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Presidential Documents

Title 3—

The President

Proclamation 5924 of December 21, 1988

To Complete Implementation of the United States-European Community Agreement on Citrus and Pasta, and for Other Purposes

By the President of the United States of America

A Proclamation

1. On February 24, 1987, the United States and the European Community (EC) signed an agreement resolving the long-standing dispute concerning access to the EC market for U.S. citrus products. The EC agreed to reduce certain duties on specified imported products, in certain cases subject to a tariff rate quota. The United States agreed to reduce duties on particular products and further agreed to eliminate the increased rates of duty on EC pasta established by Proclamation 5354 of June 21, 1985 (50 FR 26143).

2. Section 1122(b)(1) of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) (Pub. L. 100–418, 102 Stat. 1144) authorizes the President to proclaim an effective date after September 30, 1988, for the duty reductions set out in section 1122(c) of the 1988 Act that is appropriate to carry out the Agreement. Further, section 1122(b)(2) of the 1988 Act authorizes the President at any time to modify or terminate by proclamation any provision of law enacted by the amendments made by section 1122(c) of the 1988 Act.

3. Sections 9001 and 9004 of the Technical and Miscellaneous Revenue Act of 1988 (the TMRA) (Pub. L. 100–647, 102 Stat. 3342) make various amendments, including the extension of certain existing suspensions of duty and duty reductions, to the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). Certain amendments to the TSUS made by the TMRA, which became effective on November 10, 1988, extend through December 31, 1992, and must therefore be incorporated into the Harmonized Tariff Schedule of the United States (HTS) in order to continue such duty treatment after January 1, 1989. Further, certain technical corrections to particular HTS provisions are necessary to correctly state the tariff treatment of the covered articles.

4. Pursuant to section 4(a) of the United States-Israel Free Trade Area Implementation Act of 1985 (the 1985 Act) (19 U.S.C. 2112 note; Pub. L. 99–47, 99 Stat. 82), the President is authorized to proclaim such modifications or continuance of any existing duty, such continuance of existing duty-free or excise treatment, or such additional duties as he determines to be required or appropriate to carry out the schedule of duty reductions with respect to Israel set forth in Annex I of the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel, entered into on April 22, 1985, and approved on June 11, 1985. Section 4(b) of the 1985 Act authorizes the President, whenever he determines it necessary to maintain the general level of reciprocal and mutually advantageous concessions provided with respect to Israel provided for by the Agreement, to proclaim such additional tariff modifications, including the withdrawal, suspension, modification, or continuance of any duty, as he determines to be required or appropriate to carry out the Agreement.

5. Section 604 of the Trade Act of 1974 (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the provisions of that Act, of other acts affecting import treatment, and of actions taken thereunder. Section 1204(b) of the 1988 Act (19 U.S.C. 3004(b)) directs the President to proclaim

such modifications to the HTS as are necessary or appropriate to implement the applicable provisions of statutes enacted and Executive actions taken after January 1, 1988, and before the effective date of the HTS, and such technical rectifications as he considers necessary.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and statutes of the United States, including but not limited to sections 1122 and 1204 of the 1988 Act, sections 9001 and 9004 of the TMRA, section 4 of the 1985 Act, section 604 of the Trade Act, and sections 301 and 302 of title 3 of the United States Code, do proclaim that:

(1) In order to complete implementation of the United States-EC Agreement on Citrus and Pasta, the HTS is modified as provided in Annex I to this Proclamation.

(2) In order to incorporate in the HTS the changes in tariff treatment enacted in the TMRA and to make certain technical rectifications, the HTS is further modified as set forth in Annex II to this Proclamation.

(3) The duty provided for in section 466 of the Tariff Act of 1930 shall not be imposed on equipments, or any part thereof, including boats, the foregoing which are the product of Israel, or on the expenses of repairs made in Israel upon U.S.-documented vessels (other than U.S. civil aircraft, as defined in general note 3(c)(iv) to the HTS).

(4) Subject to paragraph (5), the modifications to the HTS made by this Proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1989.

(5) The United States Trade Representative (USTR) may delay the effective date of any modification to the HTS set out in Annex I to this Proclamation, or may suspend any such modification that may have taken effect, if the USTR determines that the EC has not implemented provisions of the Agreement.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of December, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

Billing code 3195-01-M

ANNEX I

MODIFICATIONS TO THE HTS TO IMPLEMENT
THE U.S.-EC AGREEMENT ON CITRUS AND PASTA

Notes:

1. Bracketed matter is included with particular subheadings to assist in the understanding of proclaimed modifications.

2. The following supersedes matter now in the Harmonized Tariff Schedule of the United States (HTS). Except where specified rates of duty are being modified for particular subheadings, the headings and subheadings are set forth in columnar form; and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively.

Effective as to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1989.

1. Subheading 0406.90.50 is modified by striking out "9%" and inserting in lieu thereof "Free".

2. Subheading 0406.90.55 is modified by striking out "12%" and inserting in lieu thereof "Free".

3. Chapter 7 is modified by inserting at the end of the Additional U.S. Notes the following new note 5:

"5. The rates of duty set forth in subheadings 0711.20.15 and 2005.70.13 apply to the first 4,400 metric tons of olives, green in color, not pitted, in a saline solution, in containers each holding more than 8 kg, drained weight, certified by the importer to be used for repacking or sale as green olives, the foregoing entered under both subheadings combined in any calendar year."

4. Subheading 0711.20.20 is superseded by:

[0711	:Vegetables . . .:]	:	:	:
[0711.20	: Olives:]	:	:	:
	: "Not pitted:	:	:	:
0711.20.15	: Described in additional	:	:	:
	: U.S. note 5 to this	:	:	:
	: chapter.....	:3.7¢/kg	:Free (E)	:7.4¢/kg
	:	: on	:	: on
	:	: drained	:	: drained
	:	: weight	:	: weight
0711,20.25	: Other.....	:7.4¢/kg	:Free (E)	:7.4¢/kg
	:	: on	:	: on
	:	: drained	:	: drained
	:	: weight	:	: weight"

5. The rates of duty in column 1-general and in column 2 for subheading 0711.20.40 are stricken and the rate "10.8¢/kg on drained weight" is inserted in both columns.

6. Subheading 0711.30.00 is modified by striking out "16%" and inserting in lieu thereof "8%".

Annex I (con.)

7. Subheading 0712.90.15 is modified by striking out the column 1-general duty rate of "11¢/kg" and inserting in lieu thereof "5.5¢/kg".

8. Subheading 0904.20.20 is modified by striking out "4.4¢/kg" and inserting in lieu thereof "3¢/kg".

9. Subheadings 1509.10.20, 1509.90.20 and 1510.00.40 are each modified by striking out "8.4¢/kg on contents and container" and inserting in lieu thereof "5¢/kg on contents and container".

10. Subheadings 1509.10.40, 1509.90.40 and 1510.00.60 are each modified by striking out "5.7¢/kg" and inserting in lieu thereof "3.4¢/kg".

11. Subheading 1604.16.20 is superseded by:

[1604	Prepared . . .]			
	[Fish, . . .]			
[1604.16	Anchovies:]			
	"In oil, in airtight containers:			
1604.16.10	For an aggregate quantity entered in any calendar year not to exceed 3,000 metric tons.....	3%	Free (A, E,IL)	30%
1604.16.30	Other.....	6%	Free (A, E,IL)	30%"

12. Chapter 20 is modified by inserting at the end of the Additional U.S. Notes the following new note 4:

"4. The rates of duty set forth in subheadings 0711.20.15 and 2005.70.13 apply to the first 4,400 metric tons of olives, green in color, not pitted, in a saline solution, in containers each holding more than 8 kg, drained weight, certified by the importer to be used for repacking or sale as green olives, the foregoing entered under both subheadings combined in any calendar year."

13. Subheadings 2001.90.10 and 2001.90.20 are each modified by striking out "16%" and inserting in lieu thereof "8%".

Annex I (con.)

14. Subheadings 2005.70.10 through 2005.70.80, inclusive, are superseded by:

[2005	:Other . . .:	:	:	:
[2005.70	: Olives:]	:	:	:
	: [In . . .:]	:	:	:
	: [Green . . .:]	:	:	:
	: "Not pitted:	:	:	:
2005.70.11	: Ripe, in containers	:	:	:
	: each holding less	:	:	:
	: than 13 kg,	:	:	:
	: drained weight, in	:	:	:
	: an aggregate quan-	:	:	:
	: tity not to exceed	:	:	:
	: 730 metric tons	:	:	:
	: entered in any	:	:	:
	: calendar year.....	:5.4¢/kg	:Free (E)	:7.4¢/kg
	:	: on	:	: on
	:	: drained	:	: drained
	:	: weight	:	: weight
	: Other:	:	:	:
2005.70.13	: Described in	:	:	:
	: additional U.S.	:	:	:
	: note 4 to this	:	:	:
	: chapter.....	:3.7¢/kg	:Free (E)	:7.4¢/kg
	:	: on	:	: on
	:	: drained	:	: drained
	:	: weight	:	: weight
2005.70.15	: Other.....	:7.4¢/kg	:Free (E)	:7.4¢/kg
	:	: on	:	: on
	:	: drained	:	: drained
	:	: weight	:	: weight
	: Pitted or	:	:	:
	: stuffed:	:	:	:
	: Place packed:	:	:	:
2005.70.21	: Stuffed, in	:	:	:
	: containers each	:	:	:
	: holding not more	:	:	:
	: than 1 kg,	:	:	:
	: drained weight,	:	:	:
	: in an aggregate	:	:	:
	: quantity not to	:	:	:
	: exceed 2,700	:	:	:
	: metric tons in	:	:	:
	: any calendar	:	:	:
	: year.....	:5.4¢/kg	:Free (E)	:10.8¢/
	:	: on	:	: kg on
	:	: drained	:	: drained
	:	: weight	:	: weight
2005.70.22	: Other.....	:10.8¢/	:Free (E)	:10.8¢/
	:	: kg on	:	: kg on
	:	: drained	:	: drained
	:	: weight	:	: weight
2005.70.25	: Other.....	:10.8¢/	:Free (E)	:10.8¢/
	:	: kg on	:	: kg on
	:	: drained	:	: drained
	:	: weight	:	: weight

Annex I (con.)

	[Other . . .: (con.)]			
	[Olives : (con.)]			
	[In . . .: (con.)]			
	Not green in color:			
	Canned:			
2005.70.50	Not pitted.....	11.6¢/ kg on drained weight	Free (E)	11.6¢/ kg on drained weight
2005.70.60	Other.....	11.9¢/ kg on drained weight	Free (E)	11.9¢/ kg on drained weight
	Other than canned:			
2005.70.70	In airtight containers of glass or metal.....	11.6¢/ kg on drained weight	Free (E)	11.6¢/ kg on drained weight
2005.70.75	Other.....	5¢/kg on drained weight	Free (E)	10¢/kg on drained weight
	Otherwise prepared or preserved:			
2005.70.81	Green, in containers each holding less than 13 kg, drained weight, in an aggregate quantity not to exceed 550 metric tons in any calendar year.....	5.5¢/kg on drained weight	Free (E)	11¢/kg on drained weight
2005.70.83	Other.....	11¢/kg on drained weight	Free (E)	11¢/kg on drained weight"

15. Subheading 2008.30.50 is superseded by:

[2008	Fruit, . . .:]			
[2008.30	Citrus . . .:]			
	[Other:]			
	[Mandarins . . .:]			
	"Mandarins:			
2008.30.52	Satsumas, in airtight containers, for an aggregate quantity entered in any calendar year not to exceed 40,000 metric tons.	Free		2.2¢/kg
2008.30.54	Other.....	0.44¢/kg	Free (A, E,IL)	2.2¢/kg"

Annex I (con.)

16. Subheading 2206.00.15 is modified by striking out "0.8¢/liter" and inserting in lieu thereof "0.4¢/liter".

17. Subheadings 9903.19.10 and 9903.19.90 and their superior description are deleted.

18. U.S. note 6 to subchapter III of chapter 99 is modified by striking out "subheadings 9903.19.10 and 9903.19.90,".

ANNEX II

TECHNICAL MODIFICATIONS TO THE
HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Note:

The following subheadings, article descriptions, rates of duty, and effective periods supersede matter now in the Harmonized Tariff Schedule of the United States (HTS). The material set forth below is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", "Rates of Duty 2", or "Effective Period", as appropriate.

1. Additional U.S. Note 1 to chapter 17 is modified by striking out "Commission for Methods" and inserting "Commission for Uniform Methods" in lieu thereof.

2. Subheading 6103.29.10 is modified by striking out "artifical" and inserting "artificial" in lieu thereof.

3. Subheadings 9902.26.22, 9902.29.16, 9902.29.18, 9902.29.19, 9902.78.01, and 9902.84.49 are each modified by striking out "12/31/88" and inserting "12/31/92" in lieu thereof.

4. Subheading 9902.29.17 is modified by striking out "Potassium salts: (Antimony tartrate (tartar emetic)" and "12/31/88" and inserting "Potassium antimony tartrate (Tartar emetic)" and "12/31/92" in lieu thereof in the Article Description and Effective Period columns, respectively.

5. Subheading 9902.70.12 is modified by striking out "Free (A,E) 3.6% (IL)" and inserting "No change" in lieu thereof in the Rates of Duty 1-Special subcolumn.

6. Subchapter II of chapter 99 is modified by adding in numerical sequence the following new U.S. Note:

"9. The 'Effective Period' for subheading 9902.30.02 is:

On or before the earlier of 12/31/92 or the date (as determined by the U.S. Trade Representative) on which the rate of duty imposed by the European Communities on articles described in subheading 2939.30.00 exceeds the rate of duty imposed by the United States on such articles that was in effect on 6/30/88."

Annex II (con.)

7. Subchapter II of chapter 99 is further modified by adding in numerical sequence the following new provisions:

"9902.07.04	Brussels sprouts, fresh, chilled, or frozen, but not reduced in size and not otherwise prepared or preserved (provided for in subheading 0704.20.00 or 0710.80.65).....	12.5%	No change	No change	On or before 12/31/92
9902.29.89	4-Chloro-3-methylphenol (CAS No. 59-50-7) (provided for in subheading 2908.10.50).....	Free	No change	No change	On or before 12/31/92
9902.29.90	3,5,6-Trichlorosalicylic acid (provided for in subheading 2918.29.50).....	Free	No change	Free	On or before 12/31/92
9902.29.91	4,4'-Bis(α,α-dimethylbenzyl)diphenylamine (provided for in subheading 2921.44.50).....	Free	No change	No change	On or before 12/31/92
9902.29.92	m-Xylenediamine (provided for in subheading 2921.59.50).	Free	No change	No change	On or before 12/31/92
9902.29.93	1,3-Bis(aminomethyl)cyclohexane (provided for in subheading 2921.30.20).....	Free	No change	No change	On or before 12/31/92
9902.29.94	m-Aminophenol (provided for in for in subheading 2922.29.10).	Free	No change	Free change	On or before 12/31/92
9902.29.95	Clomiphene citrate (provided for in subheading 2922.50.25).	Free	No change	No change	On or before 12/31/92
9902.29.96	Dicyclomine hydrochloride (provided for in subheading 2922.19.50).....	Free	No change	No change	On or before 12/31/92
9902.29.97	N-Acetylsulfanilyl chloride (provided for in subheading 2924.29.13).....	Free	No change	Free change	On or before 12/31/92

Annex II (con.)

9902.29.98	Amiodarone (provided for in subheading 2932.90.41)	Free	No change	No change	On or before 12/31/92
9902.29.99	Terfenadine; mepenzolate bromide (provided for in subheading 2933.39.35)	Free	No change	No change	On or before 12/31/92
9902.30.00	Desipramine hydrochloride (provided for in subheading 2933.90.33)	Free	No change	No change	On or before 12/31/92
9902.30.01	(6R,7R)-7-[(R)-2-Amino-2-phenylacetamido]-3-methyl-8-oxo-5-thia-1-azabicyclo[4.2.0]oct-2-ene-2-carboxylic acid disolvate (provided for in subheading 2934.90.40)	Free	No change	No change	On or before 12/31/92
9902.30.02	Caffeine (provided for in subheading 2939.30.00)	4.1%	No change	No change	See U.S. note 8 to this subchapter
9902.30.03	Lactulose (provided for in subheading 2940.00.00)	Free	No change	No change	On or before 12/31/92
9902.30.06	Rifampin (provided for in subheading 2941.90.30)	Free	No change	No change	On or before 12/31/92
9902.39.07	Allyl resins, uncompounded (provided for in subheading 3907.91.10)	Free	No change	No change	On or before 12/31/92
9902.71.04	Tool blanks and drill blanks, of industrial diamonds (provided for in subheading 7104.90.50 or heading 8207)	Free	No change	30%	On or before 12/31/92"

8. Subheading 9902.29.11 is modified by striking out "2909.49.50" and by inserting in lieu thereof "2909.19.50".

9. Subheading 9902.38.07 is modified by striking out "3808.20.10" and by inserting in lieu thereof "3808.90.10".

Annex II (con.)

10. Subheading 9902.40.11 is modified by striking out "4011.40.00" and by inserting in lieu thereof "4011.50.00".

11. The indented superior description to subheadings 9903.28.05 through 9903.28.25 is modified by striking out "2825.90.50" and by inserting in lieu thereof "2825.90.60".

12. Subheadings 9903.41.20 and 9903.41.25 are each modified by striking out the words "million bits" and by inserting in lieu thereof "megabits".

13. Chapter 75 of the HTS is modified by striking out heading number "7508" and by inserting in lieu thereof "7508.00".

14. Chapter 85 of the HTS is modified by inserting "8527.90" in the column entitled "Heading/Subheading" immediately above the subheading number "8527.90.40".

15. Subheadings 9901.00.50 and 9903.28.01 are each modified by inserting "(A,E,IL)" immediately after "No change" in the "Special" subcolumn of rate of duty column 1.

16. Subheadings 9903.17.05 through 9903.17.30, inclusive, are each modified by inserting "thousand" between the number and the unit of quantity in the quota quantity column.

17. Subheading 9903.87.00 is modified by adding "(B,E,IL)" immediately after "No change" in the "Special" subcolumn of rate of duty column 1.

18. Subheading 9903.17.30 is modified by striking out "2204.21.20,".

19. Subheading 9902.40.11 is modified by striking out "4011.40.00" and substituting "4011.50.00" in lieu thereof.

20. General note 3(c)(ii)(A) to the HTS is modified by inserting in alphabetical sequence in the enumeration of independent countries "Bahamas, The"; by striking out "Bermuda" from the enumeration of non-independent countries and territories; and by striking out "Singapore" from the enumeration of the member countries of the Association of South East Asian Nations (ASEAN).

[FR Doc. 88-29685
Filed 12-22-88; 9:56 am]
Billing code 3190-01-C

Presidential Documents

Proclamation 5925 of December 21, 1988

To Modify the Import Relief on Western Red Cedar Shakes and Shingles

By the President of the United States of America

A Proclamation

1. In Proclamation 5498 of June 6, 1986 (51 FR 20953), pursuant to sections 202 and 203 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2252 and 2253), I proclaimed import relief with respect to wood shingles and shakes, provided for in item 200.85 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). This relief took the form of a temporary duty increase for such shingles and shakes of western red cedar entered, or withdrawn from warehouse for consumption, during the period June 7, 1986, through June 6, 1991. On May 23, 1986, I directed that the United States International Trade Commission (USITC) be requested to advise me of the probable economic effect on the domestic industry of the termination of import relief after 30 months and that the Secretaries of Commerce and Labor be requested to provide advice regarding termination of relief. The Secretaries of Commerce and Labor have duly provided this advice.

2. On October 6, 1988, the USITC reported to me the results of an investigation (Inv. No. TA–203–18) pursuant to section 203(i) of the Trade Act (19 U.S.C. 2253(i)) with respect to the probable economic effect on the domestic industry of the termination of the import relief after 30 months. The USITC was equally divided on the question of whether the continuation of import relief would result in positive adjustments that would enhance the competitiveness of the domestic industry. On the basis of the advice that I have received, I have determined that the industry has undertaken positive adjustment efforts to improve competitiveness during the 30-month period of relief. However, the additional duties have burdened consumers and have encouraged substitution of alternative non-wood roofing materials.

3. On the basis of the information and advice received from the USITC and the Secretaries of Commerce and Labor, I have determined that recent market trends have impaired the effectiveness of import relief provided to the domestic industry. Accordingly, I have determined that it is in the national interest to accelerate the reduction of import duties.

4. Section 604 of the Trade Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the TSUS the substance of the provisions of that Act, of other acts affecting import treatment, and of actions taken thereunder. Further, section 1204 of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) (19 U.S.C. 3004) authorizes the President to proclaim such modifications to the Harmonized Tariff Schedule of the United States (HTS) as are necessary or appropriate to implement the applicable provisions of statutes enacted, Executive actions taken, and final judicial decisions rendered, after January 1, 1988, and before the effective date of the HTS.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and statutes of the United States, including but not limited to sections 204 and 604 of the Trade Act and section 1204 of the 1988 Act, do proclaim that:

(1) Part 2A of the Appendix to the TSUS is modified as provided in section (a) of the Annex to this Proclamation.

(2) Chapter 99 of the HTS is modified as provided in section (b) of the Annex to this Proclamation.

(3) (a) The modifications to the TSUS made by this Proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of publication of this Proclamation in the Federal Register.

(b) The modifications to the HTS made by this Proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1989.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of December, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

Billing code 3195-01-M

ANNEX

MODIFICATIONS TO THE IMPORT RELIEF
ON WESTERN RED CEDAR SHAKES AND SHINGLES

Notes:

1. Bracketed matter is included to assist in the understanding of the proclaimed modifications.

2. The provisions of Section A of this Annex supersede matter now in the Tariff Schedules of the United States (TSUS). The items and superior description are set forth in columnar format, and material in such columns is inserted in the columns of the TSUS designated "Item", "Articles", "Rates of Duty 1", and "Rates of Duty 2", respectively. The provisions of Section B of this Annex supersede matter now in the Harmonized Tariff Schedule of the United States (HTS). The subheadings and superior description are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", and "Rates of Duty 2", respectively.

Section A

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after December 7, 1988, part 2A of the Appendix is modified by striking out items 924.31 and 924.32 and by inserting in lieu thereof the following:

	[Wood...]			
"924.33	If entered during the period from December 7, 1988, through December 6, 1989, inclusive.....	20% ad val.		20% ad val.
924.34	If entered during the period from December 7, 1989, through December 6, 1990, inclusive.....	10% ad val.		10% ad val.
924.35	If entered during the period from December 7, 1990, through June 6, 1991, inclusive.....	5% ad val.		5% ad val."

Section B

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1989, subchapter III of chapter 99 of the HTS is modified by striking out subheadings 9903.44.20 and 9903.44.30 and by inserting in lieu thereof the following:

	[Wood...]			
"9903.44.24	If entered during the period from December 7, 1988, through December 6, 1989, inclusive.....	20%		20%
9903.44.28	If entered during the period from December 7, 1989, through December 6, 1990, inclusive.....	10%		10%
9903.44.32	If entered during the period from December 7, 1990, through June 6, 1991, inclusive.....	5%		5%"

[FR Doc. 88-29686
Filed 12-22-88; 9:57 am]
Billing code 3190-01-C

Rules and Regulations

Federal Register
Vol. 53, No. 247
Friday, December 23, 1988

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program; Letter of Credit Arrangements for Carrier Reserves

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing regulations to require the use of letter of credit (LOC) arrangements for Federal Employees Health Benefits Program (FEHBP) payments to certain experience-rated carriers. The regulation will enhance OPM's financial management of the FEHB Program without altering the basic OPM/carrier financial relationships which currently exist.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 632–4634.

SUPPLEMENTARY INFORMATION: On September 6, 1988, OPM published proposed regulations to require the use of letter of credit (LOC) arrangements for FEHB Program payments to certain experience-rated carriers. The regulation implements the United States Department of the Treasury regulation at 31 CFR Part 205, which requires the use of the LOC method for Federal program agencies having a continuing relationship with a contractor involving annual payments of at least $120,000.

OPM received comments from one Federal agency, seven FEHB Program health benefits carriers, and two underwriters of FEHB Program plans. The respondents were generally supportive of OPM's efforts to improve the financial management of the FEHB Program. However, most of the carriers and underwriters were uncertain about the effect of the LOC procedures on their operations. The majority of the comments fall into two categories: (1) Belief that a LOC arrangement will not yield the investment income that can be earned through the carrier's own investment of its FEHB funds; and (2) procedural questions involving the mechanics of the LOC transfer. A summary of the comments and OPM's response follows.

Five carriers and one underwriter asserted that a LOC arrangement would cause a significant loss of investment income. A decrease in investment income could possibly impact on the rate-setting process of individual plans. OPM does not dispute the claim that carriers may be able to invest in individual securities which potentially may earn more interest than the U.S. securities in which OPM is restricted by law to invest. This is a fact of the marketplace where higher risk securities require a higher interest rate to attract investors. OPM does not agree, however, that this marketplace phenomenon will necessarily translate into higher net return on investment for the FEHB Program. Carriers currently incur administrative costs with regard to FEHB investments and, due to increased risks, sometimes suffer losses which would not be applicable to the LOC process. Also, a number of carriers do not credit the FEHB Program with the actual interest earned on individual securities but, rather, use allocation formulas which do not necessarily result in greater net returns on investments to the FEHB Program than Treasury investment rates. In addition, the potential loss of investment income and, hence, any potential impact on premium is insignificant considering that total investment income earned by the carriers was less than 1 per cent of subscription income for 1987 (1987 Financial Statements for the FEHB Program reflect total interest income of $41,100,137 and subscription income of $6,488,274,986 for experience-rated carriers). Therefore, OPM believes that the overall financial benefit to the FEHB Program and the Government from the LOC arrangement is far greater than the insignificant potential loss of investment income. Three commenters expressed concern that additional administrative costs associated with the LOC procedures, such as additional bank service charges and expenses related to an increased clerical workload in mailing daily vouchers, would be charged back to the Program, causing a rise in premiums. OPM is aware that some additional costs may be incurred. Nevertheless, OPM believes that there will be an overall financial benefit to the FEHB Program and the Government from the LOC arrangement.

One respondent took exception to OPM's assertion that Part 205 of Title 31, Code of Federal Regulations, should be applied to FEHB contracts. These regulations require the use of a letter of credit arrangement for contracts involving annual advances aggregating at least $120,000. As the government agency with primary responsibility for administering letters of credit for financing operations under Federal programs, the Department of the Treasury has reviewed and approved the use of the LOC payment method for the FEHB Program. In the absence of a Department of the Treasury ruling to the contrary, OPM will comply with the regulatory requirements in Part 205 of Title 31, CFR.

The same respondent is concerned with the way State regulatory requirements, specifically the requirement that all of an insurer's assets be available for the payment of all of its liabilities, will interface with a letter of credit arrangement. The LOC payment method does not prohibit the carrier's FEHB Program assets from being used for the payment of all of its liabilities. That restriction is based in the FEHB law under which the carrier has operated for over 25 years. Section 8909, title 5, United States Code, has always required that FEHB funds be used solely for Program purposes. From this standpoint, there should be no difference in the treatment of assets historically employed by the carrier and the treatment of assets under the LOC payment arrangements.

The respondent is further concerned about the characterization of the LOC funds as an "asset." The carrier contends that the LOC funds are nonadmitted assets. That is, they are not sufficiently free to be recognized as an admitted asset by State Insurance Departments. In general, assets are nonadmitted due to either an uncertainty as to their collectibility or an insufficient basis for determining their valuation. An asset in the form of a LOC is an admitted asset because there

is no uncertainty as to its collectibility, nor is there an insufficient basis for determining its valuation. Section 205.5, Title 31, Code of Federal Regulations, states that a "letter of credit is irrevocable (the equivalent of cash available to the recipient organization) to the extent the recipient organization has obligated funds in good faith thereunder in executing the authorized Federal program in accordance with the grant, contract, or other agreement." Since the funds in the LOC account will be reported as an account receivable by the carrier and can be withdrawn when Program expenses are paid, OPM believes that the funds are admitted assets in accordance with statutory insurance accounting principles.

Eight respondents raised questions pertaining to procedures which were not covered by the proposed regulations. OPM intentionally omitted detailed procedural instructions from the proposed regulations to allow for maximum flexibility in adapting the procedures to the varied needs of the individual FEHBP carriers. The final regulation continues to reflect this philosophy. Detailed procedures are more appropriately reserved for operational guidelines which are being provided to the carriers. The questions are responded to in this Supplementary Information as follows:

(1) *Carrier/underwriter accessibility to the LOC account.* The Department of the Treasury will establish a LOC in the name of each carrier. The carrier must select one financial institution for purposes of processing requests for funds and funds transfers for both parties. The carrier and underwriter, or their designated officials, may have access to the account. Because the Department of the Treasury limits the number of drawdowns from a LOC account to one per day, the carrier and underwriter should agree upon the timing and method of requesting their respective drawdowns.

(2) *Presentation of the voucher to the carrier's bank.* The standard Treasury procedure for requesting funds requires the recipient organization (carrier) to present an SF 5805, Request for Funds, to its financial institution for review. However, at its option, the financial institution may establish an alternative procedure for accepting and validating the request-for-funds information in lieu of physical receipt of the SF 5805. The procedure established shall be mutually agreed upon by the carrier and its financial institution. The financial institution shall, in such case, be responsible for ensuring the validity of the request for funds. When an alternative procedure has been established for accepting and validating the request for funds, the SF 5805 will not be used. However, the agreed upon alternative should leave a clear audit trail of the request-for-funds transactions.

(3) *Method of drawdown (i.e., checks paid versus delay of drawdown).* The final regulations allow the carrier to select either the checks paid or the delay of drawdown technique, or both, for withdrawal of funds from the LOC account. Under the checks paid technique, the drawdown on the letter of credit is delayed until the checks issued for FEHB Program disbursements are presented to the carrier's bank for payment. Under the delay of drawdown technique, the drawdown on the letter of credit is delayed until after checks issued by the carrier or underwriter for FEHB Program disbursements have been forwarded to the payees. Some carriers may find the checks paid technique administratively easier, while others will prefer the delay of drawdown technique because the float inherent in this method affords a greater amount of working capital. Carriers may combine the two methods if they find, for example, that the checks paid technique is more appropriate for claims expenses and the delay of drawdown technique is preferable for administrative expenses.

(4) *Date for incurring expenses.* This comment concerned drawdowns from the LOC account for administrative expenses in order to avoid premature withdrawals. OPM will not establish set time frames for allocation of administrative expenses. However, drawdowns must be consistent with the drawdown technique(s) selected.

(5) *Contingency reserve payments if a plan terminates in a deficit position.* The LOC arrangement does not alter any contractual arrangements or change any rights of the carrier to the contingency reserve. All contingency reserve payments will be made available to the LOC account and the carrier and underwriter will have access to this amount to pay claims and other expenses in accordance with the drawdown procedures.

(6) *Indemnity plan reinsurance.* The respondent is concerned that there will be changes in financing as a result of the LOC arrangement which could significantly effect its reinsurers' irrevocable decisions to contract with the carrier for contract year 1989. OPM continues to assert that the basic financial relationships that currently exist in the FEHB Program will not be changed as a result of the LOC arrangement, nor will the financial makeup of the Program be changed.

(7) *Non-commingling of working capital.* The amount of working capital that may be kept outside the LOC account should be a minimal amount (less than one day's working capital). In cases where an underwriter provides services for more than one FEHB plan, monies held outside the LOC account must not be commingled.

(8) *Reports to the carrier of OPM transactions.* OPM will notify plans of the amount to be made available in the LOC account via a Payment Advice. The Payment Advice has been revised to include the balance in the LOC account.

(9) *Carrier reporting requirements.* OPM has not implemented any new reporting requirements. However, carriers may be required to provide detailed cashflow worksheets along with their annual accounting statements to support drawdown transactions.

Several respondents requested that OPM increase the amount of cash held outside the LOC account. The carriers and underwriters are concerned that a delay in receipt of available funds following claims payment will result in increased financial risk. OPM does not believe that there will be an increase in financial risk due to the limitation on working capital. Carriers may minimize the impact of the reduction in working capital by selecting the delay of drawdown technique for withdrawal of funds from the LOC account. The delay of drawdown technique allows carriers to hold the monies withdrawn after checks are forwarded to payees in a separate interest-bearing account outside of LOC until the checks are presented for payment.

Three respondents requested an exemption from the letter of credit arrangement for certain plans. OPM opposes blanket exemptions from the LOC regulations. However, in response to concerns that the change in the method of FEHB financing was proposed subsequent to agreements made in good faith between carriers and their underwriters and reinsurers, we have added a provision to the final regulations which authorizes OPM to grant exceptions to the effective date of the LOC regulations. An exception to the effective date under this provision would be authorized under very limited circumstances and would be granted only if a carrier could demonstrate in writing that its business would be adversely affected as a result of the January 1, 1989, implementation of the LOC regulations.

Several respondents commented on the early effective date of the

regulations and a possible inability to prepare administratively for the change in financing method. Although the effective date is January 1, the first LOC premium payment for contract year 1989 will not be issued until the fourth Thursday in February. This delay should give the carriers and underwriters sufficient time to adjust their administrative procedures to accommodate the letter of credit arrangement. One carrier suggested a one-year delay in effective date so that its deficit could be recovered through the existing operation of its plan. OPM does not believe this request is valid; moreover, there is no guarantee that the deficit of the plan, or that of any other plan, would be recovered in the 1989 contract year.

Two changes have been made to the regulations to clarify that only one drawdown may be made on the LOC account per day and that the drawdown must be presented to the Treasury by the carrier's financial institution not later than 1:00 p.m. eastern time.

Two respondents believe that OPM is discriminating against experience-rated plans because the LOC regulations require crediting of interest on the LOC account at Treasury security rates—a rate below the competitive market rate, while community-rated plans can continue to invest at higher rates of interest. The purpose of the LOC arrangement is to improve the Government's financial management of the Program and not to discriminate against experience-rated carriers. Since the reserves held by experience-rated carriers ultimately belong to the FEHB Program (in cases where experience-rated carriers discontinue participation in the FEHB Program, all claims are paid and the remaining reserves are returned to OPM), and excess amounts over claims expense of community-rated carriers do not, community-rated carriers were excluded from the LOC arrangement.

Final regulations amending 48 CFR Chapter 16 to conform to the LOC payment arrangement for FEHB Program contracts are published elsewhere in this issue of the **Federal Register.**

Waiver of the 30-day Delay in Effective Date of Final Regulation

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The regulation is effective January 1, 1989, so that it will be applicable to contracts covering calendar year 1989. While the regulation is effective beginning with the first day of the 1989 contract year, for practical purposes, the first premium payment affected by the LOC regulation will not be made until the fourth Thursday in February.

E.O. 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 this regulation will not have a significant economic impact on a substantial number of small entities because the regulation does not change the amount of money credited to the carriers and the carriers will continue to have full and immediate access to their Treasury LOC account.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management.

Hugh Hewitt,

Deputy Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104; § 890.803 also issued under sec. 303 of Pub. L. 99–569, 100 State. 3190, sec. 188 of Pub. L. 100–204, 101 Stat. 1331, and sec. 204 of Pub. L. 100–238, 101 Stat. 1744.

2. In § 890.101, a definition for "letter of credit" is added to paragraph (a).

§ 890.101 Definitions; time computations.

(a) * * *

"Letter of credit" means the method, established in 31 CFR Part 205, by which certain carriers, and their underwriters if authorized, receive recurring premium payments and contingency reserve payments by drawing against a commitment (certified by a responsible OPM official) which specifies a dollar amount available. For each carrier participating in the letter-of-credit arrangement for payment under this part, the terms "carrier reserves," "carrier-held reserves," and "special reserves" include any balance in the carrier's letter-of-credit account.

* * * * *

3. In Subpart E, a new § 890.505 is added to read as follows:

§ 890.505 Recurring premium payments to carriers.

(a) *Recurring payments to carriers of community-rated plans.* OPM will pay to carriers of community-rated plans the premium payments received for the plan less the amounts credited to the contingency and administrative reserves. Premium payments will be due and payable not later than 30 days after receipt by the Federal Employees Health Benefits (FEHB) Fund.

(b) *Recurring payments to experience-rated carriers.* Prior to each contract year, OPM will estimate the amount of premiums that will be paid to each experience-rated carrier participating in the program during the following contract year.

(1) If the estimate reveals that a carrier and its authorized underwriter will receive less than a total of $120,000 during the following contract year, OPM will pay to the carrier the premium payments received for the plan less the amounts credited to the contingency and administrative reserves. Premium payments will be due and payable not later than 30 days after receipt by the FEHB Fund.

