an authorized agency issue an administrative order or pursue injunctive relief against the parties responsible for the discharge or release; or

(2) Requesting that the lead agency remove, or arrange for the removal of, or provide for remedial action with respect to, any hazardous substances from a contaminated medium pursuant to section 104 of CERCLA.

Subpart H—Participation by Other Persons

§ 300.700 Activities by other persons.

(a) *General.* Any person may undertake a response action to reduce or eliminate a release of a hazardous substance, pollutant, or contaminant.

(b) *Summary of CERCLA authorities.* The mechanisms available to recover the costs of response actions under CERCLA are, in summary:

(1) Section 107(a), wherein any person may receive a court award of his or her response costs, plus interest, from the party or parties found to be liable;

(2) Section 111(a)(2), wherein a private party, a potentially responsible party pursuant to a settlement agreement, or certain foreign entities may file a claim against the Fund for reimbursement of response costs;

(3) Section 106(b), wherein any person who has complied with a section 106(a) order may petition the Fund for reimbursement of reasonable costs, plus interest; and

(4) Section 123, wherein a general purpose unit of local government may apply to the Fund under 40 CFR Part 310 for reimbursement of the costs of temporary emergency measures that are necessary to prevent or mitigate injury to human health or the environment associated with a release.

(c) *Section 107(a) cost recovery actions.* (1) The Federal government, States, including political subdivisions thereof, or Indian Tribes may recover from responsible parties governmental response costs not inconsistent with the NCP.

(2) Any other person is eligible to recover from responsible parties necessary costs consistent with the NCP incurred for response actions to releases of hazardous substances consistent with the NCP.

(3)(i) For the purpose of cost recovery under section 107(a)(4)(B) of CERCLA, EPA intends that a response action will be considered to be consistent with the NCP if the person taking the response action complies with an order issued by EPA pursuant to section 106 of CERCLA, a consent decree entered into pursuant to section 122 of CERCLA, or the following NCP provisions, where pertinent to the particular response chosen for the particular facility:

(A) Section 300.150 (on worker health and safety);

(B) Section 300.160 (on documentation and cost recovery);

(C) Section 300.400(c)(1), (4), (5), and (7) (on determining the need for a Fund-financed action), (e) (on permit requirements), and (g) (on identification of ARARs);

(D) Section 300.405(b), (c), and (d) (on reports of releases to the NRC);

(E) Section 300.410 (on removal site evaluation) except paragraphs (e)(5) and (6) and the reference to listing releases in CERCLIS in (h);

(F) Section 300.415 (on removal actions) except paragraphs (a)(2), (b)(2)(vii), (b)(4), and (g);

(G) Section 300.420 (on remedial site evaluation);

(H) Section 300.430 (on RI/FS and selection of remedy) except paragraph (f)(3)(iv)(F); and

(I) Section 300.435 (on RD/RA and operation and maintenance).

(ii) In addition, other persons undertaking response actions shall provide an opportunity for public comment concerning the selection of the response action. A response action shall not be considered consistent with the NCP unless:

(A) The person taking the response action complies with the following NCP provisions regarding public participation, with the exception of administrative record and information repository requirements stated therein:

(*1*) Section 300.155 (on public information and community relations);

(*2*) Section 300.415(n) (on community relations during removal actions);

(*3*) Section 300.430(c) (on community relations during RI/FS) except paragraph (5);

(*4*) Section 300.430(f)(1), (2), and (5) (on community relations during selection of remedy); and

(*5*) Section 300.435(c) (on community relations during RD/RA and operation and maintenance); or

(B) The person taking the response action complies with State or local requirements which provide a substantially equivalent opportunity for public involvement in the choice of remedy.

(iii) When selecting the appropriate remedial action, any other person shall, as appropriate, consider the methods of remedying releases listed in Appendix D of this Part.

(iv) Except for actions taken pursuant to CERCLA sections 104 or 106 or response actions for which reimbursement from the Fund will be sought, any action to be taken by the lead agency in §§ 300.415, 300.430, and 300.435 may be taken by the person carrying out the response action.

(d) *Section 111(a)(2) Claims.* (1) Persons, other than those listed in paragraphs (d)(1)(i) through (iii) of this section, may be able to receive reimbursement of response costs by means of a claim against the Fund. The categories of persons excluded from pursuing this claims authority are:

(i) Federal government;

(ii) State governments, and their political subdivisions, unless they are potentially responsible parties covered by an order or consent decree pursuant to section 122 of CERCLA; and

(iii) Persons operating under a procurement contract or an assistance agreement with the United States with respect to matters covered by that contract or assistance agreement, unless specifically provided therein.

(2) In order to be reimbursed by the Fund, an eligible person must notify the Administrator of EPA or designee prior to taking a response action and receive prior approval, i.e., "preauthorization," for such action.

(3) Preauthorization is EPA's prior approval to submit a claim against the Fund for necessary response costs incurred as a result of carrying out the NCP. All applications for preauthorization will be reviewed to determine whether the request should receive priority for funding. EPA, in its discretion, may grant preauthorization of a claim. Preauthorization will be considered only for:

(i) Removal actions pursuant to § 300.415;

(ii) CERCLA section 104(b) activities;

(iii) Remedial actions at National Priorities List sites pursuant to § 300.435.

(4) To receive EPA's prior approval, the eligible person must:

(i) Demonstrate technical and other capabilities to respond safely and effectively to releases of hazardous substances, pollutants, or contaminants; and

(ii) Establish that the action will be consistent with the NCP in accordance with the elements set forth in paragraphs (c)(3) (i), (ii), and (iii) of this section.

(5) EPA will grant preauthorization to a claim by a party it determines to be potentially liable under section 107 of CERCLA only in accordance with an order issued pursuant to section 106 of CERCLA, or a settlement with the Federal government in accordance with section 122 of CERCLA.

(6) Preauthorization does not establish an enforceable contractual relationship between EPA and the claimant.

(7) Preauthorization represents EPA's commitment that if funds are appropriated for response actions, the response action is conducted in accordance with the preauthorization decision document, and costs are reasonable and necessary, reimbursement will be made from the Superfund, up to the maximum amount provided in the preauthorization decision document.

(8) For a claim to be awarded under section 111 of CERCLA, EPA must certify that the costs were necessary and consistent with the preauthorization decision document.

(e) *Section 106(b) petition.* Subject to conditions specified in CERCLA section 106(b), any person who has complied with an order issued after October 10, 1986 pursuant to section 106(a) of CERCLA, may seek reimbursement for response costs incurred in complying with that order unless the person has waived that right.

(f) *Section 123 reimbursement to local governments.* Any general purpose unit of local government or a political subdivision that is affected by a release may receive reimbursement for the costs of temporary emergency measures necessary to prevent or mitigate injury to human health or the environment subject to the conditions set forth in 40 CFR Part 310. Such reimbursement may not exceed $25,000 for a single response.

(g) *Release from liability.* Implementation of response measures by potentially responsible parties or by any other person does not release those parties from liability under section 107(a) of CERCLA, except as provided in a settlement under section 122 of CERCLA or a Federal court judgment.

Subpart I—Administrative Record for Selection of Response Action

§ 300.800 Establishment of an administrative record.

(a) *General requirement.* The lead agency shall establish an administrative record that contains the documents that form the basis for the selection of a response action. The lead agency shall compile and maintain the administrative record in accordance with this subpart.

(b) *Administrative records for Federal facilities.* (1) If a Federal agency other than EPA is the lead agency for a Federal facility, the Federal agency shall compile and maintain the administrative record for the selection of the response action at that facility in accordance with this subpart. EPA may furnish documents which the Federal agency shall place in the administrative record file to ensure that the administrative record includes all documents that form the basis for the selection of the response action.

(2) EPA or the U.S. Coast Guard shall compile and maintain the administrative record when it is the lead agency for a Federal facility.

(3) If EPA is involved in the selection of the response action at a Federal facility on the NPL, the Federal agency acting as the lead agency shall provide EPA with a copy of the index of documents included in the administrative record file, the RI/FS workplan, the RI/FS released for public comment, the proposed plan, any public comments received on the RI/FS and proposed plan, and any other documents EPA may request on a case-by-case basis.

(c) *Administrative record for State-lead sites.* If a State is the lead agency for a site, the State shall compile and maintain the administrative record for the selection of the response action at that site in accordance with this subpart. EPA may require the State to place additional documents in the administrative record file to ensure that the administrative record includes all documents which form the basis for the selection of the response action. The State shall provide EPA with a copy of the index of documents included in the administrative record file, the RI/FS workplan, the RI/FS released for public comment, the proposed plan, any public comments received on the RI/FS and proposed plan, and any other documents EPA may request on a case-by-case basis.

(d) *Applicability.* This subpart applies to all response actions taken under section 104 of CERCLA or sought, secured, or ordered administratively or judicially under section 106 of CERCLA, as follows:

(1) Remedial actions where the remedial investigation commenced after the promulgation of these regulations; and

(2) Removal actions where the action memorandum is signed after the promulgation of these regulations.

(e) For those response actions not included in paragraph (d) of this section, the lead agency shall comply with this subpart to the extent practicable.

§ 300.805 Location of the administrative record.

The lead agency shall establish a docket at an office of the lead agency or other central location at which documents included in the administrative record file shall be located and a copy of the documents included in the administrative record file shall also be made available for public inspection at or near the site at issue, except as provided below:

(a) Sampling and testing data, quality control and quality assurance documentation, and chain of custody forms, need not be located at or near the site at issue or at the central location, provided that the index to the administrative record file indicates the location and availability of this information.

(b) Guidance documents not generated specifically for the site at issue need not be located at or near the site at issue, provided that they are maintained at the central location and the index to the administrative record file indicates the location and availability of these guidance documents.

(c) Publicly available technical literature not generated for the site at issue, such as engineering textbooks, articles from technical journals, and toxicological profiles, need not be located at or near the site at issue or at the central location, provided that the literature is listed in the index to the administrative record file or the literature is cited in a document in the record.

(d) Documents included in the confidential portion of the administrative record file shall be located only in the central location.

(e) The administrative record for a removal action where the release or threat of release requires that on-site removal activities be initiated within hours of the lead agency's determination that a removal is appropriate and on-site removal activities cease within 30 days of initiation, need be available for public inspection only at the central location.

§ 300.810 Contents of the administrative record.