(2)(i) If the estimate reveals that a carrier and its authorized underwriter will receive a total of $120,000 or more during the following contract year, OPM will make payments on a letter of credit (LOC) basis. Premium payments received for the plan less the amounts credited to the contingency and administrative reserves will be made available for carrier and/or underwriter drawdown not later than 30 days after receipt by the FEHB Fund. In addition, contingency reserve and interest distribution payments will be made available for carrier or underwriter drawdown from the LOC account. Carriers will use the LOC account in accordance with 31 CFR 205 and guidelines issued by OPM.

(ii) Withdrawals from the LOC account may be made by the checks paid technique, the delay of drawdown technique, or both. Under the checks paid technique, drawdown on the LOC is delayed until the checks issued for FEHB Program disbursements are presented to the carrier's or underwriter's bank for payment. Under the delay or drawdown technique, drawdown on the LOC is delayed until after the checks issued for FEHB Program disbursements have been forwarded to the payees.

(iii) Cash drawdowns from the LOC are limited to not more than one per day. Requests for drawdowns must be presented to the Department of the Treasury by the financial institution not later than 1:00 p.m. eastern time.

(iv) OPM may grant an exception to the effective date of the LOC payment arrangement if the carrier requests the exception in writing and demonstrates to OPM's satisfaction that LOC

disbursements will result in significantly increased liability under the contract, or that the LOC arrangement is otherwise clearly and significantly detrimental to the operation of the plan. Payments to carriers that have been granted an exception to the effective date will be made in accordance with paragraph (b)(1) of this section.

[FR Doc. 88-29510 Filed 12-22-88; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 680]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 680 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period December 23 through December 29, 1988. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 680 (§ 907.980) is effective for the period December 23 through December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V AMS, USDA, Room 2528-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

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

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988-89 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on December 20, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a seven to four vote, a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that demand for navel oranges is fair.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

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

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel, Oranges.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

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

2. Section 907.980 is added to read as follows:

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

§ 907.980 Navel Orange Regulation 680.

The quantity of navel oranges grown in California and Arizona which may be handled during the period December 23, 1988, through December 29, 1988, are established as follows:

(a) District 1: 680,000 cartons;

(b) District 2: 76,000 cartons;

(c) District 3: 51,000 cartons;

(d) District 4: 43,000 cartons.

Dated: December 21, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-29605 Filed 12-22-88; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 645]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 645 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 261,000 cartons during the period December 25 through December 31, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 645 (§ 910.945) is effective for the period December 25 through December 31, 1988.

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

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

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

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

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

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

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicly on December 20, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is good.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.945 is added to read as follows:

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

§ 910.945 Lemon Regulation 645.

The quantity of lemons grown in California and Arizona which may be handled during the period December 25, 1988, through December 31, 1988, is established at 261,000 cartons.

Dated: December 21, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–29604 Filed 12–22–88; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 87–073]

Cleaning and Disinfecting of Export Aircraft

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the exportation of animals and animal products from the United States by requiring the cleaning and disinfecting of aircraft prior to their being used to export animals from the United States. This action is necessary to help ensure that aircraft used to export animals from the United States are not contaminated with disease and to encourage international trade in animals from the United States.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Najam Q. Faizi, Import-Export Operations Staff, VS, APHIS, USDA, Room 762, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8383.

SUPPLEMENTARY INFORMATION:

Background

We published in the **Federal Register** on December 24, 1986 (51 FR 46684–46685, Docket No. 84–042), a proposal to amend the regulations in 9 CFR Part 91 (referred to below as the regulations) by requiring the cleaning and disinfecting of aircraft prior to their being used to export animals from the United States. On August 4, 1987, we published in the **Federal Register** (52 FR 28842, Docket No. 87–026) a document reopening the comment period on the proposal until August 19, 1987.

We received three comments, one of which supported the proposed rule. The second comment, received from the Air Transport Association of America (ATA), requested that we clarify several points and that we further investigate the effect on aircraft of our proposed disinfection. First, ATA stated that it had no objection to our proposal requirement to clean and disinfect aircraft used to export animals if the requirement does not apply to shipments of pets and other small animals. It does not. The regulations provide for the cleaning and disinfecting of aircraft to be used to export animals as defined in § 91.1(e) of the regulations. Since animals are defined in § 91.1(e) as horses, cattle (including American

bison), sheep, swine, and goats, the proposed rule does not apply to passenger-carrying aircraft that transport pets and other small animals.

Secondly, ATA questioned whether cleaning and disinfecting would occur each time the animals are placed onboard the aircraft, since it is conceivable that flights may be scheduled through more than one U.S. city prior to export. If the aircraft is loaded with animals in more than one U.S. city before export from the U.S., but is not loaded with any additional cargo, the document crtifying that the aircraft has been cleaned and disinfected at the initial city should be sufficient to negate additional cleaning and disinfection. No further risk of disease is introduced since all animals are checked for disease before they are loaded on the aircraft, and because the embarkation inspection and loading facilities must meet requirements contained in 9 CFR 91.14 that prevent introduction of disease. We will require further cleaning and disinfection of an aircraft making stops at more than one U.S. city only if the stowage area, through cargo loading, comes in contact with garbage, soil, manure, plant materials, insects, paper, debris, or other materials requiring cleaning and disinfection of the stowage area. The determination of whether cleaning and disinfection is necessary will be made by the inspector supervising the loading of animals for export, who will base his or her decision on inspection of the stowage area and examination of the cleaning and disinfection documents.

Finally, ATA expressed reservation about the properties of the proposed cleaning solution and its effect on the aircraft. ATA seems to think that the solution (4% sodium carbonate and 0.1% sodium silicate) might be deleterious to aircraft.

Research performed by Pan American World Airways and the Boeing Commercial Airplane Company has determined that the use of a 4% sodium carbonate/0.1% sodium silicate solution for disinfection of aircraft is not corrosive or otherwise damaging to aircraft.[1] This research also concluded that the addition of 0.1% sodium silicate to a 4% sodium carbonate solution effectively inhibits the corrosive action of the sodium carbonate on aluminum.

The third comment, sent by a veterinarian, noted that some disinfectant spraying devices may not be fully effective because they may not disperse the disinfectant over 100 percent of the surfaces. We have changed the rule to require that disinfectant solution must be applied with a device that creates an aerosol or mist that covers 100 percent of the surfaces.

This commenter also asked what was meant by the statement in the proposal that cleaning and disinfection would be performed "immediately prior to loading." Our intent is to require cleaning and disinfection at a time that our inspector finds adequate to ensure that the stowage area will still be clean and disinfected when the export animals are loaded. We have revised the rule to emphasize this point.

This commenter also asked whether cleaning and disinfection would be performed before or after cargo other than animals was loaded aboard the aircraft. We have revised the rule to allow cleaning and disinfection to be performed after loading of other cargo if the inspector determines that the cargo and the deck surface under it do not contain materials that may contain animal disease pathogens such as garbage, soil, manure, plant materials, insects, waste paper, or debris.

Based on the rationale set forth in the proposal and in this document, we are adopting the revised proposal as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; and will not cause a significant adverse effect 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.

No substantial delay in the departure of aircraft will be caused by these requirements. In addition, most airlines already clean and disinfect the stowage area of their aircraft prior to transporting animals from the United States. The cost of labor and materials for the disinfection techniques currently used are comparable to the cost of the techniques required by this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 91

Animal disease, Animal welfare, Exports, Humane animal handling, Livestock and livestock products, Transportation.

Accordingly, 9 CFR Part 91 is amended as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for Part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C. 466a, 466b, 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

2. In 91.1, the terms are rearranged alphabetically without paragraph designations, and the definition of "inspector" is revised to read as follows:

§ 91.1 Definitions.

* * * * *

Inspector. An inspector of the Animal and Plant Health Inspection Service.

* * * * *

§ 91.18 [Amended]

3. In § 91.18, paragraph (b) is revised to read as follows:

* * * * *

(b) 4 percent sodium carbonate plus 0.1 percent sodium silicate.

* * * * *

4. In Part 91, a new Subpart E consisting of § 91.41 is added to read as follows:

[1] A summary of this research is contained in the rulemaking record for this final rule, and may be obtained by writing to the contact person identified in the preamble of this document.

Subpart E—Cleaning and Disinfecting of Aircraft

Sec.
91.41 Cleaning and disinfecting of aircraft.

Subpart E—Cleaning and Disinfecting of Aircraft

§ 91.41 Cleaning and disinfecting of aircraft.

Prior to loading of animals, the stowage area of aircraft to be used to export animals under the provisions of this part shall, under the supervision of an inspector, be cleaned and then disinfected using a freshly prepared solution of 4 percent sodium carbonate plus 0.1 percent sodium silicate. In addition, all loading ramps, fittings, and equipment to be used in loading the animals on the aircraft shall be cleaned and disinfected using an approved disinfectant listed in § 71.10 of this chapter. The time at which the cleaning and disinfection is performed must be approved by the inspector, who will give approval only if he or she determines that the cleaning and disinfection will be effective up to the projected time of loading of animals. If the animals are not loaded by the projected time, the inspector shall determine whether further cleaning and disinfection are necessary. The cleaning must remove all garbage, soil, manure, plant materials, insects, paper, and other debris from the stowage area. The disinfectant solution must be applied with a device that creates an aerosol or mist that covers 100 percent of the surfaces in the stowage area, except for any loaded cargo and deck surface under it that, in the opinion of the inspector, do not contain materials that may contain animal disease pathogens such as garbage, soil, manure, plant materials, insects, waste paper, or debris. After cleaning and disinfection is performed, the inspector shall sign and deliver to the captain of the aircraft or other responsible official of the airline involved, a document stating that the aircraft has been properly cleaned and disinfected, and stating further the date, the carrier, the flight number, and the name of the airport and the city and state in which it is located. If an aircraft is cleaned and disinfected at one airport, then flies to a subsequent airport, with or without stops en route, to load animals for export, the inspector at the subsequent airport will determine, based on examination of the cleaning and disinfection documents, whether the previous cleaning and disinfection is adequate or whether to order a new cleaning and disinfection. If the aircraft has loaded any cargo in addition to animals, the inspector at the subsequent airport will determine whether to order a new cleaning and disinfection based on both examination of the cleaning and disinfection documents and inspection of the stowage area for materials that may contain animal disease pathogens such as garbage, soil, manure, plant materials, insects, waste paper, or debris.

Done in Washington, DC, this 20th day of December 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-29481 Filed 12-22-88; 8:45 am]
BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Docket No. R-0647]

Regulation CC; Availability of Funds and Collection of Checks; Preemption Determinations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final interpretation.

SUMMARY: The Board is publishing a final official Board interpretation concerning a preemption determination under its Regulation CC, Availability of Funds and Collection of Checks, with respect to the law of New Jersey. The Expedited Funds Availability Act provides standards for determining whether State law governing funds availability supersedes, or is preempted by Federal law. Under Regulation CC, the Board will issue preemption determinations upon request.

EFFECTIVE DATE: December 19, 1988.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452-3625), Legal Division, or Louise L. Roseman, Assistant Director (202/452-3874) or Gayle Thompson, Program Leader (202/452-2934), Division of Federal Reserve Bank Operations; for the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1988, the Board adopted Regulation CC to carry out the provisions of the Expedited Funds Availability Act (the "Act") (12 U.S.C. 4001-4010). The regulation requires banks to make funds available to their customers within specified time frames, and to disclose their funds availability policies to their customers. A number of states have also enacted rules governing funds availability. The Act (section 608) and Regulation CC (§ 229.20) provide that any provision of state law in effect on or before September 1, 1989, that provides for a shorter hold for a category of checks than is provided under federal law will supersede the federal provision.

Provisions of state law governing funds availability that permit a bank to make funds available for withdrawal in a longer period than permitted under Regulation CC are considered inconsistent, and are preempted by Regulation CC. In addition, state disclosure and notice requirements concerning funds availability related to accounts covered by Regulation CC are preempted by the federal disclosure scheme.

Regulation CC provides for Board determinations of whether state law related to the availability of funds is preempted by federal law upon the request of a state, bank, or other interested party.

Discussion

The Board issued, for a 30-day public comment period, a proposed preemption determination with respect to New Jersey law. 53 FR 44352 (November 2, 1988). The Board set out principles, at the time it adopted several final state preemption determinations in August, as guides for future preemption determinations. 53 FR 32354 (August 24, 1988). Those principles have been followed in the proposed New Jersey determination as well.

The State of New Jersey Department of Banking requested that the Board issue a preemption determination under Regulation CC with respect to New Jersey law. New Jersey does not have a law or regulation establishing maximum time periods within which funds deposited to accounts must be made available for withdrawal. New Jersey does, however, have regulations governing the disclosure of an institution's availability policy. Regulation CC provides that state funds availability disclosure or notice requirements applicable to accounts covered by the federal rules are preempted by the federal disclosure scheme. The Board received no comments from the public on the proposal, and has adopted the New Jersey preemption determination as proposed.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR Part 229 is amended as follows:

PART 229—[AMENDED]

1. The authority citation for Part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100–86, 101 Stat. 522, 635, 12 U.S.C. 4001 et seq.

2. Appendix F is amended by adding a preemption determination for the state of New Jersey alphabetically to read as follows:

Appendix F—Official Board Interpretations; Preemption Determinations

* * * * *

New Jersey

Background

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act (the "Act") and Subpart B (and in connection therewith, Subpart A) of Regulation CC preempt the provisions of New Jersey law concerning disclosure of a bank's funds availability policy. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4–213(5), pertaining to availability of cash deposits.)

New Jersey does not have a law or regulation establishing the maximum time periods within which funds deposited by check or electronic payment must be made available for withdrawal. New Jersey does, however, have regulations concerning the disclosure of a banking institution's availability policy (N.J.A.C. 3:1–15.1 *et seq.*).

Disclosures

New Jersey law requires every banking institution (defined as any state or federally chartered commercial bank, savings bank, or savings and loan association) to provide written disclosure to all holders of and applicants for deposit accounts which describes the institution's funds availability policy. Institutions must also disclose to their customers any significant changes to their availability policy.

Regulation CC preempts state disclosure requirements concerning funds availability that relates to "accounts" that are inconsistent with the federal requirements. The state requirements are different from, and therefore inconsistent with, the federal disclosure rules. (§ 229.20(c)(2)). Thus, the New Jersey statute (N.J.A.C. sections 3:1–15.1 *et seq.*) is preempted by Regulation CC to the extent that these disclosure provisions apply to "accounts" as defined by Regulation CC. The New Jersey disclosure rules would continue to apply to other "deposit accounts," as defined by New Jersey law, including money market accounts and savings accounts established by a natural person for personal or family purposes, which are not governed by the Regulation CC disclosure requirements.

By order of the Board of Governors of the Federal Reserve System, December 19, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–29458 Filed 12–22–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88–ASO–10]

Revocation of Transition Area; Camden, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes the Camden, Alabama, transition area. The transition area was established to afford airspace protection for aircraft executing a NDB Standard Instrument Approach Procedure (SIAP) to the Camden Municipal Airport. The SIAP is no longer in effect; thus, no valid need exists to retain the transition area.

EFFECTIVE DATE: 0901 U.T.C., February 9, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On September 27, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the Camden, Alabama, transition area (53 FR 37589). The transition area was established to provide airspace protection for aircraft executing a NDB SIAP to the Camden Municipal Airport. The SIAP is no longer in effect; thus, there is no reason to retain the transition area. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revokes the Camden, Alabama, transition area and will raise the floor of controlled airspace from 700 to 1,200 feet above the surface in this particular area. The NDB SIAP to the Camden Municipal Airport is no longer in effect; thus, there is no need to retain the transition area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Camden, Alabama [Removed]

Issued in East Point, Georgia, on December 1, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88–29485 Filed 12–22–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 88–ASO–16]

Revocation of Transition Area; Belzoni, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes the Belzoni, Mississippi, Transition Area. The runway surface of the Belzoni Municipal Airport has deteriorated beyond usability and the airport has been NOTAMed closed since November 1987. There are no definite plans to reopen the airport. Action has been taken to cancel the only Standard Instrument Approach Procedure (SIAP) to the airport.

EFFECTIVE DATE: 0901 u.t.c. February 9, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On September 29, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the Belzoni, Mississippi, Transition Area (53 FR 38024). The transition area was established to afford airspace protection for aircraft executing a Standard Instrument Approach Procedure (SIAP) to the Belzoni Municipal Airport. Action has been taken to cancel the SIAP. The Airport has been NOTAMed closed since November 1987, due to runway deterioration. There are no definite plans to reopen the airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revokes the Belzoni, Mississippi Transition Area and will raise the floor of controlled airspace from 700 to 1,200 feet above the surface within a 5-mile radius of the Belzoni Municipal Airport. The transition area is no longer required since the Belzoni Municipal Airport has been closed and action has been taken to cancel the only SIAP to the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Belzoni, Mississippi [Removed]

Issued in East Point, Georgia, on December 1, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88–29484 Filed 12–22–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–AGL–23]

Alteration of VOR Federal Airways; Pontiac, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the descriptions of Federal Airways V–9, V–128 and V–144 located in the vicinity of Pontiac, IL. The realignment of these airways is necessary to improve the flow of traffic in the metropolitan Chicago area. This action is one of a number of measures being implemented on an expedited basis to increase the efficiency of air traffic flow and reduce arrival/departure delays in the Chicago area. This action enhances safety, improves traffic flow and reduces controller coordination.

DATES: Effective date—0901 u.t.c., February 9, 1989.

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

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 88–AGL–23, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, that was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the descriptions of V–9, V–128 and V–144, located in the Pontiac, IL, area. These changes will substantially increase the efficiency of arrival and departure routes to and from O'Hare

International Airport and other airports in the Chicago metropolitan area. In October 1988, the FAA implemented daily traffic flow management programs into O'Hare and Midway Airports to meter arriving flights at a rate consistent with air traffic control (ATC) resources. In order to increase the efficiency of the ATC system in the Chicago area, reduce substantial operating delays at Midway and O'Hare Airports, and permit the eventual suspension of regular traffic management programs into the area, the FAA, with the cooperation of local government and aviation industry representatives, has identified a number of corrective measures involving ATC resources, procedures, and operating rules. These measures have been adopted as a high-priority action plan and are currently being implemented by the agency on an expedited basis.

Immediate reconfiguration of several federal airways in the Chicago area is a necessary element of the general revision of ATC procedures for arrivals and departures in this area. Accordingly, the FAA has concluded that there is an immediate need to realign Federal Airways V–9, V–128 and V–144 to improve traffic flow, reduce controller workload, and alleviate serious traffic delays at O'Hare International and Midway Airports. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Secton 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal Airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–9 [Amended]

By removing the words "Pontiac, IL; INT Pontiac 332° and Rockford, IL, 180° radials; Rockford;" and substituting the words "Pontiac, IL; INT Pontiac 343° and Rockford, IL, 169° radials; Rockford;"

V–128 [Revised]

From Dubuque, IA; Janesville, WI; Rockford, IL; INT Rockford 169° and Pontiac, IL, 343° radials; INT Pontiac 343° and Kankakee, IL, 274° radials; Kankakee; INT Kankakee 126° and Peotone, IL, 152° radials; INT Peotone 152° and Indianapolis, IN, 312° radials; Indianapolis; INT Indianapolis 137° and Cincinnati, OH, 290° radials; Cincinnati; York, KY; Charleston, WV; to Casanova, VA.

V–144 [Amended]

By removing the words "From Peotone, IL, via Fort Wayne, IN;" and substituting the words "From Bradford, IL; Kankakee, IL; INT Kankakee 089° and Knox, IN, 238° radials; INT Peotone, IL, 098° and Knox 238° radials; Fort Wayne, IN;"

Issued in Washington, DC, on December 15, 1988.

Robert G. Burns,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–29486 Filed 12–22–88; 8:45 am]

BILLING CODE 4910–13–M

Office of the Secretary

14 CFR Part 385

[Docket No. 45614; Amdt. 385–4]

Delegations of Powers and Duties

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule revises and updates the delegations of authority to the Director, Office of Aviation Information Management, Research and Special Programs Administration (RSPA).

EFFECTIVE DATE: This final rule is effective on December 23, 1988.

FOR FURTHER INFORMATION CONTACT: Jerold Coffee, Office of Aviation Information Management, DAI–1, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4409.

SUPPLEMENTARY INFORMATION: Following the sunset of the Civil Aeronautics Board and the transfer of remaining functions to the Department of Transportation, various powers and duties relating to aviation data collection and dissemination were delegated to the Administrator, RSPA. At that time, subdelegations to the Director, Office of Aviation Information Management were made to provide that official with substantially the same functions as were delegated to the equivalent official in the Civil Aeronautics Board. A review of those powers and duties shows that they are in need of revision and updating. This final rule makes the necessary changes.

In particular, the revisions consolidate the existing authorities, conform the rulemaking practices of aviation data collection and dissemination with the rulemaking practice of other RSPA programs, codify existing practice with respect to the International Civil Aviation Organization reporting requirements, and grant the Director initial authority to dispose of requests for confidential treatment of reports and data and to respond to requests for those reports and data.

Since these amendments relate to Departmental management, procedures, and practice, notice and public comment are unnecessary. The delegations are effective as of the date of publication of this document.

List of Subjects in 14 CFR Part 385

Authority delegations (Government agencies).

In consideration of the foregoing, Part 385 of Title 14, Code of Federal Regulations, is amended as follows:

PART 385—STAFF ASSIGNMENTS AND REVIEW OF ACTION UNDER ASSIGNMENTS

1. The authority citation for Part 385 is revised to read as follows:

Authority: Secs. 102, 204, 401, 402, 403, 407, 416, Pub. L. 85–726, as amended, 72 Stat. 740, 743, 754, 757, 758, 766, 771, 49 U.S.C. App. 1302, 1324, 1371, 1372, 1373, 1377, 1386; Pub. L. 98–443, October 4, 1984; 49 CFR 1.53(g).

2. Section 385.27 is revised to read as follows:

§ 385.27 Authority of the Director, Office of Aviation Information Management, Research and Special Programs Administration.

The Director, Office of Aviation Information Management, Research and Special Programs Administration (RSPA) has authority to:

(a) Conduct all rulemaking proceedings concerning accounting, reporting, and record retention requirements for carrying out Titles IV and X of the Act, except the issuance of final rules and the disposition of petitions for reconsideration.

(b) Interpret the accounting, reporting, and record retention requirements used to carry out Title IV and X of the Act.

(c) Waive any of the accounting, reporting, and record retention requirements upon a showing of the existence of such facts, circumstances or other grounds, and subject to such limitations or conditions as may be prescribed for waivers in the applicable regulations, unless such authority is otherwise specifically assigned.

(d) Dismiss petitions for Department or RSPA action with respect to accounting, reporting, and record retention matters when such dismissal is requested or consented to by the petitioner.

(e) Require special reports, documentation, or modifications to reports required by this chapter from any air carrier upon a determination that such reports or documentation or modifications are necessary to meet temporary information needs, assist in an evaluation of continued financial fitness, or comply with special information requests by Congress, Department officials, or another agency or component of the Federal Government.

(f) Grant or deny requests by air carriers for extension of filing dates for reports required by subchapters A and D of this chapter.

(g) Grant or deny requests by air carriers for substitution of their own forms, adaptation of Department forms, or use of ADP media to meet special needs where Department approval of such forms or ADP media is required by subchapter A of this chapter.

(h) Determine the data necessary to complete the International Civil Aviation Organization reports required by U.S. Treaty; as provided in Order 81–3–120, establish any necessary supplemental reporting requirements; and dispose of petitions for extensions of filing dates or waivers with respect to the data required for such reports.

(i) Grant or deny motions filed under § 302.39 of this chapter requesting confidential treatment of aviation economic information or reports filed with RSPA and place the decision in the motion's docket, which decision will be subject to review through a petition for reconsideration filed within ten days of issuance, to be acted upon by the Administrator, RSPA.

(j) Grant or deny requests filed under § 241.22 of this chapter for confidential treatment of preliminary year-end financial reports.

(k) Grant or deny requests filed under § 248.5 of this chapter for confidential treatment of individual air carrier special reports.

(l) Grant or deny requests for use of domestic and international service segment and market data in accordance with the limitations on the availability of these data contained in § 241.19–6 of this chapter and Order 81–12–9.

(m) Grant or deny requests for use of international Origin and Destination Survey statistics in accordance with the limitations on the availability of these data contained in § 241.19–7 of this chapter and with the policy set forth in § 399.100 of this chapter.

(n) Grant or deny requests for individual air carrier fuel data in accordance with the limitations on the availability of these data contained in paragraph (k) of the reporting instructions for Schedule P–12(a), which are contained in § 241.24 of this chapter.

(o) Grant or deny requests for individual air carrier financial data in accordance with the limitation on the availability of these data contained in paragraph (d) of the reporting instructions for Schedule F–1, which are contained in § 298.62 of this chapter.

(p) Grant or deny requests for individual air carrier financial data as reported on Schedule P–1(a) in accordance with § 241.22(b)(3) of this chapter.

Issued in Washington, DC, on December 19, 1988.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 88–29392 Filed 12–22–88; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 80861–8161]

Revision of Validated License Controls on Marine Water Tube Boilers

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule amends the validated export license controls on marine water tube boilers described in ECCN 2409A(e) and 4409B on the CCL according to a finding of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended. Marine water tube boilers controlled under ECCN 2409A on the CCL will now require a validated export license only to destinations in Country Groups Q, S, W, Y, and Z, the People's Republic of China, and Afghanistan for national security reasons. In addition, this rule removes ECCN 4409B, which controls marine water tube boilers with a heat release rate less than 190,000 BTU. As a result, these marine water tube boilers will now be covered by ECCN 6499G and only controlled to Country Groups S and Z for foreign policy reasons.

Notice of the foreign availability determination on this equipment is published in the Notices section of this **Federal Register.**

EFFECTIVE DATE: December 23, 1988.

FOR FURTHER INFORMATION CONTACT: Donald J. Brychczynski, Office of Foreign Availability, Bureau of Export Administration, Washington, DC 20230, Telephone: (202) 377–8074.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

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

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the Export Administration Act of 1979, as amended, does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a

notice of proposed rulemaking and an opportunity for public comment be given for this rule.

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

4. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0005.

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

Accordingly, this rule is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Joan Maguire, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 799 of the Export Administration Regulations (15 CFR Parts 768–799) is amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et. seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 799.1 [Amended]

2. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 2409A is amended by revising the *Validated License Required* and *Reason for Control* paragraphs to read as follows:

2409A Naval equipment.

Controls for ECCN 2409A

* * * * *

Validated License Required: Country Groups QSTVWYZ, *except marine water tube boilers, which require a validated license only for Country Groups QSWYZ, the People's Republic of China and Afghanistan.*

* * * * *

Reason for Control: National security.

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3. In Supplement No. 1 to § 799.1, ECCN 4409B is removed.

Dated: December 20, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88–29515 Filed 12–22–88; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM88–25–000; Order No. 510]

Generic Determination of Rate of Return on Common Equity for Public Utilities

Issued December 19, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issues a final rule concerning the generic determination of the rate of return on common equity for public utilities. In prior rulemaking proceedings, the Commission established a discounted cash flow (DCF) formula to determine the average cost of common equity and a quarterly indexing procedure to calculate benchmark rates of return on common equity for public utilities. In this final rule, the Commission determines that 4.3 percent is an appropriate expected annual dividend growth rate for use in the quarterly indexing procedure during the 12 months beginning February 1, 1989. The Commission also determines that 0.03 percent is an appropriate flotation cost adjustment factor for that period. The benchmark rates of return determined through the procedures remain advisory and are intended to provide guidance to companies and intervenors in individual rate cases and to serve as reference points for the Commission in its deliberations.

EFFECTIVE DATE: January 18, 1989.

FOR FURTHER INFORMATION CONTACT:

For Further Technical Information Contact: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8283.

For Further Legal Information Contact: Robert E. Gian, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) issues this final rule estimating the average cost of common equity for the jurisdictional operations of public utilities [1] for the 12 months ending June 30, 1988 (the "base year"). In several earlier rulemaking proceedings concerning the generic determination of the rate of return for electric utilities, the Commission established a discounted cash flow (DCF) formula to determine the average cost of common equity and a quarterly indexing procedure to calculate

[1] The terms "public utilities" and "electric utilities" are used interchangeably.

benchmark rates of return on common equity for public utilities. In this fifth annual proceeding concerning that generic determination, the Commission determines that the growth rate and flotation cost factors to be used in the quarterly indexing procedure during the 12 months beginning February 1, 1989 will be 4.3 percent and 0.03 percent, respectively. Benchmark rates of return determined through the procedures remain advisory, as were those resulting from the previous four annual proceedings.[2]

II. Background

Section 205(a) of the Federal Power Act (FPA) requires that all electric rates subject to the jurisdiction of the Commission be "just and reasonable." [3] In the exercise of this statutory responsibility, the Commission seeks to set rates of return on common equity that are fair to both ratepayers and utility stockholders. The allowed rate of return on common equity is now determined individually for each utility on a case-by-case basis.

In July 1984, the Commission adopted procedures for the generic determination of benchmark rates of return on common equity and for their application in individual cases.[4] The Commission has conducted four prior proceedings to determine benchmark rates of return and has made those rates advisory only. In that advisory status, benchmark rates are intended to provide guidance to parties to rate proceedings and to serve as reference points for the Commission in setting allowed rates of return.[5] The Commission again requests that all rate case participants, including staff, evaluate the reasonableness of the applicable benchmark rate of return in light of the special circumstances of the specific utility. The Commission requests that litigants submit substantive analyses of the risks of individual utilities vis-a-vis the average utility represented through the benchmark rates of return, to enable the Commission to use those benchmarks as points of departure in setting allowable rates of return.

III. Discussion

As required by § 37.4 of the Commission's regulations, the Commission initiated a fifth annual proceeding to establish the growth rate and flotation cost adjustment factors to be used in the quarterly indexing formula for the year beginning February 1, 1989 by issuing a Notice of Proposed Rulemaking (NOPR or Notice) on August 5, 1988.[6] The Commission received 12 timely comments in response to that Notice.[7]

In prior proceedings, the Commission established a DCF methodology for estimating the rate of return on common equity. Specifically, that formula is:

$$k=(1+.5g)y+g$$

where:

k = market required rate of return
y = current dividend yield (current annual dividend rate divided by current market price)
g = expected annual dividend growth rate
(1+.5g) = dividend adjustment factor for quarterly dividend payments

A. Dividend Yield

The dividend yield used in this DCF formula is the median of the dividend yields of those companies that remain in a sample of utilities after application of certain screening criteria. The Commission begins with a group of approximately 100 publicly-traded electric utilities or combination companies that meet the following standards:

(1) The utility is predominantly electric;

(2) The stock of the utility is traded on either the New York or the American Stock Exchange;

(3) The utility is included in the Utility Compustat II data base; and

(4) The utility is not excluded by the Commission based on a case-by-case determination that its data is unavailable or inappropriate.[8]

The Commission then excludes companies from the sample if:

(1) The company's common stock is no longer publicly traded due to merger or other action;

(2) The company has decreased or omitted a common dividend payment in the current or prior three quarters; or

(3) The Commission determines on a case-by-case basis that some other occurrence has caused the dividend yield for that company to be substantially misleading and to bias the resulting quarterly average.

The quarterly dividend yield for each company is computed by dividing the dividend rate by the price. The dividend rate is the "indicated dividend rate," which is the last declared quarterly dividend multiplied by four. The price used in calculating the quarterly dividend yield is the simple average of the three monthly high and low prices for the quarter. The dividend yield used in the quarterly indexing procedure is the average of the two most recent quarterly median yields.[9]

A list of the 99 remaining public utilities to be used in base-year dividend yield calculations and quarterly updates is included as Appendix B to this rule.[10]

B. Growth Rate

In the NOPR, the Commission proposed to rely on both a fundamental analysis approach and a two-stage growth model to estimate the expected growth rate, as it did in previous proceedings.[11] The fundamental analysis approach involves evaluation of the two underlying components of expected annual dividend growth, which are growth from retention of earnings and growth from sales of new common stock. Growth from retention of earnings, or internal growth, is a function of the expected retention ratio "b" and the expected return on common equity "r". Growth from sales of new common stock, or external growth, is a function of the amount of stock expected to be sold "s" and the expected price of those sales relative to book value "v". The formula for estimating the growth

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[2] The annual proceedings were first established by Order No. 389, Generic Determination of Rate of Return on Common Equity for Electric Utilities, 49 FR 29946 (July 25, 1984) (Docket No. RM80-36-000) (final rule) (issued July 18, 1984) and Order No. 389-A, 49 FR 46351 (Nov. 26, 1984) (order denying rehearing) (issued Nov. 21, 1984). The first annual proceeding resulted in Order No. 420, 50 FR 21802 (May 29, 1985) (Docket No. RM84-15-000) (final rule) (issued May 20, 1985) and Order No. 420-A, 50 FR 34086 (Aug. 23, 1985) (Docket No. RM85-15-001, *et al.*), (order denying rehearing); (issued Aug. 20, 1985). The second annual proceeding resulted in Order No. 442, 51 FR 343 (Jan. 6, 1986) (Docket No. RM85-19-000) (final rule) (issued Dec. 26, 1985) and Order No.442-A, 51 FR 22505 (June 20, 1986) (Docket No. RM85-19-001, et al.) (order granting in part and denying in part requests for rehearing) (issued June 11, 1986). The third annual proceeding resulted in Order No. 461, 52 FR 11 (Jan. 2, 1987) Docket No. RM86-12-000) (final rule) (issued Dec. 24, 1986) and Order 461-A, 52 FR 5757 (Feb. 26, 1987) (order denying rehearing) (issued Feb. 19, 1987). The fourth annual proceeding resulted in Order No. 489, 53 FR 3342 (Feb. 5, 1988) (Docket No. RM87-35-000) (final rule) (issued Jan. 29, 1988) and Order No. 489-A, 53 FR 11991 (Apr. 12, 1988) (order denying rehearing) (issued March 30, 1988).

[3] 16 U.S.C. 824d(a) (1982).

[4] Order No. 389, 49 FR 29946 (July 25, 1984).

[5] *Id.*, at 29954.

[6] Generic Determination of Rate of Return on Common Equity for Public Utilities, 53 FR 31883 (Aug. 22, 1988) (Docket No. RM88-25-000) (notice of proposed rulemaking) (issued Aug. 5, 1988).

[7] *See* Appendix A for a list of commenters.

[8] Southwestern Public Service Company, which meets the first three standards, is excluded from the sample because it has a non-standard fiscal year which does not end at the conclusion of a calendar quarter, causing its dividend yield to be out of step with the other companies in the sample.

[9] 18 CFR 37.4 (1988).

[10] The sample of 100 utilities used in the fourth annual proceeding has been reduced by one through the deletion of Savannah Electric & Power Company, which was acquired by the Southern Company.

[11] 53 FR at 31884-85 (Aug. 22, 1988).

rate based on this fundamental analysis is g=br+sv. The two-stage growth analysis involves separate evaluation of near-term and long-term growth expectations.

The Commission also proposed to consider other data and methods for estimating the expected growth rate, but primarily as a check on the reasonableness of its growth rate determination based on the fundamental and two-stage growth analyses.

Seven commenters make growth rate recommendations. These growth rate recommendations range from 3.70 percent by the Financial Analyses Branch, Office of Electric Power Regulation, Federal Energy Regulatory Commission (FAB–OEPR), to 5.09 percent by Southwestern Electric Power Service Company (SWEP). *See* Table 1. Most commenters recommend lower growth rates than those they recommended in the previous proceeding (RM87–35). SWEP is the only commenter to recommend a growth rate higher than its recommendation in RM87–35. Table 2 presents the raw growth rate data on which the commenters relied. Based on its review and evaluation of the growth rate analyses submitted by the commenters in this proceeding, the Commission finds the expected growth rate for use in the quarterly indexing procedure during the 12 months beginning February 1, 1989 to be 4.3 percent.

TABLE 1.—SUMMARY OF GROWTH RATE RECOMMENDATIONS

Commenter	Growth rate	Basis for recommendation
Utilities		
1. SWEP	5.086	1. Base-year fundamental analysis. 2. Analyst forecasts.
2. EEI	4.6	1. Hist. EPS and DPS growth rates. 2. Base-year fundamental analysis. 3. Projected fundamental analysis. 4. Analyst forecasts. 5. Two-stage growth analysis.
3. AUS	4.53	1. Hist. EPS and DPS growth rates. 2. Base-year fundamental analysis. 3. Projected fundamental analysis. 4. Analyst forecasts. 5. Two-stage growth analysis.
4. NEP	4.5/5.0	1. Hist. DPS growth rates. 2. Base-year fundamental analysis. 3. Analyst forecasts.
5. BEC	4.44	1. Hist. EPS and DPS growth rates. 2. Base-year fundamental analysis. 3. Projected fundamental analysis. 4. Analyst forecasts. 5. Two-stage growth analysis.
Other Commenters		
6. FAB-OEPR	3.70	1. Projected fundamental analysis.
7. GSA	3.5/4.0	1. Hist. DPS and Price growth rates. 2. Analyst forecasts.

TABLE 2.—RAW GROWTH RATE DATA

Rate(s)	Type of rate	Commenter
Historical DPS Growth Rates		
4.94	5-year median	AUS
4.20	5-year median	BEC
4.50	5-year median	EEI
4.9	5-year median	NEP
4.94	10-year median	AUS
5.10	10-year median	BEC
4.42/4.82	10-year mean/median	EEI
5.23	10-year median	NEP
Historical EPS Growth Rates		
5.50	5-year median	AUS
3.60	5-year median	BEC
4.19	5-year median	EEI
4.94	10-year median	AUS
5.60	10-year median	BEC
4.56/5.52	10-year mean/median	EEI
Base-Year Fundamental Growth Rates		
	(b)(r)+(s)(v)	
4.44	4.2+0.24	BEC
3.38	3.37+0.007	EEI
4.30	4.1+0.2	NEP
4.30	4.3+(Not reported)	AUS
3.70	3.6+0.1	FAB-OEPR
5.90	(Not reported)	SWEP
Projected Fundamental Growth Rates		
	(b)(r)+(s)(v)	
4.7	4.7+0.01	EEI

TABLE 2.—RAW GROWTH RATE DATA—Continued

Rate(s)	Type of rate	Commenter
Analyst Near-Term Forecasts		
3.87	I/B/E/S average	AUS
4.0	I/B/E/S median	BEC
3.45/3.7	I/B/E/S mean/median	EEI
4.0	Zack's median	NEP
3.25	Value Line DPS median	AUS
3.5	Value Line DPS median	BEC
3.13/3.5	Value Line DPS mean/median.	EEI
Analyst Near-Term Forecasts		
3.0	Value Line EPS median	AUS
3.0	Value Line EPS median	BEC
2.85/3.0	Value Line EPS mean/median.	EEI
2.7	Merrill Lynch DPS median.	BEC
3.3	Merrill Lynch EPS mean/median.	BEC
4.0/4.0	Salomon Brothers' Normalized Growth mean/median.	EEI
3.8/4.0	Salomon Brothers' Normalized Growth mean/median.	BEC
4.286	Salomon Brothers'	SWEP
4.556	First Boston DPS	SWEP
4.79	First Boston EPS	SWEP
Analyst Long-Term Forecasts		
4.0	Merrill Lynch EPS	GSA

1. Growth Rate Recommendations

BEC recommends a growth rate of 4.44 percent, based on a combination of historical growth, fundamental analysis, analysts' projections, and two different two-stage growth rate analyses.[12] Using a 90-company sample, BEC calculates that the median 5-year and 10-year historical growth rates in earnings and dividends ranged from 3.6 percent to 5.6 percent. However, BEC states that it considers the 5-year growth rate to be unusually low and that investors also regard that rate as atypically low.[13]

For its fundamental growth rate analyses, BEC calculates the individual components of internal growth, "b" and "r", and external growth, "s" and "v". BEC uses three methods to estimate the retention ratio "b" and the return on common equity "r".[14] To estimate internal growth, BEC first calculates the payout ratio, (1–b), of the Value Line Electric Utility Composite for the period 1977–1987. In five of those years the payout ratio was greater than 70 percent and in the other six years it was less than 70 percent. BEC concludes that the payout ratio for the industry has been

[12] BEC at i.
[13] BEC at 9.
[14] BEC at 13–15.

roughly centered on the 70 percent level. Second, BEC examines the payout ratio for 90 electric utilities for the 12 months ending in each of the four quarters from June 1987 through March 1988. It finds that the average of the median payout ratios slightly exceeded 72 percent. Finally, BEC examines the projected retention rate data reported by the Value Line Investment Survey for 1987 and for 1990–1992. The averages of the median values for 1987 and 1990–1992 were 27.5 percent and 27 percent, respectively. BEC concludes that "[w]hile the base year and projected retention ratios are somewhat below historical levels of about 30 percent, it seems reasonable for investors to expect the retention rates to rise to the more traditional level the long run." [15]

To estimate the return on equity "r" for the industry, BEC first examines the rates of return for the Value Line Electric Utility Composite from 1977 through 1987. It finds that industry rates of return since 1982 have fluctuated between 13.5 and 14.5 percent, and have averaged 14.1 percent. Second, BEC examines average return on equity for 90 electric utilities for the 12 months ending in each of the four quarters from June 1987 through March 1988. It finds that the average of the median returns was 14.0 percent. Finally, BEC examines the 1987 average return on equity reported by the Value Line Investment Survey and Value Line's projections for 1990–1992. The averages of the median returns for 1987 and 1990–1992 were 14.0 percent and 13.8 percent, respectively. BEC concludes that investors expect a return on equity of approximately 14.0 percent.[16]

Using an expected retention ratio "b" of 30 percent and an expected return on average common equity "r" of 14 percent, BEC calculates an internal growth rate for the industry of 4.2 percent.

BEC then estimates external growth "sv".[17] It adopts an "s" component (proportion of future new common stock financing) of 1.0 percent, based on its judgment and on common stock financing projections published by EEI. BEC estimates the "v" component to be 0.237, on the basis of a Value Line 1990–1992 projection of 1.31 for the price-book value ratio (calculated by multiplying the projected return on average equity of 13.8 percent by the projected price-earnings ratio of 9.5).[18] Thus, "sv" is equal to 0.24 percent (0.01 × 0.237). Total projected growth, the sum of internal growth and external growth, is 4.44 percent.

BEC then reviews near-term growth rate forecasts of earnings and dividends made by the following analysts and investment advisory services: Value Line (3.0–3.5 percent), Merrill Lynch (2.7–3.3 percent), I/B/E/S (4.0 percent), and Salomon Brothers (4.3 percent). BEC concludes that investors would not put much weight on growth projections below 4.0 percent because such growth rates would produce unreasonable costs of equity.[19]

BEC concludes with a pair of two-stage DCF analyses. Both are based on Value Line projections of dividends and prices for the 1990–1992 period. The resulting composite constant growth rate is 4.6 percent.

EEI recommends a growth rate of 4.6 percent on the basis of historical data, a fundamental analysis, and a two-stage growth analysis.[20] EEI begins by examining historical 5-year and 10-year growth rates in per share earnings and per share dividends. The median 5-year historical growth rates in earnings range from 1.44 to 3.46 percent. The 10-year historical growth rates range from 4.42 to 5.52 percent. EEI notes that if a number of utilities that reported negative growth rates are eliminated from the sample, the recalculated 5-year growth rates (4.19–4.50 percent) approach the lower end of the range of the 10-year growth rates.

EEI also examines historical 10-year payout ratios and returns on average common equity derived from Value Line data.[21] The resulting distribution of payout ratios and rates of return is almost identical to the distribution found by BEC.

EEI relies on a base-year analysis and a projected fundamental growth rate analysis. For the base-year estimate, EEI calculates individual components of internal growth, "b" and "r", and of external growth, "s" and "v". To estimate the base-year internal growth rate, EEI calculates the payout rate ratio "b" and return on average equity "r" for each of 91 electric utilities for the 12 months ending in each of the four quarters from June 1987 through March 1988. It then computes the internal growth rate for each company. The average of the four quarterly median values is 3.37 percent.[22]

To calculate the base-year external growth rate "sv", EEI first estimates the "v" component. Using the same sample of 91 utilities, EEI divides the average price for the 12 months ending June 30, 1988 by the 1986 book value and arrives at a price-book value ratio of 1.28 and a "v" of 0.219.[23] It then derives the "s" component (0.0003) from its own published data. The resulting external growth "sv" is 0.007 percent (0.0003 × 0.219). Total base-year growth, the sum of internal and external growth, is 3.38 percent.

For its projected fundamental growth rate, EEI projects "br" and "s" and "v". Internal growth is based on Value Line 1990–1992 projections of retention growth. The mean and median values of projected growth are 4.7 and 4.8 percent, respectively.

EEI then estimates the price-book value ratio used in the formula for the "v" component. EEI relies on the Value Line projected return on common equity for 1990–1992 (13.4 percent) and the Value Line projected price-earnings ratio for the same period (9.5 percent). The product of return on average equity and the projected price-earnings ratio is the price-book value ratio. The resulting price-book value ratio is 1.27 (0.134 × 9.5) and is equivalent to a "v" value of 0.214. EEI attempted to derive its projected "s" by subtracting its estimate of projected internal growth "br" from Value Line projections of growth in total equity. That result was negative (−0.007) and EEI discarded it. EEI then uses its own projections of external financing and obtains an "s" of 0.0007.[24] The resulting projected external growth, the product of "s" and "v", is 0.01 percent (0.0007 × 0.214). EEI's estimate of fundamental projected growth, the sum of internal and external growth, is 4.7 percent.[25]

EEI also cities direct forecasts of near-term growth rates made by I/B/E/S, Value Line, and Salomon Brothers. These range from 2.9 to 4.0 percent, but center around 3.5 percent.

Finally, EEI presents a two-stage growth analysis. Its analysis uses an initial growth rate of 3.4 percent, based on EEI's base-year fundamental analysis, and assumes that growth will increase to a constant of 3.5 percent after five years, based on the analysts' near-term forecasts. This approach results in a composite growth rate of 3.49 percent.

EEI relieves heavily on its projected fundamental growth rate of 4.7 percent

[15] BEC at 14.

[16] BEC at 15.

[17] BEC at 15–19.

[18] The "v" component is typically computed from the following formula:

$v = 1 - [1/(P/B)]$,

where:

P/B = Price-Book Value Ratio.

[19] BEC at 20–21.

[20] EEI at Attachment A–13.

[21] EEI at Attachment A–8.

[22] EEI at Attachment A–8.

[23] *Id.* and Appendix 10.

[24] EEI at 9.

[25] EEI at Attachment A–10.

to arrive at its recommended growth rate of 4.6 percent. It discounts analysts' projections of earning and dividend growth because it believes that the analysts have been unduly influenced by " 'temporary,' single events which have disrupted [utility] earnings", such as changes in accounting standards. EEI also discounts its own two-stage growth analysis because the analysis relied heavily on those analysts' projections.[26]

NEP recommends a growth rate in the range of 4.5 to 5.0 percent.[27] Its analysis includes historical dividend growth rates, a fundamental analysis, and projections of earnings per share. The median 5-year and 10-year historical growth rates in dividends per share (for the period ending with 1987) are 4.45 and 5.15 percent, respectively. However, NEP believes that investors "expect dividend growth rates greater than zero." It therefore recalculates historical dividend growth excluding companies with historical dividend growth rates equal to or less than zero. The resulting median 5-year and 10-year historical growth rates in dividends are 4.9 and 5.23 percent.

In its fundamental analysis, NEP calculates a total growth rate of 4.3 percent, comprised of an internal growth rate of 4.1 percent and an external growth rate of 0.20 percent. NEP calculates an internal growth rate "br" for each utility based on Salomon Brothers' earned rates of return for the year ending June 30, 1988 (a median of 13.7 percent), and a payout ratio of 70 percent. The 70 percent payout ratio was "based on the FERC's conclusion in Order No. 489 that, regardless of recent data and near-term expectations, investors hold to long-term expectations of approximately 70 percent payout (i.e., 30 percent retention) of earnings."[28] NEP calculates an external growth rate "sv" for each utility from Value Line projections of the growth in the number of common shares outstanding ("s") and from 1987 stock prices and book values ("v").[29] NEP also relies on the 4.0 percent 5-year median projected earnings growth rate published by Zacks Investment Research in June 1988.

AUS recommends a growth rate of 4.53 percent on the basis of an equal weighting of the results of 4.75 percent from its two-stage growth analysis and 4.3 percent from its fundamental analysis.[30] The two-stage analysis uses data derived by averaging seven historical and forecasted growth rates taken from Value Line and I/B/E/S. AUS uses the mean of these rates, 4.35 percent, for the first stage, and the median, 4.94 percent, for the long-run second stage beginning after five years.

AUS bases its retention growth rate "br" of 4.3 percent on retention growth rates projected by Value Line for 1988, 1989, and 1990–1992.[31] Although AUS does not attempt to specify a particular "sv" component in its fundamental analysis, it notes that with price-book value ratios above 1.0, the "sv" component would be positive and thus produce additional growth.

AUS uses a totally different method to "test the reasonableness of growth rates developed from other sources."[32] It notes that indicators of inflation, economic growth, and changing capital cost rates are higher now than last year, and then argues that the growth rate must also be higher. AUS presents a table showing that the average increase in these items between 1987 and 1988 was 0.85 percent. Forecasts of these factors for the coming year average a 0.20 percent increase. AUS weighs the historical and projected increases and concludes that an increase of approximately 0.5 percent in the Commission's prior annual growth rate (to 4.84 percent) would be appropriate.

FAB–OEPR recommends a growth rate of 3.70 percent on the basis of a fundamental analysis of 85 companies.[33] FAB–OEPR estimates a near-term retention ratio "b" of 27 percent, based on 1988 data from Salomon Brothers and on projected data from Value Line.

FAB–OEPR uses three methods to estimate a near-term return on equity "r" of 13.5 percent.[34] First, it reviews the Value Line rate of return projections for 1990–1993, concluding that "the Value Line data support a 13.6 percent estimate for the expected earned rate of return on average common equity during the next several years."[35]

Second, FAB-OEPR uses a technique called attrition analysis to examine the difference between allowed rates of return and earned returns for the period 1982–1987. On the basis of its judgment about those differences, FAB-OEPR concludes that electric utilities will earn 12.5 percent (about 0.5 percent below the 1987 allowed rates of return) in the near term.

Third, FAB–OEPR uses a method described as "sustainable rate of return," based on the mathematical equality:

$$r = \frac{\text{Dividend Yield} \times \text{Price/Book Value Ratio}}{\text{Payout Ratio}}$$

FAB–OEPR determines that a sustainable rate of return on common equity is 14.04 percent. FAB–OEPR concludes on the basis of this analysis that "investors would reasonably expect the average electric utility to earn a 13.5 percent rate of return on common equity in the near-term."[36]

Using an expected retention ratio "b" of 27 percent and an expected earned rate of return on average common equity "r" of 13.5 percent, FAB–OEPR calculates an internal growth rate for the industry of 3.6 percent.

FAB–OEPR next estimates external growth "sv".[37] It determines the "s" component to be 0.40 percent by subtracting its own estimate of internal growth (3.6 percent) from its analysis of Value Line's projections of growth in common stock equity (4.0 percent). FAB–OEPR's estimate of the "v" component is 0.219, based on a 1.28 price-book value ratio for the year ending June 30, 1988. Thus, external growth "sv" is 0.1 percent (0.004×0.219) and total projected growth, the sum of internal growth and external, is 3.7 percent.

GSA recommends a growth rate between 3.5 and 4.0 percent.[38] Its recommendation is based on both analyst growth forecasts and historical growth rates. GSA relies on Merrill Lynch's long-term (steady-state) growth rate for electric utility earnings of 4.0 percent. GSA also cites a finding that for each 5-year and 10-year period between 1955 and 1987 the average growth rate of Moody's Utility Common Stock Index ranged from 3.5 to 4.0 percent.

SWEP recommends a growth rate of 5.086 percent based on a 60–40 weighting of historical data and projections of future growth rates.[39] The historical data include a 5.9 percent fundamental growth rate derived from Standard and Poor's Compustat data. The projected growth rates average 4 5 percent and consist of 5-year projections of earnings per share and dividends made by First Boston and Salomon Brothers.

[26] EEI at Attachment A–13.
[27] NEP at 6.
[28] NEP at 3.
[29] NEP at Schedule No. 8.
[30] AUS at 39.
[31] AUS at 35.
[32] AUS at 31–32.
[33] FAB–OEPR at 9.
[34] FAB–OEPR at 3–6.
[35] FAB–OEPR at 4.
[36] FAB–OEPR at 6.
[37] FAB–OEPR at 6–7.
[38] GSA at 15.
[39] SWEP at 2.

2. Fundamental Analysis

a. *Earnings Retention Rate ("b") Analysis.* Six Commenters estimate the fundamental internal growth rate "br", either directly or through its individual components, the retention rate "b" and expected earned rate of return on book value of common equity "r". Three commenters, NEP, BEC and FAB–OEPR, present estimates of the earnings retention rate "b" (1.0 minus the payout ratio). NEP adopts the 30 percent rate from Order No. 489 without any independent analysis. BEC analyzes base-year data and projections and finds that both of these are below the 30 percent level. BEC also analyzes historical data and finds that the retention rate has fluctuated around the 30 percent level. BEC concludes that a 30 percent retention rate is appropriate.[40] FAB–OEPR also examines base-year and projected retention rates and concludes that a retention rate of 27 percent is appropriate.[41]

In Order No. 489, the Commission noted that in the two previous proceedings it had found that 28–32 percent represented a reasonable range of projected retention rates and used 30 percent in its own calculations. It further stated:

> In this proceeding, evidence suggests that the dividend payout ratio has risen recently and that a ratio above 70 percent is projected for the near-term future. * * * However, the Commission believes that, despite recent data and near-term expectations for the dividend payout ratio, the evidence is not persuasive that investors have long-term expectations that deviate significantly from the 70 percent ratio the Commission has adopted in the last two proceedings.[42]

The Commission concludes that the evidence in the record of this proceeding supports continuation of a long-term expected earnings retention rate of 30 percent.

b. *Expected Earned Rate of Return on Equity ("r") Analysis.* Two commenters, BEC and FAB–OEPR, explicitly comment on the expected earned rate of return on equity "r". The Commission also infers the rate of return for a third commenter, NEP. The three expected earned rates of return are in the relatively narrow range of 13.5 percent to 14.0 percent.

BEC examines historical and base-year data and projections of "r". Its historical analysis covers the six-year period 1982–1987. Its projections are based on Value Line's estimates for each utility for 1990–1992. The average of the median returns for the projected period is 13.8 percent. On the basis of all of its analyses, BEC concludes that investors expect a return on equity of approximately 14.0 percent.

FAB–OEPR examines Value Line composite projections and projections for individual utilities. On the basis of that data, FAB–OEPR concludes that the projections support an estimate for "r" of 13.6 percent. FAB–OEPR also performs an "attrition analysis" which yields an estimated earned rate of return of 12.5 percent and a "sustainable rate of return analysis" which yields an estimated return of 14.04 percent. FAB–OEPR concludes that a 13.5 percent rate of return is appropriate.[43]

NEP estimates a historical base-year "br" for each utility. Because NEP uses a retention rate of 30 percent for each company, the Commission is able to estimate that the rate of return implied in NEP's estimate is 13.7 percent.[44]

The Commission believes that reliance on a purely historical appproach to project an expected rate of return is not warranted. Although historical growth rates do provide a reference point, additional analyses are needed before one can conclude that investors expect the future to replicate the past. It is the judgment of the Commission that 13.8 percent is a reasonable expected earned rate of return on common equity for public utilities at this time.

c. *Internal Growth ("br") Analysis.* Three commenters, AUS, EEI and NEP, present estimates of the combined value of internal growth "br". AUS uses Value Line forecasts to arrive at its projected "br" of 4.3 percent. EEI estimates internal growth through a base-year fundamental analysis (3.37 percent) and a projected fundamental analysis (4.7 percent). As noted above, NEP uses base-year data to derive its internal growth estimate of 4.1 percent.

The Commission's estimate of "br", derived from separate estimates of "b" and "r", is 4.14 (0.3×0.138), which is in the lower to mid-range of these estimates.

d. *Proportion of New Stock Expected to be Issued ("s") Analysis.* The Commission adopts an "s" value (proportion of new stock expected to be issued) of 0.9 percent. Three commenters present specific estimates of "s", ranging from 0.03 percent in the base year (EEI) to a 1.0 percent long-term forecast (BEC). The use of the constant growth model requires evaluation of estimates of long-term industry trends. BEC presents a convincing argument that, while investors expect relatively low construction and external common stock financing in the near term, they expect somewhat higher levels in the longer term. The Commission therefore gives relatively little weight to the near-term forecasts of EEI (0.07 percent) and FAB–OEPR (0.4 percent), and more weight to the long-term forecast of BEC, which is more in keeping with the findings of long-term expectations in previous proceedings.

e. *Expected Price of New Common Stock Financing Relative to Book Value ("v") Analysis.* The Commission adopts a "v" value (the expected price of new common stock financing relative to its book value) of 0.225. The estimates presented by commenters are in a narrow range. FAB–OEPR uses base-year data to arrive at a price-book value ratio of 1.28. BEC and EEI use the methodology favored in RM87–35 and arrive at projected price-book value ratios of 1.31 and 1.27, respectively. The commenters' results are so close that the Commission cannot meaningfully distinguish among them. The Commission therefore adopts the average, 1.29, which is equivalent to a "v" of 0.225. The resulting value of "sv" is 0.20 percent (0.9×0.225).

f. *Total Fundamental Growth ("br+sv") Analysis.* One commenter, SWEP, reports the result of its historically based fundamental analysis as one line of a table.[45] The Commission places little weight on SWEP's fundamental analysis because it does not provide sufficient information for the Commission to evaluate its study. In particular, the comments state neither which data SWEP uses to estimate "br" and "sv" nor how many years of data are included in the study. The Commission's estimate of total fundamental growth "br+sv" is 4.3 percent (0.138×0.30+0.009×0.225).

3. Two-Stage Growth Analysis

Three commenters present two-stage growth analyses. However, these analyses are not particularly helpful in determining a dividend growth rate for use in the constant growth rate model. In its two-stage DCF analyses, BEC employs a complex procedure to forecast utility stock prices in the 1990–1992 period. By forecasting stock prices directly, BEC bypasses the two-stage growth analysis the Commission asked commenters to utilize. The analysis desired by the Commission includes estimates for near-term growth and long-term growth in dividends per share. Long-term growth rates are implicit in

[40] BEC at 14.
[41] FAB–OEPR at 2.
[42] 53 FR at 3352.
[43] FAB–OEPR at 3–6.
[44] NEP at Schedule No. 7.
[45] SWEP at 2 and Exhibit B.

BEC's stock price forecasts, but the Commission has no way of appraising their reasonableness. For this reason, the Commission places little weight on BEC's results.

In its analysis, EEI uses its base-year fundamental analysis growth rate (3.4 percent) as the near-term growth rate estimate, and analysts' near-term forecasts as the long-term growth rate. EEI dismisses its own two-stage forecast, arguing that the analyst's near-term forecasts are understated. The Commission believes that the EEI analysis is deserving of little weight because EEI does not use a long-term growth rate forecast.

The Commission also does not place much weight on AUS's application of the two-stage growth model. AUS provides no theoretical justification for using the mean of its seven historical and forecasted growth rates as the short-term growth rate in the model or for using the median of these growth rates as the long-run growth rate.[46]

NEP criticizes the use of a two-stage growth rate analysis on practical grounds. It argues that it is very difficult to establish two separate growth rate stages for the electric utility industry because most projected growth rates are for periods not longer than five years and are appropriate only for the first stage. The use of short-term forecasts for the second stage of the model has been a problem in this proceeding. The only commenter to offer a long-term growth rate (4.0) estimate (GSA) does not use that rate in a two-stage model.[47]

The Commission cannot rely on the two-stage growth rate analysis in this proceding because the two-stage analyses presented by commenters are each deficient in some manner, leaving the Commission without sufficient data to perform its analysis.

4. Other Growth Rate Estimates

The State of Connecticut Office of Policy and Management suggests that the evaluation of the data and methods for estimating the expected growth rate are reasonable and should be encouraged.[48] The Commission restates its position that it will place primary reliance on two specific methods of estimating the expected annual dividend growth rate—a fundamental analysis approach and a two-stage growth model, but that it will consider other data and methods as a check on the reasonableness of the results of the two primary methods.[49]

AUS presents a hypothesized relationship between indicators of inflation, economic growth, and changing capital cost rates on the one hand and growth of electric utility dividends on the other, but fails to offer a persuasive justification for that relationship. In fact, some of the relationships may be the inverse of that hypothesized by AUS. For example, increases in interest rates and capital costs generally curb business expansion and demand for electricity. It is therefore unlikely that the result would be an expectation of an increased dividend growth for electric utilities. Furthermore, AUS does not present any evidence of the sensitivity of electric utility dividend growth rates to these factors. Finally, AUS test is tied to near-term phenomena and not to the long-term factors required by the constant growth rate model.

Four commenters submit historical growth rates of dividends and of earnings per share. These historical growth rates vary from 3.6 percent to 5.6 percent, with most estimates above 4.0 percent (See Table 2). Both BEC and EEI suggest that those 5-year growth rates may be biased downward because of negative earnings growth in recent years. EEI suggests that negative earnings growth may be due to one-time events such as changes in accounting standards.[50]

Analysts' near-term forecasts vary from 2.7 to 4.8 percent, with most estimates at 4.0 percent or below. EEI also suggests that near-term forecasts may be biased downward by the same one-time events that affected the 5-year historic growth rates.

The Commission's fundamental analysis growth rate of 4.3 percent falls between historic growth rates and near-term forecasts.

5. Conclusion

The Commission concludes, on the basis of its review of the commenters' analyses and its own analysis developed above, that an expected annual dividend growth rate factor of 4.3 percent is appropriate for use in the quarterly indexing procedure for the 12 months beginning February 1, 1989. The Commission reaches this conclusion primarily on the basis of the fundamental analysis approach. The two-stage growth rate analysis proved unusable for determining growth rate in this proceeding due to the sparse data and deficient analyses offered by commenters.

C. Flotation Costs

Flotation costs are incurred by utilities when they sell new shares of their common stock, and include issuance costs, such as underwriters' compensation and legal and printing fees. Although relatively small, flotation costs are not accounted for elsewhere in a utility's cost of service and are therefore included in the calculation of the allowance on common equity.

The Commission continues its policy of calculating an industry average adjustment to the required rate of return in order to compensate utilities for issuance costs only. The Commission also continues its policy of estimating the adjustment to the required rate of return for flotation costs using the following formula:[51]

$$k^* = \frac{fs}{(1+s)}$$

where:

k^* = flotation cost adjustment to required rate of return

f = industry average flotation cost as a percentage of offering price

s = proportion of new common equity expected to be issued annually to total common equity

Commenters' estimates for "f", average flotation cost as a percentage of offering price, range from 2.68 to 3.56 percent.[52] The Commission finds the analysis of BEC to include the most comprehensive set of new issues and adopts it estimated 3.56 percent value of "f" in deriving the value of flotation cost "k *".

The Commission determined in the growth rate section above that the expected proportion of new common equity issued annually, "s", should be 0.9 percent. Applying the 3.56 percent estimate of issuance costs, "f", and the 0.9 percent estimate of new equity financing, "s", to the above formula, the Commission finds the flotation cost adjustment for use in the quarterly indexing procedure to be 0.03 percent, or 3 basis points.[53]

D. Inclusion of Diversified Public Utilities in the Sample

The General Services Administration (GSA), commenting on behalf of the

[46] AUS at 34.

[47] GSA at 15.

[48] CONN at 1.

[49] *See*, 53 FR 31884–85.

[50] The EEI estimates of 5-year historical growth appearing in Table 2 have been recalculated to eliminate utilities with negative growth rates. Before the recalculation EEI's median 5-year historical dividend and earnings growth rates were 3.46 percent and 1.44 percent, respectively.

[51] *See*, Order Nos. 420, 442, 461, and 489.

[52] AUS at 37, BEC at 32, EEI Attachment A at 15, OEPR at 11, and SWEP at Exhibit C.

[53] Flotation cost adjustment = 0.0356 (0.009) ÷ 1.009 = 0.0003.

consumer interests of Federal executive agencies, recommends that the Commission revise the criteria for inclusion of electric utilities in the sample used to determine the dividend yield factor in the DCF formula to recognize the increasing diversification of some of those firms into non-utility ventures. GSA maintains that diversification into non-utility ventures increases the investment risk of utility firms, thereby requiring them to offer higher dividend yields to attract investors. GSA concludes that inclusion of these diversified firms in the sample for calculating the median dividend yield for electric utilities inflates that median yield and thereby inflates the rate of return finding.[54]

GSA cites three specific examples of diversification efforts which it suggests have altered the risk profiles of sample firms. Minnesota Power and Light has invested in leveraged leases and preferred stock, real estate, telecommunications, and paper mills, and 40 percent of its net income is currently derived from non-utility ventures.[55] Potomac Electric Power Company has invested in oil and gas exploration, venture capital firms, finance and operating aircraft leases, subway cars, communication satellites, real estate, power production projects, financing of low-income housing, and high-yield corporate bonds. Hawaiian Electric Industries has invested in banking, insurance, real estate, marine transportation services, and corporate securities. GSA argues that most diversification into non-utility areas has led to greater risks and higher expected and required returns on common equity. It supports its position by citing reports by credit rating agencies and other investment firms and a statement by the Minnesota State public utility commission recognizing that investors perceive non-utility ventures as relatively riskier than utility ventures. It discounts the likelihood that the "portfolio effect" of diversification (that is, investment in non-utility operations that are countercyclical to the firm's utility operations) will offset the increase in business risk.

GSA suggests that the sample group of utilities be changed to ensure that the rates charged for utility services reflect only the risks and costs, including capital costs, attributable to utility operations. It suggests inclusion of an earnings volatility measure to screen out those firms whose earnings volatility has been significantly altered by diversification.

The Commission has previously considered this issue. In the fourth annual proceeding, FAB-OEPR identified a number of companies in the industry sample which had begun to diversify into unregulated businesses. It suggested that diversified companies have a different risk profile than firms which are solely regulated utilities because diversified companies as a group have lower dividend yields, higher expected earned returns, and, therefore, higher price-to-book value ratios. However, FAB-OEPR's analysis revealed that diversification had not had a significant impact on the industry cost of capital.[56] The Commission responded in Order No. 489 by noting that, although FAB-OEPR's data showed divergence between diversified and non-diversified utilities in dividend yields, expected earned returns, and price-to-book value ratios, they also showed that the costs of equity for the two groups remained very close. The Commission therefore declined to eliminate utilities from its sample on the grounds of diversification and concluded that its existing sampling procedures regarding diversified firms were adequate. However, the Commission did acknowledge that diversification is an increasingly important factor in the electric utility industry and did state its intent to monitor the effects of diversification on the industry average cost of equity in future proceedings.[57]

The Commission continues to acknowledge that diversification activities may transform the risk profile of a public utility to such an extent that it is no longer appropriate to include that firm in the sample for calculation of median dividend yields for public utilities. In the current proceeding, FAB-OEPR again suggests that the inclusion of diversified companies in the sample has no material effect on the benchmark.[58] The Commission will continue to monitor the impact of diversification on the benchmark rate of return.

E. Advisory Status of Generic Rate of Return

Several commenters support the intention of the Commission, expressed in the NOPR in this proceeding, to continue to use the generic rate of return on an advisory basis.[59] During several earlier annual proceedings, the Commission had considered treating the generic rate of return as a rebuttal presumption. However, that is not an issue in this proceeding because the NOPR did not propose to modify § 37.8 of the Commission's regulations, which provides that "[t]he benchmark rates of return under this part will be advisory only." The Commission decided in those earlier proceedings, most recently in Order No. 461, not to make the generic rate of return a rebuttal presumption at that time. The generic rates remain advisory.

Two commenters go further and suggest that the Commission declare that the generic rate of return will permanently remain advisory only.[60] The Commission declines to do so. This rule deals with the benchmark process for the 12 months beginning February 1, 1989, and the Commission did not propose to change the status of the generic rate of return for that period. Furthermore, the Commission in the future could choose to propose and implement such a change and would not be bound by any statement regarding permanence made in this rule. Therefore, the sense of permanence sought by those two commenters would be illusory.

F. Utility of Benchmark Rate of Return

BEC comments that the "benchmark experiment" now seems unlikely to achieve its three original purposes stated in Order No. 389. It suggests that the annual benchmark proceeding has become a purely mechanical process which does not give the Commission a "more current and direct understanding of the financial and operating circumstances of the electric utility industry." BEC notes that the Commission prepared industry financial profiles in 1985 and 1986 to implement this objective but has discontinued the practice. It also suggests that the procedure cannot achieve its purpose of rendering more accurate and consistent rate of return decisions without the agency's willingness to devote the time and resources needed for a meaningful exploration of factors affecting the cost of equity. Finally, BEC comments that the benchmark procedure has not achieved its purpose of saving resources, and that there is no reason to expect that it will.[61]

AUS also expresses concern that the generic rate of return proceedings have not accomplished the stated goals initially established by the Commission

[54] GSA at 1–2.
[55] *Id.*, at 3–5.
[56] 53 FR 3349, citing comments of FAB-OEPR staff at 1, 12.
[57] 53 FR 3349.
[58] OEPR at 1.
[59] Conn. at 1, CEC at 2.
[60] CEC at 2, EEI at 5.
[61] BEC at 1–2.

and it criticizes the DCF model as presently employed by the Commission.

EEI comments that little use has been made of the benchmark rates of return by utilities, intervenors, Commission staff, or the Commission itself. It notes that the benchmark rate of return is rarely mentioned in Commission orders other than in the generic rate of return proceedings themselves and that, although Commission staff now includes benchmark information as exhibits in rate case proceedings, that information does not appear to play any significant role in the staff's recommendations.[62] EEI states that reference to the generic rate of return in decisions of the Commission or administrative law judges has been generally limited either to matters of detail or to rejections of its use. EEI further notes that when public utilities have sought to use the benchmark to serve as a basis for automatic adjustment of the rate of return on equity, the Commission has refused permission. EEI finds this unfortunate "since automatic adjustment of a pre-established rate of return is at least one (perhaps the only) function that the benchmark rate of return procedure may be adequately equipped to perform." [63] EEI suggests that the Commission's failure to utilize the benchmark rate of return reflects a lack of confidence in its validity. EEI concludes that the benchmark rates of return developed by the Commission in earlier proceedings have "systematically and substantially understated the cost of capital to electric utilities" and that therefore the Commission's methodology fails the "end-result" test.[64]

The Commission continues to believe that generic determination of rate of return on common equity for public utilities can provide several desirable benefits, including more accurate and consistent Commission decisions among companies and for the same company over time. The Commission also expects use of the generic rate of return to result ultimately in significant cost savings. Those benefits have not yet been realized to a major degree because adoption of the benchmark rate has been incremental and cases in which the benchmark could be applied have only recently begun to reach the Commission decision stage. In addition, the pace of change in long-standing practices and procedures is often slow. The Commission has utilized the generic rate in arriving at its rate of return conclusion in several recent cases, including *Connecticut Light and Power, et al.*[65] and *Yankee Atomic Electric Company, et al.*[66] There have also been some innovative uses of the generic rate of return in proceedings such as *Ocean State Power.*[67] The Commission continues to encourage wider use of the generic rate of return by staff and other parties and remains confident that as its use broadens, its utility will become more evident.

American Electric Power Service Corporation (AEP) comments that the generic rate of return has not produced economically realistic results and should be abandoned. AEP asserts that in each recent year the required rate of return projected by the Commission's DCF model has failed "to even remotely approximate the actual return realized by investors in utility stocks." [68]

Even if AEP's assertions are true, the test it implies is not a valid test of the model. As the Commission has stated in the past, the DCF model is used to estimate the return required by investors at the time the analysis is performed. It is not intended to forecast price changes, changes in market conditions, or changes in expectations. A year later, expectations about interest rates, dividends and growth rates will likely have changed. Prices change because expectations change. The Commission agrees that the DCF model is a poor method for predicting future stock prices.[69]

AUS charges that the Commission's quarterly benchmark does not work properly. AUS argues that the benchmark does not change in unison with other indicators of capital costs. To make its point, AUS cites the reduction in the benchmark from 12.51 percent to 12.36 percent (calculated using dividend yield data for the period January through June 1988 and applicable between August 1 and October 31, 1988). It compares this decrease to the 34 basis point increase in the yield of "10-year Treasuries" between April 15 and July 15, 1988.

AUS has mismatched the time periods for comparison between the benchmark rate and bond yields. In partial response to a similar argument by AUS in RM87–35, the Commission stated:

> In addition, some commenters mismatched the time periods for comparison between the benchmark rate and bond yields. While it is true that a benchmark rate of return is meant to apply to a particular period, it is calculated by the Commission using dividend yield data from a period prior to the applicability period. Therefore, a fair comparison should contrast the benchmark rate of return with contemporaneous smoothed bond yields * * *
>
> In the quarterly indexing procedure used to develop the benchmark rate, the Commission uses a six month divident yield to smooth short-term market fluctuations inherent in spot yields. A similar smoothing process should be used to remove short-term fluctuations from bond yields before any comparison is made.[70]

The same problem arises again with the AUS analysis in this proceeding. When 10-year Treasury bond yields are smoothed in a manner consistent with the dividend yield measurement period used in the quarterly indexing procedure, the result is a decrease in bond yields between the two periods. The smoothed bond yield is 8.77 percent for the first period and 8.66 percent for the second, a decline of 11 basis points, almost precisely equal to the 15 basis point decline in the generic rate of return for the same period.