(a) *Contents.* The administrative record file for selection of a response action typically, but not in all cases, will contain the following types of documents:

(1) Documents containing factual information, data, and analysis of the factual information and data that may form a basis for the selection of the response action. Such documents may include verified sampling data, quality control and quality assurance documentation, chain of custody forms, site inspection reports, preliminary assessment and site evaluation reports, ATSDR health assessment, documents supporting the lead agency's determination of imminent and substantial endangerment; public health evaluations, and technical and engineering evaluations. In addition, for remedial actions, such documents may include approved work plans, State documentation of applicable or relevant and appropriate requirements, and the RI/FS;

(2) Guidance documents, technical literature, and site-specific policy memoranda that may form a basis for the selection of the response action. Such documents may include guidance on conducting remedial investigations and feasibility studies, guidance on determining applicable or relevant and appropriate requirements, guidance on risk/exposure assessments, engineering handbooks, articles from technical journals, memoranda on the application of a specific regulation to a site, and memoranda on off-site disposal capacity;

(3) Documents received, published, or made available to the public under § 300.815 for remedial actions, or § 300.820 for removal actions. Such documents may include notice of availability of the administrative record file, community relations plan, proposed plan for remedial action, notices of public comment periods, public comments and new information received by the lead agency, and responses to significant comments;

(4) Decision documents. Such documents may include action memoranda and records of decision;

(5) Enforcement orders. Such documents may include administrative orders and consent decrees; and

(6) An index of the documents included in the administrative record file.

(b) *Documents not included in the administrative record.* The lead agency is not required to include documents in the administrative record file which do not form a basis for the selection of the response action. Such documents include but are not limited to draft documents, internal memoranda, and day-to-day notes of staff unless such documents contain information that forms the basis of selection of the response action and the information is not included in any other document in the administrative record file.

(c) *Privileged documents.* Privileged documents shall not be included in the record file except as provided in paragraph (d) of this section or where such privilege is waived. Privileged documents include but are not limited to documents subject to the attorney-client, attorney work product, deliberative process, or other applicable privilege.

(d) *Confidential file.* If information which forms the basis for the selection of a response action is included only in a document containing confidential or privileged information and is not otherwise available to the public, the information, to the extent feasible, shall be summarized in such a way as to make it disclosable and placed in the publicly available portion of the administrative record file. The

confidential or privileged document itself shall be placed in the confidential portion of the administrative record file. If information, such as confidential business information, cannot be summarized in a disclosable manner, the information shall be placed only in the confidential portion of the administrative record file. All documents contained in the confidential portion of the administrative record file shall be listed in the index to the file.

§ 300.815 Administrative record for a remedial action.

(a) The administrative record file for the selection of a remedial action shall be made available for public inspection at the commencement of the remedial investigation phase. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice of the availability of the files containing the administrative record.

(b) The lead agency shall provide a public comment period as specified in § 300.430(f) so that interested persons may submit comments on the selection of the remedial action for inclusion in the administrative record file. The lead agency is not required to respond to comments that were submitted prior to the public comment period. A written response to significant comments submitted during the public comment period shall be included in the administrative record file.

(c) The lead agency shall comply with the public participation procedures required in § 300.430(f) and shall document such compliance in the administrative record.

(d) Documents generated or received after the record of decision is signed shall be added to the administrative record file only as provided in § 300.825.

§ 300.820 Administrative record for a removal action.

(a) If, based on the site evaluation, the lead agency determines that a removal action is appropriate and that a planning period of at least six months exists before on-site removal activities must be initiated:

(1) The administrative record file shall be made available for public inspection when the engineering evaluation/cost analysis (EE/CA) is made available for public comment. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice of the availability of the file containing the administrative record.

(2) The lead agency shall provide a public comment period as specified in § 300.415 so that interested persons may submit comments on the selection of the removal action for inclusion in the administrative record file. The lead agency is not required to respond to comments that were submitted prior to the public comment period. A written response to significant comments submitted during the public comment period shall be included in the administrative record file.

(3) The lead agency shall comply with the public participation procedures of § 300.415(n) and shall document compliance with § 300.415(n)(3) (i) through (iii) in the administrative record file.

(4) Documents generated or received after the action memorandum is signed shall be added to the administrative record file only as provided in § 300.825.

(b) For all removal actions not included in paragraph (a) of this section:

(1) Documents included in the administrative record file shall be made available for public inspection no later than 60 days after initiation of on-site removal activity. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice of availability of the file containing the administrative record.

(2) The lead agency shall, as appropriate, provide a public comment period of not less than 30 days beginning at the time the administrative record is made available to the public. The lead agency is not required to respond to comments that were submitted prior to the public comment period. A written response to significant comments submitted during the public comment period shall be included in the administrative record file.

(3) Documents generated or received after the action memorandum is signed shall be added to the administrative record file only as provided in § 300.825.

§ 300.825 Record requirements after decision document is signed.

(a) The lead agency may add documents to the administrative record file after the decision document selecting the response action has been signed if:

(1) The documents concern a portion of a response action decision that the decision document does not address or reserves to be decided at a later date; or

(2) An explanation of significant differences required by § 300.435(c), or an amended decision document is issued, in which case, the explanation of significant differences or amended decision document and all documents that form the basis for the decision to modify the response action shall be added to the administrative record file.

(b) The lead agency may hold additional public comment periods or extend the time for the submission of public comment after a decision document has been signed on any issues concerning selection of the response action. Such comment shall be limited to the issues for which the lead agency has requested additional comment. All additional comments submitted during such comment periods that are responsive to the request, and any response to these comments, shall be placed in the administrative record file.

(c) The lead agency is required to consider comments submitted by interested persons after the close of the public comment period only to the extent that the comments contain significant information not contained elsewhere in the administrative record which could not have been submitted during the public comment period and which substantially support the need to significantly alter the response action. All such comments and any responses thereto shall be placed in the administrative record file.

Subpart J—Use of Dispersants and Other Chemicals

§ 300.900 General.

(a) Section 311(c)(2)(G) of the Clean Water Act requires that EPA prepare a schedule of dispersants and other chemicals, if any, that may be used in carrying out the NCP. This subpart makes provisions for such a schedule.

(b) This subpart applies to the navigable waters of the United States and adjoining shorelines, the waters of the contiguous zone, and the high seas beyond the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act, activities under the Deepwater Port Act of 1974, or activities that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States, including resources under the Magnuson Fishery Conservation and Management Act of 1976.

(c) This subpart applies to the use of any chemical agents or other additives as defined in Subpart A of this Part that may be used to remove or control oil discharges.

§ 300.905 NCP Product Schedule.

(a) *Oil Discharges.* (1) EPA shall maintain a schedule of dispersants and other chemical or biological products that may be authorized for use on oil discharges in accordance with the procedures set forth in § 300.910. This schedule, called the NCP Product Schedule, may be obtained from the Emergency Response Division (OS–210), U.S. Environmental Protection Agency,

Washington, DC 20460. The telephone number is 1–202–382–2190.

(2) Products may be added to the NCP Product Schedule by the process specified in § 300.920.

(b) [Reserved]

§ 300.910 Authorization of use.

(a) The OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the States with jurisdiction over the navigable waters threatened by the release or discharge and the DOC/DOI natural resource trustees, may authorize the use of dispersants, surface collecting agents, biological additives, or miscellaneous oil spill control agents on the oil discharge, provided that the dispersants, surface collecting agents, biological additives, or miscellaneous oil spill control agents are listed on the NCP Product Schedule.

(b) The OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the States with jurisdiction over the navigable waters threatened by the release or discharge and the DOC/DOI natural resources trustees, may authorize the use of burning agents on a case-by-case basis.

(c) The OSC may authorize the use of any dispersant, surface collecting agent, other chemical agent, burning agent, biological additive, or miscellaneous oil spill control agent, including products not listed on the NCP Product Schedule, without obtaining the concurrence of the EPA representative to the RRT, the RRT representatives from the States with jurisdiction over the navigable waters threatened by the release or discharge, or the DOC/DOI natural resource trustees when, in the judgment of the OSC, the use of the product is necessary to prevent or substantially reduce a hazard to human life. The OSC is to inform the EPA RRT representative and, as appropriate, the RRT representatives from the affected States and the DOC/DOI natural resource trustees of the use of a product as soon as possible and, pursuant to the provisions in paragraph (a) of this section, obtain their concurrence for its continued use once the threat to human life has subsided.

(d) Sinking agents shall not be authorized for application to oil discharges.

(e) RRTs shall, as appropriate, consider, as part of their planning activities, the appropriateness of using the dispersants, surface collecting agents, biological additives, or miscellaneous oil spill control agents listed on the NCP Product Schedule, and the appropriateness of using burning agents. Regional Contingency Plans (RCPs) shall, as appropriate, address the use of such products in specific contexts. If the RRT representatives from the States with jurisdiction over the waters of the area to which a RCP applies approve in advance the use of certain products as described in the RCP, the OSC may authorize the use of the products without obtaining the specific concurrences described in paragraph (a) of this section.

§ 300.915 Data requirements.

(a) *Dispersants.* (1) Name, brand, or trademark, if any, under which the dispersant is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

(4) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures, to include optimum ranges as well as temperatures that will cause phase separations, chemical changes, or other alterations to the effectiveness of the product.

(5) Shelf life.

(6) Recommended application procedures, concentrations, and conditions for use depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

(7) Dispersant Toxicity—Use standard toxicity test methods described in Appendix C to Part 300.

(8) Effectiveness—Use standard effectiveness test methods described in Appendix C to Part 300. Manufacturers are also encouraged to provide data on product performance under conditions other than those captured by these tests.

(9) Flash Point—Select appropriate method from the following: ASTM—D 56–82; ASTM—D 92–85; ASTM—D 93–85; ASTM—D 1310–86; ASTM—D 3278–80.[1]

(10) Pour Point—Use ASTM—D 97–85.[1]

(11) Viscosity—Use ASTM—D 445–86.[1]

(12) Specific Gravity—Use ASTM—D 1298–84.[1]

(13) pH—Use ASTM—D 1293–84.[1]

(14) Dispersing Agent Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages will include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: surface active agents, solvents, and additives.

(15) Heavy Metals, Cyanide, and Chlorinated Hydrocarbons. Using standard test procedures, state the concentrations or upper limits of the following materials:

(i) Arsenic, cadmium, chromium, copper, lead, mercury, nickel, zinc, plus any other metals that may be reasonably expected to be in the sample. Atomic absorption methods should be used and the detailed analytical methods and sample preparation shall be fully described.

(ii) Cyanide. Standard calorimetric procedures should be used.

(iii) Chlorinated hydrocarbons. Gas chromatography should be used and the detailed analytical methods and sample preparation shall be fully described.

(16) The technical product data submission shall include the identity of the laboratory that performed the required tests, the qualifications of the laboratory staff, including professional biographical information for individuals responsible for any tests, and laboratory experience with similar tests. Laboratories performing toxicity tests for dispersant toxicity must demonstrate previous toxicity test experience in order for their results to be accepted. It is the responsibility of the submitter to select competent analytical laboratories based on the guidelines contained herein. EPA reserves the right to refuse to accept a submission of technical product data because of lack of qualification of the analytical laboratory, significant variance between submitted data and any laboratory confirmation performed by EPA, or other circumstances that would result in inadequate or inaccurate information on the dispersing agent.

(b) *Surface Collecting Agents.* (1) Name, brand, or trademark, if any, under which the product is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

[1] 1988 Annual Book of ASTM Standards. American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103. This incorporation by reference has been submitted for approval by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the book may be obtained from the publisher. Copies may be inspected at the U.S. Environmental Protection Agency, 401 M St., S.W., Room LG, Washington, D.C., or at the Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

(4) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures, to include optimum ranges as well as temperatures that will cause phase separations, chemical changes, or other alterations to the effectiveness of the product.

(5) Shelf life.

(6) Recommended application procedures, concentrations, and conditions for use depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

(7) Toxicity—Use standard toxicity test methods described in Appendix C to Part 300.

(8) Flash Point—Select appropriate method from the following: ASTM—D 56–82; ASTM—D 92–85; ASTM—D 93–85; ASTM—D 1310–86; ASTM—D 3278–80.[1]

(9) Pour Point—Use ASTM—D 97–85.[1]

(10) Viscosity—Use ASTM—D 445–86.[1]

(11) Specific Gravity—Use ASTM—D 1298–84.[1]

(12) pH—Use ASTM—D 1293–84.[1]

(13) Test to Distinguish Between Surface Collecting Agents and Other Chemical Agents.

(i) Method Summary—Five milliliters of the chemical under test are mixed with 95 milliliters of distilled water and allowed to stand undisturbed for one hour. Then the volume of the upper phase is determined to the nearest one milliliter.

(ii) Apparatus.

(A) Mixing Cylinder: 100 milliliter subdivisions and fitted with a glass stopper.

(B) Pipettes: Volumetric pipette, 5.0 milliliter.

(C) Timers.

(iii) Procedure—Add 95 milliliters of distilled water at 22° C, plus or minus 3° C, to a 100 milliliter mixing cylinder. To the surface of the water in the mixing cylinder, add 5.0 milliliters of the chemical under test. Insert the stopper and invert the cylinder five times in ten seconds. Set upright for one hour at 22° C, plus or minus 3° C, and then measure the chemical layer at the surface of the water. If the major portion of the chemical added (75 percent) is at the water surface as a separate and easily distinguished layer, the product is a surface collecting agent.

(14) Surface Collecting Agent Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages should include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: surface action agents, solvents, and additives.

(15) Heavy Metals, Cyanide, and Chlorinated Hydrocarbons. Follow specifications in paragraph (a)(15) of this section.

(16) Analytical Laboratory Requirements for Technical Product Data. Follow specifications in paragraph (a)(16) of this section.

(c) *Biological Additives.* (1) Name, brand, or trademark, if any, under which the additive is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

(4) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures.

(5) Shelf life.

(6) Recommended application procedures, concentrations, and conditions for use, depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

(7) Statements and supporting data on the effectiveness of the additive, including degradation rates, and on the test conditions under which the effectiveness data were obtained.

(8) For microbiological cultures, furnish the following information:

(i) Listing of all microorganisms by species.

(ii) Percentage of each species in the composition of the additive.

(iii) Optimum pH, temperature, and salinity ranges for use of the additive, and maximum and minimum pH, temperature, and salinity levels above or below which the effectiveness of the additive is reduced to half its optimum capacity.

(iv) Special nutrient requirements, if any.

(v) Separate listing of the following, and test methods for such determinations: Salmonella, fecal coliform, Shigella, Staphylococcus Coagulase positive, and Beta Hemolytic Streptococci.

(9) For enzyme additives furnish the following information:

(i) Enzyme name(s).

(ii) International Union of Biochemistry (I.U.B.) number(s).

(iii) Source of the enzyme.

(iv) Units.

(v) Specific Activity.

(vi) Optimum pH, temperature, and salinity ranges for use of the additive, and maximum and minimum pH, temperature, and salinity levels above or below which the effectiveness of the additive is reduced to half its optimum capacity.

(vii) Enzyme shelf life.

(viii) Enzyme optimum storage conditions.

(10) Laboratory Requirements for Technical Product Data. Follow specifications in paragraph (a)(16) of this section.

(d) *Burning Agents.* EPA does not require technical product data submissions for burning agents and does not include burning agents on the NCP Product Schedule.

(e) *Miscellaneous Oil Spill Control Agents.* (1) Name, brand or trademark, if any, under which the miscellaneous oil spill control agent is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

(4) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures, to include optimum ranges as well as temperatures that will cause phase separations, chemical changes, or other alternatives to the effectiveness of the product.

(5) Shelf life.

(6) Recommended application procedures, concentrations, and conditions for use depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

(7) Toxicity—Use standard toxicity test methods described in Appendix C to Part 300.

(8) Flash Point—Select appropriate method from the following: ASTM—D 56–82; ASTM—D 92–85; ASTM—D 93–85; ASTM—D 1310–86; ASTM—D 3278–80.[1]

[1] 1988 Annual Book of ASTM Standards. American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103. This incorporation by reference has been submitted for approval by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the book may be obtained from the publisher. Copies may be inspected at the U.S. Environmental Protection Agency, 401 M St., S.W., Room LG, Washington, D.C., or at the Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

[1] 1988 Annual Book of ASTM Standards. American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103. This incorporation by reference has been submitted for approval by the Director of the Federal Register in

Continued

(9) Pour Point—Use ASTM—D 97–85.[1]
(10) Viscosity—Use ASTM—D 445–86.[1]
(11) Specific Gravity—Use ASTM—D 1298–84.[1]
(12) pH—Use ASTM—D 1293–84.[1]
(13) Miscellaneous Oil Spill Control Agent Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages should include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: surface active agents, solvents, and additives.
(14) Heavy Metals, Cyanide, and Chlorinated Hydrocarbons. Follow specifications in paragraph (a)(15) of this section.
(15) For any miscellaneous oil spill control agent that contains microbiological cultures or enzyme additives, furnish the information specified in paragraphs (c)(8) and (c)(9) of this section, as appropriate.
(16) Analytical Laboratory Requirements for Technical Product Data. Follow specifications in paragraph (a)(16) of this section.

§ 300.920 Addition of products to schedule.

(a) To add a dispersant, surface collecting agent, biological additive, or miscellaneous oil spill control agent to the NCP Product Schedule, the technical product data specified in § 300.915 must be submitted to the Emergency Response Division (OS–210), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. If EPA determines that the required data were submitted, EPA will add the product to the schedule.
(b) EPA will inform the submitter in writing, within 60 days of the receipt of technical product data, of its decision on adding the product to the schedule.
(c) The submitter may assert that certain information in the technical product data submissions is confidential business information. EPA will handle such claims pursuant to the provisions in 40 CFR Part 2, Subpart B. Such information must be submitted separately from non-confidential information, clearly identified, and clearly marked "Confidential Business Information." If the submitter fails to make such a claim at the time of submittal, EPA may make the information available to the public without further notice.
(d) The submitter must notify EPA of any changes in the composition, formulation, or application of the dispersant, surface collecting agent, biological additive, or miscellaneous oil spill control agent. On the basis of this data, EPA may require retesting of the product if the change is likely to affect the effectiveness or toxicity of the product.
(e) The listing of a product on the NCP Product Schedule does not constitute approval of the product. To avoid possible misinterpretation or misrepresentation, any label, advertisement, or technical literature that refers to the placement of the product on the NCP schedule must either reproduce in its entirety EPA's written statement that it will add the product to the NCP Product Schedule under § 300.920(b), or include the disclaimer shown below. If the disclaimer is used, it must be conspicuous and must be fully reproduced. Failure to comply with these restrictions or any other improper attempt to demonstrate the approval of the product by any NRT or other U.S. Government agency shall constitute grounds for removing the product from the NCP Product Schedule.

Disclaimer

[PRODUCT NAME] is on the U.S. Environmental Protection Agency's NCP Product Schedule. This listing does NOT mean that EPA approves, recommends, licenses, certifies, or authorizes the use of [product name] on an oil discharge. This listing means only that data have been submitted to EPA as required by Subpart J of the National Contingency Plan, § 300.915.

Subpart K—Federal Facilities [Reserved]

3. Units 1.0, 2.0, and 4.0 of Appendix C to Part 300 are amended by revising the first sentence of subunit 1.1, and subunits 2.5 (step 13), and 2.6 (steps 15 and 16) and IX, and adding reference 4 to the list of references to read as follows:

Appendix C to Part 300—Revised Standard Dispersant Effectiveness and Toxicity Tests

* * * * *

1.0 Introduction

1.1 *Scope and Application.* These methods apply to "dispersants" involving Subpart J (Use of Dispersants and Other Chemicals) in 40 CFR Part 300 (National Oil and Hazardous Substances Pollution Contingency Plan).

* * *

* * * * *

2.0 Revised Standard Dispersant Effectiveness Test

* * * * *

2.5 * * *

* * * * *

13. Spectrophotometrically determine the absorbance of the extract using the identical wavelength and cell used to calibrate the spectrophotometer. From the calibration curve, determine the concentration of oil in the chloroform.

Compute the concentration of oil in the sample as follows:

$$C_{do} = \frac{C_1 \text{ X (volume of chloroform used)}}{\text{(volume of sample)}} \quad (2)$$

where:

C_{do} is the concentration of dispersed oil in the sample and
C_1 is the measured concentration of oil in the chloroform extract.

Note that the standard sample volume is 500 ml and the volume of chloroform used should also be expressed in ml.

Repeat steps 1 through 13 at least three times for each of the three required volumes of dispersant.

2.6 * * *

* * * * *

15. Spectrophotometrically determine the absorbance of the extract using the identical wavelength and cell used to calibrate the spectrophotometer. From the calibration curve, determine the corresponding concentration of oil in the chloroform. Compute the dispersant blank correction for 25 ml of dispersant as follows:

$$D = \frac{C_2 \text{ X (volume of chloroform used)}}{\text{(volume of sample)}} \quad (3)$$

where:

D is the blank correction for 25 ml of dispersant, and
C_2 is the measured concentration of oil in the chloroform extract.