G. Other Comments

AUS requests that the Commission conduct evidentiary hearings or appoint an administrative law judge to analyze the comments submitted in this proceeding to "provide the necessary forum for each commenting party to sustain its burden of proof through discovery and cross-examination of each participant." [71] AUS suggests that the fact that the Commission has stated that it will take "official notice" of the benchmark rate of return in individual rate cases requires that hearings be conducted in this rulemaking proceeding before the Commission or an administrative law judge.

This is a generic rulemaking proceeding under the Administrative Procedure Act (APA). The APA does not require a formal evidentiary hearing in such circumstances and AUS has presented no justification for holding such a hearing in this case.

The State of Connecticut, on behalf of its Department of Public Utility Control, stresses its opposition to extension of the generic rate of return concept beyond the Commission. It argues that state regulatory agencies must maintain flexibility in their decision making and sovereignty over determination of rates of return allowed to local utilities.[72]

[62] EEI at 8.
[63] *Id.* at 9.
[64] *Id.* at 6.
[65] 43 FERC ¶ 61,508 (June 22, 1988) at 62,264 and 62,267, 45 FERC ¶ 61,370 (Dec. 6, 1988) (order on rehearing).
[66] 40 FERC ¶ 61,372 (Sept. 30, 1987) at 62,210 43 FERC ¶ 61,232 (May 6, 1988) (order on rehearing).
[67] 44 FERC ¶ 61,261 (Aug. 19, 1988).
[68] AERP at 3, 6.
[69] 53 FR 3346.
[70] *Id.*
[71] AUS at 5.
[72] CONN at 2.

The NOPR in this proceeding did not propose to expand the applicability of the generic rate of return. The Commission regulations are applicable to utilities within this Commission's jurisdiction; Connecticut's concerns about their imposition on state regulatory agencies are groundless.

Two commenters suggest that the Commission consider methods and models other than its DCF formula to determine a benchmark rate of return, arguing that the Commission's DCF formula is flawed and inadequate.[73]

The Commission's use of the DCF formula is not an issue in this proceeding. The Commission has thoroughly considered numerous and wide-ranging comments on that DCF formula in the four previous annual proceedings and has adopted the same formula in each final rule. In adopting its DCF formula for the fourth time in Order No. 489, the Commission stated that future proceedings may be limited to determination of the growth rate and flotation cost factors to be used in that formula in the quarterly indexing procedure.[74] The NOPR in this fifth annual proceeding did limit the inquiry to the growth rate and flotation cost factors. The Commission's DCF formula is an established methodology and comments promoting alternative methods are beyond the scope of the NOPR.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[75] requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. Nearly all of the jurisdictional utilities that would be affected by the proposed rule are too large to be considered "small entities" within the meaning of the Act.[76] Accordingly, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

V. National Environmental Policy Act

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.[77] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[78] The Commission has found that matters affecting rates for the purchase or sale of electricity are not major federal actions that have a significant environmental impact.[79] The generic rate of return is a factor to be considered in the determination of electric rates. Thus, no environmental assessment or environmental impact statement is necessary for the requirements of this final rule.

VI. Paperwork Reduction Act

The Paperwork Reduction Act[80] and Office of Management and Budget (OMB) regulations[81] require that the OMB approve certain information collection requirements imposed by agency rule. The final rule in this proceeding does not impose any information collection requirements. Therefore, the Commission has not submitted this rule to the OMB for review or approval.

VII. Timing of Quarterly Updates and Effective Date of Rule

The benchmark rates of return established through the Commission's quarterly indexing procedure will generally be published on or before the fifteenth of the month following the close of a calendar quarter.

The first quarter will run from February 1 to April 30, the second quarter from May 1 to July 31, the third quarter from August 1 to October 31, and the fourth quarter from November 1 to January 31.

This rule will be effective January 18, 1989.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission. Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,

Secretary.

Appendix A—Commenters in RM88–25–000

American Electric Power Service Corporation—AEP
Associated Utility Services, Inc.—AUS
Boston Edison Company, *et al.*—BEC
Commonwealth Edison Company—CEC
State of Connecticut/Office of Policy and Management—CONN
Edison Electric Institute—EEI
Financial Analyses Branch, Office of Electric Power Regulation, Federal Energy Regulatory Commission—FAB–OEPR
General Services Administration—GSA
New England Power Company—NEP
Southern Electric System—SES
Southwestern Electric Power Company—SWEP
Southwestern Public Service Company—SPSC

Appendix B—Public Utilities Used in Base-year Dividend Yield Calculations and Quarterly Updates

Utility	Ticker symbol
Allegheny Power System	AYP
American Electric Power	AEP
Atlantic Energy Inc	ATE
Baltimore Gas & Electric	BGE
Black Hills Corp	BKH
Boston Edison Co	BSE
Carolina Power & Light	CPL
Centerior Energy Corp	CX
Central & South West Corp	CSR
Central Hudson Gas & Elec	CNH
Central Ill Public Servic	CIP
Central Louisiana Electri	CNL
Central Maine Power Co	CTP
Central Vermont Pub Serv	CV
Cilcorp Inc	CER
Cincinnati Gas & Electric	CIN
CMS Energy Corp	CMS
Commonwealth Edison	CWE
Commonwealth Energy Syste	CES
Consolidated Edison of NY	ED
Delmarva Power & Light	DEW
Detroit Edison Co	DTE
Dominion Resources Inc-VA	D
DPL Inc	DPL
Duke Power Co	DUK
Duquesne Light Co	DQU
Eastern Utilities Assoc	EUA
Empire District Electric	EDE
Fitchburg Gas & Elec Ligh	FGE
Florida Progress Corp	FPC
FPL Group Inc	FPL
General Public Utilities	GPU
Green Mountain Power Corp	GMP
Gulf States Utilities Co	GSU
Hawaiian Electric Inds	HE
Houston Industries Inc	HOU
I E Industries Inc	IEL
Idaho Power Co	IDA
Illinois Power Co	IPC
Interstate Power Co	IPW
Iowa Resources Inc	IOR
Iowa-Illinois Gas & Elec	IWG
Ipalco Enterprises Inc	IPL
Kansas City Power & Light	KLT
Kansas Gas & Electric	KGE

[73] AUS at 5, SPSC at 4.

[74] 53 FR 3359.

[75] 5 U.S.C. 601–612 (1982).

[76] The Act defines a "small entity" as a small business, a small not-for-profit enterprise or a small governmental jurisdiction. 5 U.S.C. 601(b) (1982). A "small business" is defined by reference to section 3 of the Small Business Act, as an enterprise which is "independently owned and operated and which is not dominant it its field of operation." 15 U.S.C. 6.32(a) (1982).

[77] Order No. 486, Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987) FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987), *codified at* 18 CFR Part 380.

[78] 18 CFR 380.4 (1988).

[79] 18 CFR 380.4(a)(15) (1988).

[80] 44 U.S.C. 3301–3520 (1982).

[81] 5 CFR 1320.12 (1988).

Utility	Ticker symbol
Kansas Power & Light	KAN
Kentucky Utilities Co	KU
Long Island Lighting	LIL
Louisville Gas & Electric	LOU
Maine Public Service	MAP
Middle South Utilities	MSU
Midwest Energy Co	MWE
Minnesota Power & Light	MPL
Montana Power Co	MTP
Neco Enterprises Inc	NPT
Nevada Power Co	NVP
New England Electric Syst	NES
New York State Elec & Gas	NGE
Niagara Mohawk Power	NMK
Nipsco Industries Inc	NI
Northeast Utilities	NU
Northern States Power-MN	NSP
Ohio Edison Co	OEC
Oklahoma Gas & Electric	OGE
Orange & Rockland Utiliti	ORU
Pacific Gas & Electric	PCG
Pacificorp	PPW
Pennsylvania Power & Light	PPL
Philadelphia Electric Co	PE
Pinnacle West Capital Cor	PNW
Portland General Corp	PGN
Potomac Electric Power	POM
PSI Holdings Inc	PIN
Public Service Co of Colo	PSR
Public Service Co of N H	PNH
Public Service Co of N ME	PNM
Public Service Co Enterprise	PEG
Puget Sound Power & Light	PSD
Rochester Gas & Electric	RGS
San Diego Gas & Electric	SDO
Scana Corp	SCG
Scecorp	SCE
Sierra Pacific Resources	SRP
Southern Co	SO
Southern Indiana Gas & El	SIG
St Joseph Light & Power	SAJ
Teco Energy Inc	TE
Texas Utilities Co	TXU
TNP Enterprises Inc	TNP
Tucson Electric Power Co	TEP
Union Electric Co	UEP
United Illuminating Co	UIL
Unitil Corp	UTL
Utah Power & Light	UTP
Utilicorp United Inc	UCU
Washington Water Power	WWP
Wisconsin Energy Corp	WEC
Wisconsin Public Service	WPS
WPL Holdings Inc	WPH

Trabandt, Commissioner, concurring

This, the fifth annual rule on the generic rate of return, serves a routine purpose. The Commission has only updated two elements in the formula for 1989: the growth rate and "flotation cost factors" (that part of the cost of capital that represents expenses for securities underwriters). Order at 1. If the majority had stopped there, I would have voted for the rule without again expressing my basic disapproval of the idea that the Commission should fix a generic rate of return. As the preamble, order at 37–42, meanders from solving algebraic equations to provide a response to comments questioning the "Utility of the Benchmark Rate of Return," I will offer mine.

I agree with Boston Edison Company and, to some extent, with the Edison Electric Institute (EEI)'s observations. Not only has the annual benchmark proceeding become a "purely mechanical exercise" (order at 37), I have gone even further and suggested that "the generic rate of return has no meaning." *Connecticut Light & Power Company*, 43 FERC ¶ 61,508 (1988) at 62,272 (dissenting opinion). To me, the whole exercise reflects a lack of sensitivity to the proper method of setting rates of return.

The law and sound policy require that we also take the individual circumstances in which companies operate into account when we set the rate of return. *See, Ocean State Power*, 44 FERC ¶ 61,261 (1988) at 61,987 (dissenting opinion). With a generic rate of return, no matter how advisory, the Commission faces—and perhaps succumbs to—a severe temptation not to. (Indeed, I have pointed out the coincidence between the generic and the allegedly individual rates of return we have set in several cases, *e.g., Connecticut Light & Power; Yankee Atomic Electric Company*, 40 FERC ¶ 61,372 (1987) at 62,226 (concurring opinion), *reh. den.* 43 FERC ¶ 61,232 (1988).) Fixing a rate of return may be subjective but that does not entitle us to become completely arbitrary. *Public Service Commission of the State of New York v. FERC*, 813 F.2d 448, 465 (D.C. Cir. 1987).

One final comment: the majority, order at 39–40, hints strongly that they intend to take the generic rate of return beyond the advisory stage. Indeed, the order states with certain eloquence, in response to EEI's complaint that we have not used the benchmark enough, "the pace of change in long-standing practices and procedures is often slow." The order correctly cites to the fact that the Commission has used the generic rate of return several times. The majority encourages parties to make greater use of the benchmark in the future.

I dissented in the cases the majority cites and I will continue to oppose our imposing the generic rate of return on individual utilities in rate cases. In my opinion, change in long-standing practices and procedures may sometimes be unnecessary, and in some instances, may be harmful. The type of change the majority suggests here falls under both categories. I think we should abandon this approach altogether.

With these reservations, I concur in the order.

Charles A. Trabandt,

Commissioner.

[FR Doc 88–29516 Filed 12–22–88; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 24, and 148

[T.D. 89–3]

Customs Regulations Amendments Relating to the United States-Canada Free-Trade Agreement

AGENCY: Customs Service, Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document amends the Customs Regulations to implement the duty preferences of the United States-Canada Free-Trade Agreement, commonly referred to as the CFTA.

DATES: Effective date: January 1, 1989. Written comments must be received on or before February 21, 1989.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Harrison Feese, Office of Trade Operations (202–566–7060), Harry Carnes, Office of Inspection and Control (202–566–8648); Audit and Forms Aspects: Marcus Sircus, Office of Regulatory Audit (202–566–2812); Legal Aspects: John Valentine, Office of Regulations and Rulings, (202–566–5868).

SUPPLEMENTARY INFORMATION:

Background

On January 2, 1988, the United States and Canada (the "Parties") entered into an agreement, the United States-Canada Free-Trade Agreement (CFTA). The objectives of the CFTA are to eliminate barriers to trade in goods and services between the two parties, facilitate conditions of fair competition within the free-trade area, liberalize significantly conditions for investments within the free-trade area, establish effective procedures for the joint administration of the CFTA and the resolution of disputes, and lay the foundation for further bilateral and multilateral cooperation to expand and enhance the benefits of the CFTA.

The provisions of the CFTA were adopted by the United States with the enactment of the United States-Canada Free-Trade Agreement Implementation Act of 1988 the ("Act") (100 Stat. 418, Pub. L. 100–449).

The role of the U.S. Customs Service is to implement those portions of the CFTA and the Act that relate to the rules of origin and other trade issues. The rules of origin are the basis for determining whether goods imported into the U.S. from Canada are eligible for the preferential treatment accorded to goods originating in Canada. These rules do not confer origin or establish a criterion for determining origin for any other purpose. For example, origin determinations for eligibility under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS), as well as for country of origin marking under 19 U.S.C. 1304, are not affected.

Preferential treatment is available for goods entered under certain designated provisions throughout Chapters 1–99 of the HTSUS. This preferential treatment is available only to goods which are determined to be originating goods in

accordance with General Note 3(c), of the HTSUS.

The CFTA and the Act provide that goods wholly obtained or produced in the United States and/or Canada will qualify for such preferential treatment. Goods containing third-country material will qualify for preferential treatment if the materials undergo, in one or both parties, a sufficient degree of processing or assembly to result in a designated change in tariff classification under the HTSUS; that is, processing and/or assembly must result in changes in the product that are physicially and commercially significant. With respect to some goods (generally, assembled products), the CFTA and the Act also require that a specified percent of the cost of manufacturing the goods be attributable to U.S. or Canadian materials and/or direct cost of processing or assembly, incurred in the U.S. or Canada. In certain limited circumstances, the origin requirement may be met on the basis of meeting the value-content requirement above.

The CFTA and the Act contain a safeguard provision that will result in denial of preferential treatment to any goods altered merely to circumvent the rules of origin.

While regulations relating to automotive products are set forth below, specific regulations relating to textile and apparel products and other provisions will be the subject of a separate rule to be published at a later date. Following is a discussion of each section of the interim regulations.

Section-by-Section Discussion

Section 10.301 Scope.

This section sets forth a general statement of the coverage and statutory authority for the CFTA and the Act. It should be noted that excluded from the coverage of these provisions are such matters as marking and foreign assets control. Each of these is provided for elsewhere in this chapter.

Section 10.302 Eligibility criteria in general.

This section provides that the preferences shall be claimed under a HTSUS heading or subheading by use of the prefix "CA" in the "special" column of the entry summary or other appropriate customs document. This section further defines "originating goods", in general, which will be eligible for the preferences and which are more specifically defined in § 10.303. Such goods must be wholly obtained or produced in the United States or Canada, or transformed in accordance with General Note 3(c), HTSUS, in either party. The section further states that such originating goods must be shipped to the United States directly from Canada with certain exceptions identified in detail in § 10.306(b).

Section 10.303 Originating goods.

This section more specifically defines originating goods that are eligible for a preference. Such goods must be wholly obtained or produced in Canada or have been transformed by a processing that results in a change in classification that is specified in the CFTA. In certain instances, eligibility for preference also requires that a value-content test be met, as set forth in General Note 3(c), HSTUS. This section also provides rules under which a very limited class of goods may qualify for preference without change in classification.

Section 10.304 Exclusions.

This section sets forth those circumstances in which, notwithstanding a change in tariff classification, goods will not be considered as eligible for a preference. Such goods include those that have undergone simple packaging or simple combining operations, or have been merely diluted with water or another substance that does not materially change the characteristics of the goods.

In addition, under certain circumstances, goods will not be considered as originating goods if they have undergone any process or work the sole purpose of which is to circumvent the rules of origin that thereby qualify for a preference.

Section 10.305 Value content requirement.

This section sets forth the definitions that apply whenever a specific rule of origin requires a value-content determination.

Paragraph (a) defines the terms "direct cost of processing" or "direct cost of assembling" as those costs directly incurred in, or reasonably allocated to, the production of goods.

Paragraph (b) defines the term "value of materials originating in Canada or the United States, or both", as the aggregate of the price paid by the producer for material originating in either party, or both, or for materials from a third country used or consumed in the production of originating goods. When not included in that price, specific costs are defined that may be included in the value of the originating material, when related thereto.

Paragraph (c) defines the term "value of the goods when exported to the United States" as the aggregate of the price paid by the producer for *all* materials and the direct cost of processing and/or the direct cost of assembling the goods. When not included in the price paid for the materials, specific costs related thereto are specified.

Paragraph (d) provides that whenever a value-content determination is required, and whenever materials used in the production of goods in Canada or the United States originated in a third country, the value of the originating material may be included in the value-content only to the extent that the value is directly attributable to the goods under consideration.

Paragraph (e) sets forth specific costs that are excluded from the direct cost of processing or assembling. Such costs excluded include those related to the general expenses of doing business, brokerage charges, royalty payments, buildings costs and profit on goods.

Section 10.306 Direct shipment to the United States.

This section defines the circumstances under which goods will be considered to have been directly shipped to the United States from Canada in order to establish eligibility for preferences.

Paragraph (a) defines a through shipment as a direct shipment from Canada to the United States that does not enter the territory of a third country.

Paragraph (b) defines the circumstances under which goods will qualify for a preference if shipped through the territory of a third country. The requirements are that the goods not enter the commerce of any third country and not be subjected to any operation other than unloading, reloading, or any other operation necessary to transport or maintain them in good condition. Further, the documentation must reflect the United States as the final destination.

Section 10.307 Documentation.

This section sets forth the documentation required to claim a preference.

Paragraph (a) provides that a preference is claimed by including on the entry summary or equivalent document the symbol "CA" as a prefix to the subheading of the HTSUS under which the good is being entered.

Paragraph (b) requires that the claim for a preference be made at the time of filing of the entry summary, or liquidation will occur at the rate that would otherwise be applicable.

Paragraph (c) provides that a claim for a preference will be based on the exporter's written certificate of origin, Customs Form 353 (a copy of which is

set forth in Appendix A to this document), and that the certificate of origin must be available at the time the preference is claimed. The certificate under the regulations must be presented to the district director upon request.

Paragraph (d) requires that the certificate of origin be prepared on Customs Form 353 unless the exporter uses an approved computerized format or other format approved by the U.S. Customs Service. Such alternative format must contain the same information and certification as set forth on the Customs Form 353.

Paragraph (e) sets forth exceptions to the requirement for an exporter's certificate of origin that may be authorized by the district director. The exceptions include entries entitled to informal entry procedures provided for in §§ 143.21 and 143.22, Customs Regulations.

Paragraph (e) further requires that the invoice or other Customs release document for commercial goods that qualify for both informal entry and a preference must include a certification that the goods are eligible for a preference based upon the rules of origin. The certification must be signed by the manufacturer, supplier, or exporter. Further, special rules for automotive products are set forth in § 10.311.

Noncommercial goods which qualify for both informal entry and a preference may be exempt from the exporter's certificate of origin requirement if the goods are legally marked "Made in Canada", or it is otherwise shown that the goods qualify as originating goods.

Paragraph (e)(2) authorizes the district director to waive the requirement for evidence of direct shipment when he is satisfied that the otherwise qualifying goods were in fact imported directly from Canada.

Section 10.308 Records retention.

This section sets out the requirements for records retention by both U.S. importers and exporters. Paragraph (a) requires the importer to retain the exporter's certificate of origin for a 5-year period and requires that it be furnished to the appropriate Customs official upon request.

Paragraph (b) requires the exporter to retain, for a 5-year period, all of the information necessary to prepare the exporters certification of origin and to submit such information to the appropriate Customs official upon request.

Section 10.309 Verification of documentation.

This section authorizes the appropriate Customs official to require any evidence of country of origin or of direct shipment that he deems necessary to verify the claim for a preference.

Section 10.310 Election to average for motor vehicles.

Section 10.310 contains the regulations relating to the election to average for motor vehicles. Certain conforming amendments have also been made to § 10.84 that relate to automotive vehicles and articles for use as original equipment in the manufacture of automotive vehicles.

Paragraph (a) provides that the manufacturer may elect to average its calculation of the 50 percent value-content requirement for vehicles of the same class, assembled in the same plant, over a 12-month period. The election to average must be made before the importation of any vehicle produced within the 12-month period identified.

Paragraph (b) provides that an election to average becomes binding upon the first entry of vehicles for the identified 12-month period and that if the manufacturer's annual report fails to substantiate the claim that the vehicles are originating goods under the Act or a Canadian article under the Automotive Products Trade Act of 1965 (APTA), or if the manufacturer fails to comply with other reporting requirements, all vehicles covered by the averaging declaration will be liquidated without preference. Paragraph (c) sets forth the documentation requirements for a manufacturer of motor vehicles who elects to average in lieu of submitting an exporter's certificate of origin.

Section 10.311 Documentation for election to average for motor vehicles.

Paragraph (a) requires a declaration of election to average, signed by an authorized company official, and submitted to Customs on Customs Form 355. A sample of Customs Form 355 is set forth in Appendix B to this document.

Paragraph (b) requires that a quarterly report be submitted to Customs within 30 days of the end of each quarter on Customs Form 356. A copy of Customs Form 356 is set forth in Appendix C to this document. The manufacturer may elect to submit the required information in an approved computerized format or such other format as may be approved by Customs, provided the alternative format contains the information set forth on Customs Form 356. Negative quarterly reports are required.

Paragraph (c) requires that an annual report be submitted within 90 days of the end of the identified financial year on Customs Form 357. Again, the manufacturer may elect to submit the required information in an approved computerized format or such other format as may be approved by Customs, provided such alternative format contains the same information as required on Customs Form 357. A copy of Customs Form 357 is set forth in Appendix D.

Part 24 Customs Financial And Accounting Procedures

Section 24.23 sets forth an ad valorem fee on merchandise formally entered or withdrawn from warehouse for consumption. The Act provides for a gradual reduction of this fee on originating goods. The amendments establish the schedule for fee reduction from Janauary 1, 1990, to January 1, 1994.

Part 148 Personal Declarations and Exemptions

Subpart J of Part 148 relates to noncommercial importations of limited value. Section 148.102 provides for a flat rate of duty. The Act provides for a gradual reduction of the flat rate for originating goods imported from Canada. the regulatory amendments establish the schedule for duty reductions.

In order to assist the public in understanding the application of the flat rate to originating goods imported from Canada and the relationship of this flat rate to the personal exemptions provided by law, an example has been included as Appendix E to this document.

Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments (preferably in triplicate) timely submitted. 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 normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Customs Service Headquarters, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

Inapplicability of Notice and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(a) public notice is inapplicable to

this regulation because it is within the foreign affairs function of the United States. Not having regulations implementing the procedures for obtaining preferences for goods designated as eligible and other aspects of the United States-Canada Free-Trade Agreement on the date the United States-Canada Free-Trade Agreement Implementation Act of 1988, is expected to be effective, January 1, 1989, would provoke undesirable international consequences. In addition, because these regulations establish procedures which the public needs to know in order to claim a preference under the United States-Canada Free-Trade Implementation Act of 1988, it is determined pursuant to 5 U.S.C. 553(b)(B) that notice and public procedures are impracticable, unnecessary, and contrary to the public interest.

Furthermore, for the above reasons and because the regulations implement procedures for obtaining preferences for goods designated as eligible, thus conferring substantial benefits upon Canadian exporters and the public in general, it is determined that good cause exists under the provisions of 5 U.S.C. 553(d)(1) and (d)(3) for dispensing with a delayed effective date.

Executive Order 12291

Because this document will not result in a "major rule" as defined in E.O. 12291, a regulatory impact analysis is not required.

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.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in this regulation have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1515 - 0164.

Comments concerning the collection 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, with copies to the U.S. Customs Service, Regulations and Disclosure Law Branch, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

The collections of information in this regulation are in § 10.84, 10.307, 10.310 and 10.311, title 19, Code of Federal Regulations. This information is required to claim a preference under the CFTA and Act and will be used by the U.S. Customs Service to determine eligiblity for a preference. The likely respondents are business organizations including importers, exporters and manufacturers.

The estimated annual burden per respondent/recordkeeper varies from 15 minutes to 225 hours, depending on individual circumstances, with an estimated average of 3.55 hours. Estimated number of respondents and/or recordkeepers: 5,165. Estimated annual frequency of responses: 7.

Drafting Information

The principal author of this document was Marilyn G. Morrison, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Customs duties and inspections, Imports, Motor Vehicles.

19 CFR Part 24

Customs duties and inspections, Imports.

19 CFR Part 148

Customs duties and inspections, Imports.

Amendments to the Regulations

For the reasons set forth above, Parts 10, 24 and 148, Customs Regulations (19 CFR Parts 10, 24 and 148) are amended as set forth below.

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

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

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1499, 1508, 1623, 1624.

2. Section 10.84 is revised to read as follows:

§ 10.84 Automotive vehicles and articles for use as original equipment in the manufacture of automotive vehicles.

(a)(1) Certain motor vehicles and motor vehicle equipment are eligible for duty-free entry as proclaimed by the President under the Automotive Products Trade Act of 1965. The articles designated for such duty-free treatment are defined in General Note 3(c)(iii), HTSUS (19 U.S.C. 1202). Specifically, such articles are those designated [as "Free (B)"] in the "Special" subcolumn in Chapter 87, HTSUS, and must qualify as "Canadian articles" as defined in General Note 3(c)(iii)(A)(1). To claim exemption from duty under the Automotive Products Act of 1965, an importer must establish, to the satisfaction of the appropriate Customs officer, that the article in question qualifies as a "Canadian article" for purposes of General Note 3(c)(iii)A)(1). The Customs officer may accept as satisfactory evidence a certificate executed by the importer as set forth in paragraph (b) of the section, subject to any verification he may deem necessary. Alternatively, the Customs officer may determine that under the circumstances of the importation a certificate is unnecessary.

(2) Under the United States-Canada Free-Trade Agreement and implementing legislation (Pub. L. 100–449, 100 Stat. 418) a manufacturer of motor vehicles may elect to average, over its 12-month financial year, its calculation of the value-content requirement for vehicles in establishing its eligibility for tariff preference. Requirements for averaging are set forth in § 10.310 and 10.311.

(b)(1) When all materials used at any stage in the production of the imported article are wholly obtained or produced in Canada or the United States, or both, a certificate in the following form may be accepted as evidence that the commodity is a "Canadian article":

All materials contained in the product covered by the _____ (Describe the invoice, bill of lading, or other document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed were wholly obtained or produced in Canada or the United States, or both. No materials other than those which were wholly obtained or produced in Canada or the United States, or both, were incorporated into this product or any of its components at any stage of production or in the production of any intermediate product used at any stage in the chain of production in Canada or the United States, or both.

(2) When any material used at any stage in the production of an imported article or any of its components is not wholly obtained or produced in Canada or the United States, or both, a certificate in the following form may be accepted as evidence that the commodity is nevertheless a "Canadian article":

The product covered by the _____ (Describe the invoice, bill of lading, or other

document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed is an originating good so as to be a Canadian article. There were used in its production in Canada _____ (Description sufficient for tariff classification of the materials, and number of units) of third country materials of which the price paid was _____ per unit of quantity, plus _____ which represents all costs incurred in transporting the materials to the location of the producer and the duties, taxes, and brokerage fees on the materials, if such costs were not included in the price paid.

(3) If such Customs officer is satisfied that the revenue will be protected adequately thereby, he may accept in lieu of the certificate specified in paragraph (b)(2) of this section a certificate in the following form when the merchandise covered thereby has been produced with third country material but is an originating good under a specific rule of origin for the merchandise:

The product covered by the _____ (Describe the invoice, bill of lading, or other document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed is an originating good so as to be a Canadian article. There were or may have been used in its production in Canada or the United States, or both, materials of a third country.

It is impractical to ascertain the exact number of units of third country material, if any, used in its production or the price paid (and other costs required to be included in the price paid) of such materials but to the best of (my) (our) (its) knowledge the materials are described (sufficient for tariff classification purposes) as follows:

_____.

(4) The certificates described in paragraphs (b)(2) and (b)(3) of this section shall not be accepted if the statements therein make it evident that the importation is not a "Canadian article" within the meaning of General Note 3(c), HTSUS.

(5) If more than one kind of article is covered by a certificate provided for in paragraph (b) (1), (2), or (3) of this section, the information required by the certificate shall be shown with respect to each kind. When more than one kind of material, other than originating material, is used in the production of an article covered by such a certificate, the certificate shall state the number of units, a description sufficient for tariff classification purposes, the price paid, and, if not included in the price paid, the costs incurred in transporting the materials to the location of the producer and duties, taxes and brokerage fees paid in Canada and/or the United States on the material, per unit of each kind of materials.

(6) A certificate conforming to paragraph (b) (1), (2), or (3) of this section shall be accepted as evidence of the facts alleged therein only if:

(i) There is annexed thereto a copy of the commercial invoice or bill of lading covering the articles or other documentary evidence which identifies the article to which the certificate pertains,

(ii) The certificate is signed by the manufacturer or producer of the article to which it pertains, or by the person who exported the articles from Canada, and

(iii) It clearly appears that such copy or other documentary evidence was annexed to the certificate when it was signed.

(c) In lieu of the certification in paragraph (b) (1), (2), or (3) of this section, a manufacturer of motor vehicles who claims a preference under the United States-Canada Free-Trade Agreement and elects to average pursuant to § 10.310(a), shall be subject to the requirements of §§ 10.301 to 10.311 of this part.

(d) When an importer makes an entry, or withdrawal from warehouse, for consumption of articles for use as "original motor-vehicle equipment" as that term is defined in General Note 3(c)(iii), HTSUS, he shall file in connection therewith his declaration that the articles are being imported for use as original equipment in the manufacture in the United States of the kinds of motor vehicles specified in the General Note and furnish the name and address of the motor vehicle manufacturer. A copy of the written order, contract, or letter of intent shall be attached to the importer's declaration except that if the district director of Customs is satisfied that a copy of the written order, contract, or letter of intent will be made available by the importer or ultimate consignee for inspection by customs officials upon request during a period of 3 years from the date of such entry or withdrawal from warehouse, the production of such documents will not be required. Proof of use need not be furnished.

(e) If, after a Canadian article has been accorded the status of original motor-vehicle equipment, it is decided to divert the article from its intended use in the manufacture in the United States of motor vehicles, the importer or other person deciding to divert the article from such intended use shall give notice in writing of the decision to the district director of Customs of the district where entry was made or where the offices of the importer are located and either make arrangements for its destruction or exportation under Customs supervision or pay duties in accordance with General Note 3(c)(iii)(B)(2), HTSUS. If such article is not destroyed or exported under Customs supervision or the duties paid, the article, or its value, shall be subject to forfeiture.

3. Part 10 is amended by adding at the end thereof a new heading followed by new §§ 10.301 through 10.311 to read as follows:

* * * * *

United States-Canada Free Trade Agreement

Sec.

10.301 Scope.
10.302 Eligibility criteria in general.
10.303 Originating goods.
10.304 Exclusions.
10.305 Value content requirement.
10.306 Direct shipment to the United States.
10.307 Documentation.
10.308 Records retention.
10.309 Verification of documentation.
10.310 Election to average for motor vehicles.
10.311 Documentation for election to average for motor vehicles.

United States-Canada Free Trade Agreement

§ 10.301 Scope.

The provisions of §§ 10.302–10.311 of this part relate to the procedures for obtaining preferences for imported goods designated as eligible in the "special" column of the Harmonized Tariff Schedules of the United States (HTSUS), and General Note 3(c), HTSUS. These preferences were the subject of the United States-Canada Free-Trade Agreement (the Agreement) entered into on January 2, 1988, and the United States-Canada Free-Trade Agreement Implementation Act of 1988 (100 Stat. 418). In situations involving goods subject to bilateral restrictions or prohibitions, or country of origin marking, other criteria for determining origin may be applicable pursuant to section 407 of the Agreement.

§ 10.302 Eligibility criteria in general.

Subject to the more specific explanations of the criteria in §§ 10.303 and 10.305 of this part, goods classifiable under an HTSUS heading or subheading for which the symbol "CA" appears in the "special" column are eligible for a preference if:

(a) *Originating goods.* The goods originate in Canada or the United States, or both, and

(b) *Direct shipment required.* Except as provided in § 10.306(b), are directly shipped to the United States from Canada.

§ 10.303 Originating goods.

For the purpose of eligibility for a preference under the Agreement, goods may be regarded as originating goods if:

(a) *Wholly of Canadian or United States origin.* The goods are wholly obtained or produced in the Territory of Canada or the United States, or both.

(b) *Transformed with a change in classification.* The goods have been transformed by a processing which results in a change in classification and, if required, a sufficient value-content, as set forth in General Note 3(c), HTSUS: or

(c) *Transformed without a change in classification.* An assembly of goods, other than goods of chapters 61 to 63 of the HTSUS, which does not result in a change in classification because the goods were imported in an unassembled or disassembled form and classified as the goods, unassembled or disassembled, pursuant to General Rule of Interpretation 2(a), HTSUS; or because the tariff subheading for the goods provides for both the goods themselves and their parts, shall nonetheless be treated as originating goods if:

(1) The value of originating materials and the direct cost of assembling in Canada or the United States, or both, as defined in § 10.305 constitute not less than 50 percent of the value of the goods when exported to the United States,

(2) The assembled goods are not subsequently processed or further assembled in a third country, and

(3) The goods satisfy the requirement in § 10.306.

(d) *Articles of Feather.* The goods are eligible to be treated as originating in Canada pursuant General Note 3(c)(vii)(Q)(12)(ee), HTSUS.

§ 10.304 Exclusions.

(a) *Changes based on simple processing.* No goods shall be considered originating for purposes of eligibility under the Agreement if they have merely undergone simple packaging or simple combining operations, or have undergone mere dilution with water or with another substance that does not materially alter the characteristics of the goods.

(b) *Other excluded processing.* No goods shall be considered to be originating merely by virtue of having undergone any process or work in which the facts clearly justify the presumption that the sole object was to circumvent the provisions of Chapter 3 of the Agreement.

§ 10.305 Value content requirement.

The following definitions apply whenever a specific rule of origin under the Agreement requires a value content determination:

(a) *Direct cost of processing or assembling.* The terms "direct cost of processing" or "direct cost of assembling" mean the costs directly incurred in, or that can be reasonably allocated to, the production of goods, including:

(1) The cost of all labor, including benefits and on-the-job training, labor provided in connection with supervision, quality control, shipping, receiving, storage, packaging, management at the location of the process or assembly, and other like labor, whether provided by employees or independent contractors;

(2) The cost of inspecting and testing the goods;

(3) The cost of energy, fuel, dies, molds, tooling, and the depreciation and maintenance of machinery and equipment, without regard to whether they originate within the territory of the United States or Canada;

(4) Development, design, and engineering costs;

(5) Rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes and the cost of utilities for real property used in the production of the goods; and

(6) Royalty, licensing, or other like payments for the right to the goods.

(b) *Value of originating materials.* The term "value of materials originating in the United States or Canada or both" means the aggregate of:

(1) The price paid by the producer of exported goods for materials originating in either the United States, or Canada, or both, or for materials imported from a third country used or consumed in the production of such originating materials; and

(2) When not included in that price, the following costs related thereto:

(i) Freight, insurance, packing and all other costs incurred in transporting any of the materials referred to in paragraph (b)(1) of this section to the location of the producer;

(ii) Duties, taxes and brokerage fees on such materials paid in the United States, or Canada, or both;

(iii) The cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or by-product; and

(iv) The value of goods and services relating to such materials determined in accordance with subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.

(c) *Value of goods when exported.* The term "value of the goods when exported to the United States" means the aggregate of:

(1) The price paid by the producer for all materials, whether or not the materials originate in the United States, or Canada, or both, and, when not included in the price paid for the materials, the following costs related thereto:

(i) Freight, insurance, packing, and all other costs incurred in transporting all materials to the location of the producer;

(ii) Duties, taxes, and brokerage fees on all materials paid in the United States, or Canada, or both;

(iii) The cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or by-product; and

(iv) The value of goods and services relating to all materials determined in accordance with subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade; and

(2) The direct cost of processing or the direct cost of assembling the goods.