Note that the standard sample volume is 500 ml and the volume of chloroform used should also be expressed in ml.

The Dispersant Blank Correction (DBC) for other volumes of dispersant used in a test may then be computed as:

---

accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the book may be obtained from the publisher. Copies may be inspected at the U.S. Environmental Protection Agency, 401 M St., S.W., Room LG, Washington, D.C., or at the Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

$$DBC = \frac{D \times (\text{volume in ml of dispersants used})}{25\ ml} \quad (4)$$

16. Clean the test tank and prepare the synthetic seawater at 23±1°C as described in Step 1. Do not install the containment cylinder. Prepare 100 ml of test oil as described in Steps 4 and 5, and add it to the test tank. Continue the test procedures as described in Steps 8 through 13. The Oil Blank Correction (OBC) is:

$$OBC = \frac{C_1 \times (\text{volume of chloroform used})}{(\text{volume of sample})} \quad (5)$$

* * * * *

4.0 Summary Technical Product Test Data Format

* * * * *

IX. *Physical Properties of Dispersant/Surface Collecting Agent* (4):

1. Flash Point: (°F).
2. Pour Point: (°F).
3. Viscosity: —— at —— °F (centistokes).
4. Specific Gravity: —— at —— °F.
5. pH: (10 percent solution if hydrocarbon based).
6. Surface Active Agents (Dispersants).[1]
7. Solvents (Dispersants).[1]
8. Additives (Dispersants).
9. Solubility (Surface Collecting Agents).

* * * * *

4. Appendix D is being added to Part 300 to read as follows:

Appendix D to Part 300—Appropriate Actions and Methods of Remedying Releases

(a) This Appendix D to Part 300 describes types of remedial actions generally appropriate for specific situations commonly found at remedial sites and lists methods for remedying releases that may be considered by the lead agency to accomplish a particular response action. This list shall not be considered inclusive of all possible methods of remedying releases and does not limit the lead agency from selecting any other actions deemed necessary in response to any situation.

(b) In response to contaminated soil, sediment, or waste, the following types of response actions shall generally be considered: removal, treatment, or containment of the soil, sediment, or waste to reduce or eliminate the potential for hazardous substances or pollutants or contaminants to contaminate other media (ground water, surface water, or air) and to reduce or eliminate the potential for such substances to be inhaled, absorbed, or ingested.

(1) Techniques for removing contaminated soil, sediment, or waste include the following:

(i) Excavation.
(ii) Hydraulic dredging.
(iii) Mechanical dredging.

(2) Techniques for treating contaminated soil, sediment, or waste include the following:

(i) Biological methods, including the following:

(A) Treatment via modified conventional wastewater treatment techniques.
(B) Anaerobic, aerated, and facultative lagoons.
(C) Supported growth biological reactors.
(D) Microbial biodegradation.

(ii) Chemical methods, including the following:

(A) Chlorination.
(B) Precipitation, flocculation, sedimentation.
(C) Neutralization.
(D) Equalization.
(E) Chemical oxidation.

(iii) Physical methods, including the following:

(A) Air stripping.
(B) Carbon absorption.
(C) Ion exchange.
(D) Reverse osmosis.
(E) Permeable bed treatment.
(F) Wet air oxidation.
(G) Solidification.
(H) Encapsulation.
(I) Soil washing or flushing.
(J) Incineration.

(c) In response to contaminated ground water, the following types of response actions will generally be considered: elimination or containment of the contamination to prevent further contamination, treatment and/or removal of such ground water to reduce or eliminate the contamination, physical containment of such ground water to reduce or eliminate potential exposure to such contamination, and/or restrictions on use of the ground water to eliminate potential exposure to the contamination.

(1) Techniques that can be used to contain or restore contaminated ground water include the following:

(i) Impermeable barriers, including the following:

(A) Slurry walls.
(B) Grout curtains.
(C) Sheet pilings.

(ii) Permeable treatment beds.

(iii) Gound water pumping, including the following:

(A) Water table adjustment.
(B) Plume containment.

(iv) Leachate control, including the following:

(A) Subsurface drains.
(B) Drainage ditches.
(C) Liners.

(2) Techniques suitable for the control of contamination of water and sewer lines include the following:

(i) Grouting.
(ii) Pipe relining and sleeving.
(iii) Sewer relocation.

(d)(1) In response to contaminated surface water, the following types of response actions shall generally be considered: elimination or containment of the contamination to prevent further pollution, and/or treatment of the contaminated water to reduce or eliminate its hazard potential.

(2) Techniques that can be used to control or remediate surface water include the following:

(i) Surface seals.

(ii) Surface water diversions and collection systems, including the following:

(A) Dikes and berms.
(B) Ditches, diversions, waterways.
(C) Chutes and downpipes.
(D) Levees.
(E) Seepage basins and ditches.
(F) Sedimentation basins and ditches.
(G) Terraces and benches.

(iii) Grading.
(iv) Revegetation.

(e) In response to air emissions, the following techniques will be considered:

(1) Pipe vents.
(2) Trench vents.
(3) Gas barriers.
(4) Gas collection.
(5) Overpacking.
(6) Treatment for gaseous emissions, including the following:

(i) Vapor phase adsorption.
(ii) Thermal oxidation.

(f) Alternative water supplies can be provided in several ways, including the following:

(i) Individual treatment units.
(ii) Water distribution system.
(iii) New wells in a new location or deeper wells.
(iv) Cisterns.
(v) Bottled or treated water.
(vi) Upgraded treatment for existing distribution systems.

(g) Temporary or permanent relocation of residents, businesses, and community facilities may be provided where it is determined necessary to protect human health and the environment.

[1] If the submitter claims that the information presented under this subheading is confidential, this information should be submitted on a separate sheet of paper clearly labeled according to the subheading and entitled "Confidential Information."

[FR Doc. 88-26789 Filed 12-20-88; 8:45 am]
BILLING CODE 6560-50-M

federal register

Wednesday
December 21, 1988

Part VI

Department of Labor

Employment and Training Administration

Trade Adjustment Assistance for Workers: Supplemental Operating Instructions for Implementing the 1988 Amendments to Trade Adjustment Assistance for Workers Program; Notice of Change 1 to General Administration Letter No. 7-88

DEPARTMENT OF LABOR

Employment and Training Administration

Trade Adjustment Assistance for Workers: Supplemental Operating Instructions for Implementing The 1988 Amendments to Trade Adjustment Assistance for Workers Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Change 1 to General Administration Letter No. 7–88.

SUMMARY: The Department of Labor publishes with this notice Change 1 to General Administration Letter (GAL) No. 7–88, to inform the States and cooperating State agencies of the substantive changes in Change 1 to the operating instructions issued in GAL 7–88, which constitute supplemental operating instructions for implementing the 1988 Amendments to the Trade Adjustment Assistance for Workers Program.

FOR FURTHER INFORMATION CONTACT: Glenn M. Zech, Deputy Director, Office of Trade Adjustment Assistance. Telephone: (202) 376–2646; this is not a toll free telephone number.

SUPPLEMENTARY INFORMATION: On August 23, 1988, the President signed into law the "Omnibus Trade and Competitiveness Act of 1988." Part 3—Trade Adjustment Assistance, Subtitle D of Title I of the Act, concerns trade adjustment assistance for workers. On September 16, 1988, the Department published GAL 7–88, dated September 12, 1988, and the preamble thereto in the **Federal Register** (53 FR 36180–36212). In this Change 1 to GAL 7–88, the Department of Labor announces two substantive changes and one addition which are further operating instructions that supersede or supplement the operating instructions in GAL 7–88 to the extent that they are not consistent with those instructions.

For the reasons set out above, GAL No. 7–88, Change 1 is published below, together with Training and Employment Information Notice No. 6–88, Change 1.

Signed at Washington, DC, on December 12, 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

Directive: General Administration Letter No. 7–88, Change 1
To: All State Employment Security Agencies
From: Donald J. Kulick, Administrator for Regional Management

Subject: Supplemental Operating Instructions for Implementing the Amendments to the Trade Adjustment Assistance Program in the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Amendments)

1. *Purpose.* To inform the States and cooperating State agencies of substantive changes to the operating instructions issued in GAL 7–88, which constitute supplemental operating instructions for implementing the amendments to the Trade Adjustment Assistance Program in the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Amendments).

2. *References.* The Trade Act of 1974; Part 3 of Subtitle D of Title I of the Omnibus Trade and Competitiveness Act (OTCA) of 1988 (Pub. L. 100–418); regulations at 20 CFR Part 617; the proposed rule published at 53 FR 48474; GAL 7–88, and TEIN 6–88.

3. *Background.* General Administration Letter (GAL) No. 7–88 was issued to all State employment security agencies on September 12, 1988 and was published in the **Federal Register** on September 16, 1988 (53 FR 36180); TEIN 6–88 was published on the same date (53 FR 36213). The GAL and the preamble published in the **Federal Register** set forth operating instructions of the Department of Labor to guide States in implementing the provisions of the 1988 Amendments. The operating instructions were subsequently used by Employment and Training Administration staff in briefing and training sessions for State agency staffs in Washington, DC, Atlanta, GA, and San Francisco, CA.

GAL 7–88 provided that the operating instructions contained therein shall remain in effect until amended regulations are published or they are superseded or supplemented by further operating instructions. In this Change 1 to GAL 7–88 the Department announces two substantive changes and one addition which are further operating instructions that supersede or supplement the operating instructions in GAL 7–88, to the extent that they are not consistent with these instructions.

The operating instructions issued in GAL 7–88 and in this Change 1 to GAL 7–88 shall remain in effect until the amended regulations become effective or until superseded by further operating instructions.

4. *Changes to the Operating Instructions.* There are substantive changes in the operating instructions in GAL 7–88. These changes were influenced largely through questions and comments by State agency staffs at the three briefing and training sessions. These changes are all effective on the date of issuance of this Change 1.

- *Breaks in training.* Counting days in scheduled breaks in training for purposes of paying TRA is changed from the way it was presented in GAL 7–88. The revised method for counting days provides that the days within a break in a training program that shall be counted in determining the number of days of the break shall include all calendar days beginning with the first day of the break and ending with the last day of the break, as provided for in the published schedule of the training program, except that any Saturday or Sunday occurring during the scheduled break in training, on which training would not normally be scheduled in the training program if there were no break in training, shall not be counted in determining the number of days of the break.

- *Meaning of no suitable employment available (Criterion (A) of Section 236(a)(1)).* The meaning of criterion (A) is presented in GAL 7–88 as follows: "This means that for the worker for whom approval of training is being considered under section 236(a)(1) * * * there is no reasonable prospect of such suitable employment becoming available for the worker *within the next 30 days.*" (Underlining added for emphasis). The phrase "within the next 30 days" is deleted and the phrase "in the foreseeable future" is added. This change is made to make criterion (A) more flexible and also to make training inappropriate when it is reasonably foreseeable (even beyond 30 days) that a worker will be recalled by the former employer or other suitable job opportunities are expected to become available.

- *Waiver of participation in training requirement.* GAL 7–88 explained that the new subsection (c) in section 231 of the Trade Act provided for the issuance of a waiver by the State agency of the training requirement as a condition for receiving TRA upon a finding that training "is not feasible or appropriate." Subsection (c)(1)(B) of the Act also provides that when a State agency issues such a waiver to a worker, it is required to "submit to the Secretary a written statement certifying such finding and the reasons for such finding." In GAL 7–88 there is no listing of reasons why training may be considered not feasible or appropriate.

State agency representatives in the training session were informed that such a list of reasons would be included in the regulations. For purposes of recordkeeping and until amended regulations are published, the following list of reasons is being provided:

Not feasible because—

(A) The beginning date of approved training is beyond 30 days, as required in the definition for "Enrolled in training".

(B) Training is not reasonably available to the individual.

(C) Training is not available at a reasonable cost.

(D) Funds are not available to pay the total costs of training.

(E) Other (explain).

Not appropriate because—

(A) The firm from which the individual was separated plans to recall the individual within the reasonably foreseeable future (State agencies must verify planned recalls with the employer).

(B) The duration of training suitable for the individual exceeds the individual's maximum entitlement to basic and additional TRA payments.

(C) The individual possesses skills for "suitable employment" and there is reasonable expectation of employment in the foreseeable future.

(D) Other (explain).

Note: The proposed rule amending the regulations at 20 CFR Part 617, to implement the 1988 Amendments, was published in the **Federal Register** on November 30, 1988 at 53 FR 48474. The proposed rule is intended to be consistent in all substantive points with the operating instructions in GAL 7–88 and in this Change 1. The matters covered in this Change 1 may be found at §§ 617.15(d)(3), 617.22(a)(1)(ii), and 617.19(b)(2) of the proposed rule. On these and other matters, reference may be made to the proposed rule for any assistance that may be provided in understanding the operating instructions. Any comments submitted on the proposed rule, however, should reference the section and paragraph of the proposed rule on which the comment is made. Copies of the proposed rule are being provided to the States and cooperating State agencies under separate cover.

5. *Supplemental Operating Instructions.* The supplemental operating instructions in this Change 1 constitute controlling guidance for the States and the cooperating State agencies in implementing and administering the provisions of the 1988 Amendments pursuant to the agreements between the States and the Secretary of Labor under section 239 of the Trade Act of 1974. The provisions of 20 CFR 617.52(c) shall apply regarding the carrying out of the operating instructions in GAL 7–88, and in this Change 1 to GAL 7–88, and in any other subsequent or supplemental operating instructions.

6. *Action Required.* Inform appropriate staff:

- Of the substantive changes, in this Change 1, to operating instructions published in GAL 7–88.
- That the operating instructions in GAL 7–88 and in this Change 1 shall remain in effect until the amended regulations are published or until superseded or supplemented by further operating instructions.

7. *Inquiries.* State agencies are to direct all inquiries to the appropriate ETA Regional Office.

Training and Employment Information Notice No. 6–88, Change 1
To: All State JTPA Liaisons, State Wagner-Peyser Administering Agencies, Worker Adjustment Liaisons
From: Jones, Assistant Secretary of Labor
Subject: Supplemental Operating Instructions for Implementing the Amendments to the Trade Adjustment Assistance Program in the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Amendments)

1. *Purpose.* To inform the State JTPA Liaisons, State Wagner-Peyser Administering Agencies, and Worker Adjustment Liaisons of the publication of Change 1 to General Administration Letter (GAL) No. 7–88, informing States and cooperating State agencies of several substantive changes to the operating instructions issued in GAL 7–88.

2. *References.* The Trade Act of 1974; Part 3 of Subtitle D of Title I of the Omnibus Trade and Competitiveness Act (OTCA) of 1988 (Pub. L. 100–418); Regulations at 20 CFR Part 617; the proposed rule published at 53 FR 48474; GAL 7–88 and Change 1; and TEIN 6–88.

3. *Background.* Change 1 to General Administration Letter No. 7–88, dated December 9, 1988, was furnished to all State employment security agencies. Change 1 described several changes to the operating instructions in GAL 7–88, which were published in the **Federal Register** on September 16, 1988 (53 FR 36180–36212), and states that these changes supersede or supplement operating instructions issued in GAL 7–88 to the extent that they are not consistent with these operating instructions.

The supplemental operating instructions issued in Change 1 to GAL 7–88 shall also constitute controlling guidance for State JTPA and Wagner-Peyser Administering Agencies in administering the 1988 Amendments. GAL 7–88, and Change 1 to GAL 7–88, shall remain in effect until the amended regulations become effective or until superseded by further operating instructions.

The provisions of 20 CFR 617.52(c) shall apply regarding the carrying out of the operating instructions in GAL 7–88, in Change 1 to GAL 7–88, and in any other subsequent or supplemental operating instructions.

4. *Attachment.* General Administration Letter No. 7–88, Change 1.

[FR Doc. 88–29265 Filed 12–20–88; 8:45 am]
BILLING CODE 4510–30–M

federal register

Wednesday
December 21, 1988

Part VII

Department of the Interior

National Park Service

36 CFR Part 4
Vehicles and Traffic Safety; Proposed Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 4

Vehicles and Traffic Safety

AGENCY: National Park Service, Interior.
ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes to establish a mandatory seatbelt regulation that would apply to occupants of motor vehicles operated within units of the National Park System. This proposed rulemaking is issued in response to a specific provision in the Department of the Interior's 1989 Fiscal Year Appropriations Act that requires the NPS to issue such a rulemaking. Under current NPS regulations, the use of seatbelts by the public is required only in park areas that lie within states that have a mandatory seatbelt law in effect; the applicable state law is adopted and enforced by the NPS. The NPS now proposes to require the use of seatbelts by all front seat occupants of motor vehicles that are operated in park areas located within states that do not have a mandatory seatbelt law in effect. The NPS anticipates the effects of such a regulation to be mixed. A potential decrease in injuries and fatalities resulting from motor vehicle accidents would be an obvious benefit to the public. However, this rulemaking will create an inconsistency between traffic regulations that apply within some park areas and those that apply in the surrounding state(s), resulting in conflicts for motor vehicle operators and management and enforcement problems for the NPS.

DATES: Written comments will be accepted through February 21, 1989.

ADDRESS: Comments should be addressed to: Associate Director, Operations, National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

FOR FURTHER INFORMATION CONTACT: James Loach, National Park Service, Division of Ranger Activities, P.O. Box 37127, Washington, DC 20013–7127, Telephone: 202–343–4874.

SUPPLEMENTARY INFORMATION:

Background

The NPS administers 354 park areas throughout the country under the broad statutory mandates to promote and regulate their use; to conserve the scenery, the natural and cultural objects and the wildlife therein; and to provide for their enjoyment in such manner as will leave them unimpaired for the enjoyment of future generations. Facilities developed by the NPS in park areas, including roads, are limited to those necessary to carry out these legislative mandates and to support the purposes of the individual park areas as defined by Congress.

Although visitors to the National Park System use a variety of access methods, the vast majority continue to rely on motor vehicles and roadways to reach park areas and to circulate within them. Consequently, the NPS has major responsibilities and program involvement in the areas of road construction and maintenance, traffic safety and traffic law enforcement.

The NPS currently administers almost 8,000 miles of roads within the National Park System that are open to the public. There is great variety in the nature and extent of park roads, ranging from very short lengths of unpaved secondary roadways, to well-developed road systems complete with spur roads, parking areas and overlooks, to parkways running for hundreds of miles through several states, to parkways used primarily as commuter routes in the Washington, DC area. In addition, many park areas contain state and/or county highways and roads over which the NPS may exercise varying degrees of jurisdiction.

The following statistics provide an indication of the scope of NPS traffic safety and traffic law enforcement activities. In 1987 there were 287,200,000 visits recorded to the National Park System and approximately 2,600,000,000 vehicle-miles traveled on roads administered by the NPS. There were 9,358 traffic accidents reported that resulted in 70 fatalities, 1,979 personal injuries and $6.3 million in property damage. A total of 140,610 citations were issued by NPS law enforcement officers (Park, Rangers and U.S. Park Police) for traffic violations.

NPS general regulations pertaining to vehicles and traffic safety are codified in Title 36 of the Code of Federal Regulations (36 CFR) Part 4. These regulations apply to all units of the National Park System. They were revised extensively in 1987. The rulemaking that proposed those revisions in 1986 included a section that would have established a mandatory seatbelt regulation that applied throughout the National Park System (see 51 FR 21840). However, the NPS did not incorporate that provision in the final rule for reasons that were discussed in detail in that document (see 52 FR 10670). In general, those reasons included the following:

1. NPS regulations provide for adopting applicable state traffic law; state seatbelt laws that are in effect are adopted and enforced by the NPS in park areas.

2. The NPS believes that, in general, the respective states are the appropriate authorities to regulate traffic. In states in which there was no mandatory seatbelt law in effect, there was no greater need demonstrated for the use of restraint systems by vehicle occupants within park areas than existed outside parks.

3. The NPS seatbelt regulation as proposed would have created conflicts with state law in park areas located within states in which there was a mandatory seatbelt law in effect.

4. The NPS seatbelt regulation would have created management problems and public confusion in park areas located within states in which there was no seatbelt law in effect because park visitors would have been subject to a unique Federal regulation, with no similar requirement in effect on state highways outside the park. These problems would have been severe in park areas with multiple access roads or roads that wind in and out of park boundaries.

5. Comments received during the comment period, mostly from park managers and members of their staffs, opposed the promulgation of this particular regulation because of management and enforcement problems associated with it.

The NPS is again proposing a seatbelt regulation. The Department of the Interior and the NPS strongly support the use of appropriate restraint systems by vehicle occupants and view the potential reduction in personal injuries and fatalities that might result from the promulgation of this regulation as highly desirable. The benefits of wearing seatbelts have been documented extensively.