(d) *Directly attributable.* Whenever a value-content determination is required by the rules of the Agreement and whenever originating materials and materials obtained or produced in a third country are used or consumed together in the production of goods in the United States or Canada, the value of originating materials may be treated as such only to the extent that the value is directly attributable to the goods under consideration.

(e) *Exclusions from direct costs of processing or assembling.* Excluded from the direct costs of processing or assembling are:

(1) Costs relating to the general expense of doing business, such as the cost of providing executive, financial, sales, advertising, marketing, accounting and legal services, and insurance;

(2) Brokerage charges relating to the importation and exportation of goods;

(3) Costs for telephone, mail, and other means of communication;

(4) Packing costs for exporting the goods;

(5) Royalty payments related to a licensing agreement to distribute or sell the goods;

(6) Rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes, and the cost of utilities for real property used by personnel charged with administrative functions; and

(7) Profit on the goods.

§ 10.306 Direct shipment to the United States.

Goods shall be considered as directly shipped to the United States from Canada for the purpose of eligibility for preferences under the Agreement only under the following circumstances:

(a) *Through shipment.* The goods have been shipped directly from Canada to the United States without passage through the territory of any third country; or

(b) *Shipment through a third country.* The goods were shipped through the territory of a third country but:

(1) The goods did not enter the commerce of any third country;

(2) The goods did not undergo any operation other than unloading, reloading, or any operation necessary to transport them to the United States or to preserve them in good condition; and

(3) All shipping and export documents show the United States as the final destination.

§ 10.307 Documentation

(a) *Claims for a preference.* A preference in accordance with the Agreement is claimed by including on the entry summary, or equivalent documentation, the symbol "CA" as a prefix to the subheading of the HTSUS under which each eligible good is classified.

(b) *Failure to claim a preference.* A claim for preference under the Agreement must be made at the time of the filing of the entry summary in accordance with § 10.307(a) of this part. Failure to make a timely claim will result in liquidation at the rate which would otherwise be applicable.

(c) *Documentation showing origin.* A claim for a preference for goods under paragraph (a) of this section shall be based on the Exporter's Certificate of Origin, properly completed and signed by the person who exports or knowingly causes the goods to be exported from Canada. The Exporter's Certificate of Origin must be available at the time the preference is claimed under paragraph (a) of this section and shall be presented to the district director upon request.

(d) *Exporter's Certificate of Origin.* The Exporter's Certificate of Origin shall be prepared on Customs Form 353. In lieu of the Customs Form 353, the exporter may use an approved computerized format or such other format as is approved by the Headquarters, U.S. Customs Service, Office of Trade Operations, Washington, D.C. 20229. Alternative formats must contain the same information and certification set forth on Customs Form 353.

(e) *Exceptions to documentation requirements.* Exceptions to the foregoing documentation requirements may be authorized at the discretion of the district director in the following circumstances:

(1) *Exception for informal entries.* As set forth in paragraphs (e)(1) (i) and (ii) of this section, an Exporter's Certificate of Origin may be waived in connection with an entry entitled to informal entry procedures as authorized in §§ 143.21 and 143.22 of this chapter if:

(i) *Commercial goods which qualify for informal entry.* The invoice, or an appropriate Customs release document, for commercial goods which qualify both for informal entry and a preference must include the following statement, on the invoice or appropriate Customs document:

I hereby certify that the goods described herein are eligible for a preference based upon the rules of origin enumerated in the United States-Canada Free-Trade Agreement.

Check One:

( ) Manufacturer
( ) Supplier
( ) Exporter

Signature

Title
Date:

(ii) *Noncommercial goods which qualify for informal entry.* The importation of goods from Canada by a person for noncommercial use may be exempt from documentation requirements if the goods are legally marked "Made in Canada", or it can otherwise be shown that they are originating goods under the Agreement and there is no evidence to the contrary.

(2) *Waiver of evidence of direct shipment.* The district director may waive the submission of evidence of direct shipment when otherwise satisfied, taking into consideration the kind and value of the goods, that the goods were, in fact, imported directly from Canada, and that they otherwise qualify for a preference in accordance with the Agreement.

§ 10.308 Records retention.

(a) *Importer.* The importer of record shall retain the exporter's certificate of origin required by § 10.307(d) for a period of 5 years and it must be made available upon request by the appropriate Customs official.

(b) *Exporter.* Any person who exports, or who knowlingly causes to be exported, any merchandise to Canada shall make, keep, and render for examination and inspection, such records (including certifications of origin or copies thereof), which pertain to such exportation for a period of 5 years from the date of exportation. In the event that the appropriate Customs official requests submission of the records, they shall be submitted directly to the requesting official.

§ 10.309 Verification of documentation.

Any evidence of country of origin or of direct shipment submitted in support of a preference under the Agreement shall be subject to such verification as the appropriate Customs official may deem necessary. If the U.S. importer or U.S. exporter or their agent does not provide the information requested by the appropriate Customs officer, the district director may refuse to grant the claim for preference, in addition to other available sanctions.

§ 10.310 Election to average for motor vehicles.

(a) *Election.* In determining whether a motor vehicle is originating for purposes of the preferences under the Agreement or a Canadian article under the Automotive Products Trade Act of 1965 (APTA), a manufacturer may elect to average, over its 12-month financial year, its calculation of the value-content requirement for vehicles of the same class or sister vehicles which are assembled in the same plant as provided for in the Agreement. A manufacturer must declare its election to average before the importation of any vehicles produced within the identified 12-month period. The election to average is subject to the conditions and requirements set forth in §§ 10.310 and 10.311.

(b) *Effect of election.* An election to average shall be binding at the time of the first entry of vehicles for which the election has been made. If a manufacturer's annual report, required by § 10.311, does not verify the claim that the vehicles are originating goods under the Agreement of Canadian articles under APTA, or if a manufacturer otherwise fails to comply with the reporting requirements, entries of the vehicles identified in the averaging declaration will be subject to liquidation in accordance with the rate of duty which would otherwise apply.

(c) *Election in lieu of certificate of origin.* In lieu of the Exporter's Certificate of Origin required in § 10.307(c), an importer of vehicles covered by an election to average under this section may have its claim for preference based on a copy of the declaration of election.

§ 10.311 Documentation for election to average for motor vehicles.

A manufacturer who elects to average for motor vehicles shall submit a

declaration of election to average, quarterly reports, and an annual report in the form and manner as follows:

(a) *Declaration of election.* A declaration of election to average, signed by an authorized company official, shall be submitted by the manufacturer to the U.S. Customs Service, Regulatory Audit Division, Detroit, Michigan 48226–2568 on Customs Form 355, Declaration of Election to Average.

(b) *Quarterly Report.* A quarterly report shall be submitted to the Regulatory Audit Division, at the above address, on Customs Form 356, Vehicle Cost Report (Quarterly), within 30 days after the end of each quarter. In lieu of the Customs Form 356, the manufacturer may submit the information required on the form in an approved computerized format or such other format as is approved by the U.S. Customs Service, Regulatory Audit Division, Detroit, Michigan 48226–2568. Alternative formats must contain the same information set forth on the Customs Form 356. Negative quarterly reports are required.

(c) *Annual Report.* An annual report shall be submitted to the U.S. Customs Service, Regulatory Audit Division, Detroit, Michigan 48226–2568, on Customs Form 357, Vehicle Cost Report (Annual), within 90 days of the end of the financial year identified in the Election to Average, Customs Form 355. In lieu of the Customs Form 357, Vehicle Cost Report (Annual), the manufacturer may submit the information required on the form in an approved computerized format or such other format as is approved by the U.S. Customs Service, Regulatory Audit Division, Detroit, Michigan 48226–2568. Alternative formats must contain the same information set forth on Customs Form 357.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

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

Authority: 19 U.S.C. 58, 66, 1202, 1624.

2. Section 24.23 is amended by adding a subparagraph (5) at the end of paragraph (b) to read as follows:

§ 24.23 Ad valorem fee.

* * * * *

(b) *Exemptions.* * * *

(5) Goods originating in Canada pursuant to General Note 3(c), HTSUS, according to the following schedule:

(i) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1990, the user fee shall be 80 percent of the user fee otherwise applicable on that date;

(ii) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1991, the user fee shall be 60 percent of the user fee otherwise applicable on that date;

(iii) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1992, the user fee shall be 40 percent of the user fee otherwise applicable on that date;

(iv) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1993, the user fee shall be 20 percent of the user fee otherwise applicable on that date;

(v) With respect to goods entered or withdrawn from warehouse on or after January 1, 1994, there shall be no Customs user fee.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority citation for Part 148 continues to read as follows:

Authority: 19 U.S.C. 66, 1498, 1624.

2. Section 148.102(a) is amended by adding "Canada," before "American Samoa".

3. Section 148.102 is amended by adding a new paragraph (c) to read as follows:

§ 148.102 Flat rate of duty.

* * * * *

(c) *Canada.* The rate of duty on originating goods from Canada (exclusive of duty-free goods) as defined in § 10.303 of this chapter, accompanying any person, including a crew member, arriving in the United States directly or indirectly from Canada shall be a flat rate of 9 percent as established by the United States-Canada Free-Trade Agreement. The flat rate shall decrease at the rate of one percent every year commencing on January 1, 1990, until January 1, 1998, at which time a free rate of duty shall apply.

Michael H. Lane,

Acting Commissioner of Customs.

Approved:

December 9, 1988.

John P. Simpson,

Acting Assistant Secretary for the Treasury.

Appendices

Note: These appendices will not appear in the Code of Federal Regulations.

BILLING CODE 4820-02-M

Appendix A

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

Approved through 4/30/89
OMB No. 1515-0164

U.S.-CANADA FREE TRADE AGREEMENT

EXPORTER'S CERTIFICATE OF ORIGIN

19 CFR 10.307(d)

1. GOODS CONSIGNED FROM (Exporter's business name, address, country, tax identification number)	2. IF BLANKET CERTIFICATION EFFECTIVE DATE EXPIRATION DATE
3. GOODS CONSIGNED TO (Consignee's name, address, country)	4. PRODUCER'S NAME, ADDRESS, COUNTRY, TAX IDENTIFICATION NUMBER (If different from exporter)

5. ORIGIN CRITERIA FOR GOODS COVERED BY THIS CERTIFICATE:

A. Wholly produced or obtained in Canada or the United States; or

B. The goods have been transformed in the United States or Canada so as to be subject:

1) to a change in tariff classification as described in the Rules of Annex 301.2; or

2) to a change in tariff classification as described in the Rules of Annex 301.2 and the value of originating materials plus the direct cost of processing in Canada or the United States is not less than 50 percent or, as required by Section VI Rule 15 of Annex 301.2, 70 percent of the value of exported goods; or

3) to Rule 5, Section XII of Annex 301.2; or

C. No change in tariff classification because goods and parts are provided for in the same tariff subheading or goods were imported in unassembled or disassembled form and were classified pursuant to General Rule of Interpretation 2a) of the Harmonized System, and the value of originating materials plus the direct cost of assembly in Canada or the United States is not less than 50 percent of the value of exported goods.

6. SPECIAL DECLARATION FOR TEXTILE PRODUCTS SUBJECT TO TARIFF RATE QUOTA:

A. Apparel goods cut and sewn in Canada or the United States from fabric produced or obtained in a third country.

B. Non-wool fabric and non-wool made-up textile articles, woven or knitted in Canada from yarn produced or obtained in a third country.

7. Origin Criterion (See Fields 5 or 6)	8. Description of Goods	Tariff Classification (To Six Digits)	9. Gross Weight or Other Quantity	10. Invoice Number(s) & Date(s)

11. CERTIFICATION OF ORIGIN

I certify that the information and statements herein are correct, that all the goods were produced in Canada or the United States, that they comply with the origin requirements specified for those goods in the United States-Canada Free Trade Agreement, and that further processing or assembly in a third country has not occurred subsequent to processing or assembly in Canada or the United States.

I agree to maintain, and present upon request, the documentation to support this certification and, if this is a blanket certification, to inform the importer or other appropriate party of any change that would affect the validity of this certification.

This certificate consists of _____ pages.

PLACE AND DATE	AUTHORIZED SIGNATURE	TITLE

Customs Form 353 (120188)

INFORMATION FOR THE COMPLETION OF THE EXPORTER'S CERTIFICATE OF ORIGIN

Paperwork Reduction Act Notice: The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it and whether you have to give it to us. We ask for the information to carry out the terms of Annex 406 of the U.S./Canadian Free Trade Agreement and the Statement of Administrative Action for the implementing legislation (P.L. 100-449). Annex 406 requires that, upon request, an importer must provide the Customs Administration of the Party (U.S./Canada) with proof of the exporter's written certification of the origin of the goods. The exporter's certification, provided for in the Agreement, is essential to substantiate compliance with the rules of origin under the Agreement. You are required to give us this information.

Statement Required by 5 CFR 1320.21: The estimated average burden associated with this collection of information is 20 minutes per respondent or recordkeeper depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention Desk Officer for U.S. Customs Service.

FIELD

1. Complete with the full legal name, address, country and tax identification number.
2. Complete with the effective and expiration dates (Maximum 6 months),[1] if this certificate is to cover multiple FTA qualified shipments to the same importer. NOTE: It is the exporter's responsibility to notify everyone to whom a blanket certificate is issued if changes occur in materials, costs, or production sites that would materially affect the accuracy or validity of the certification during the period. Failure to do so could make the exporter subject to penalties.
3. Complete with the consignee's full legal name, address, and country.
4. Complete with the full legal name, address, country and if known, the tax identification number. This field is to be completed only if the exporter is not the producer of the goods. If more than one producer's goods are included in a single or blanket certificate, attach a numbered list of the additional producers. Indicate the appropriate producer's number in parenthesis after the origin criteria in Field 7.
5. Fields 5 and 6 reflect the various origin criteria by which exported goods may be eligible for FTA treatment, and are to be identified in Field 7 for each corresponding item listed in Field 8.

5.A. Indicate this criterion if the goods are wholly produced or obtained in Canada or U.S. as defined in Article 304 of the Agreement.

5.B.1. Requires that a change in the tariff classification take place along with any other requirements, other than value-added, as described in the Rules of Annex 301.2 of the Agreement.

5.B.2. Also requires that a change in tariff classification take place. Additionally, it requires that the value of domestic materials and direct cost of processing, as described in the Rules of Annex 301.2, be either 50 or 70 percent, as specified in the Rules of Annex 301.2, of the value of the exported good.[2]

5.B.3. This field does not require that a change in tariff classification take place but other requirements as described in the Rules of Annex 301.2, other than value-added, be met.[2]

5.C. This criterion does not require that a change in tariff classification take place but requires that the value of domestic materials and direct cost of assembly is not less than 50 percent of the value of exported goods. The provisions of this criterion are in accordance with paragraphs 3, 4, and 5 of the interpretation of Annex 301.2 of the Agreement. The imported components from which the goods were produced in Canada must have constituted an unassembled or disassembled article as per the General Rule of Interpretation 2(a) of the Harmonized System, or the tariff subheading for the imported components must have provided for both the goods and their parts

6. The special declarations for textile products are identified for use in Field 7
7. Indicate the origin criterion selected from Fields 5 or 6 for each corresponding item listed in Field 8. If more than one article for export is covered by this certificate, the origin criterion for each is required. If necessary, a continuation sheet may be used to list the articles for export and their respective criteria. If more than one producer (Field 4) is identified, indicate next to the criteria the producer number assigned, e.g. 5.A.(3).
8. Fully describe the goods. If more than one article for export is covered by this certificate, a complete description of each article is required. If a change in tariff classification criterion is used and there are multiple constitutent materials, indicate in parentheses, the number of third country constituent materials per unit. When third country constituent materials vary in a product, estimates are acceptable. The tariff classification, to six digits, of each article for export is required beside each description
9. Indicate the gross weight or other pertinent quantities, as described on the invoice(s) or purchase order, of each good listed in Field 8. If this is a blanket certificate, indicate the contracted for weight or other quantity anticipated or contracted for during the blanket certification period, if known.
10. Indicate the invoice number(s) and date(s) for each item being shipped. If this is a blanket certificate, this field need not be completed
11. Self-explanatory. The number of pages the certificate comprises must be indicated. **NOTE:** Unless the place, date, signature and title of the exporter appear on the space provided, this document will be considered invalid

Note: Where the certificate or instructions makes reference to "Canada or the United States" or "domestic", this is to be interpreted as meaning either Canada or the United States or both.

[1] Canada will accept blanket exporter certificates with a validity period of twelve months; the United States will accept a validity period of six months.

[2] Canada requires the exporter to indicate the specific rule which the goods qualify; the United States simply requires an indication of the criterion.

Appendix B

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

Approved through 4/30/89
OMB No. 1515-0164

U.S./CANADA FREE TRADE AGREEMENT
VEHICLE AVERAGING ELECTION

19 CFR 10.311(a)

1. FINANCIAL YEAR TO WHICH THIS ELECTION APPLIES	
2. CANADIAN MANUFACTURER (Name and Address)	3. FINANCIAL YEAR–
	3a. Starting Date / 3b. Ending Date
	4. NAME AND LOCATION OF PLANT

VEHICLES TO BE AVERAGED

5. Make	6. Model	7. FTA Class	8. Estimated Minimum Average Percentage U.S./Canadian Value

CERTIFICATION

In accordance with Article 1005, paragraph 2, of the U.S./Canada Free Trade Agreement, we hereby elect to average our calculations over a 12-month period on the same class of vehicles or sister vehicles (station wagons and other body styles in the same car line), assembled in the same plant for the financial year. Quarterly reports will be submitted to U.S. Customs within 30 days after the end of each quarter, and a final report for the financial year, based on actual costs and values, will be submitted to U.S. Customs within 90 days of the close of the financial year.

The estimated minimum average percentage of U.S./Canadian value and costs for the financial year is based upon an analysis of the projected foreign and U.S./Canadian costs of production for these vehicles and takes into account normal business fluctuations.

The accounting system used to arrive at these estimates is not expected to change during the financial year. Should it change, we will provide U.S. Customs with the details of such change at the time of implementation. The manufacturer will still be able to provide U.S. Customs with complete value and cost data on the vehicles identified herein to verify the FTA claim.

9. SIGNER'S TITLE	10. SIGNATURE OF AUTHORIZED CO. OFFICIAL	11. DATE SIGNED

Paperwork Reduction Act Notice: The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it and whether you have to give it to us. We ask for the information to carry out the Statement of Administrative Action for the U.S. Implementing legislation (P.L. 100-449) which requires Customs to prepare a multi-year enforcement plan for enforcement of the FTA, with emphasis on the automotive sector. It also requires Canadian vehicle manufacturers to provide an "election to average for motor vehicles." This form is used by Canadian automotive vehicle manufacturers/assemblers electing to average their costs by automotive vehicle class over a 12-month period under the provisions of the U.S./Canada Free Trade Agreement. The submission of this form is required to obtain or retain a benefit and once made is a binding election to average cost information by the automotive vehicle manufacturer/assembler.

Statement Required by 5 CFR 1320.21: The estimated average burden associated with this collection of information is 15 minutes per respondent or recordkeeper depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Desk Officer for U.S. Customs Service.

Customs Form 355 (112288)

Appendix C

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

Approved through 4/30/89
OMB No. 1515-0164

U.S./CANADA FREE TRADE AGREEMENT

VEHICLE COST REPORT (Quarterly)

19 CFR 10.311(b)

1. CLASS OF VEHICLE	

2. REPORTING COMPANY (Name and Address)	3. FOR QUARTER ENDED	4. DATE OF THIS REPORT
	5. FINANCIAL YEAR –	
	5a. Starting Date	5b. Ending Date
	6. PLANT LOCATION	
7. CONTACT PERSON (Name and Phone Number)		

COST DATA – Direct Cost of Total Vehicles Produced in Canada

ARTICLE 304, PART TWO, CHAPTER THREE – U.S./CANADA FREE TRADE AGREEMENT	COST OF VEHICLES	
	U.S./Canadian	Foreign
8. Material		
9. Labor and Overhead		
10. Total Direct Costs		

INVENTORY ADDITIONS AND SUBTRACTIONS (Vehicles Produced, Shipped, Returned)

			NUMBER OF VEHICLES	
			Qualifying	Non-Qualifying
11. Beginning Inventory				
12. Total Vehicles Produced in Quarter				
13. Total Vehicles Available for Shipment (Item 11 Plus Item 12)				
14. Less:	a. Vehicles Shipped to U.S.	(1) Under Autopact (APTA)		
		(2) Under FTA		
		(3) Under MFN		
	b. Vehicles Shipped to: –	(1) Canadian Locations		
		(2) Foreign Countries Other Than U.S.		
	c. Vehicles Returned		( )	( )
	d. Total Vehicles Shipped			
15. Ending Inventory (Item 13 less Item 14d)				

METHOD USED FOR DETERMINING INVENTORY COSTS

16. METHOD USED FOR FINANCIAL STATEMENTS (E.g., "LIFO", "FIFO", Etc.)	17. METHOD USED TO PREPARE THIS REPORT
18. ARE COSTS "ACTUAL" OR "STANDARD" (ESTIMATED)? ☐ ACTUAL ☐ STANDARD (On separate sheet, explain how and when actual costs are determined.)	19. IS THIS REPORT BASED ON AN AVERAGING METHOD? ☐ YES (On separate sheet, describe method in detail.) ☐ NO

CERTIFICATION

The reporting company identified in item 2 above certifies that the information and statements contained in this report are true and accurate, that all the vehicles were produced in Canada and/or the United States, that they comply with the origin requirements specified for those goods in the United States/Canada Free Trade Agreement, and that further processing or assembly in a third country has not occurred subsequent to processing or assembly in the United States or Canada.

The reporting company agrees to maintain the documentation to support this certification and it will be available for Customs review.

20. PLACE AND DATE SIGNED	21. AUTHORIZED SIGNATURE	22. TITLE

Customs Form 356 (112288)

INFORMATION FOR THE COMPLETION OF THE VEHICLE COST REPORT (QUARTERLY)

Paperwork Reduction Act Notice: The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it and whether you have to give it to us. We ask for the information to carry out the Statement of Administrative Action for the U.S. Implementing legislation (P.L. 100-449) which requires Customs to prepare a multi-year enforcement plan for enforcement of the FTA, with emphasis on the automotive sector. It also requires Canadian vehicle manufacturers to provide "regular cost submissions." This form is used by Canadian automotive vehicle manufacturers/assemblers electing to average their costs by automotive vehicle class over a 12-month period under the provisions of the U.S./Canada Free Trade Agreement. The submission of this form is mandatory once a binding election to average cost information is made by the automotive vehicle manufacturer/assembler.

Statement Required by 5 CFR 1320.21: The estimated average burden associated with this collection of information is 185 hours per respondent or recordkeeper depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Desk Officer for U.S. Customs Service.

BLOCK

1. Designate the class of automotive vehicle as defined in Article 1006, class of vehicles—a through g.
2. Complete with the full legal name, address and country.
3. Date current financial quarter ended.
4. Self explanatory.
5. State your financial year starting and ending dates.
6. Street address, province and city.
7. Self explanatory.
8. These costs represent the total costs of finished vehicles whether shipped or ready for shipment from the plant.
9. Same as 8.
10. Totals of 8 & 9.
11. The number of vehicles represents finished vehicles ready for shipment from the plant.
12. Use only total of vehicles produced during quarter which represent finished vehicles shipped or ready for shipment.
13. Self explanatory.
14. Self explanatory. APTA=Automotive Products Trade Act;
    FTA =U.S./Canada Free Trade Agreement;
    MFN=Most Favored Nation Tariff.
15. Self explanatory.
16. Attach explanation of inventory method used.
17. Attach explanation of inventory method used.
18. Explain on separate sheet methodology used to develop standard costs.
19. Self explanatory.

Appendix D

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE
U.S./CANADA FREE TRADE AGREEMENT

VEHICLE COST REPORT (Annual)

19 CFR 10.311(c)

Approved through 4/30/89
OMB No. 1515-0164

1. CLASS OF VEHICLE

2. REPORTING COMPANY (Name and Address)	3. FOR YEAR ENDED	4. DATE OF THIS REPORT
	5. FINANCIAL YEAR —	
	5a. Starting Date	5b. Ending Date
	6. PLANT LOCATION	
7. CONTACT PERSON (Name and Phone Number)		

COST DATA — Direct Cost of Total Vehicles Produced in Canada

ARTICLE 304, PART TWO, CHAPTER THREE — U.S./CANADA FREE TRADE AGREEMENT	COST OF VEHICLES			
	U.S./Canadian		Foreign	
	Standard	Actual	Standard	Actual
8. Material				
9. Labor				
10. Inspecting and Testing				
11. Energy, Fuel, Etc.				
12. Development, Design, Etc.				
13. Rent, Mortgage, Etc. Used in Production of Goods				
14. Royalty, Licensing, Etc. for Right to Goods				
15. Other				
16. Total Direct Costs				

INVENTORY ADDITIONS AND SUBTRACTIONS (Vehicles Produced, Shipped, Returned)

			NUMBER OF VEHICLES	
			Qualifying	Non-Qualifying
17. Beginning Inventory				
18. Total Vehicles Produced in Year				
19. Total Vehicles Available for Shipment (Item 17 Plus Item 18)				
20. Less:	a. Vehicles Shipped to U.S	(1) Under Autopact (APTA)		
		(2) Under FTA		
		(3) Under MFN		
	b. Vehicles Shipped to —	(1) Canadian Locations		
		(2) Foreign Countries Other Than U.S.		
	c. Vehicles Returned		( )	( )
	d. Total Vehicles Shipped			
21. Ending Inventory (Item 19 less Item 20d)				

METHOD USED FOR DETERMINING INVENTORY COSTS

22. METHOD USED FOR FINANCIAL STATEMENTS (E.g., "LIFO", "FIFO", Etc.)	23. METHOD USED TO PREPARE THIS REPORT
24. ARE COSTS "ACTUAL" OR "STANDARD" (ESTIMATED)? ☐ ACTUAL ☐ STANDARD (On separate sheet, explain how and when actual costs are determined)	25. IS THIS REPORT BASED ON AN AVERAGING METHOD? ☐ YES (On separate sheet, describe method in detail.) ☐ NO

CERTIFICATION

The reporting company identified in item 2 above certifies that the information and statements contained in this report are true and accurate, that all the vehicles were produced in Canada and/or the United States, that they comply with the origin requirements specified for those goods in the United States/Canada Free Trade Agreement, and that further processing or assembly in a third country has not occurred subsequent to processing or assembly in the United States or Canada.

The reporting company agrees to maintain the documentation to support this certification and it will be available for Customs review.

26. PLACE AND DATE SIGNED	27. AUTHORIZED SIGNATURE	28. TITLE

Customs Form 357 (112288)

INFORMATION FOR THE COMPLETION OF THE VEHICLE COST REPORT (ANNUAL)

Paperwork Reduction Act Notice: The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it and whether you have to give it to us. We ask for the information to carry out the Statement of Administrative Action for the U.S. Implementing legislation (P.L. 100-449) which requires Customs to prepare a multi-year enforcement plan for enforcement of the FTA, with emphasis on the automotive sector. It also requires Canadian vehicle manufacturers to provide "regular cost submissions." This form is used by Canadian automotive vehicle manufacturers/assemblers electing to average their costs by automative vehicle class over a 12-month period under the provisions of the U.S./Canada Free Trade Agreement. The submission of this form is mandatory once a binding election to average cost information is made by the automotive vehicle manufacturer/assembler.

Statement Required by 5 CFR 1320.21: The estimated average burden associated with this collection of information is 225 hours per respondent or recordkeeper depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Desk Officer for U.S. Customs Service.

BLOCK

1. Designate the class of automotive vehicle as defined in Article 1006, class of vehicles—a through g, U.S./Canada Free Trade Agreement.
2. Complete with the full legal name, address and country.
3. Date current financial year ended.
4. Self explanatory.
5. State your financial year starting and ending dates.
6. Street address, province and city.
7. Self explanatory.
8.-15. These costs represent the total costs of finished vehicles whether shipped or ready for shipment from the plant.
16. Totals of 8 through 15.
17. The number of vehicles represents finished vehicles ready for shipment from the plant.
18. Use only total of vehicles produced during year which represent finished vehicles shipped or ready for shipment.
19. Self explanatory.
20. Self explanatory. APTA=Automotive Products Trade Act;
    FTA =U.S./Canada Free Trade Agreement;
    MFN =Most Favored Nation Tariff.
21. Self explanatory.
22. Attach explanation of inventory method used.
23. Attach explanation of inventory method used.
24. Explain on separate sheet methodology used to develop standard costs.
25. Self explanatory.

BILLING CODE 4820-02-C

Appendix E—Example of Duty Calculation for Passengers Under the U.S./Canada Free Trade Agreement (FTA)

Mr. and Mrs. E return from a one-week visit to Canada where they have acquired merchandise having a fair retail value of $10,000. Assume for this example that (1) $5,800 of the merchandise is of Canadian origin and $4,200 of the merchandise is of foreign origin other than Canada; (2) in addition to the personal exemptions of $800 ($400 each), $5,200 of the merchandise carries a free rate of duty, (3) allowances and exemptions have not been used in the last 30 days, and (4) all articles in excess of allowances, exemptions and duty free articles are dutiable at rates other than the flat rate.

Mr. and Mrs. E present their baggage declaration for verification. Duty is figured as follows:

BREAKDOWN OF MERCHANDISE

Canadian origin	Duty rate	Foreign origin other than Canada
$3,500	Free	$1,700
1,800	3% ad valorem	
500	2% ad valorem	
	24% ad valorem	2500

	Fair retail value	Duty
(a) The $400 personal exemption is grouped for a total of	$800	0.00
(b) Articles which carry a free rate of duty	5,200	0.00
(c) The $1,000 flat rate of duty allowance calculated at 9% on merchandise of Canadian origin and 10% on merchandise of foreign origin other than Canada. The flat rate is grouped for a total of $2,000	1,700 (at 10% flat rate)	$170.00
	300 (at 9% flat rate)	27.00
(d) Balance of articles subject to duty at rates other than the flat rate	1,500 (at 3% ad valorem)	45.00
	500 (at 2% ad valorem)	10.00
Total	10,000	252.00

[FR Doc. 88-29501 Filed 12-22-88; 8:45 am]

BILLING CODE 4820-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3493-3]

Ocean Dumping; Site Designation; Atlantic Ocean Offshore Brunswick Harbor, GA

AGENCY: U.S Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates the existing, interim-approved Ocean Dredged Material Disposal Site (ODMDS) in the Atlantic Ocean offshore Brunswick Harbor, Georgia, as an EPA-approved ocean disposal site for the disposal of suitable dredged material. This action is necessary to provide an acceptable ocean disposal site for consideration as a disposal option for dredged material disposal projects in the greater Brunswick, Georgia, vicinity.

This Final Rule also corrects the discrepancies in the Brunswick Harbor ODMDS boundary coordinates relative to the draft and final Environmental Impact Statement (EIS), 40 CFR Part 228 (Revised as of July 1, 1984, and 1987), and 42 FR 2461 (January 11, 1977: pg. 2485).

EFFECTIVE DATE: This designation shall become effective on January 23, 1989.

ADDRESSES: Send comments to: Frank M. Redmond, Chief, Wetlands and Coastal Programs Section, Water Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

The file supporting this designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street, SW., Washington, DC 20460

EPA/Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365

FOR FURTHER INFORMATION CONTACT: Reginald G. Rogers, 404/347-2126.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. This final designation of a site offshore Brunswick Harbor, Georgia, which is within Region IV, is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under the Act (40 CFR Chapter I, Subchapter H, § 228.4) indicate that ocean disposal sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 (January 11, 1977)). The list established the existing Brunswick Harbor site as an interim site.

B. EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et seq.*, requires that Federal agencies prepare an EIS on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

The object of NEPA is to build careful consideration of all environmental aspects of proposed actions into the agency decision-making process. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean disposal site designations such as this (see 39 FR 16186 (May 7, 1974)). EPA, in cooperation with the Savannah District of the U.S. Army Corps of Engineers (COE), has prepared a draft and final EIS entitled "Brunswick Harbor, Georgia Ocean Dredged Material Disposal Site Designation." This Final Rule and the preceding Proposed Rule (53 FR 38032 (September 29, 1988)) are procedural follow-ups to the EIS. The EIS may be used (not necessarily "*should* be used" as stated in the Proposed Rule) as reference, particularly for literature citations, which are not cited in the Rules. This Final Rule includes excerpts from the Proposed Rule.

The action discussed in this EIS is the final designation for continuing use of the existing interim ocean dredged material disposal site near Brunswick Harbor, Georgia. The purpose of the action is to provide an environmentally acceptable location for ocean disposal. The need for ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

For the Brunswick Harbor ODMDS, the COE and EPA would evaluate all dredged material disposal projects (not just "*all Federal* dredged material disposal projects" as stated in the Proposed Rule) pursuant to the EPA

criteria given in the Ocean Dumping Regulations (40 CFR Parts 220 through 229) and the COE regulations (33 CFR 209.120 and 209.145). The COE also issues MPRSA permits to all applicants (upgraded from "*private* applicants" as stated in the Proposed Rule) for the transport of dredged material intended for disposal after compliance with these regulations is determined (although not stated in the Proposed Rule, the COE also undergoes a public review process for its own disposal actions). EPA has the right to disapprove any ocean disposal project if, in its judgment, all provisions of MPRSA and the associated implementing regulations have not been met. State permitting would not be needed for the Brunswick Harbor ODMDS since the disposal site is located outside of State of Georgia waters and the State of Georgia currently has no approved Coastal Zone Management Plan.

On Friday, November 28, 1986, the Notice of Availability of the draft EIS for public review and comment was published in the **Federal Register** (51 FR 43082 (November 28, 1986)). The public comment period on the draft EIS closed on January 12, 1987.

The Notice of Availability of the final EIS for public review and comment was published in the **Federal Register** on Friday, March 25, 1988 (53 FR 9806 (March 25, 1988)). The public comment period closed on April 25, 1988. The final EIS addressed the eight comments received on the draft EIS.

The EIS discusses the need for this site designation and examines ocean disposal site alternatives to the action. The EIS considers mid-shelf and shelf-break alternative sites (Continental Shelf) using the general criteria and specific factors contained in the Ocean Dumping Regulations, 40 CFR Part 228. Dredged material disposal has not occurred previously at the mid-shelf or shelf-break alternative site locations. There are significant dissimilarities between the physical and chemical characteristics of the dredged material sediments and sediments covering the mid-shelf or shelf-break regions. Altering the sediment texture and composition through the addition of finer coastal sediments may have a long-term adverse impact on the benthic infauna at the mid-shelf and shelf-break sites. Fishery resources are localized over the mid-shelf and shelf-break areas. These hard bottom areas are unique habitats, support several species of commercially and recreationally important finfish, and are sensitive to the effects of dredged material disposal. Also, the Continental Shelf offshore Brunswick is so wide that any site chosen beyond the shelf-break would be beyond economical distances for transporting materials; several proposed or active Minerals Management Service oil and gas lease sites exist in the mid-shelf and shelf-break regions; and the Ocean Dumping Regulations require the designation of sites which have historically been used, where feasible. The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation use and is based on one of a series of disposal site environmental studies.

C. Coastal Zone Management Coordination

The State of Georgia does not have an approved Coastal Zone Management Plan; however, EPA has determined that this site designation is consistent with general coastal zone management practices. The Brunswick Harbor ODMDS is located outside of Georgia State waters.

D. Endangered Species Coordination

Pursuant to section 7 of the Endangered Species Act, the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) were asked by EPA to concur in EPA's conclusion that this site designation will not affect the endangered species under their jurisdictions. By letter dated July 2, 1986, the FWS concurred in the conclusion that this site designation will have no effect on Federally-listed threatened or endangered species under the FWS jurisdiction. By letter dated May 1, 1987, the NMFS concurred that the site designation will not affect the endangered or threatened species under NMFS jurisdiction.

E. Site Designation

The disposal site is located southeast of Brunswick, Georgia, outside of State waters, approximately 6 nautical miles (nmi) offshore and occupies an area of about 2 square nautical miles (nmi^2). The site is rectangular, approximately 1 nmi by 2 nmi. Water depths within the area average 9 meters. The correct coordinates of the Brunswick Harbor site being designated on a permanent basis are as follows:

31°02'35" N., 81°17'40" W.;
31°02'35" N., 81°16'30" W.;
31°00'30" N., 81°16'30" W.;
31°00'30" N., 81°17'42" W.