The basis for this proposal is a provision contained in the 1989 Department of the Interior Appropriations Act (Pub. L. 100–46; 9/27/88) which states as follows:

> For necessary expenses of the Office of the Secretary of the Interior, $49,067,000, of which not to exceed $10,000 may be for official reception and representation expenses: *Provided*, that the National Park Service shall reissue a Notice of Proposed Rulemaking on the mandatory use of seatbelts while traveling on National Park Service roads within 30 days after the date of enactment of this Act.

The Conference Report to accompany this Act (HR 100–862) provided additional guidance to the NPS as follows:

The amendment provides for a Notice of Proposed Rulemaking on seatbelt use on National Park Service roads instead of withholding 5 per centum of Office of the Secretary funds until final rules are issued. The Park Service should take special measures to solicit comments on proposed rules from appropriate State and Federal highway safety agencies as well as other interested health and safety organizations.

The proposed NPS seatbelt regulation requires that a motor vehicle operator and all front seat passengers be restrained by a properly fastened seatbelt while the motor vehicle is in motion. The burden of compliance is placed on the operator. The regulation prohibits operating a motor vehicle in motion unless restrained by a properly fastened safety belt and operating a motor vehicle in motion unless all front seat passengers are restrained by a properly fastened safety belt. Children, as defined by applicable state law, are required to be restrained in accordance with state law. A person who is convicted of violating this or any other NPS regulation promulgated under the authority of 16 U.S.C. 3 would be subject to a maximum penalty of a $500 fine, or six months imprisonment, or both.

According to figures provided by staff of the National Highway Traffic Safety Administration, all states have child restraint laws in effect; 31 states and the District of Columbia have mandatory seatbelt laws in effect. The seatbelt regulation proposed in this rulemaking is intended to apply only in park areas that are located within states that do not have some form of mandatory vehicle seatbelt law in effect. In states that do have a mandatory seatbelt law in effect, the NPS will continue to enforce the applicable state seatbelt law in park areas located within these states, regardless or whether the provisions of state law are identical to or different from the provisions of this proposed regulation. To do otherwise would create the potential for unnecessary conflicts with state law.

The proposed regulation would not apply to a motor vehicle operator or passenger who is occupying a seat that was not originally equipped with a seatbelt by the vehicle manufacturer, nor would it apply to a person with a medical condition that prevents restraint by a seatbelt.

The NPS intends that this regulation be enforced primarily through signing, text in brochures and incidental public contact, not through checkpoints or other enforcement contacts that are not initiated as a result of another violation.

The NPS estimates that this regulation could potentially affect approximately 100 park areas, or portions thereof, that are located within the following states: Alabama, Alaska, Arizona, Arkansas, Kentucky, Maine, Massachusetts, Mississippi, Nebraska, New Hampshire, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, West Virginia and Wyoming. Park areas located in the Virgin Islands would also be affected.

The question of the applicability and enforcement of the NPS seatbelt regulation is further complicated by the fact that many park areas contain state highways and county roads as well as roadways administered by the NPS. NPS traffic regulations apply on all roadways and parking areas within a park area that are open to public traffic and that are under the legislative jurisdiction of the United States. As an example of a confusing situation that could be created if the NPS seatbelt regulation is promulgated, a motor vehicle operator visiting a park area to which the regulation applies could be faced with a situation in which he or she is not subject to a seatbelt regulation on the state highway leading up to the park boundary, is then subject to a seatbelt regulation on roads administered by the NPS within the park, and then may or may not be subject to a seatbelt requirement on portions of state highways or county roads within the park, depending on the extent of jurisdiction over those roads that has been ceded to the NPS by the state. These problems are compounded in situations when state highways or county roads wind in and out of park boundaries. Inconsistencies between the traffic regulations that apply within park areas and in the surrounding state(s) create very undesirable situations for motor vehicle operators and obvious management and enforcement problems for NPS staff involved. The NPS believes that such situations should be avoided if at all practicable.

The existing strong support from the Department and the NPS for the wearing of seatbelts does not alter the basic position of the Department and the NPS that the respective states are the appropriate authorities to regulate traffic on roadways within units of the National Park System. The NPS believes that, to the extent practicable, motor vehicle operators should be subject to the same traffic laws and regulations while traveling on roadways in park areas as they are in the surrounding state(s); NPS traffic regulations should be limited to those that address problems or situations that are unique to park areas or that reflect a need to apply a consistent Servicewide regulatory approach.

The Department and the NPS welcome public comment to assist in resolving these apparently conflicting concerns. On one hand the Department and the NPS strongly support a public safety measure that has proven effective; on the other hand, the agencies have serious reservations about the proposed designation of the NPS as the appropriate authority to impose seatbelt requirements in situations in which states have elected not to impose such requirements.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this document to the address noted at the beginning of this rulemaking. The NPS specifically solicits comments from representatives of state and Federal highway safety agencies, traffic law enforcement agencies and other interested health and safety organizations.

Drafting Information

The primary author of this rulemaking is Andy Ringgold of the NPS Division of Ranger Activities, Washington, DC. The staff of the National Highway Traffic Safety Administration was consulted informally during the development of this rulemaking and provided valuable advice and assistance.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance with Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These findings are based on the fact that the overall economic effects of this rulemaking are negligible; it would impose no additional costs on any group or class of individuals. The NPS would incur costs associated with the installation of signs and the development of other public information programs in all affected park areas. These administrative costs could be significant in some park areas, depending on the road inventory and the number of access points.

The NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based in this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 4

National parks, traffic regulations.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 4—VEHICLES AND TRAFFIC SAFETY

1. The authority citation for Part 4 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. By adding a new § 4.15 to read as follows:

§ 4.15 Safety belts.

(a) This section applies only in park areas, or portions thereof, that are located within States in which there is no State law in effect that requires the mandatory use of vehicle safety belts.

(b) This section does not apply to an operator or a passenger of a motor vehicle occupying a seat that was not originally equipped by the manufacturer with a safety belt, nor does in apply to an operator or passenger with a medical condition that prevents restraint by a safety belt.

(c) The following are prohibited: (1) Operating a motor vehicle in forward motion unless the operator is restrained by a properly fastened safety belt. (2) Operating a motor vehicle in forward motion unless each front seat passenger is restrained by a properly fastened safety belt, except that children, as defined by State law, shall be restrained as provided by State law.

Date: December 6, 1988.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-29236 Filed 12-20-88; 8:45 am]

BILLING CODE 4310-70-M

federal register

Wednesday
December 21, 1989

Part VIII

Department of Education

34 CFR Part 212

Migrant Education Even Start; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 212

Migrant Education Even Start

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to issue regulations to govern the Migrant Education Even Start program, which was authorized by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, in amendments to the Elementary and Secondary Education Act of 1965. The regulations are proposed to be added to the Basic Even Start regulations, which were published in proposed form on October 25, 1988, in the **Federal Register** (53 FR 43178).

DATES: Comments must be received on or before February 21, 1989.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Dr. John F. Staehle, Director, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2145, FOB #6, Washington, DC, 20202–6135.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph P. Bertoglio, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2145, FOB #6, Washington, DC 20202–6135. Telephone No. (202) 732–4758.

SUPPLEMENTARY INFORMATION:

A. Background

The Even Start program grants funds to eligible local educational agencies (LEAs) and State educational agencies (SEAs) for the Federal share of the cost of providing family-centered education projects to help parents become full partners in the education of their children, to assist children in reaching their full potential as learners, and to provide literary training for their parents. On October 25, 1988, the Secretary published a notice of proposed rulemaking in the **Federal Register** (53 FR 43178) for the Even Start program operated by LEAs. Those proposed regulations, as currently written, would establish a new 34 CFR Part 212 to govern the basic Even Start program. However, as published, the proposed regulations contain no provision for the migrant education component authorized by section 1053(a) of the Elementary and Secondary Education Act of 1965 (ESEA). Therefore, the Secretary proposes to add a new Subpart F to Part 212 to implement the new Migrant Education Even Start program. These regulations are necessary because, in some respects, the proposed regulations governing the basic Even Start program are not compatible with the way the Migrant Education Even Start program should operate.

Sections 1051 through 1058 of Chapter 1 establish specific criteria for administration of the basic Even Start program. However, section 1053(a) delegates to the Secretary broad discretion to administer the migrant education component in a manner that is "consistent with the purpose of the" basic Even Start program.

There are two fundamental reasons why the two Even Start programs must operate somewhat differently. First, the basic Chapter 1 Migrant Education Program is administered by the SEAs, and the Migrant Education Even Start program is supplemental to the basic Migrant Education Program. Second, the Migrant Education Even Start program is intended to serve children and parents with very different characteristics from those served under the basic Even Start program. The migrant education component, like the basic Chapter 1 Migrant Education Program, is intended to meet the needs of children and parents who move from one school district to another during the calendar year to permit the parent, guardian, or other immediate family member to obtain temporary or seasonal agricultural or fishing work. The basic Even Start program addresses the needs of children and parents who generally reside permanently in one school district.

The proposed Subpart F reflects these differences in approach. While it incorporates for the Migrant Education Even Start program many of the proposed regulations governing the basic Even Start program, it includes certain modifications of those regulations that stem from fundamental differences in the ways the two programs will need to operate.

Section 212.56 would provide that the regulations in proposed § 212.5(a) apply to this program. For further information on appeals from adverse agency decisions to a new Office of Administrative Law Judges, refer to proposed regulations published on December 2, 1988, in the **Federal Register** (53 FR 48866).

B. Reservations of Funds

Set-aside of funds for Migrant Education Even Start Program. Section 1053(a) of the Act requires the Secretary to reserve three percent of the funds appropriated for the Even Start program for use by the Office of Migrant Education to conduct Even Start programs for migratory children. The Secretary interprets this provision as applying regardless of the level of the Even Start appropriation.

Set-aside of funds for evaluation. Section 1058 of the Act requires the Secretary to conduct an annual independent evaluation of Even Start programs and submit a report to Congress summarizing those evaluations. To conduct these evaluations, the Secretary intends to reserve annually not more than two percent of appropriated funds. The reserved amount would be used to evaluate the migrant education program as well as the basic statutory program.

C. Significant Provisions

Eligible grantees. Under the basic Even Start program, LEAs apply for funding on a competitive basis when appropriations are below $50 million. When appropriations equal or exceed $50 million, basic Even Start program funds are distributed on a formula basis to SEAs.

The Act does not specify which agencies are to be eligible grantees under the Migrant Education Even Start program. Proposed § 212.51 designates only SEAs or consortia of SEAs as eligible applicants and grantees and specifies that funding would be on a competitive grant basis, regardless of the size of appropriations. The Secretary believes this difference from the basic Even Start program is needed for several reasons. First, because of the transient nature of the population to be served, SEAs are better equipped than LEAs to undertake the inter- and intrastate coordination activities necessary for this program. Second, since SEAs are the grant recipients under the larger State-operated Chapter 1 Migrant Education Program and are responsible for administering migrant education programs operated by LEAs, designating SEAs as the eligible grantees will facilitate coordination between the two programs. Finally, the small scope of the Migrant Education Even Start program accentuates the importance of evaluation and dissemination of results so that other State and local agencies can benefit from the experience of

successful grantees. SEAs appear to be better suited than LEAs to perform these functions.

The small three percent set-aside by which the Migrant Education Even Start program is funded also compels maintaining awards on a competitive grant basis regardless of the size of the appropriation. If program funding were distributed on a formula basis, funds would be spread too thinly to support meaningful Even Start projects.

Eligible participants. Section 212.51 proposes to define children eligible to participate as only currently migratory children who are aged 1 through 7. The Secretary believes that limiting services to migrant children who have moved from one school district to another within the past year is necessary to ensure that services are provided to the children most in need.

Section 1055(2) of the Act defines eligible parents as those eligible for participation in an adult basic education program under the Adult Education Act. Section 312 of the Adult Education Act contains the definition of an eligible adult for participation in an adult education program. That definition is as follows:

(1) The term "adult" means an individual who has attained 16 years of age or who is beyond the age of compulsory school attendance under State law * * *.

(2) The term "adult education" means services or instruction below the college level for adults—

(A) who are not enrolled in secondary school;

(B) who lack sufficient mastery of basic educational skills to enable them to function effectively in society or who do not have a certificate of graduation from a school providing secondary education and who have not achieved an equivalent level of education;

(C) who are not currently required to be enrolled in school; and

(D) whose lack of mastery of basic skills results in an inability to speak, read, or write the English language which constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability, and thus are in need of programs to help eliminate such inability and raise the level of education of such individuals with a view to making them less likely to become dependent on others.

Selection criteria. In evaluating applications for Migrant Education Even Start program funds, the Secretary, under § 212.54, would use the selection criteria applicable to the basic Even Start program with only minor variations. Under the basic Even Start program, in proposed § 212.21(o), the Secretary would consider the "percentage of eligible children and parents to be served" relative to the number of children and parents who are not to receive Even Start project services. Because the Secretary proposes to have the migrant education component administered by SEAs on an interstate or intrastate basis in project areas the SEAs will select, and because the number of migrant children and parents residing in a project area may change significantly from year to year, this criterion would not be appropriate for the Migrant Education Even Start program. Therefore, the Secretary proposes that § 212.21(b) not apply to this program. Because of the importance that funded projects serve as models for use elsewhere, the Secretary also proposes, in § 212.54(b), to increase the number of points that can be awarded under the criterion in § 212.21(e) ("Promise as a model") from 15 to 20 to adjust for the inapplicability of the criterion in § 212.21(b).

Equitable distribution of assistance. Section 1057(c) of the Act requires the Secretary to ensure that funds are distributed on an equitable geographic basis. Under the basic Even Start program, the Secretary has proposed to implement this requirement by distributing projects among States and among urban and rural areas of a State and the Nation as a whole. Because the movement patterns of migrant children and their parents typically result in three major geographic streams (generally referred to as Eastern, Central, and Western), the Secretary proposes in § 212.55 to implement the requirement by distributing grants on the basis of these three streams and the States within those streams.

Continuation awards. Section 212.25 of the proposed basic Even Start program regulations establishes criteria for making continuation awards if appropriation levels are insufficient to fund all requests fully. The Secretary proposes in § 212.56(a) to apply these criteria, with needed modifications to reflect differences between the two programs, to new awards under the Migrant Education Even Start program.

Other changes from proposed requirements for the basic Even Start program. Under section 1057(b) of the Act and § 212.20 of the proposed basic Even Start program regulations, the Secretary would establish a formal review panel of experts to evaluate each application. Given the small amount of funds available and the State focus of the migrant component, the Secretary believes that this review panel is not appropriate for the Migrant Even Start program, and proposes that § 212.20 not apply.

In addition, § 212.11 of the proposed basic Even Start regulations would establish a requirement for open meetings with members of the public and consideration of public comment before an LEA submits an application to the Secretary for a new grant. The provision derives from former section 1006 of the Elementary and Secondary Education Act (20 U.S.C. 3386), which affects only submission of applications prepared by LEAs. Therefore, the Secretary has determined that proposed § 212.11 should not apply to the Migrant Education Even Start program since applicants under this program would be limited to SEAs or a consortium of SEAs.

D. Contents of Application

Sections 1054 (b) and (c) and 1056 (b) and (c) of the Act contain the content of applications to be submitted under the basic Even Start program. The preamble to the basic Even Start program regulations, published in the **Federal Register** on October 25, 1988, at 53 FR 43178, enumerated the required content of program applications. Except for the LEA open meeting certification discussed in Part C of the Supplementary Information section of this preamble, the Secretary interprets these statutory provisions as also applicable to applications for grants under the Migrant Even Start program. The Secretary expects to prepare an application form that will identify the required information.

The applicable statutory provisions include the Federal share limitation in section 1054(c), which requires grantees to contribute, over time, increasing levels of program support out of non-Federal sources. Under proposed § 212.53(a), the Secretary would only consider applications that demonstrate an applicant's ability to meet this requirement. The non-Federal contribution may include both monetary and in-kind support. Therefore, while the Migrant Education Even Start program is to be administered by SEAs rather than LEAs, the Secretary believes that in working with LEAs to operate projects SEAs can appropriately meet responsibilities to provide the requisite State or local contribution.

Executive Order 12606

The Secretary certifies that these proposed regulations have been reviewed in accordance with the Executive Order 12606 and that they do not have a significant negative impact on family formation, maintenance, and

general well-being. To the contrary, the Even Start program has the potential of providing significant advantages to the family. In funding family-centered education projects, the program may help the family perform its educational function, strengthen the stability of the family, and strengthen the role of the parents in the education of their children.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Because the Secretary proposes to make competitive direct grants only to SEAs or consortia of SEAs, the proposed regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Section 212.54 contains information collections requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review.

(44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Federal Office Building 6, Room 2145, 400 Maryland Avenue, SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 212

Children, Coordination, Education, Evaluation, Family, Migratory children, Reporting and recordkeeping requirements, State educational agencies, Subgrants.

Dated: November 22, 1988.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.214—Migrant Education Even Start)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Subpart F to Part 212 to read as follows:

PART 212—EVEN START

* * * * *

Subpart F—Migrant Education Even Start

Sec.

Authority: 20 U.S.C. 2741–2749, 2831, unless otherwise noted.

* * * * *

Subpart F—Migrant Education Even Start

§ 212.50 What is the Migrant Education Even Start program?

(a) The Migrant Education Even Start program supports grants to eligible SEAs for the cost of providing family-centered education projects to help parents of currently migratory children (as defined in 34 CFR 201.3) become full partners in the education of their children, to assist currently migratory children in reaching their full potential as learners, and to provide literacy training for their parents.

(b) The Secretary makes grants for family-centered education projects that provide services on an intrastate or interstate basis, and that includes all of the program elements required by section 1054(b) of the Act.

(Authority: 20 U.S.C. 2741, 2743, 2831)

§ 212.51 Who is eligible for a grant?

An applicant under section 1053(a) of the Act is eligible to receive a grant under the Migrant Education Even Start program if it is an SEA or a consortium of SEAs.

(Authority: 20 U.S.C. 2743, 2831)

§ 212.52 Who may be served?

Persons to be served by a project under this subpart are—

(a) A parent of a child described in paragraph (b) of this section, if the parent is eligible for participation in an adult basic education program under the Adult Education Act, 20 U.S.C. 1201(a)(1) and (2); and

(b) A currently migratory child, aged 1 to 7 inclusive, as defined in 34 CFR 201.3.

(Authority: 20 U.S.C. 2743, 2745, 2831)

§ 212.53 How does the Secretary evaluate an application for a new grant?

(a) The Secretary evaluates an application for a new grant that—

(1) Meets the purposes of the Migrant Education Even Start program as provided in § 212.50 on the basis of the procedure described in § 212.54; and

(2) Adequately demonstrates the applicant's ability to provide the additional funding required by section 1054(c) of the Act.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum number of points for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1070d–2 (a) and (e), 2743)

§ 212.54 What selection criteria does the Secretary use in making new grants?

The Secretary uses the criteria in § 212.21, when evaluating an application, except that—

(a) In each place the term "LEA" appears, the term is considered to mean "SEA";

(b) The criterion in § 212.21(b) (Percentage of eligible children and parents to be served) does not apply; and

(c) The maximum number of points possible under the criterion in § 212.21(e) (Promise as a model) is 20.

(Authority: 20 U.S.C. 2743, 2831)

§ 212.55 What additional factors does the Secretary consider in making new grants?

(a) In addition to applying the criteria in §§ 212.21 and 212.54, the Secretary ensures that—

(1) Grants are made to projects that ensure coordination and cooperation between States (or areas of a State) in which participating children and parents reside during the year; and

(2) To the extent possible, grants are distributed equitably among the States in the three migrant streams, as defined in paragraph (c) of this section.

(b) In order to meet the requirements of paragraph (a)(2) of this section, the Secretary—

(1) Separates applications into three groups representing the three migrant streams; and

(2) First awards a grant to the applicant in each stream that is ranked the highest as a result of the process in § 212.53, provided that there is an acceptable application from an SEA or consortium of SEAs in that stream.

(c) For the purposes of this section, the States comprising each stream are the following:

Eastern Stream—

Alabama
Connecticut
Delaware
Florida
Georgia
Kentucky
Maine
Maryland
Massachusetts
Mississippi
New Hampshire
New Jersey
New York
North Carolina
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
Tennessee
Vermont
Virginia
West Virginia
District of Columbia

Central Stream—

Arkansas
Illinois
Indiana
Iowa
Kansas
Louisiana
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Ohio
Oklahoma
South Dakota
Texas
Wisconsin

Western Stream—

Alaska
Arizona
California
Colorado
Idaho
Montana
Nevada
New Mexico
Oregon
Utah
Washington
Wyoming
Mariana Islands

(Authority: 20 U.S.C. 2743, 2831)

§ 212.56 What other provisions in this part apply?

(a) In addition to the provisions in this subpart, the following provisions in this part apply to the Migrant Education Even Start program:

(1) § 212.3.
(2) § 212.4.
(3) § 212.5(a).
(4) § 212.6.
(5) § 212.25, except the references in paragraphs (c) and (d) to § 212.21 and § 212.22(a) are read to refer to § 212.54 and § 212.55 respectively.
(6) 212.26.