The above last coordinate component, 81°17'42"W., is a slight modification of the 81°17'40"W. coordinate component presented (apparently in error) in 40 CFR 228.12(a)(3) (revised as of July 1, 1984 and 1987) for the interim Brunswick Harbor ODMDS.

(**Note:** The draft EIS and the final EIS cited the correct coordinates (as above) but incorrectly referenced the **Federal Register** (Vol. 42, No. 7 dated 11 January 1977), since that **Federal Register** presented (apparently in error) the last coordinate component as 81°16'30" W. (page 2485) as opposed to 81°17'42" W.).

The Proposed Rule was published in the **Federal Register** on September 29, 1988 (53 FR 38032 (September 29, 1988)). The 30-day comment period closed on October 31, 1988. No formal comments on the Proposed Rule were received during the comment period by EPA/Region IV. However, certain changes in this Final Rule concerned with the COE's role in dredging project review and permit issuance resulted from a discussion with a COE district.

To supplement EPA's response to a comment letter on the draft EIS received from Terrell K. Murphy, D.D.S. dated December 18, 1986 (see pages 46–47 in final EIS), EPA wishes to relate in this Final Rule that a copy of this comment letter was also subsequently received by EPA (after the close of the draft EIS comment period on January 12, 1987) via an inquiry letter from the Honorable Sam Nunn, U.S. Senator (Georgia), dated January 27, 1987. A copy of Dr. Terrell's letter to Senator Nunn dated January 7, 1987, was also included. EPA responded to this Congressional interest in a letter dated February 12, 1987, which referenced the then pending final EIS, in which the response to the original letter from Dr. Terrell was provided (see response on page 56 in the final EIS).

A draft version of the Proposed Rule was circulated to various Federal, State of Georgia, university and private concern representatives—essentially those attendees at a meeting requested by the Georgia Department of Natural Resources (GDNR) and hosted on April 12, 1988, in Atlanta, Georgia (see discussion of meeting in Proposed Rule). As indicated in the Proposed Rule, comments on the draft version of the Proposed Rule were not formally discussed. However, a brief summary of those received comments is nevertheless presented in this Final Rule.

Informal substantive comments on the draft Proposed Rule were primarily concerned with the fact that the Brunswick Harbor ODMDS designation should not preclude beach nourishment. A formal comment letter dated August 15, 1988, from the GDNR also expressed this concern and the GDNR's intention to pursue beach nourishment permits. The letter also stated that "[a]lthough it is apparent EPA does not consider use of maintenance and other dredged material for beach renourishment; it is important that EPA recognize the

potential value of the use of this material for renourishment." EPA responded to the GDNR letter with a letter dated September 13, 1988, indicating that the GDNR letter was interpreted as a restatement of GDNR's policies on beach nourishment as opposed to a presentation of suggestions to change the draft Proposed Rule. The letter also indicated, as discussed in the Proposed Rule that, "* * * EPA's site designation of the Brunswick Harbor ODMDS would not preclude a beach nourishment alternative."

It should be emphasized in this Final Rule that an EPA designation of an ODMDS makes available an environmentally-acceptable site *option* for ocean disposal as opposed to authorizing any dredging projects or disposal at the ODMDS. Therefore, beach nourishment and other disposal options can also be considered for disposal needs. These options should be addressed at the dredging project level and with appropriate permitting agencies. As stated in the EPA response letter to the GDNR's interest in beach nourishment, "[p]ursuit of such an alternative should be initiated with the appropriate permitting agencies as opposed to EPA concerned with site designation."

A draft version of this Final Rule was coordinated with the Savannah COE before EPA's publication of its (this) final version.

F. Site Management

Site management of the Brunswick Harbor ODMDS is the responsibility of EPA and the COE (upgraded from "EPA *as well as* the COE" as stated in the Proposed Rule). The COE issues permits to all applicants (upgraded from "*private* applicants" as stated in the Proposed Rule) for ocean disposal (although not stated in the Proposed Rule, the COE also undergoes a public review process for its own disposal actions); however, EPA/Region IV assumes overall responsibility for the Brunswick Harbor site management. A Memorandum of Understanding between EPA/Region IV and the South Atlantic Division of the COE is being developed and is to establish a management/monitoring framework (not just "a *monitoring* framework" as stated in the Proposed Rule) for ODMDSs in the Region, which is to lead toward a site-specific management/monitoring plan (not just "a *monitoring* plan" as stated in the Proposed Rule) for the Brunswick Harbor ODMDS.

Site management may include strategically locating and/or orienting dredged material within the site boundaries relative to predominant current patterns. Monitoring could involve sediment mapping of disposed material to determine any movement of material off of the site. Determination of the significance of any biological impacts of dredged material outside the ODMDS boundaries would then be appropriate.

The existence, magnitude, and implementation of a site management/monitoring plan (not just "a *monitoring* plan" as stated in the Proposed Rule) is dependent upon available funding and coordination between EPA, the COE, and the State of Georgia (the State was not included in the Proposed Rule).

G. Action

The EIS concludes that the proposed site may appropriately be designated for use. The proposed site is compatible with the general and selection criteria (not just "the *general* criteria" as stated in the Proposed Rule) used for site evaluation.

The designation of the Brunswick Harbor site as an EPA-approved ODMDS is being published as Final Rulemaking. Overall management of this site is the responsibility of the Regional Administrator of EPA/Region IV.

It should be emphasized that, if an ODMDS is designated, such a site designation does not constitute EPA's approval of actual disposal of material at sea. Before ocean dumping of dredged material at the site may commence, EPA and the COE (not just "the COE" as stated in the Proposed Rule) must evaluate a permit application according to EPA's Ocean Dumping Criteria. EPA has the right to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met.

In this Final Rule, EPA wishes to emphasize that the site designation of the Brunswick Harbor ODMDS does not preclude beach nourishment or other non-ocean disposal alternatives. As indicated in the Proposed Rule, if relevant to the project, such options should be discussed at the dredging project level as opposed to the ODMDS designation level by the applicant. Furthermore, pursuit of such options should be with appropriate permitting agencies rather than EPA.

The Brunswick Harbor ODMDS is not restricted to disposal use by Federal Projects; private applicants may also dispose suitable dredged material at the ODMDS once relevant regulations have been satisfied. This site is restricted, however, to suitable dredged material from the greater Brunswick, Georgia vicinity.

H. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the designation will only have the effect of providing a disposal option for dredged material. Consequently, this Rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this Rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

This Final Rulemaking Notice fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: December 9, 1988.

Approved by:

Lee A. DeHihns, III,

Acting Regional Administrator.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Part 228 is amended by removing the paragraph for Brunswick Harbor from § 228.12(a)(3).

3. Part 228 is further amended by adding § 228.12(b)(41) as follows: [1]

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[1] (Note.—The last component presented as 81°17'40" W. in § 228.12(a)(3) of the 40 CFR revised as of July 1, 1987, referenced above was apparently in error, per coordination with the COE Savannah District, and should have been 81°17'42" W. as added above in § 228.12(b)(41). This apparent error was also in § 228.12(a)(3) of the 40 CFR revised as of July 1, 1984. Also, page 2485 of 42 FR 2461 (January 11, 1977) listed (apparently in error) the last coordinate component as 81°16'30" W.).

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(41) Brunswick Harbor; Brunswick, Georgia; Ocean Dredged Material Disposal Site _____ Region IV.

Location: 31°02'35" N., 81°17'40" W.; 31°02'35" N., 81°16'30" W., 31°00'30" N., 81°16'30" W., 31°00'30" N., 81°17'42" W;

Size: Approximately 2 square nautical miles.

Depth: Average 9 meters.

Primary use: Dredged material.

Period of use: Continuing use.

Restriction: Disposal shall be limited to suitable dredged material from the greater Brunswick, Georgia, vicinity.

[FR Doc. 88-29055 Filed 12-22-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 300

[FRL-3497-1]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of deletion of a site from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the deletion of the Toftdahl Drums site (Brush Prairie, Washington) from the National Priorities List (NPL). The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Washington have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA has determined that remedial actions conducted at the site have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: December 23, 1988.

FOR FURTHER INFORMATION CONTACT: Judi Schwarz, Remedial Project Manager, Superfund Branch, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101 Telephone (206) 442-2684.

SUPPLEMENTARY INFORMATION: As stated above, the site EPA deletes from the NPL is: Toftdahl Drums, Brush Prairie, Washington.

A Notice of Intent to Delete for this site was published August 12, 1988 (53 FR 30452). The closing date for comments on the Notice of Intent to Delete was September 12, 1988. EPA received no comments.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Superfund-(Fund) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial action in the unlikely event that conditions at the site warrant such action. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Hazardous waste.

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: Section 105, Pub. L. 96-510, 94 Stat. 2764, 42 U.S.C. 9605 and sec. 311(c)(2), Pub. L. 92-500 as amended, 86 Stat. 865, 33 U.S.C. 1321(c)(2); E.O. 12316, 46 FR 42237; E.O. 17735, 38 FR 21243.

Appendix B—[Amended]

2. The NPL Part 300, Appendix B is amended as follows: Remove: Toftdahl Drums, Brush Prairie, Washington.

Date: December 12, 1988.

Robie G. Russell,

Regional Administrator, U.S. EPA, Region 10.

[FR Doc. 88-29491 Filed 12-22-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-7]

Broadcast Services; Amendment of the Radio Duopoly Rule to Liberalize the Restrictions Against the Common Ownership of Two or More Commercial Radio Stations in the Same Broadcast Service Whose 1mV/m Contours Overlap

AGENCY: Federal Communications Commission.

ACTION: Final rule; public notice regarding effective date.

SUMMARY: On October 27, 1988, the Commission adopted amendments to the radio duopoly rule contained in § 73.3555(a) of the Commission's Rules and Regulations. A *Public Notice* advised that these amendments became effective immediately upon adoption. The Commission found good cause to make these amendments effective immediately because the revised rules remove restrictions that were unnecessary and contrary to the public interest. All currently pending waiver requests involving radio station combinations that would be permissible under the rule as amended are thus rendered moot and the underlying applications in those cases may be granted if it is otherwise appropriate to do so.

EFFECTIVE DATE: October 27, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michele Farquhar, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's decision in MM Docket No. 87-7, adopted October 27, 1988. Pursuant to the *Public Notice* summarized above, this decision became effective immediately upon adoption. The text of this Commission decision has not been released.

Summary of Decision

1. This decision modifies one of the Commission's local ownership rules—the radio duopoly rule, which prohibits the common ownership of two or more commercial radio stations in the same broadcast service whose 1 mV/m contours overlap. The Commission is relaxing this rule to a principal-city contour standard (the 5 mV/m contour for AM stations and the 3.16 mV/m contour for FM stations). This refinement of the contour overlap represents a relatively minor adjustment to the rule, under which ownership of two AM or FM stations located in the same "principal city" will still be prohibited. Nevertheless, this action will enable broadcasters to own two or more commercial radio stations in the same service in closer proximity than is currently allowed, enabling them to realize some of the efficiencies of common ownership.

2. This rule was adopted in 1964 in order to promote the dual goals of economic competition and viewpoint diversity in the ownership of broadcast stations. The *Notice of Proposed Rule Making* in this proceeding proposed relaxing the rule to a principal-city contour standard to reflect the geographic area in which most radio listenership occurs, the undue discrimination against AM broadcasters

caused by the present rule, the tremendous growth in the number and types of media outlets in large and small markets in the 24 years since the rule was adopted, and the benefits of common station ownership. Commenters responding to the *Notice* overwhelmingly agreed with the Commission's initial determination that the rule should be liberalized in light of these factors.

3. Based on the record in this proceeding and the overwhelming support of the comments received, the Commission concluded that the public interest would best be served by relaxing the rule as proposed in the *Notice*. The principal-city contour standard more accurately reflects the geographic area where most of a station's audience is located and relieves the overly restrictive effects of the current rule, including the unwarranted discrimination against AM broadcasters. Under this relatively minor adjustment to the rule, the Commission will still prohibit the common ownership of stations in the same service located in the same listening area. In view of this fact, as well as the substantial growth and availability of media outlets in local markets, the Commission does not believe that this modification will adversely affect our traditional competition and diversity goals. In fact, this decision may actually enhance these goals given the efficiencies and public service benefits possible from common ownership of stations in the same vicinity.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Rule Amendments

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

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

2. Section 73.3555 is amended by revising paragraphs (a) (1) and (2) to read as follows:

§ 73.3555 Mutiple ownership.

(a) * * *

(1) Any overlap of the predicted or measured 5 mV/m groundwave contours of the existing and proposed AM stations, computed in accordance with § 73.183 or § 73.186; or

(2) Any overlap of the predicted 3.16 mV/m contours of the existing and proposed FM stations, computed in accordance with § 73.313; or

(3) * * *

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 88-29603 Filed 12-22-88; 8:45 am]

BILLING CODE 6712-01-M

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1602, 1632 and 1652

Federal Employees Health Benefits Acquisition Regulation; Letter of Credit Arrangements for Carrier Reserves

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing regulations to require the use of letter of credit (LOC) arrangements for Federal Employees Health Benefits Program (FEHBP) payments to certain experience-rated carriers. The regulation will enhance OPM's financial management of the FEHB Program without altering the basic OPM/carrier financial relationships which currently exist.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 632-4634.

SUPPLEMENTARY INFORMATION: On September 6, 1988, (53 FR 34320) OPM published proposed regulations to require the use of letter of credit (LOC) arrangements for FEHB Program payments to certain experience-rated carriers. The regulation implements the United States Department of the Treasury regulation at 31 CFR Part 205, which requires the use of the LOC method for Federal program agencies having a continuing relationship with a contractor involving annual payments of at least $120,000.

OPM received comments from one Federal agency, seven FEHB Program health benefits carriers, and two underwriters of FEHB Program plans. The respondents were generally supportive of OPM's efforts to improve the financial management of the FEHB Program. However, most of the carriers and underwriters were uncertain about the effect of the LOC procedures on their operations. The majority of the comments fall into two categories: (1) Belief that a LOC arrangement will not yield the investment income that can be earned through the carrier's own investment of its FEHB funds; and (2) procedural questions involving the mechanics of the LOC transfer. A summary of the comments and OPM's response follows.

Five carriers and one underwriter asserted that a LOC arrangement would cause a significant loss of investment income. A decrease in investment income could possibly impact on the rate-setting process of individual plans. OPM does not dispute the claim that carriers may be able to invest in individual securities which potentially may earn more interest than the U.S. securities in which OPM is restricted by law to invest. This is a fact of the market-place where higher risk securities require a higher interest rate to attract investors. OPM does not agree, however, that this marketplace phenomenon will necessarily translate into higher net return on investment for the FEHB Program. Carriers currently incur administrative costs with regard to FEHB investments and, due to increased risks, sometimes suffer losses which would not be applicable to the LOC process. Also, a number of carriers do not credit the FEHB Program with the actual interest earned on individual securities but, rather, use allocation formulas which do not necessarily result in greater net returns on investments to the FEHB Program than Treasury investment rates. In addition, the potential loss of investment income and, hence, any potential impact on premium, is insignificant considering that total investment income earned by the carriers was less than 1 per cent of subscription income for 1987 (1987 Financial Statements for the FEHB Program reflect total interest income of $41,100,137 and subscription income of $6,488,274,986 for experience-rate carriers). Therefore, OPM believes that the overall financial benefit to the FEHB Program and the Goverment from the LOC arrangement is far greater than the insignificant potential loss of investment income. Three commenters expressed concern that additional administrative costs associated with the LOC procedures, such as additional bank service charges and expenses related to an increased clerical workload in mailing daily vouchers, would be charged back to the Program, causing a rise in premiums. OPM is aware that some additional costs may be incurred. Nevertheless, OPM believes that there will be an overall financial benefit to the FEHB Program and the Government from the LOC arrangement.

One respondent took exception to OPM's assertion that Par' 205 of Title 31,

Code of Federal Regulations, should be applied to FEHB contracts. These regulations require the use of a letter of credit arrangement for contracts involving annual advances aggregating at least $120,000. As the government agency with primary responsibility for administering letters of credit for financing operations under Federal programs, the Department of the Treasury has reviewed and approved the use of the LOC payment method for the FEHB Program. In the absence of a Department of Treasury ruling to the contrary, OPM will comply with the regulatory requirements in Part 205 of Title 31, CFR.

The same respondent is concerned with the way State regulatory requirements, specifically the requirement that all of an insurer's assets be available for the payment of all of its liabilities, will interface with a letter of credit arrangement. The LOC payment method does not prohibit the carrier's FEHB Program assets from being used for the payment of all of its liabilities. That restriction is based in the FEHB law under which the carrier has operated for over 25 years. Section 8909, title 5, United States Code, has always required that FEHB funds be used solely for Program purposes. From this standpoint, there should be no difference in the treatment of assets historically employed by the carrier and the treatment of assets under the LOC payment arrangements.

The respondent is further concerned about the characterization of the LOC funds as an "asset." The carrier contends that the LOC funds are nonadmitted assets. That is, they are not sufficiently free to be recognized as an admitted asset by State Insurance Departments. In general, assets are nonadmitted due to either an uncertainty as to their collectibility or an insufficient basis for determining their valuation. An asset in the form of a LOC is an admitted asset because there is no uncertainty as to its collectibility, nor is there an insufficient basis for determining its valuation. Section 205.5, Title 31, Code of Federal Regulations, states that a "letter of credit is irrevocable (the equivalent of cash available to the recipient organization) to the extent the recipient organization has obligated funds in good faith thereunder in executing the authorized Federal program in accordance with the grant, contract, or other agreement." Since the funds in the LOC account will be reported as an account receivable by the carrier and can be withdrawn when Program expenses are paid, OPM believes that the funds are admitted assets in accordance with statutory insurance accounting principles.

Eight respondents raised questions pertaining to procedures which were not covered by the proposed regulations. OPM intentionally omitted detailed procedural instructions from the proposed regulations to allow for maximum flexibility in adapting the procedures to the varied needs of the individual FEHBP carriers. The final regulation continues to reflect this philosophy. Detailed procedures are more appropriately reserved for operational guidelines which are being provided to the carriers. The questions are responded to in this Supplementary Information as follows:

(1) *Carrier/underwriter accessibility to the LOC account.* The Department of Treasury will establish a LOC in the name of each carrier. The carrier must select one financial institution for purposes of processing requests for funds and funds transfers for both parties. The carrier and underwriter, or their designated officials, may have access to the account. Because the Department of the Treasury limits the number of drawdowns from a LOC account to one per day, the carrier and underwriter should agree upon the timing and method of requesting their respective drawdowns.

(2) *Presentation of the voucher to the carrier's bank.* The standard Treasury procedure for requesting funds requires the recipient organization (carrier) to present an SF 5805, Request for Funds, to its financial institution for review. However, at its option, the financial institution may establish an alternative procedure for accepting and validating the request-for-funds information in lieu of physical receipt of the SF 5805. The procedure established shall be mutually agreed upon by the carrier and its financial institution. The financial institution shall, in such case, be responsible for ensuring the validity of the request for funds. When an alternative procedure has been established for accepting and validating the request for funds, the SF 5805 will not be used. However, the agreed upon alternative should leave a clear audit trail of the request-for-funds transactions.

(3) *Method of drawdown (i.e., checks paid versus delay of drawdown).* The final regulations allow the carrier to select either the checks paid or the delay of drawdown technique, or both, for withdrawal of funds from the LOC account. Under the checks paid technique, the drawdown on the letter of credit is delayed until the checks issued for FEHB Program disbursements are presented to the carrier's bank for payment. Under the delay of drawdown technique, the drawdown on the letter of credit is delayed until after checks issued by the carrier or underwriter for FEHB Program disbursements have been forwarded to the payees. Some carriers may find the checks paid technique administratively easier, while others will prefer the delay of drawdown technique because the float inherent in this method affords a greater amount of working capital. Carriers may combine the two methods if they find, for example, that the checks paid technique is more appropriate for claims expenses and the delay of drawdown technique is preferable for administrative purposes.

(4) *Date for incurring expenses.* This comment concerned drawdowns from the LOC account for administrative expenses in order to avoid premature withdrawals. OPM will not establish set time frames for allocation of administrative expenses. However, drawdowns must be consistent with the drawdown technique(s) selected.

(5) *Contingency reserve payments if a plan terminates in a deficit position.* The LOC arrangement does not alter any contractual arrangements or change any rights of the carrier to the contingency reserve. All contingency reserve payments will be made available to the LOC account and the carrier and underwriter will have access to this amount to pay claims and other expenses in accordance with the drawdown procedures.

(6) *Indemnity plan reinsurance.* The respondent is concerned that there will be changes in financing as a result of the LOC arrangement which could significantly effect its reinsurers' irrevocable decisions to contract with the carrier for contract year 1989. OPM continues to assert that the basic financial relationships that currently exist in the FEHB Program will not be changed as a result of the LOC arrangement, nor will the financial makeup of the Program be changed.

(7) *Non-commingling of working capital.* The amount of working capital that may be kept outside the LOC account should be a minimal amount (less than one day's working capital). In cases where an underwriter provides services for more than one FEHB plan, monies held outside the LOC account must not be commingled.

(8) *Reports to the carrier of OPM transactions.* OPM will notify plans of the amount to be made available in the LOC account via a Payment Advice. The Payment Advice has been revised to include the balance in the LOC account.

(9) *Carrier reporting requirements.* OPM has not implemented any new reporting requirements. However, carriers may be required to provide detailed cashflow worksheets along with their annual accounting statements to support drawdown transactions.

Several respondents requested that OPM increase the amount of cash held outside the LOC account. The carriers and underwriters are concerned that a delay in receipt of available funds following claims payment will result in increased financial risk. OPM does not believe that there will be an increase in financial risk due to the limitation on working capital. Carriers may minimize the impact of the reduction in working capital by selecting the delay of drawdown technique for withdrawal of funds from the LOC account. The delay of drawdown technique allows carriers to hold the monies withdrawn after checks are forwarded to payees in a separate interest-bearing account outside of LOC until the checks are presented for payment.

Three respondents requested an exemption from the letter of credit arrangement for certain plans. OPM opposes blanket exemptions from the LOC regulations. However, in response to concerns that the change in the method of FEHB financing was proposed subsequent to agreements made in good faith between carriers and their underwriters and reinsurers, we have added a provision to the final regulations which authorizes OPM to grant exceptions to the effective date of the LOC regulations. An exception to the effective date under this provision would be authorized under very limited circumstances and would be granted only if a carrier could demonstrate in writing that its business would be adversely affected as a result of the January 1, 1989, implementation of the LOC regulations.

Several respondents commented on the early effective date of the regulations and a possible inability to prepare administratively for the change in financing method. Although the effective date is January 1, the first LOC premium payment for contract year 1989 will not be issued until the fourth Thursday in February. This delay should give the carriers and underwriters sufficient time to adjust their administrative procedures to accommodate the letter of credit arrangement. One carrier suggested a one-year delay in effective date so that its deficit could be recovered through the existing operation of its plan. OPM does not believe this request is valid; moreover, there is no guarantee that the deficit of the plan, or that of any other plan, would be recovered in the 1989 contract year.

Two changes have been made to the regulations to clarify that only one drawdown may be made on the LOC account per day and that the drawdown must be presented to the Treasury by the carrier's financial institution not later than 1:00 p.m. eastern time.

Two respondents believe that OPM is discriminating against experience-rated plans because the LOC regulations require crediting of interest on the LOC account at Treasury security rates—a rate below the competitive market rate, while community-rated plans can continue to invest at higher rates of interest. The purpose of the LOC arrangement is to improve the Government's financial management of the Program and not to discriminate against experience-rated carriers. Since the reserves held by experience-rated carriers ultimately belong to the FEHB Program (in cases where experience-rated carriers discontinue participation in the FEHB Program, all claims are paid and the remaining reserves are returned to OPM), and excess amounts over claims expense of community-rated carriers do not, community-rated carriers were excluded from the LOC arrangement.

Final regulations amending 5 CFR Part 890 to establish the LOC payment arrangement for FEHB Program contracts are published elsewhere in this issue of the **Federal Register.**

Waiver of the 30-day Delay in Effective Date of Final Regulation

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The regulation is effective January 1, 1989, so that it will be applicable to contracts covering calendar year 1989. While the regulation is effective beginning with the first day of the 1989 contract year, for practical purposes, the first premium payment affected by the LOC regulation will not be made until the fourth Thursday in February.

E.O. 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 this regulation will not have a significant economic impact on a substantial number of small entities because the regulation does not change the amount of money credited to the carriers and the carriers will continue to have full and immediate access to their Treasury LOC account.

List of Subjects in 48 CFR Parts 1602, 1632, and 1652

Administrative practice and procedure, Government contracts, Health insurance.

U.S. Office of Personnel Management.

Hugh Hewitt,

Deputy Director.

Accordingly, OPM is amending 48 CFR Chapter 16 as follows:

1. The authority citation for Chapter 16 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

PART 1602—DEFINITIONS OF WORDS AND TERMS

2. In Subpart 1602.1, subsections 1602.170–9 and 1602.170–10 are redesignated as 1602.170–10 and 1602.170–11 and a new subsection 1602.170–9 is added as follows:

1602.170–9 Letter of credit.

"Letter of credit" means the method, established in 31 CFR Part 205, by which certain carriers, and their underwriters if authorized, receive recurring premium payments and contingency reserve payments by drawing against a commitment (certified by a responsible OPM official) which specifies a dollar amount available. For each carrier participating in the letter of credit arrangement for payment under this part, the terms "carrier reserves," "carrier-held reserves," and "special reserves" include any balance in the carrier's letter of credit account.

PART 1632—CONTRACT FINANCING

3. In Subpart 1632.1, section 1632.111 is removed and new sections 1632.170, 1632.171, and 1632.172 are added to read as follows:

1632.111 [Removed]

1632.170 Recurring premium payments to carriers.

The procedures for payment of premiums, contingency reserve, and interest distribution to FEHB Program carriers shall be those contained in 5 CFR 890.505.

1632.171 Clause—contracts without letter of credit payment arrangements.

The clause at 1652.232–70 shall be inserted in all FEHBP contracts without letter of credit payment arrangements.

1632.172 Clause—contracts with letter of credit payment arrangements.

The clause at 1652.232–71 shall be inserted in all FEHBP contracts with letter of credit payment arrangements.

PART 1652—CONTRACT CLAUSES

4. In Subpart 1652.2, subsection 1652.232–70 is redesignated as 1652.232–72 and new subsections 1652.232–70 and 1652.232–71 are added to read as follows:

1652.232–70 [Redesignated as 1652.232–72]

1652.232–70 Payments—contracts without letter of credit payment arrangements.

As prescribed in 1632.171, the following clause shall be inserted in all FEHBP contracts without letter of credit payment arrangements:

Payments

(a) OPM will pay to the Carrier, in full settlement of its obligations under this contract, subject to adjustment for error or fraud, the subscription charges received for the plan by the Employees Health Benefits Fund (hereinafter called the Fund) less the amounts set aside by OPM for the Contingency Reserve and for the administrative expenses of OPM, plus any payments made by OPM from the Contingency Reserve.

(b) The specific subscription rates, charges, allowances and limitations applicable to the contract are set forth in Appendix B.

(c) Recurring payments from premiums shall be due and payable not later than thirty days after receipt by the Fund. The Contracting Officer may authorize special non-recurring payments from the Contingency Reserve in accordance with OPM's regulations.

(d) In the event this contract between the Carrier and OPM is terminated or not renewed in accordance with General Provision 1.15, RENEWAL and WITHDRAWAL OF APPROVAL, the Contingency Reserve of the Carrier held by OPM shall be available to the Carrier to pay the necessary and proper charges against this contract to the extent that the reserves held by the Carrier are insufficient for that purpose.

(End of Clause)

1652.232–71 Payments—contracts with letter of credit payment arrangements.

As prescribed in 1632.172, the following clause shall be inserted in all FEHBP contracts with letter of credit payment arrangements:

Payments

(a) OPM will pay to the Carrier, in full settlement of its obligations under this contract, subject to adjustment for error or fraud, the subscription charges received for the Plan by the Employees Health Benefits Fund (hereinafter called the Fund) less the amounts set aside by OPM for the Contingency Reserve and for the administrative expenses of OPM, plus any payments made by OPM from the Contingency Reserve.

(b) The specific subscription rates, charges, allowances and limitations applicable to the contract are set forth in Appendix B.

(c) Recurring payments from premiums shall be made available for carrier and/or underwriter drawdown not later than thirty days after receipt by the Fund. The Contracting Officer may authorize special non-recurring payments from the Contingency Reserve in accordance with OPM's regulations.

(d) In the event this contract between the Carrier and OPM is terminated or not renewed in accordance with General Provision 1.15, RENEWAL and WITHDRAWAL OF APPROVAL, the Contingency Reserve of the Carrier held by OPM shall be available to the Carrier to pay the necessary and proper charges against this contract to the extent that the reserves held by the Carrier are insufficient for that purpose.

(End of Clause)

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Proposed Rules

Federal Register
Vol. 53, No. 247
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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.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0654]

Truth in Lending; Credit and Charge Card Disclosures

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to revise Regulation Z (Truth in Lending) to implement the Fair Credit and Charge Card Disclosure Act amendments to the Truth in Lending Act. The law, enacted on November 3, 1988, requires credit and charge card issuers to provide certain credit disclosures in telephone solicitations and in direct mail and other applications and solicitations to open credit and charge card accounts. Card issuers will also be required to give cardholders written notice regarding the renewal of their credit and charge card accounts before a cardholder has to pay a fee to renew the account. In addition, the law requires credit card issuers to provide cardholders with written notice of a change in the entity providing credit insurance on credit card accounts.

DATE: Comments must be received on or before February 21, 1989.

ADDRESSES: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to the Mail Services courtyard entrance on 20th Street, between C Street and Constitution Avenue, NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to Docket No. R-0654. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: The following attorneys in the Division of Consumer and Community Affairs, at (202) 452-2412 or (202) 452-3867: Michael S. Bylsma or Adrienne D. Hurt, Senior Attorneys, or Kathleen S. Brueger, Staff Attorney; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) General

On November 3, 1988, the Fair Credit and Charge Card Disclosure Act, Pub. L. No. 100-583, 102 Stat. 2960, was enacted into law. The law amends sections 111 (state law preemption), 122 (form of disclosure), 127 (open-end credit disclosures), 130 (civil liability), and 136 (information collection by Board) of the Truth in Lending Act (TILA). The purpose of the law is to provide for more detailed and uniform disclosure of rates and other cost information in applications and solicitations to open credit and charge card accounts. Consumers will be given basic cost information about credit and charge cards at an earlier time than under the current provisions of the TILA in order to enhance credit shopping. Under the current provisions of the TILA, card issuers are required to give consumers credit disclosure statements at about the time an account is opened. (The new law does not affect the general advertising provisions in section 143 of the TILA.)

The law mandates that an implementing rule be in place 150 days from enactment of the law. Mandatory compliance by card issuers with the law's requirements will be effective 150 days from issuance of a final rule by the Board (240 days for disclosures in applications and solicitations made available to the general public by means other than direct mail or telephone). The Board expects to adopt a final rule by April 3, 1989, making compliance with the law mandatory on or around August 31, 1989 (or November 29, 1989, for applications and solicitations made available to the general public other than by direct mail or telephone).

As of the mandatory compliance dates, all state laws relating to the disclosure of information in any credit or charge card application and solicitation that will be subject to the requirements of new section 127(c) of the TILA, or any renewal notice that will be subject to the requirements of new section 127(d), will be preempted. If a card issuer complies with the federal requirements before the effective dates for mandatory compliance, all relevant state laws will be preempted as to that card issuer as of the date of compliance.

The law requires credit and charge card issuers to provide disclosures to consumers in three situations involving applications and solicitations to open credit or charge card accounts: (1) Direct mail applications and solicitations; (2) telephone solicitations; and (3) applications and solicitations by means other than mail or telephone that are made available to the general public (such as applications and solicitations commonly referred to as "take-ones"), including those contained in catalogs, magazines, or other generally available publications. An application or solicitation to add a credit or charge card to an existing open-end plan would not be subject to the new law. Most of the required disclosures would have to be provided in the form of a table, which the Board is directed to prescribe.

In addition to the disclosures required with applications and solicitations, the law requires disclosures in two other circumstances. First, card issuers that impose fees to renew credit and charge card accounts will have to provide cardholders with renewal notices (including a new set of credit disclosures and information about an account's expiration and how to terminate an account) before a renewal fee is payable. Second, credit card issuers will have to provide disclosures if they offer credit insurance and decide to change insurance providers. As part of the disclosures, credit card issuers would be required to disclose any substantial decrease or limitation in coverage as a result of a change.

The law amends section 130 of the TILA, the civil liability provision, to provide that a card issuer shall have liability under section 127 (c) and (d) of the act only to a cardholder who pays an annual or other periodic fee or a membership fee, or who uses a credit or charge card. The law also requires the Board to collect credit card price and availability information from a sampling of financial institutions and make it available to the public on request.

(2) The Proposed Amendments to Regulation Z

The Board proposes to add new § 226.5a to Regulation Z to implement most of the provisions of the Fair Credit

and Charge Card Disclosure Act. The proposed section has been added between § 226.5 (general open-end disclosure requirements) and § 226.6 (initial open-end disclosure statement) because of the timing for providing the disclosures. The disclosures required when renewing a credit or charge card account or changing an insurance provider on a credit card account are contained in § 226.9 (subsequent disclosure requirements) of the regulation.

The disclosure requirements for credit and charge cards have been combined in the proposed rule to avoid unnecessary duplication. Unless otherwise specified in the discussion below, language of the proposed rule which differs from the language of the act primarily simplifies and clarifies the act's requirements. Citations in the discussion of the proposed rule are to the amended sections of the TILA. The Board intends to provide additional guidance as necessary when it publishes the final rule. This guidance will eventually be proposed for incorporation into the Board's official staff commentary to the regulation.

Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability

Paragraph (a)—Authority

Instead of adding to the authority section each law that amends the TILA, the section will merely refer to the TILA as amended, thus incorporating all such laws. As a result, any specific reference to laws amending the act would be removed as unnecessary.

Section 226.2—Definitions and Rules of Construction

Section 226.2(a)(15) of the regulation would be revised to include the definition of a charge card. Generally, these are credit card accounts on which outstanding balances cannot be rolled over from one month to another and are payable when a periodic statement is received. Section 127(c)(4)(E) of the act defines a charge card as a credit card (as defined in Regulation Z, § 226.2(a)(15)) which is not subject to a finance charge. The act's disclosure provisions applicable to charge cards require the issuer to disclose transaction charges, for both purchases and cash advances. Since, under Regulation Z, these charges are finance charges, it is clear that charge card accounts can involve finance charges despite the act's definition. The Board proposes to modify the charge card definition for clarity, so that the term charge card would be defined in the regulation to mean a credit card on an account for which no periodic rate is used to compute a finance charge. Consequently, card issuers who offer cards that may be subject to finance charges such as transaction charges on cash advances—but for which no periodic rate is used to compute the finance charge on an outstanding balance—would be characterized as charge card issuers for purposes of the new law and would give the applicable charge card disclosures.

Under the existing regulation, § 226.2(a)(17)(iv), card issuers extending closed-end credit are subject to certain of the open-end credit disclosure provisions. That section sets forth the provisions that are not applicable to such card issuers. The Board proposes to revise the section to also exclude these card issuers from the new disclosure requirements of the law.

Section 226.5—General Disclosure Requirements

Paragraph (a)—Form of Disclosures

Paragraph (a)(1). The Board proposes to revise footnotes 8 and 9 to § 226.5. Footnote 8 would be revised to indicate that the terms "annual percentage rate" (APR) and "finance charge," when used in the disclosures required under proposed § 226.5a, need not be more conspicuous than other terms. Footnote 9 would be revised to indicate that the disclosures given under § 226.5a need not be in a form that the consumer can keep.

Paragraph (a)(3). Paragraph (a)(3) would be added to explain that the standard for certain disclosures required under proposed § 226.5a differs from the general clear and conspicuous standard for TILA disclosures. Certain disclosures under proposed § 226.5a must be given in the form of a table and in a prominent location when provided on or with an application or solicitation.

Paragraph (b)—Time of Disclosures

Paragraph (b)(3). Paragraph (b)(3) would be added to provide a general cross reference to § 226.5a for the timing requirements for disclosures in credit and charge card applications and solicitations.

Section 226.5a—Credit and Charge Card Applications and Soliciations

Paragraph (a)—General Rules

Paragraph (a) would contain the general rules applicable to this section.

Paragraph (a)(1). Paragraph (a)(1) would implement section 127(e)(1) of the act and provide that if the amount of any fee required to be disclosed is determined on the basis of a percentage of another amount—for example, if a card issuer imposes an annual fee based on a percentage of the credit line—the card issuer may state the percentage and what it is applied to rather than the dollar amount of the fee. If a card issuer is able to determine the dollar amount of the fee, the card issuer would, of course, be permitted to disclose that amount.

Paragraph (a)(2). Paragraph (a)(2) would implement section 127(f) of the act. It provides that if any cash advance, late payment or over-the-credit-limit fee required to be disclosed varies from state to state, the card issuer may disclose the range of the fees instead of disclosing the amount of the fee. If a range is disclosed, the card issuer must include a statement that the amount of the fee varies from state to state. This option is limited to the fees mentioned above.

Paragraph (b)—Direct Mail Applications and Solicitations

Paragraph (b) would implement the disclosure requirements for direct mail applications and solicitations for credit and charge cards provided in section 127 (c)(1) and (c)(4) (A) and (B) of the act. Paragraph (b)(1) would contain the disclosures under the act that are required to be given in tabular format. Paragraph (b)(2) would contain the additional fee disclosures that may be located inside or outside of the table.

Paragraph (b)(1). Credit card issuers would have to provide the disclosures in paragraph (b)(1) (i) through (vi) to the extent the disclosures are applicable. Charge card issuers would have to provide the disclosures in paragraphs (b)(1) (ii), (iv) and (vii) as applicable. The disclosures would have to be given in the form of a table. The Board is proposing two new model forms in appendix G, either of which will comply with the tabular format requirement if used properly. Detailed information about requirements as to the form of disclosures is contained in the discussion of appendix G below.

APR Disclosure. Paragraph (b)(1)(i) would implement section 127(c)(1)(A)(i) of the act. Credit card issuers would be required to disclose each periodic rate that may be used to compute the finance charge on an outstanding balance expressed as a corresponding APR. This provision would apply to rates applied to purchase and cash advance balances. If the APR for cash advances differs from the APR for purchases, the disclosure should indicate the rate applicable to each balance. Whenever more than one rate applies to an outstanding balance, the card issuer

would be required to disclose the range of balances to which each rate applies.

If an extension of credit is subject to a variable rate, the credit card issuer would be required to disclose the fact that the rate is variable. The credit card issuer would also be required to disclose the APR in effect at the time of mailing, and how the rate is determined. An APR in effect at any time within 30 days before the mailing may be deemed to be the rate in effect at the time of mailing. Thus, a change in an index resulting in a change in the APR within 30 days before the mailing would not invalidate the disclosure. A credit card issuer would satisfy the requirement of disclosing how the rate is determined by identifying the index and the margin or spread above the index.

Periodic and membership fee disclosure. Paragraph (b)(1)(ii) would implement section 127(c) (1)(A)(ii)(I) and (4)(A)(i) of the act. It would require credit and charge card issuers to disclose any annual or other periodic fee (including fees based on account activity or inactivity), or any membership fee imposed for the issuance or availability of a credit or charge card. This would include a one-time fee for the issuance of a card. To promote easy comparison of disclosures, the proposed rule would require that the fees (if periodic) be expressed as an annualized amount. Therefore, for example, if a card issuer imposed a quarterly fee, the issuer would have to disclose how much the fee would be on an annual basis.

With regard to one-time membership fees, the Board requests comment on what types of fees should be included. For example, the language of the proposed rule might be interpreted to include application fees, raising the question of whether these fees should be covered. The same question arises with respect to various charges associated with the opening of a home equity line of credit that is accessible by credit card.

Minimum finance charge. Paragraph (b)(1)(iii) would implement section 127(c)(1)(A)(ii)(II) of the act and would require credit card issuers to disclose any minimum or fixed finance charge that could be imposed for any period during which any extension of credit which is subject to a finance charge is outstanding. This would occur where the amount of such a finance charge is greater than the finance charge that would otherwise be imposed for such period under the applicable APR.

Transaction charge for purchases. Paragraph (b)(1)(iv) would implement section 127(c) (1)(A)(ii)(III) and (4)(A)(ii) of the act. It would require credit and charge card issuers to disclose any transaction charge imposed in connection with the use of the card to purchase goods and services. This provision does not cover fees for cash advances, although such fees are required to be disclosed by another provision of the law.

Grace period for purchases. Paragraph (b)(1)(v) would implement section 127(c)(1)(A)(iii) of the act. It would require credit card issuers to disclose the date by which or the period within which any credit extended under credit card accounts for the purchase of goods or services must be repaid to avoid incurring a finance charge. If a card issuer does not offer a "grace period", the card issuer must disclose that fact. If the length of the grace period varies, a card issuer may disclose the range, the minimum or the average number of days in the grace period, if the disclosure is identified as a range, minimum or average, respectively. No disclosure about grace periods for cash advances is required.

The act provides that either the heading or the statement under the heading for the disclosure shall contain the term "grace period." The Board proposes to mandate use of the term "grace period" as a required heading in the table (as well as all other terms in the headings). Therefore, to the extent a card issuer provides more than a numerical disclosure in the body of the table, the card issuer would be permitted to use any word or statement that conveys substantially the same meaning as a "grace period", for example, a reference to a free-ride period.

Balance calculation method for purchases. Paragraph (b)(1)(vi) would implement section 127(c)(1)(A)(iv) of the act. Credit card issuers would be required to disclose the method of calculating the balance on which finance charges will be computed for the purchase of goods and services. (No disclosure of the method of calculating the balance for cash advances is required.) In making this disclosure, issuers would be required to identify the balance calculation method used on the account by the name provided by the Board in the regulation's definitions of the most common balance calculation methods. Credit card issuers would be required to provide a detailed explanation of the balance calculation method used if it is not one of the methods described in the regulation. The level of detail of the explanation would be the same as that required for the initial disclosures under § 226.6(a)(3) of the regulation. A card issuer would be permitted to provide the detailed explanation outside of the table if a reference is included in the table.

The Board has tentatively identified five of the most common methods for determining the balance of account transactions on which the finance charge will be computed. Those methods are contained in paragraph (f) of this section of the proposal. The numerical order of these methods is not intended to reflect their relative usage by issuers. Three general balance calculation methods have been defined by the Board—average daily balance, adjusted balance and previous balance. Of these general methods, three variations of the average daily balance method have been identified as separate methods because of their potential impact on a consumer's finance charge. The three average daily balance methods which would be required to be identified separately are average daily balance (including new transactions), average daily balance (excluding new transactions), and retroactive average daily balance.

As described, the average daily balance methods are computed in a similar manner but vary based on whether new transactions are included in the balance and on whether the balance includes transactions from a previous billing cycle. The retroactive average daily balance method is described as the sum of the average daily balance (including new transactions) for two billing cycles. The Board requests comment on whether a separate retroactive method exists which is the average daily balance (*excluding* new transactions) for two cycles and on how many issuers may use that method. The Board also requests comment on whether and how much any separate retroactive methods vary from the retroactive method described by the Board in terms of their potential effect on a consumer's finance charge.

Another average daily balance method, frequently called "true" or "actuarial" average daily balance, has not been identified as a specific balance calculation method because the Board believes that it is the average daily balance (including new transactions) method without a grace period, and therefore may be disclosed using the name "average daily balance (including new transactions)."

The proposed descriptions of the balance calculation methods disregard minor variations in the methods resulting from differences in the allocation of payments, in the posting date as compared to the transaction date, the grace period, and whether the

balance includes unpaid finance charges and charges such as late fees and annual fees. Such variations in the methods described would not constitute different balance calculation methods.

The Board also has identified two other balance calculation methods—ending balance and daily balance—as the alternative sixth and seventh methods on the list for the purpose of soliciting comment on whether either of these methods should be substituted for any of the five methods identified as the most common methods. The Board also requests comment on whether the daily balance method results in a finance charge substantially similar to that derived under the average daily balance (including new transactions) method. The Board would consider categorizing the daily balance method as average daily balance (including new transactions) if it determines that there is no significant difference between the two methods in the impact on the consumer's finance charge.

The Board also solicits comment on whether any methods that have not been identified are more common than those in the proposed rule. The Board is particularly interested in any data from surveys or other studies of card issuers that address which methods are most commonly used. This information should focus only on those methods which are most common for the majority of card issuers—not on those methods which are most common for the majority of accounts in existence. Comments suggesting substitution of other methods for the five methods identified by the Board should include information supporting the inclusion of certain methods as more common among all card issuers than a particular method on the Board's list.

Due and payable statement. Paragraph (b)(1)(vii) would implement section 127(c)(4)(A)(iii) of the Act which applies only to charge card issuers. It would require charge card issuers to disclose that charges incurred by use of a charge card are payable when the periodic statement reflecting those charges is received by the cardholder.

Paragraph (b)(2)

Additional fee disclosures. Paragraph (b)(2) would implement section 127 (c)(1)(B) and (c)(4)(B) of the Act which requires credit and charge card issuers to disclose any cash advance, late payment or over-the-credit-limit fee. These disclosures could be provided in the prescribed table along with the disclosures mentioned in paragraph (b)(1) above (see the discussion of proposed model forms for details), or could be provided elsewhere in a clear and conspicuous manner on or with an application or solicitation.

Paragraph (c)—Telephone Solicitations

Paragraph (c) would implement the disclosure requirements for telephone solicitations to open a credit or charge card account provided in section 127 (c)(2) and (c)(4)(A) of the act.

Paragraph (c)(1).

Under paragraph (c)(1), card issuers would generally be required to orally disclose the applicable items that are required to be disclosed in tabular format in direct mail applications and solicitations; cash advance, late payment and over-the-credit-limit fees would not have to be disclosed.

Paragraph (c)(2).

Paragraph (c)(2) would implement section 127(c)(2)(B) of the act which permits an alternative disclosure for telephone solicitations. The act specifically provides this alternative for credit card issuers. The Board proposes to make this alternative disclosure available to both credit and charge card issuers; this modification might make compliance easier, and would not appear to reduce consumer protections.

If a card issuer does not impose a periodic or membership fee or does not impose any of those fees unless the consumer signifies acceptance by using the card, the card issuer need not give the oral disclosures at the time of the solicitation. The card issuer, however, would be required to disclose in writing the required terms—both those specified in paragraph (b)(1), in tabular format, and those listed in paragraph (b)(2)—within 30 days after the consumer requests the card, but in no event later than the delivery of the card. Therefore, if a consumer requests a card and the card is sent to the consumer 10 days after the solicitation, of example, the disclosures would have to be provided at that time. The card issuer must also explain in the written disclosure notice that the consumer is not obligated to accept the card and that the consumer will not be obligated to pay any fee or charges disclosed unless the consumer elects to accept the card by using it.

Paragraph (d)—Applications and Solicitations Other Than by Mail or Telephone

Paragraph (d) would implement the disclosure requirements for applications and solicitations to open credit and charge card accounts that are made available to the general public, including those contained in catalogs, magazines and other generally available publications, as provided in section 127 (c)(3) and (4)(C) of the act. A card issuer could satisfy the requirements of this section of the act in any of three ways. The act specifically allows any option to be used by credit card issuers. In order to allow maximum flexibility in complying with the new requirements, the Board proposes to make all options available to both credit and charge card issuers.

Paragraph (d)(1).

Under the option in paragraph (d)(1), the card issuer would provide all the required credit disclosures in the requisite format on or with applications and solicitations, and indicate: (1) That the disclosures are accurate as of the date they were printed; (2) the date of printing (disclosure of the month and year would be sufficient to fulfill this requirement); (3) that the terms are subject to change after such date; and (4) that the consumer should contact the creditor for any changes in the information disclosed. (If a rate is variable, any rate in effect 30 days before the date of printing would be deemed accurate as of the date of printing.) The card issuer would also have to provide a mailing address, or a toll-free telephone number to call (for calls made from an area code other than that used by the card issuer), for consumers to obtain information about changes in the disclosures. If the card issuer elects to provide an address rather than a toll-free telephone number, the card issuer could also provide a regular telephone number (rather than a toll-free number).

Paragraph (d)(2).

Under the option in paragraph (d)(2), a card issuer could include on or with an application or solicitation the disclosures required under § 226.6(a) through (c) of the regulation. The act provides that the credit disclosures required under section 127(c)(1) (proposed paragraph (b) discussed above) must be included, though they need not be given in tabular format. The legislative history of the act indicates that this option is available so long as the credit disclosures required under the act are provided clearly and conspicuously (H.R. Rep. No. 1069, 100th Cong., 2d Sess. 17). With minor exceptions, the disclosures required under section 127(c)(1) are also part of the disclosures required to be given under § 226.6(a) through (c) of the regulation. Furthermore, all TILA disclosures are subject to a general clear and conspicuous standard. Consequently, the Board proposes to interpret this option as requiring that

only the initial disclosures in § 226.6(a) through (c) of the regulation be given.

It should be noted that the disclosure of this information alone would not satisfy the initial disclosure requirements under the TILA. If, however, the card issuer in complying with this section provides all the disclosures required under § 226.6, in a form that the consumer may keep, the card issuer will have satisfied the disclosure requirement for this section of the act as well as the initial disclosure requirements for credit cards under the TILA.

Paragraph (d)(2) would also require the card issuer to disclose a toll-free telephone number or a mailing address for use in asking about changes in the information disclosed.

Paragraph (d)(3).

Under the option in paragraph (d)(3), a card issuer would provide a statement on the aplication or solicitation that there are costs associated with the use of the credit or charge card and that the applicant could contact the creditor to request specific information about those costs by calling a toll-free telephone number or by writing to an address specified on the application or solicitation. The card issuer would have to provide both a toll-free telephone number (for calls made from an area code other than that used by the card issuer) and a mailing address at which the consumer would contact the card issuer to obtain the required information. A card issuer could not use this option if the card issuer includes on the application or solicitation any of the credit disclosures required by the act.

Paragraph (d)(4).

Regardless of the option used, the act provides that upon receiving a request by a consumer for any of the credit information required to be disclosed under the act, card issuers must promptly disclose all of the required credit disclosures. The Board would not interpret this provision to require card issuers to provide all required credit disclosures in all instances. For example, if disclosures have been provided in accordance with proposed paragraph (d)(1) or (2), and a consumer calls or writes a card issuer to obtain information about changes in the disclosures, the card issuer may, but would not be required to, provide information about disclosures for which there are no changes from those previously provided on or with the application. Furthermore, if a consumer requested only one particular item, the card issuer could supply just that requested item rather than the entire list of disclosures. If, however, the card issuer has made disclosures in accordance with the option in paragraph (d)(3), and a consumer calls or writes the card issuer requesting information about costs, all the required disclosure information would have to be given.

Paragraph (e)—Special Charge Card Rule—Card Issuer and Person Extending Credit Not the Same Person

Paragraph (e) would implement section 127(c)(4)(D) of the act. Where the charge card issuer and the person maintaining an open-end credit plan that the card accesses are different persons, this provision permits the charge card issuer to disclose only the information required for the charge card, and no information about the underlying plan, if the charge card issuer also discloses to the consumer that: (1) The card issuer will make an independent decision whether to issue the card; (2) the card may arrive before the decision is made on the open-end plan; and (3) approval by the card issuer does not constitute approval of the plan.

The act also requires the creditor offering the underlying open-end credit plan to provide the credit disclosures required under section 127(c)(1) for the plan, before the first transaction under the plan. The timing for giving these disclosures is identical to the timing for giving initial disclosures. Moreover, with minor exceptions, the credit disclosures required under the new law will be included as part of the initial disclosures required under § 226.6 of the regulation. Consequently, the Board proposes to eliminate any additional disclosure requirements for a creditor that extends the underlying open-end credit plan beyond providing the initial disclosures in accordance with § 226.6 of the regulation. Thus, the proposed rule makes no reference to this requirement.

Paragraph (f)—Balance Calculation Methods Defined

This paragraph sets forth the proposed names and definitions of balance calculation methods. For a detailed discussion, refer to the discussion under paragraph (b) above.

Section 226.9 Subsequent Disclosure Requirements

Paragraph (e)—Disclosures Upon Renewal of Credit or Charge Card

Paragraph (e) would implement the disclosure requirements for credit and charge card renewals provided in section 127(d) of the act. Paragraph (e)(1) contains the general rule about notification. Paragraph (e)(2) allows the notice in paragraph (e)(1) to be given at a later point in time if certain other disclosures are provided.

Paragraph (e)(1). If a card issuer imposes any annual or other periodic fee to renew a credit or charge card account, the card issuer would generally be required to provide cardholders with written notices of renewal at least 30 days before the scheduled renewal date of the credit or charge card account. The renewal date is the date the fee is payable to preserve continued credit availability and not necessarily the date on which the credit or charge card expires. The notice would have to disclose: (1) The date by which, the month by which, or the billing period at the close of which the account will expire if not renewed; (2) the credit disclosures required under the Act, in the requisite format, that would apply if the account were renewed; and (3) the manner in which the cardholder may terminate continued credit availability under an account.

Paragraph (e)(2). Under paragraph (e)(2), the notice could be provided less than 30 days before the renewal date so long as the cardholder is given at least 30 days to avoid payment of the fee, or to have the fee recredited to the account, in any case where the cardholder does not wish to continue the availability of credit. The card issuer would have to disclose those facts, in writing, along with a disclosure that the cardholder may use the card in the interim without paying the fee.

Paragraph (e)(3). The renewal disclosures may be presented on or with a periodic statement, or in a separate mailing. If provided with a periodic statement or separately, the credit disclosures required by § 226.9(e)(1)(ii) would have to be given in tabular format (to the extent required in applications and solicitations); if provided on the statement itself, they need not be given in tabular format although the required headings would have to be used. If disclosures are provided on the back of a periodic statement, the card issuer must include on the front of the statement a reference to those disclosures.

Section 127(d)(3) of the act permits the Board, by regulation, to provide for fewer disclosures where an account is renewable more frequently than every six months; the purpose would be to ease the burden on card issuers in this circumstance. The legislative history indicates, however, that the Board would have to require, at a minimum, the periodic fee disclosure and disclosure of any credit term that had changed since the last disclosure. The Board believes such short term renewals

are rare and is not proposing any special rule; however, it seeks comment on whether an abbreviated disclosure scheme would be necessary or useful to cover this situation.

Paragraph (f)—Change in Credit Card Account Insurance Provider

Paragraph (f) would implement section 127(g) of the act. Credit card issuers that offer credit insurance (typically, life, disability, and unemployment insurance) on the outstanding balance on an account would be required to make certain disclosures to their insured consumer cardholders if the card issuers change insurance providers. The Board proposes to add two new model forms that may be used to comply with paragraph (f); see the discussion of appendix G, below, for details.

Paragraph (f)(1). Paragraph (f)(1) would implement section 127(g)(1) of the act which requires that a notice be sent at least 30 days before a change in insurance providers occurs. The notice may be sent on or with a periodic statement. The notice must inform the cardholder of the upcoming change in insurance providers, and indicate that the cardholder has the right to discontinue the credit insurance. (If discontinuing the credit insurance would have some effect on the credit plan, the notice may also explain that.) In addition, if the change in insurance providers will result in an increased rate or other increased costs for the cardholder, or if a substantial decrease or limitation in coverage will result, the notice must disclose those items to the cardholder. The Board proposes to interpret the act to require notice of changes in coverage terms only and not of changes relating solely to service.

Paragraph (f)(2). Paragraph (f)(2) would incorporate section 127(g)(5) of the act and would provide that, in determining whether a decrease or limitation in the coverage terms is considered substantial, the card issuer first must consider whether the decrease or limitation is in a significant term of coverage. (A list of examples of significant terms of coverage is provided in the proposed rule.) If a significant term of coverage is involved, the card issuer must then consider whether the decrease or limitation might reasonably be expected to affect a cardholder's decision to continue taking insurance from the card issuer; if that is the case, the decrease or limitation must be disclosed in the notice. The Board seeks comment on its definition of a substantial decrease and on its examples of significant terms of coverage.

Paragraph (f)(3).

Paragraph (f)(3) would incorporate section 127(g)(2) of the act. It would require that a second notice be provided by card issuers when the change in insurance providers actually occurs. Card issuers would be required to send this notice no later than 30 days after the change. Card issuers would be required to provide the name and address of the new insurance provider, and to include a statement that the consumer has the right to discontinue the insurance. In addition, card issuers would have to provide a copy of the new policy or group certificate, which must contain the basic terms and conditions and the premium rate. This notice may be sent on or with a periodic statement. (The copy of the policy or group certificate could be sent along with the periodic statement.)

Paragraph (f)(4).

Paragraph (f)(4) allows card issuers to combine the notice required by paragraph (f)(3) with the notice required by paragraph (f)(1) providing the timing requirement of paragraph (f)(1) is met. Notices may be provided on or with a periodic statement.

Section 226.28 Effect on State Laws

Paragraph (d) would implement the new preemption provision added to section 111 of the TILA. Section 127 (c) through (f) preempts any provision in state or local laws and regulations relating to the disclosure of information in any credit or charge card application or solicitation that is subject to section 127(c) and any provision relating to renewal notices in any transaction that is subject to section 127(d). The preemption of such state law is total, and differs from the preemption standard of other parts of the TILA, which generally preempt only inconsistent state law requirements.

State laws enacted or used to enforce the requirements of section 127 (c) and (d) of the act are not affected. The same is true for general disclosure laws such as state retail installment sales acts and plain language laws. In addition, other state consumer laws regarding credit or charge cards, such as a law requiring banks in that state to offer a grace period, would not be affected. The provisions of the act requiring insurance disclosures do not supersede any state laws applicable to the regulation of insurance. The Board would also take the view that the act does not preempt state laws that require disclosures relating to antidiscrimination matters.

Appendix G—Open-End Model Forms and Clauses

The Board's proposal includes several model forms and clauses which would appear in Appendix G of the regulation.

Proposed model from G–10A illustrates the permissible inclusion in the tabular format of all of the required disclosures for applications and solicitations. In proposed model form G–10B, the table includes only that information required to be included in the table, while the three additional required disclosures are illustrated clearly and conspicuously outside of the table. The table (in either G–10A or G–10B) must contain the prescribed headings to the extent applicable, although they may be arranged horizontally rather than vertically. In designing forms, card issuers would be permitted to eliminate inapplicable headings and their corresponding boxes. For example, if no transaction fee is imposed for purchases, the disclosure form could either retain the "Transaction Fee for Purchases" heading and box, indicating "None" in the box, or the heading and box could be deleted from the disclosure entirely. There is, however, an exception for the grace period disclosure: even if no grace period exists, this disclosure must be retained, stating that fact. The information in the boxes must be provided in a manner that conveys substantially the same meaning as the information in the Board's model form, although the precise terminology shown need not be used. A card issuer may provide other information about the tabular disclosures; however, that information must be presented outside the table.

Proposed model clauses G–11, –12, and –13 are provided to illustrate the additional disclosures for applications and solicitations by means other than by direct mail or telephone. Proposed model clause G–14 illustrates the disclosures to be made when a charge card may access an open-end line of credit offered by someone other than the card issuer.

Proposed model forms G–15 and –16 relate to changes in an insurance provider. Form G–15 lists several significant terms of coverage that may be affected by the change in insurance provider. The card issuer may list all of these potential changes in coverage and place a checkmark by the applicable changes or may include only statements about the actual change in coverage. Under either approach, the card issuer must explain the change or reference an accompanying copy of the policy or

group certificate for details of the new terms of coverage. Form G–15 illustrates the permissible combination of the two notices required by § 226.9(f). Form G–15 may be modified for use in providing only the disclosures required before the change if the card issuer chooses to send two separate notices. Proposed model form G–16 illustrates the disclosures required when the insurance provider is changed.

The Board solicits comment on whether additional model forms and clauses should be provided, and if so, suggestions about what would be useful.

(3) Comments Requested

Interested persons are invited to submit written comments on the proposed amendments and other matters addressed in this notice. After the close of the comment period, based upon its analysis of the comments received, the Board will publish in the **Federal Register** notice of final action. The comment period ends on February 21, 1989. Because of the strict statutory deadline for issuing the final regulations, comments must be submitted no later than this date.

(4) Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the proposed revisions to Regulation Z. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3245.

List of Subjects in 12 CFR 226

Advertising; Banks; Banking; Consumer protection; Credit; Federal Reserve System; Finance; Penalties; Rate limitations; Truth in Lending.

(5) Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside arrows, while language that would be removed is set off with brackets. Pursuant to authority granted in 15 U.S.C. 1604 and sec. 2, Pub. L. No. 100–583, 102 Stat. 2960 (to be codified at 15 U.S.C. 1637(c)(5)) of the TILA, as amended, the Board proposes to amend Regulation Z (12 CFR Part 226) as follows:

1. The authority citation for Part 226 is revised to read as follows:

Authority: ►Truth in Lending Act, 15 U.S.C. 1604 and sec. 2, Pub. L. No. 100–583, 102 Stat. 2960◄ [Sec. 105, Truth in Lending Act, as amended by sec. 605, Pub. L. 96–221, 94 Stat. 170 (15 U.S.C. 1604 *et seq.*)]; sec. 1204(c), Competitive Equality Banking Act, Pub. L. No. 100–86 101 Stat. 552.

Subpart A—General

2. Section 226.1 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 226.1 Authority, purpose, coverage, organization, enforcement and liability.

(a) *Authority.* This regulation, known as Regulation Z, is issued by the Board of Governors of the Federal Reserve System to implement the federal Truth in Lending ►Act◄ [and Fair Credit Billing Acts], which [are] ►is◄ contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.). * * *

* * * * *

3. Section 226.2 is amended by revising paragraph (a)(15) and (a)(17)(iv) to read as follows:

§ 226.2 Definitions and rules of construction.

(a) *Definitions.*

* * * * *

(15) *"Credit card"* means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain credit. ►The term "charge card" means a credit card on an account for which no periodic rate is used to compute a finance charge.◄

* * * * *

(17) *"Creditor"* means:

* * * * *

(iv) For purposes of Subpart B (except for ►the credit and charge card disclosures contained in §§ 226.5a and 226.9(e) and (f),◄ the finance charge disclosures contained in §§ 226.6(a) and 226.7(d) through (g) and the right of rescission set forth in § 226.15) and Subpart C, any card issuer that extends closed-end credit that is subject to a finance charge or is payable by written agreement in more than four installments.

* * * * *

Subpart B—Open-End Credit

4. Section 226.5 is amended by revising footnotes 8 and 9, adding paragraphs (a)(3) and (b)(3) and republishing paragraphs (a)(1) and (a)(2) and footnote 7 to read as follows:

§ 226.5 General disclosure requirements.

(a) *Form of disclosures.* (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing,[7] in a form that the consumer may keep.[8]

(2) The terms "finance charge" and "annual percentage rate," when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure.[9]

►(3) Certain disclosures required under § 226.5a for credit and charge card applications and solicitations must be provided in a tabular format and in a prominent location in accordance with the requirements of that section.◄

(b) *Time of disclosures.*

* * * * *

►(3) *Credit and charge card application and solicitation disclosures.* The card issuer shall furnish the disclosures for credit and charge card applications and solicitations in accordance with the requirements of § 226.5a.◄

* * * * *

5. A new § 226.5a is added to read as follows:

§ 226.5a Credit and charge card applications and solicitations.

(a) *General rules*—(1) *Fees based on a percentage.* If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.

(2) *Certain fees that vary by state.* If the amount of any fee referred to in paragraph (b)(2) of this section varies from state to state, the card issuer may disclose the range of the fees instead of the amount for each state, if the disclosure includes a statement that the amount of the fee varies from state to state.

(b) *Direct mail applications and solicitations.* The credit card issuer shall disclose the applicable items in paragraphs (b)(1)(i) through (vi) and paragraph (b)(2) of this section on or with an application to open a credit card account, or a solicitation not requiring an application to open a credit card account, that is mailed to consumers. In the case of a similar mail application or solicitation to open a charge card account, the charge card issuer shall disclose the applicable items in

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[7] The disclosure required by § 226.9(d) when a finance charge is imposed at the time of a transaction need not be written.

[8] The ►disclosures required under § 226.5a for credit and charge card applications and solicitations, the◄ alternative summary billing rights statement provided for in § 226.9 (a)(2), and the disclosures made under § 226.10(b) about payment requirements need not be in a form that the consumer can keep.

[9] The terms need not be more conspicuous when used ►under § 226.5a for credit and charge card applications and solicitations,◄ under § 226.7(d) on periodic statements and under § 226.16 in advertisements.

paragraphs (b)(1)(ii),(iv) and (vii) and paragraph (b)(2) of this section. This paragraph does not apply to an application or a solicitation made available to the general public, including one contained in a catalog, magazine, or other generally available publication. The disclosures for such applications and solicitations are contained in paragraph (d) of this section.

(1) *Disclosures in tabular format.* The card issuer shall disclose, to the extent applicable, in a prominent location on or with the application or solicitation, each of the following items in the form of a table, using the prescribed terminology in the headings and substantially the same format and statements as found in appendix G:

(i) Each periodic rate that may be used to compute the finance charge on an outstanding balance expressed as an annual percentage rate. When more than one rate applies, the range of balances to which each rate is applicable shall also be disclosed. If the plan has a variable rate, the card issuer shall also disclose the fact that the rate may vary, the annual percentage rate in effect within 30 days before the time of mailing, and how the rate is determined.

(ii) Any annual or other periodic fee, expressed as an annualized amount, or any other membership fee, that may be imposed for the issuance or availability of a credit or charge card, including any fee based on account activity or inactivity.

(iii) Any minimum or fixed finance charge that could be imposed during a billing cycle.

(iv) Any transaction charge imposed in connection with use of the card for purchases.

(v) The date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. If no such grace period is provided, that fact must be disclosed. If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average.

(vi) The name of the balance calculation method listed in paragraph (f) of this section that is used to determine the balance on which the finance charge is computed for purchases, or an explanation of the method used if it is not listed. The explanation may appear outside the table if the table contains a reference to the explanation.

(vii) A statement that charges incurred by use of the charge card are due when the periodic statement is received.

(2) *Additional disclosures.* The card issuer shall also disclose either in the table prescribed in paragraph (b)(1) of this section or elsewhere on or with the application or solicitation, the following items to the extent applicable, using the prescribed terminology in the headings and substantially the same format and statements as found in appendix G (if the items are in the table):

(i) Any fee imposed for an extension of credit in the form of cash;

(ii) Any fee imposed for a late payment; and

(iii) Any fee imposed for exceeding a credit limit.

(c) *Telephone solicitations.*—(1) *Oral disclosure.* The card issuer shall orally disclose the information in paragraph (b)(1) of this section, to the extent applicable, in a telephone solicitation to open a credit or charge card account.

(2) *Alternative disclosure.* The oral disclosure under paragraph (c)(1) of this section need not be given if the card issuer either does not impose a fee described in paragraph (b)(1)(ii) of this section or does not impose the fee unless the consumer uses the card, and the card issuer discloses in writing:

(i) The applicable information contained in, and in the form required by, paragraphs (b)(1) and (2) of this section within 30 days after the consumer requests the card, but in no event later than the delivery of the card; and

(ii) The fact that the consumer need not accept the card or pay any fee disclosed unless the consumer uses the card.

(d) *Applications and solicitations other than by mail or telephone.* The card issuer shall provide disclosures on or with an application to open a credit or charge card account, or a solicitation not requiring an application to open a credit or charge card account, that is made available to the general public, including one contained in a catalog, magazine, or other generally available publication. The disclosures shall be provided in accordance with paragraph (d)(1), (2) or (3) of this section.

(1) *Disclosure of required credit information.* The card issuer may disclose in a prominent location on or with the application or solicitation, the following items:

(i) The applicable information contained in, and in the form required by, paragraphs (b) (1) and (2) of this section;

(ii) The date the required information was printed, including a statement that the required information was accurate as of that date and is subject to change after that date; and

(iii) A statement that the consumer should contact the card issuer for any change in the required information since it was printed, and a toll-free telephone number or a mailing address for that purpose.

(2) *Disclosure of certain initial disclosures.* The card issuer may disclose on or with the application or solicitation the following:

(i) The disclosures required in § 226.6 (a) through (c); and

(ii) A toll-free telephone number or a mailing address for the consumer to contact the card issuer to obtain any change in the information disclosed.

(3) *No disclosure of credit information.* If none of the items in paragraph (b) of this section is provided on or with the application or solicitation, the card issuer may state in a prominent location on the application or solicitation the following:

(i) There are costs associated with the use of the card; and

(ii) The consumer may contact the card issuer to request specific information about the costs, along with a toll-free telephone number and a mailing address for that purpose.

(4) *Prompt response to requests for information.* Upon receiving a request for any of the information referred to in this paragraph, the card issuer shall promptly and fully disclose the information requested.

(e) *Special charge card rule—card issuer and person extending credit not the same person.* If by use of a charge card, a cardholder may access an open-end plan that is not maintained by the charge card issuer, the card issuer need not provide the disclosures in paragraph (b), (c) or (d) of this section for the open-end plan if the card issuer states on or with the application or solicitation the following, to the extent applicable:

(1) The card issuer will make an independent decision whether to issue the card;

(2) The charge card may arrive before the decision is made about extending credit under the open-end plan; and

(3) Approval for the charge card does not constitute approval for the open-end plan.

(f) *Balance calculation methods defined.* The following methods may be described by name without regard to minor variations such as the allocation of payments, whether the finance charge begins to accrue on the transaction date or the date of posting the transaction, the existence or length of a grace period and whether the balance is adjusted by charges such as late fees, annual fees, and unpaid finance charges:

(1) *Average daily balance (including new transactions).* This balance is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(2) *Average daily balance (excluding new transactions).* This balance is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(3) *Retroactive average daily balance.* This balance is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle, and is figured in the same way as the first balance except that it will be considered zero if a finance charge was already imposed against purchases in that cycle.

(4) *Adjusted balance.* This balance is figured by deducting payments and credits made during the billing cycle from the outstanding balance at the beginning of the billing cycle.

(5) *Previous balance.* This balance is the outstanding balance at the beginning of the billing cycle.

(6) *Ending balance.* This balance is the outstanding balance at the end of the billing cycle (including new purchases and deducting payments and credits made during the billing cycle).

(7) *Daily balance.* This balance is the balance on each day of the billing cycle (including new purchases and deducting payments and credits made as of that day).◄

6. Section 226.9 is amended by adding paragraphs (e) and (f) to read as follows:

§ 226.9 Subsequent disclosure requirements.

* * * * *

►(e) *Disclosures upon renewal of credit or charge card*—(1) *Notice prior to renewal.* Except as provided in paragraph (e)(2) of this section, a card issuer that imposes any annual or other periodic fee to renew a credit or charge card account (including any fee based on account activity or inactivity) shall mail or deliver to the cardholder at least 30 days before the renewal fee is payable written notice of the following information:

(i) When the account will expire if not renewed;

(ii) The disclosures contained in, and in the form required by, § 226.5a(b)(1) that would apply if the account were renewed; and

(iii) How the cardholder may terminate the account to avoid paying the renewal fee.

(2) *Delayed notice.* The notice required by paragraph (e)(1) of this section may be provided less than 30 days before the date the fee to renew the account is payable if, no later than the time the periodic statement first disclosing the fee is mailed or delivered, the card issuer also discloses that:

(i) The cardholder has 30 days to avoid paying the fee or to have the fee recredited if the cardholder terminates the account; and

(ii) The cardholder may use the card during the interim period without having to pay the fee.

(3) *Combined notification.* The disclosures required by this paragraph may be made on or with a periodic statement. When the disclosures are provided on a periodic statement, the card issuer shall use the prescribed headings referred to in § 226.5a(b)(1) but need not give the disclosures in tabular format. If the disclosures are provided on the back of a periodic statement, the card issuer shall include on the front of the statement a reference to those disclosures.

(f) *Change in credit card account insurance provider*—(1) *Notice prior to proposed change.* If a credit card issuer proposes to change the provider of insurance for repayment of all or part of the outstanding balance of an open-end credit card account, the card issuer shall send the cardholder written notice of the proposed change not less than 30 days before the change. The notice shall also include the following items, to the extent applicable:

(i) Any increase in the premium rate or other costs that will result from the proposed change;

(ii) Any substantial decrease or limitation in coverage that will result from the proposed change; and

(iii) A statement that the cardholder may discontinue the insurance.

(2) *Substantial decrease or limitation in coverage.* For purposes of this paragraph, a substantial decrease or limitation in coverage is a decrease or limitation in a significant term of coverage that might reasonably be expected to affect the cardholder's decision to continue the insurance. Significant terms of coverage include, for example, the following:

(i) Type of coverage provided;

(ii) Age at which coverage terminates or becomes more restrictive;

(iii) Maximum insurable loan balance, maximum installment benefit, maximum number of payments, or other term affecting the dollar amount of coverage or benefits provided;

(iv) Eligibility requirements and number and identity of persons covered;

(v) Definition of a key term of coverage such as disability;

(vi) Exclusions from or limitations on coverage; and

(vii) Waiting periods and whether coverage is retroactive.