(b) In each place the term "LEA" appears in § 212.4 or § 212.26, the term is considered to mean "SEA."

[FR Doc. 88-29269 Filed 12-20-88; 8:45 am]
BILLING CODE 4000-01-M

Reader Aids

Federal Register

Vol. 53, No. 245

Wednesday, December 21, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

618.....50381
620.....50381
701.....50918
741.....50918
Proposed Rules:
205.....48914
225.....48915
226.....48925

13 CFR

302.....50206
309.....50207, 51236
314.....51237
Proposed Rules:
124.....48550
129.....49675

14 CFR

21.....48520, 49297, 49851, 50157
23.....49297, 49851
36.....50157, 51087
39.....48521, 49547, 49548, 49853, 49854, 49978, 50511, 50920, 51094, 51095
43.....50190
47.....50208
61.....49979
63.....49979
65.....49979
71.....48897, 49549, 49638, 49824, 50494
75.....50921
91.....50190, 50208
97.....48522, 50513
121.....49522, 49979
127.....49522
135.....49378, 49522, 49979
145.....49378, 49522
298.....48524
316.....51237
Proposed Rules:
Ch. I.....50973
39.....48929, 49554–49559, 49677, 49678, 49891 50544, 50545
61.....49072
71.....48930, 48931, 49679, 50421, 50974
141.....49072
143.....49072
398.....50233

15 CFR

799.....48529
Proposed Rules:
771.....49202
774.....49202
776.....48932, 49327
786.....49202

16 CFR

13.....48530–48532, 51096 51241, 51242
Proposed Rules:
13.....49329
453.....48550

17 CFR

15.....50922
Proposed Rules:
229.....49997
230.....50038
240.....49997
249.....49997
270.....49997
274.....49997

18 CFR

2.....50924
154.....49659
157.....49659
284.....49659, 50925
385.....50943

19 CFR

Ch. I.....51244
122.....51271
177.....49117
210.....49118
Proposed Rules:
24.....49207
101.....49891
152.....49825
213.....51281

20 CFR

404.....51097
416.....51097
501.....49491
639.....48884, 49076

21 CFR

14.....49550, 50948, 50949
73.....49823
74.....49138
172.....49638, 51272
173.....49823
176.....50210, 50950
178.....49550
201.....49138
510.....49823, 50514
520.....48532, 48634, 49823, 51273
522.....49823
524.....49823
546.....49823
555.....49823
558.....48533, 50400
882.....48618
Proposed Rules:
130.....51062
182.....51065
184.....51065

22 CFR

41.....50161
43.....49979
510.....50514
Proposed Rules:
41.....48652
210.....51032
211.....51044

23 CFR

658.....48634

24 CFR

201.....48636, 49855
203.....49855
234.....48636, 49855
511.....49138
596.....48638
885.....49139
888.....49828
4100.....50952

26 CFR

1.....48533, 48639, 49873
14a.....48639
602.....48533
Proposed Rules:
1.....49208, 49893–49895
301.....50243
602.....49208, 49894, 49895

28 CFR

2.....49653
44.....49638

29 CFR

1910.....49981, 50198
2610.....50401
2619.....49140
2621.....50402
2676.....50403
Proposed Rules:
1926.....50038

30 CFR

780.....48614, 50491
784.....48614, 50491
816.....48614, 50491
817.....48614, 50491
915.....49656
942.....49104
Proposed Rules:
56.....48934
57.....48934
206.....50422
906.....50244
931.....49561, 50245
934.....50246
936.....50247
938.....50424

31 CFR

515.....50491
Proposed Rules:
103.....48551, 49378, 50039

32 CFR

65.....48898
68.....49981
199.....50515
536.....49298
537.....48899
706.....49318, 49319, 51097
809d.....49320

33 CFR

110.....50403
117.....48904, 48905, 49982, 51098
165.....48906, 48907
Proposed Rules:
110.....48935
117.....51125
151.....49016
165.....48653, 49562
334.....50623

34 CFR

74.....49141
75.....49141
76.....49141
80.....49141
100.....49141
200.....49141
222.....49141
241.....49141
251.....49141
253.....49141
254.....49141
255.....49141
256.....49141
257.....49141
258.....49141
263.....49141
298.....49141
300.....49141
302.....49141
307.....49141
309.....49141
315.....49141
324.....49141, 49966
326.....49141
338.....49141
361.....49141
366.....49141
367.....49141
369.....49141
370.....49141
385.....49141
386.....49141
387.....49141
388.....49141
389.....49141
390.....49141
396.....49141
538.....49141
600.....49141
607.....49141
624.....49141
626.....49141
628.....49141
637.....49141
639.....49141
643.....49141
644.....49141
649.....49141
650.....49141
653.....49141
656.....49141
657.....49141
668.....49141
674.....49141
675.....49141
676.....49141
682.....49141
690.....49141
745.....49141
755.....49141
762.....49141
769.....49141
776.....49141
777.....49141
778.....49141
779.....49141
787.....49141
790.....49141
Proposed Rules:
81.....48866
203.....48856
208.....49280
212.....51530

36 CFR

1270.....50404
Proposed Rules:
4.....51526
1234.....48936

37 CFR

304.....48534
Proposed Rules:
1.....49637
2.....49637

38 CFR

2.....49879

4.....50955
14.....49879
21.....48549, 50520, 50955

Proposed Rules:
3.....48551, 50547

39 CFR

111.....49657, 49880
265.....49983
3001.....48641

Proposed Rules:
3001.....48654, 49968

40 CFR

52.....48535, 48537, 48539, 48642, 48643, 49881 50521, 50958
60.....49822, 50354, 50524
61.....50524
62.....49881
81.....50211, 50213
271.....50529
280.....51273
281.....51273
716.....49966
796.....49148, 51099
797.....51099
798.....49148, 51099
799.....48542, 48645, 49966

Proposed Rules:
Ch. I.....48939
51.....48552
52.....48552, 48554, 48654, 48939, 48942, 49209, 49494, 49680, 50257, 50425, 50975
61.....50428
81.....50428
122.....49416
123.....49416
124.....49416
177.....50157
179.....50157
180.....50258–50262
228.....50977
261.....48655, 49680, 50040 50550
300.....48661, 51390, 51394
372.....49688
435.....48947
504.....49416
795.....49822
799.....49822

41 CFR

101–40.....50157

Proposed Rules:
201–45.....48947

42 CFR

57.....49690, 49824, 50407
59.....49320
74.....48645
405.....48645
441.....48645

Proposed Rules:
57.....49690

43 CFR

4.....49658
426.....50530
3160.....49661
3480.....49984
3830.....49664
3850.....49664
3860.....49664

Public Land Orders:
4.....48648
960 (Revoked by PLO 6690).....49151
3830.....48876
3850.....48876
3860.....48876
5550 (Revoked in part by PLO 6692).....49551
5566 (Amended in part by PLO 6692).....49551
6690.....49151
6691.....49664
6692.....49551
6693.....49664

Proposed Rules:
2200.....49824
4100.....49564

44 CFR

64.....49883, 50409, 51274
67.....51100

Proposed Rules:
67.....50491

45 CFR

4.....49551
1356.....50215

Proposed Rules:
1304.....49565
1306.....49565
1385.....49332
1386.....49332
1387.....49332
1388.....49332
1609.....50982

46 CFR

Proposed Rules:
30.....49018
56.....48557
150.....49018
151.....49018
153.....49018
161.....48558
164.....48557
390.....49895
572.....49210, 50264
585.....49574
587.....49574
588.....49574

47 CFR

22.....48909
32.....49320
43.....49986
73.....48648, 48649, 49322, 49323, 49637, 49987–49989 50537
80.....48650

Proposed Rules:
1.....50045
36.....49575
73.....48663, 48664, 49335, 49336, 49693, 50046 50556
76.....49336

48 CFR

204.....50410
213.....50410
215.....50410
217.....50410
219.....50410
225.....50410
227.....50410
235.....50410
237.....50410
242.....49822
245.....50410
252.....50410
253.....50410
270.....50410
Ch. 2, App. T.....50410
501.....51107
519.....48910
522.....51107
552.....48910, 51077
553.....51107
701.....50630
702.....50630
728.....50630
731.....50630
733.....50630
736.....50630
742.....50630
752.....50630
753.....50630
Ch 7, App. B.....50630
Ch 7, App. D.....50630
Ch 7, App. J.....50630
852.....48615
927.....51277
1804.....51340
1807.....51340
1808.....51340
1809.....51340
1810.....51340
1812.....51340
1813.....51340
1814.....51340
1815.....51340
1816.....51340
1817.....51340
1819.....51340
1823.....51340
1825.....51340
1827.....51340
1828.....51340
1833.....51340
1836.....51340
1837.....51340
1842.....51340
1848.....51340
1852.....51340
2801.....49665
2804.....49665
2806.....49665
2845.....49665
2852.....49665

Proposed Rules:
28.....48614
203.....49694
219.....49577
226.....49577
252.....49212, 49577, 49694
1837.....50047

49 CFR

89.....51237
92.....51279
225.....48547
385.....50961
386.....50961
393.....49380
396.....49402, 49968
571.....49989, 50221
840.....49151
1011.....49323
1140.....49989
1152.....49666

Proposed Rules:
Ch. II.....49336
173.....49895
209.....49695
225.....48560
571.....50047, 50429
1056.....50270

50 CFR

216.....50420
642.....49325, 51280
652.....50970
658.....49992
675.....49552, 49994

Proposed Rules:
270.....51284

LIST OF PUBLIC LAWS

Note: The list of public laws enacted during the second session of the 100th Congress has been completed.

Last List November 30, 1988

The list will be resumed when bills are enacted into public law during the first session of the 101st Congress, which convenes on January 3, 1989. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 193 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued. Or, the previous year's full set may be purchased at a reduced price and mailed as a single shipment.

Microfiche Subscription Prices:

Federal Register:

One year: $195
Six months: $97.50

Code of Federal Regulations:

Current year (as issued): $185

Previous year's full set: $115
(single shipment)

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
*** 6462**

Charge your order. It's easy! MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

24x MICROFICHE FORMAT:

____ **Federal Register:** ____ One year as issued: $195 ____ Six months: $97.50

____ **Code of Federal Regulations:** ____ Current year: $185 ____ Previous year's full set: $115 (single shipment)

1. The total cost of my order is $_____ . All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371 (Rev. 10-1-88)