(3) *Notice when change in provider occurs.* If a proposed change described in paragraph (f)(1) of this section occurs, the card issuer shall provide the cardholder with a written notice no later than 30 days after the change, including the following items:

(i) The name and address of the new insurance provider;

(ii) A copy of the new policy or group certificate containing the basic terms of the insurance, including the premium rate to be charged; and

(iii) A statement that the cardholder may discontinue the insurance.

(4) *Combined notification.* The notices required by paragraphs (f) (1) and (3) of this section may be provided on or with a periodic statement, and may be combined provided the timing requirement of paragraph (f)(1) of this section is met.◄

Subpart D—Miscellaneous

7. Section 226.28 is amended by revising the first sentence of paragraph (a)(1) and adding paragraph (d) to read as follows:

§ 226.28 Effect on State laws.

(a) *Inconsistent disclosure requirements.* (1) ►Except as provided in paragraph (d) of this section, state◄ [State] law requirements that are inconsistent with the requirements contained in chapter 1 (General Provisions), chapter 2 (Credit Transactions), or chapter 3 (Credit Advertising) of the act and the implementing provisions of this regulation are preempted to the extent of the inconsistency. * * *

* * * * *

►(d) *(d) Special rule for credit and charge cards.* State law requiremens relating to the disclousre of information in any credit or charge care application or solicitation which is subject to the requirements of section 127(c) of chapter 2 of the act (§ 226.5a of the requirement) or in any renewal notice for a credit or charge card which is subject to the requirements of section 127(d) of chapter 2 of the act (§ 226.9(e) of the regulation)

are preempted. State laws relating to the enforcement of section 127(c) and (d) of the act are not preempted.◄

8. Appendix G is amended by adding G–10A through G–16 to read as follows:

Appendix G—Open-End Model Forms and Clauses

* * * * *

►G–10A Applications and Solicitations Model Form (§ 226.5a(b)).

G–10B Applications and Solicitations Model Form (§ 226.5a(b)).

G–11 Applications and Solicitations Other Than By Direct Mail or Telephone Model Clauses (Disclosure of Required Credit Information) (§ 226.5a(d)(1)).

G–12 Applications and Solicitations Other Than By Direct Mail or Telephone Model Clauses (Disclosure With Initial Disclosures) (§ 226.5a(d)(2)).

G–13 Applications and Solicitations Other Than By Direct Mail or Telephone Model Clauses (No Disclosure of Credit Information) (§ 226.5a(d)(3)).

G–14 Open-End Credit Feature Model Clauses (§ 226.5a(e)).

G–15 Change in Insurance Provider Model Form (§ 226.9(f)(1)–(3)).

G–16 Change in Insurance Provider Model Form (§ 226.9(f)(3)).◄

* * * * *

BILLING CODE 6210–01–M

▸G-10A — Applications and Solicitations Model Form

Annual Percentage Rate	_____%
Variable Rate Information	Your annual percentage rate may vary. The rate is determined by _____.
Grace Period For Purchases	• You have _____ days [until _____] [not less than _____ days] [between _____ and _____ days] [_____ days on average] to repay your balance for purchases before being charged a finance charge. [• There is no grace period allowing you to repay your balance for purchases before being charged a finance charge.]
Balance Calculation Method for Purchases	
Membership Fees	[Annual][Membership] fee: $____ per year.] [_____ $____ per year.] [_____ $_____.]
Minimum Finance Charge	$_____.
Transaction Fee for Purchases	$_____.
Transaction Fee for Cash Advances	$_____.
Late Payment and Over-the-Credit-Limit Fees	Late Payment fee: $_____. Over-the-Credit Limit fee: $_____.
[All charges made on this charge card are due and payable when you receive your periodic statement.]	

G-10B — Applications and Solicitations Model Form

Annual Percentage Rate	_____ %
Variable Rate Information	Your annual percentage rate may vary. The rate is determined by _____.
Grace Period for Purchases	• You have _____ days [until _____] [not less than _____ days] [between _____ and _____ days] [_____ days on average] to repay your balance for purchases before being charged a finance charge. [• There is no grace period allowing you to repay your balance for purchases before being charged a finance charge.]
Balance Calculation Method for Purchases	
Membership Fees	[Annual][Membership] fee: $_____ per year.] [_____ $_____ per year.] [_____ $_____.]
Minimum Finance Charge	$_____.
Transaction Fee for Purchases	$_____.
[All charges made on this charge card are due and payable when you receive your periodic statement.]	

- Transaction Fee for Cash Advances: $_____.
- Late Payment Fee: $_____.
- Over-the-Credit-Limit Fee: $_____.

G-11 — Applications and Solicitations Other Than By Direct Mail or Telephone Model Clauses (Disclosure of Required Credit Information)

The information about the costs of the card described in this [application] [solicitation] is accurate as of _____, when it was printed. This information may change after the printing date.

To find out what may have changed, [call us at _____.] [write to us at_____
_____
_____.]

G-12 — Applications and Solicitations Other Than By Direct Mail or Telephone Model Clauses (Disclosure With Initial Disclosures)

To find out about changes in the information in this [application][solicitation], [call us at _____.] [write to us at _____
_____
_____.]

G-13 — Applications and Solicitations Other Than By Direct Mail or Telephone Model Clauses (No Disclosure of Credit Information)

The card is subject to various fees and charges. To get information about these fees and charges, call us at _____ or write to us at _____
_____
_____.

G-14 — Open-End Credit Feature Model Clauses

This charge card may also allow you to obtain credit from a line of credit offered by a different creditor. Our decision about issuing you a charge card will be made independently from the other creditor's decision about allowing you access to a line of credit. Approval by us to issue you a card does not constitute approval by the other creditor to grant you credit privileges.

If we issue you a charge card, you may receive it before the other creditor decides whether to grant you credit privileges. The other creditor will provide you with information about the costs associated with the line of credit before the first extension of credit.

G-15 — Change in Insurance Provider Model Form

The credit card account you have with us currently is insured. This is to notify you that we plan to obtain insurance coverage from a different insurer to replace your current coverage.

- If we obtain insurance for your account from a different insurer, you may cancel the insurance.

[- Your premium rate will increase to $____ per ____.]

[- Your other costs for coverage will increase to $____ per ____.]

[- Your coverage will be affected by the following:

[] The elimination of a type of coverage previously provided to you. [_____(explanation)_____
_____]
[See _____ of the attached policy for details.]

[] A lowering of the age at which your coverage will terminate or become more restrictive. [_____
(explanation)_____]
[See _____ of the attached policy for details.]

[] A decrease in your maximum insurable loan balance, maximum installment benefit, maximum number of payments, or other decrease in the dollar amount of your coverage or benefits. [_____(explanation)_____
_____]
[See _____ of the attached policy for details.]

[] A restriction on your eligibility for benefits. [_____(explanation)_____
_____]
[See _____ of the attached policy for details.]

[] A restriction in the definition of "disability" or other key term of coverage. [_____(explanation)_____
_____]
[See _____ of the attached policy for details.]

[ ] The addition of exclusions or limitations broader or other than those under the current coverage. [_____ (explanation)_____]
[See _____ of the attached policy for details.]

[ ] An increase in the elimination (waiting) period or a change to non-retroactive coverage. [_____ (explanation)_____]
[See _____ of the attached policy for details.]

[• The name and mailing address of the new insurer providing the coverage for your account will be:

_____

_____

_____]

G-16 — Change in Insurance Provider Model Form

We have changed the insurer providing the coverage for your account. The new insurer's name and mailing address is:

_____

_____

_____.

(A copy of the new policy or certificate is attached.)

You may cancel the insurance for your account.◄

BILLING CODE 6210-01-C

By order of the Board of Governors of the Federal Reserve System, December 19, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-29457 Filed 12-22-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561 and 563

[No. 88-1342]

Regulatory Capital Requirements for Insured Institutions

Date: December 15, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board (the "Bank Board" or "Board"), in its own right and as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is today proposing to amend its regulations establishing capital requirements for institutions whose accounts are insured by the FSLIC ("insured institutions," "thrift institutions," or "institutions"). The proposal is intended to continue the Board's efforts to ensure that the thrift industry is adequately capitalized in order to protect the FSLIC and to ensure the financial strength of individual institutions, as well as the industry as a whole. The proposed rule is, to a greater extent than the Board's current capital regulations, risk-based, with the goal of better ensuring that institutions engaging in activities that are riskier to the institution and ultimately to the FSLIC as insurer are supported by adequate capital. It is modeled, in many respects, on the capital requirements recently proposed by the Board of Governors of the Federal Reserve System ("Federal Reserve Board"), the Office of the Comptroller of the Currency ("OCC"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively the "federal banking agencies"or "federal banking regulators"). The proposal also addresses additional issues affecting capital and an institution's risk to the FSLIC, including interest-rate risk and collateralized borrowing.

DATE: Comments must be received on or before March 23, 1989.

ADDRESSES: Send comments to: Director, Information Services Division, Office of the Secretariat, Federal Home Loan Bank Board,1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at Information Services, Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Robert Fishman, Senior Policy Analyst, (202) 331-4592; Carol Larson, Accounting Fellow, (202) 331-4577; John Robinson, Director, Policy Analysis, (202) 331-4587; Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street, NW., Washington, DC 20006; Donald Bisenius, Director, Financial Analysis Division, (202) 377-6759, Office of Policy and Economic Research; Deborah Dakin, Regulatory Counsel, (202) 377-6445; Theresa Stark, Attorney, (202) 377-7054; Karen Solomon, Associate General Counsel, (202) 377-7240, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

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I. General Background

A. Introduction

The Board's current minimum capital regulation, 12 CFR 563.13, is primarily a liability-based requirement that contains limited provisions addressing credit risk, interest-rate risk, and off-balance-sheet risk. The Board's current definition of regulatory capital, 12 CFR 561.13, establishes the elements that make up thrift capital. Today, the Board proposes a risk-based capital requirement, similar in many respects, to that proposed by the federal banking agencies in March of this year. The proposal addresses two major issues: (1) How much capital should be required for thrift institutions; and (2) what should count as capital for thrift institutions.

The Board is proposing to amend its capital regulations at this time for several reasons. First, Section 406 of the Competitive Equality Banking Act of 1987 ("CEBA") instructed the Board to establish capital requirements for thrifts consistent with the purposes of the capital requirements established by the federal banking agencies pursuant to section 908 of the International Lending Supervision Act of 1983 ("ILSA"). The federal banking agencies have proposed guidelines significantly modifying how certain risks will be taken into account in determining banking organizations' capital adequacy. *See* 53 FR 8550 (March 15, 1988). It is appropriate that the Board review these changes and consider them in conjunction with congressional intent as expressed in CEBA.

Second, the Board is concerned that its present capital rule may be unnecessarily complex in some respects without being adequately responsive to risk. Any rule that seeks to calculate a level of capital appropriate to protect the insurance fund against potential losses will be complex if it reflects the business risks involved in operating depository institutions. Today's proposal, like that of the federal banking agencies, advances the effort to distinguish among different risks. The proposal is designed as a reasonable balance between the need for a rule that distinguishes among institutions based on risk and the attendant problems of complexity and imprecision.

If the rule is adopted as proposed, thrifts without large amounts of collateralized borrowings will have a total capital requirement that, on average, is expected to equal 8% of risk-weighted assets. This requirement may be more or less stringent for individual institutions than the Board's present requirement, depending on the credit and interest-rate risk inherent in an institution's portfolio.

Total capital is the sum of an institution's core equity capital (primarily capital as computed in accordance with generally accepted accounting principles or "GAAP") and its supplementary capital (which

includes elements such as maturing subordinated instruments and general loss allowances). Each institution must hold at least the greater of one-half of its total capital requirement (based upon risk-weighted assets) or 2% of total assets as core equity capital. (*See* Part V) This latter requirement recognizes the fact that no institution is completely risk-free, no matter how minimal its credit and interest-rate risk may be. Establishing a minimum level of core equity capital based on total assets rather than risk assets provides protection against risks that do not necessarily vary with the degree of credit risk or interest-rate risk posed by an institution, such as operating risk, risks of fraud, and liquidity risk.

Under the proposal, institutions will calculate their total capital requirement as the sum of three components: credit risk, interest-rate risk, and collateralized borrowings.

The *credit-risk* component of the capital calculation assigns each asset held by an institution to one of six risk categories based on the amount of credit risk associated with a particular class of assets. The categories range from 0% for U.S. Treasury securities to 300% for equity-risk investments. The book value of assets in each category is multiplied by the weighting factor (from 0% to 300%) assigned to that category. These products are then summed across all risk categories to arrive at total risk-weighted assets. (*See* Part III.B.1)

Off-balance sheet items are included in risk-weighted assets by converting them to an approximate balance sheet "credit equivalent amount" based on a conversion schedule discussed below. These credit equivalent amounts are then assigned to risk categories in the same manner as on-balance-sheet assets and included in risk-weighted assets. (*See* Part III.B.2)

The proposal requires institutions to maintain capital equal to no less than 6 percent of risk-weighted assets for the credit-risk component of their capital requirement.

The *interest-rate risk* component requires an institution to maintain capital equal to fifty percent of the change in value of the institution's equity (the market value of portfolio equity) that would likely result from a change in interest rates of 200 basis points (assuming the change is instantaneous and permanent). (*See* Part III.C)

The *collateralized borrowing* component requires an institution to maintain capital equal to three percent of the institution's liabilities against which a specific asset is pledged. Collateralized borrowings perform much the same function for insured institutions as insured deposits, *i.e.*, serving as a relatively low-cost source of funds. Nevertheless, insured institutions pay no premiums on these liabilities as they do on insured deposits. Because the creditor holding the collateral stands ahead of the FSLIC in the event of the institution's liquidation, these liabilities, unlike subordinated securities, provide no protection to the FSLIC. This component is intended to provide such protection in the form of higher capital. (*See* Part III.D)

The Board intends its risk-based capital proposal to implement Congress' intent that thrift industry capital requirements be consistent with those of the banking industry. The proposal recognizes, however, differences inherent in the industries. The differences between this proposed rule and the guidelines proposed by the banking regulators are most significant in five areas: interest-rate risk, the treatment of intangible assets and equity-risk investments, collateralized borrowings, and the allowable components of capital.

In contrast to the federal banking regulators' proposal, which for the most part defers consideration of interest-rate risk, the Board is proposing to take explicit account of interest-rate risk. The Board considers this the prudent course of action given the volatility of interest rates and the greater vulnerability to such risk of long-term home mortgage lending, an activity in which the thrift industry has traditionally been engaged to a much greater extent than the banking industry.

The Board has also proposed to create credit-risk categories above the 100% level for most intangible assets and equity-risk investments. Intangible assets (including goodwill but not purchased or excess mortgage servicing right) are placed in a 200% risk category. The Board believes that it is more appropriate to treat such intangible assets within the risk-weighting system than to deduct them from capital in most cases, as the federal banking regulators have proposed.

In addition, thrifts have significantly greater investment flexibility than banks in making equity-risk investments. These investments pose a variety of risks beyond the scope of the federal banking regulators' proposal. Equity-risk investments for purposes of this proposal are placed into a single risk category, 300%, although the Board is specifically requesting comments and supporting empirical data to assist it in determining whether to establish additional risk categories for various types of equity-risk investments at lower or higher levels to avoid either unduly increasing the cost of conducting certain low-risk activities, on the one hand, or providing inappropriate incentives to conduct high-risk activities, on the other. The Board is also considering whether the amount of some or all equity-risk investments should be added to an institution's capital requirement so that such investments are funded with capital, or uninsured liabilities outside the insured institution itself, rather than insured deposits.

The Board has also determined to address the risks posed to the FSLIC as insurer of the thrift industry by the use of collateralized borrowings, rather than insured deposits, subordinated debt instruments, or equity, to fund assets. Such non-deposit liabilities, which escape FSLIC deposit insurance premiums, serve to support the same level of asset risk and also may significantly affect the FSLIC's costs in resolving troubled insured institutions. While banks' use of these obligations present the same risks, the bank regulators have not addressed these risks in their capital proposal. The FDIC, however, has recently proposed to address the issuance of "bank notes" by FDIC-insured institutions, which raises some similar concerns, through a regulation that would widen the scope of "deposits" for purposes of assessing FDIC insurance premiums. 53 FR 47723 (Nov. 25, 1988).

With respect to capital components, as a result of statutory requirements and historical differences between the thrift and banking industries, the Board has included in both its current definition of regulatory capital and in this proposal certain components that the bank regulators have excluded. Many of these components are, however, being phased out under the regulations implementing CEBA that the Board promulgated in December 1987.

B. Purpose of Regulatory Capital

Capital in a thrift institution serves two primary purposes. From the Board's perspective, the most important purpose is protection of the FSLIC, the insurer of the accounts of the insured institution. Capital serves this purpose in two ways. In addition to serving as a cushion to absorb losses ahead of the FSLIC, capital acts to reduce the "moral hazard" engendered when the insurer bears most of the cost of a thrift's failure.

Capital requirements impose a responsibility for risk on a depository institution comparable to the customary "deductible" included in most forms of

insurance, *i.e.*, initial losses are borne not by the insurer but by the depository institution's equity and subordinated debt holders, who, through their control of the institution's management, control the actions most likely to lead to insurance losses. Thrift management is more likely to conduct its business appropriately with respect to risks and rewards when the owners bear significant risk. When the owners do bear meaningful risk, the responsibility for the institution's well-being is firmly placed in the hands of the people who have the most to gain and lose from business decisions and who should know their business best—the institution's owners and their agents, management. Capital requirements thus provide the FSLIC with a "cushion" against loss and reduce the incentive for a thrift to take excessive risk with insured deposits.

Ensuring a sufficient cushion against loss for the FSLIC has become increasingly important as thrifts have engaged in new activities with more volatile returns and as the economic environment has become more volatile as well. A greater reliance on capital to provide incentives for prudent management will enable the Board to be flexible in its regulatory responses to economic environments that are rapidly changing and becoming more competitive.

The second major purpose served specifically by equity captial is to enable thrift institutions to absorb losses. An adequate capital cushion can play a significant role in helping thrifts to remain solvent and successful.

While capital is crucial in serving these purposes, it does not solve all problems. There is no substitute for competent management. Strong earnings also provide an important means to absorb losses. The Board views its capital regulation as a key, but by no means the only, tool in fulfilling its statutory mandate as insurer and regulator of the thrift industry.

C. Defining Adequate Capital

The question of what constitutes an adquate level of capital for an insured institution is best answered in relation to the activities of the particular institution. The Board believes that insured institutions with relatively low risk profiles should not be required to maintain the same level of regulatory capital as institutions with high risk profiles. Today's proposal distinguishes among the credit-risk profiles of insured institutions by assigning assets and off-balance sheet items to various risk categories and incorporating the risk represented by those assets and off-balance sheet activities in the calculation of an institution's capital requirement.

Interest-rate risk is an important part of an institution's overall risk profile. An institution may own assets that present a low level of credit risk, but its overall portfolio (assets and liabilities) may render it vulnerable to sudden shifts in interest rates. Institutions with different interest-rate risk profiles will differ in their need, and ability, to absorb losses tied to fluctuations in interest rates. A risk-based capital rule should also take this type of risk into account in determining an institution's minimum capital requirement, especially in the thrift industry, which has traditionally borne significant amounts of interest-rate risk.

The amount of capital that an insured institution should maintain, however, is not the only relevant issue in establishing a regulatory capital requirement. The quality of capital is also relevant. All components that can be included in an institution's capital base do not serve equally well the dual purposes of protecting the FSLIC and providing a cushion to the insured institution. By their nature, some components of capital will provide protection to the FSLIC, but will not protect the institution as a going concern if the principal value of that component is threatened. Moreover, some capital components with debt characteristics will eventually mature, subjecting the institution to refunding risks and the FSLIC to the risk of a precipitous decline in the institution's capital. In order to assure that the FSLIC and an insured institution are both sufficiently protected by a regulatory capital requirement, the Board believes that a capital rule should not only distinguish among various elements of risk contained in an institution's portfolio, but should also distinguish among the quality of protection various components of capital afford the FSLIC.

Insured institutions with different risk profiles face different costs of capital and therefore may need different capital structures. A low-risk institution with stable earnings, for example, may safely use more debt capital than a high-risk thrift—indeed, it may require such a structure to conduct its low risk/low return-on-assets strategy profitably. A regulatory capital requirement should be flexible enough—with regard to both the required level of equity capital and the authorized capital components—to ensure that different institutions with differing risk profiles may adapt their capital structures to the needs of their insurer as well as their own needs.

Although a high capital requirement can provide added protection to the FSLIC and can be a source of stability to an insured institution, an excessive *equity* capital requirement may have accompanying negative consequences. Requiring insured institutions to retain excessively high levels of equity capital relative to their potential earnings or unnecessarily restricting the use of alternative forms of capital could adversely affect the ability of the thrift industry to compete for capital in today's rapidly changing and highly competitive financial environment. Furthermore, an equity capital requirement that is too high could encourage insured institutions to make high-risk investments in attempts to earn sufficient returns to attract and retain capital.

As the Board considers implementing new regulatory capital requirements, its principal goal is to provide an appropriate level of protection to both the FSLIC and to insured institutions by establishing capital standards that will enable insured institutions to withstand the risk of loss attendant to their asset, liability, and off-balance sheet portfolios. It is equally important to the Board, however, that any revisions to the regulatory capital requirement not unnecessarily handicap the industry's ability to attract additional capital. The rule proposed today is designed to strike a balance between these concerns.

II. Statutory and Regulatory Background

A. Prior Reserve, Net-Worth, and Regulatory Capital Regulations

Since 1934, section 403(b) of the NHA has required that institutions establish reserves. Reserves, net worth, and capital are all intended to absorb losses. The statutory reserve requirement and related regulatory requirements have varied in response to the market forces shaping the thrift industry. In the effort to keep up with changes in economic conditions, Congress and the Board have altered minimum reserve requirements, and the Board has worked to improve the base upon which reserve requirements are calculated. This has included an increasing recognition that these requirements should reflect the risks facing, and posed by, thrift institutions.

Early regulatory reserve requirements called for institutions annually to credit a percentage of their net income to reserves until their reserves equaled a stated percentage of their insured accounts.[1] Beginning in 1972, the Board

[1] *See* Board Res. No. 9826, 21 FR 5483 (July 21, 1956).

replaced the net income credit requirement with requirements that were based, at least in part, on risk analysis. In 1972, the Board promulgated a regulatory capital requirement that required institutions to maintain a "regulatory reserve" or "net worth" of an amount equal to the greater of: (1) 5 percent of insured accounts, plus 20 percent of scheduled items, or (2) the amount determined by the so-called Asset Composition and Net-Worth Index. That index assigned minimum net-worth percentages to specific types of assets, including real estate held for development or investment and investments in service corporations.[2]

Over a decade later, in 1985, in reaction to declining capital in the thrift industry, the Board adopted a capital rule that was even more explicitly based on a system of risk incentives and disincentives.[3] Under the rule, an insured institution's minimum net-worth requirement was calculated using a four-factor formula. The four factors included a base factor, an amortization factor, a growth factor, and a contingency factor. The contingency factor was the portion of the formula that added loans sold with recourse to the institution, scheduled items, and equity investments to the calculation of required capital. Under the regulation, the sum of these four factors was adjusted by the amount of the insured institution's "qualifying balance deduction" to determine the required net worth. Qualifying balances included interest-bearing liquid assets, one-half of adjustable-rate mortgages, and fixed-rate liability sources that had remaining terms to maturity of more than five years. The contingency factor attempted to take a measure of credit risk into account, while the qualifying balance deduction attempted to encourage institutions to take steps to minimize their interest-rate risks.

In formulating the current capital regulation in 1986, the Board chose to build on the risk-adjusted structure of the 1985 regulation and to require an increase in the industry's overall level of capital while continuing to restrict over-leveraged growth and imposing incremental capital requirements on potentially high risk assets, *i.e.*, land loans, direct investments, and nonresidential construction loans.[4] The capital level required of an institution under the current regulation consists of a liability component [5] plus a contingency component,[6] from which a maturity matching credit [7] is subtracted. The maturity-matching credit expanded the former qualifying balance deduction in order to reflect more accurately an institution's interest-rate risk exposure as a portfolio measure. The contingency component continued to reflect a measure of credit and equity risk.

B. Recent Developments Affecting Regulatory Capital Requirements

With the passage of the CEBA in 1987, Congress significantly enhanced the Board's statutory authority to impose and enforce capital requirements. Congress granted this authority to provide consistency between the Board's capital requirements and those established by the federal banking agencies pursuant to the ILSA. Section 406 of CEBA authorized the Board to establish minimum capital requirements for federal associations and insured institutions and enabled the Board to alter those requirements with respect to an individual institution as necessary or appropriate. CEBA also authorized the Board to issue directives requiring individual institutions to increase their capital.

On December 22, 1987, the Board adopted regulations to implement this new authority.[8] A new regulation, 12 CFR 563.14, provides for case-by-case minimum capital requirements established upon a determination that the insured institution's capital is or may become inadequate in view of its circumstances. It also sets forth discretionary standards for determining appropriate individual minimum capital requirements.

In early 1986, the federal banking agencies proposed a risk-based capital structure. That proposal recognized broad differences in risks among a banking organization's assets and off-balance sheet items in an effort to fashion a capital requirement that would be more sensitive to the risk profiles of individual banking organizations. Based on comments received in response to that proposal, the federal banking agencies, in conjunction with the Bank of England, published a revised risk-based capital proposal in early 1987. Implementation of that proposal was deferred in order to enlist the participation of additional countries in the risk-based capital agreement.

The federal banking agencies again sought comment on a revised risk-based capital proposal in March 1988. 53 FR 8550 (March 15, 1988). The 1988 proposal was based upon a risk-based capital framework ("the Basle capital framework" or "Basle Agreement") developed by the Basle Committee on Banking Regulations and Supervisory Practices ("Basle Supervisors' Committee"), which was made up of supervisory authorities from 12 major industrial countries. The goals of the federal banking agencies in adopting this proposal were to establish a uniform risk-based capital framework applicable to all federally supervised banking organizations that: (1) Is more sensitive to credit risk factors among the portfolios of different banking organizations; (2) takes off-balance sheet exposures into explicit account in assessing capital adequacy; and (3) minimizes the disincentives to holding liquid, low-risk assets.

In July 1988, the Basle Supervisors' Committee agreed to the final Basle capital framework. The final accord differs only slightly from the proposal. The three federal banking regulators expect to issue their final regulations implementing the Basle Accord by the end of 1988.

III. Risk-Based Capital Requirement

A. Asset Base for Purposes of Determining Capital Requirements

The asset base used in determining an institution's appropriate capital requirement is a critical element of any

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[2] Board Res. No. 72–1415, 37 FR 26579 (Dec. 14, 1972).

[3] 50 FR 6891 (February 19, 1985).

[4] 51 FR 33565 (September 22, 1986).

[5] The liability component requires each institution to hold capital in an amount equal to 6% of its liabilities in excess of the book value of its existing level of liabilities on January 1, 1987. 51 FR 33565, 33577 (September 22, 1986). In essence, all growth of an institution was to be supported by 6 percent additional capital. Institutions were given a number of years (to be determined by industry profitability), however, to achieve a capital level equal to 6% of liabilities. The regulation provided that the amount of capital previously required by the net worth requirement on existing liabilities increase annually by a fraction of the average profitability in the industry during the preceding year until it reached 6 percent.

[6] The contingency component required each institution to hold additional capital against certain risky assets and certain off-balance sheet items. 51 FR 33565, 33579 (September 22, 1986). The regulation classified assets into two categories: fixed-reserve elements and variable-reserve elements. With respect to fixed-reserve elements, there was a 2% requirement on recourse liabilities, a 2% requirement on standby letters of credit, and a 20% requirement on scheduled items. The requirement on a variable-reserve element depended on an institution's actual capital level and its concentration in a specific asset category. The variable-reserve elements included land loans, equity-risk investments and non-residential construction loans. The requirement on equity-risk investments ranged from 0–10%. It ranged from 0 to 4% on land and nonresidential construction loans.

[7] The maturity matching credit allowed an institution to reduce its capital requirement by up to 2% of liabilities for one-year and three-year hedged maturity gaps of less than 15% in absolute value. Gaps between 15% and 25% received credit on a declining scale and gaps above 25% received no credit. An institution could not use this credit to bring its overall requirement below 3% for the first three years that the regulation was in effect and not below 4% thereafter.

[8] 53 FR 363 (January 6, 1988).

capital proposal. The starting point, of course, is the institution's asset portfolio. In reviewing the structure and level of capital requirements required to support various investments, the Board has also considered the appropriate treatment of debt and equity investments in service corporations and other subsidiaries. Subsidiaries allow an insured institution to engage in certain activities to a greater extent than is possible in the institution itself and to fund those activities from market sources, not insured deposits. The Board's regulations require that insured institutions maintain a "corporate veil" between the institution and its subsidiaries. *See* 12 CFR 563.37, 570.10 (1988). The Board continues to believe that a strong corporate veil is important to the safety and soundness of insured institutions.

Effective January 1, 1989, all insured institutions must report their financial statements to the Board on a consolidated basis, as required by GAAP. 12 CFR 563.23–3. When the Board imposed this requirement as part of its Uniform Accounting Standards regulation,[9] it expressly noted that the appropriate vehicle for determining whether a thrift's capital should be calculated on a consolidated basis for purposes of measuring compliance with the Board's minimum capital regulation would be a rulemaking on that subject. The Board is addressing that issue at this time and will take into consideration comments received on this issue in that earlier rulemaking.

The Board has reviewed three methods of treating the thrift's investment in subsidiaries for purposes of computing the institution's minimum capital requirement. Currently, thrift institutions may account for their investments in their majority-owned subsidiaries, other than finance subsidiaries, using the *equity method* of accounting. Under this accounting method, the thrift's investment in its subsidiaries is reflected as an asset on its books. The amount of the investment is increased to recognize the institution's proportionate share of the subsidiary's earnings, while it is decreased to reflect the institution's proportionate share of the subsidiary's losses and any dividends declared. The thrift is required to hold capital against this asset (the investment in its subsidiary).

Banking regulators have generally consolidated the assets and liabilities of a bank and its majority-owned subsidiaries (except domestic depository institutions) in applying capital requirements. Under the *consolidation method*, the parent institution must maintain capital against both its assets and the assets of its subsidiaries. The parent's investment in its subsidiaries and other intercompany transactions and balances are subtracted from the calculation of assets and the subsidiary's equity attributable to the parent does not count as part of capital.

A third method for treating an institution's investment in its subsidiaries for capital adequacy purposes is to exclude the investment from the institution's total assets and from capital—the *exclusion method*. Under this method, an institution's investment in subsidiaries (including loans and advances to subsidiaries) is added to the capital requirement of the institution and not counted in the assets of institution. This method requires institutions to provide capital for their investment in subsidiaries on a dollar-for-dollar basis with their own capital rather than leveraging that investment with insured deposits and permits only the amount of leverage in the subsidiary itself that will be supported by the uninsured lenders.[10]

The Board proposes to apply the consolidation method to investments by thrifts in subsidiaries and service corporations and to the assets and liabilities of such subsidiaries and service corporations in applying capital requirements. (Consistent with the consolidation method and with the proposed treatment of collateralized borrowings in Part III.D, any collateralized borrowings or other obligations issued by the subsidiary that are senior to the claims of the parent would also be subject to the three percent capital requirement explained in the Part.) As discussed in Part III.B.1.c, the Board is also considering, as an alternative, whether to adopt the exclusion method for investments by thrifts in equity-risk investments and in subsidiaries and service coporations that themselves engage in equity-risk investments.

The proposed treatment would eliminate the need for the optional consolidation provisions in the current capital requirements (with respect to determining the equity-risk investments considered in the capital requirement) because any and all risks posed by subsidiaries in this regard will be sufficiently covered by the risk-weighting of the asset or off-balance sheet item. It would also eliminate the need for the separate treatment of securities issued through subsidiaries that is contained in 12 CFR 563.13–2 (1988). Under current § 563.13–2, an institution must include the amount of securities issued through a subsidiary in the calculation of its total liabilities for purposes of computing its regulatory capital requirement unless the securities are collateralized by assets that have substantially the same duration as the securities issued or the securities were remitted in exchange for a liability issued by the parent institution what was otherwise included in the parent's total liabilities for capital calculation purposes. Under the Board's proposal, application of the risk-weighting scheme to the assets of the finance subsidiary would take into account the relatively low-risk nature of its assets, making it unnecessary and, in fact, inappropriate to retain separate treatment for finance subsidiaries. To the extent that the subsidiary's assets and liabilities expose the parent to risk resulting from maturity mismatch, the interest-rate risk component of the proposed rule will figure such risk into the calculation of the parent institution's capital requirement. Therefore, the Board proposes to delete § 563.13–2 from its rules if the rule proposed today is adopted.

B. Credit Risk

1. On-Balance Sheet Assets

a. Discussion of risk weights for on-balance sheet assets. Today's proposal sets forth a system of risk-weighted assets similar to that proposed by the federal banking regulators. Assets, in general, will be assigned to risk categories based on the degree of credit risk associated with the obligor or

[9] Board Res. No. 87–1293, 53 FR 324 (January 6, 1988).

[10] The federal banking agencies' proposed guidelines indicated that, in considering the capital requirements of the banking organizations they regulate they may, on a case-by-case basis, deduct investments in subsidiaries from capital. *See* 53 FR 8569 (March 15, 1988) (OCC); 8574 (Federal Reserve Board); 8582 (FDIC). Such deductions would most likely be in the case of non-banking subsidiaries, but might also occur with other subsidiaries. The Federal Reserve Board intends to deduct from the capital of bank holding companies the organization's equity and debt capital investments in certain subsidiaries, such as securities, affiliates, for purposes of determining capital adequacy, although the investment would be consolidated for reporting purposes. This would be "an element of the firewall that is designed to insulate bank subsidiaries of a holding company from their securities affiliates and to ensure that a bank holding company maintains a level of capital, exclusive of the resources invested in the securities affiliate, that is sufficient to support their bank and other nonbank subsidiaries." This treatment has been applied in recent orders approving applications of certain banking organizations to engage, through subsidiaries, in securities underwriting activities. The Federal Reserve Board believes such treatment furthers the functional regulation of such subsidiaries.

nature of the obligation. The categories include risk-weights of 0, 20, 50, 100, 200, and 300 percent.

The 100 percent category is the standard risk category and contains most types of loans to private-sector entities. Assets not specifically included in another category fall within this category. Items that are less risky than a "standard risk asset" because of the traditional financial strength of the obligor, the default history of the asset type, or the guarantee or security backing the asset are assigned to a lower risk category. This reflects the Board's determination, mirroring in many ways the implicit determinations made by the market, that such assets present lower risks. Items that are more risky than a standard risk asset, such as most intangible assets, including goodwill, and real estate owned ("REO"), or that otherwise present a wider range of potentially higher risks, such as equity-risk investments, are assigned to a higher risk category.

Risk-weighted assets are determined by taking the book value of each asset and multiplying it by the risk weight assigned to it.[11] The resulting values are added together to arrive at total risk assets. The amount of total risk assets is the amount against which the minimum capital requirement is applied.[12]

This proposal uses the risk-weighting approach that was adopted by the international banking regulators in the Basle Agreement and has since been proposed by the federal banking regulators. Residential mortgages and mortgage-backed securities have generally been assigned risk-weights of 50% and 20%, respectively. The Board recognizes that the relationship between the risks of these investment forms may be different from the 50/20 or 50/100 ratios implied by these risk weights and that a significantly different relationship may result in unintended incentives to hold one investment type rather than the other. The Board is proposing these risk weights in part to maintain competitive equality between the thrift industry and the banking industry. It solicits comments on the appropriateness of the specific weights and the possible unintended consequences and seeks data that may provide assistance in analyzing the appropriate relationship.

b. *Summary of risk weights for on-balance sheet assets.*

0%

—Cash
—Full faith and credit obligations (except mortgage-backed securities) of the U.S. Government or its agencies
—Items collateralized by cash

20%

—U.S. Government-sponsored agencies' obligations
—Qualifying mortgage-related securities guaranteed by U.S. Government agencies, government-sponsored agencies, or of equivalent high quality
—Claims on and balances due from Federal Home Loan Banks and Federal Reserve Banks
—Stock of Federal Home Loan Banks, Federal Reserve Banks, and other U.S. Government corporations
—Bonds issued by the Financing Corporation
—General obligations of state and local governments
—Federal funds sold
—Cash items in the process of collection

50%

—Public purpose revenue bonds
—Qualifying mortgage loans
—Non-high quality mortage-related securities collateralized by qualifying mortgage loans

100%

—All assets not classified elsewhere

200%

—All intangible assets except purchased or excess mortgage servicing rights
—Real estate owned

300%

—Equity-risk investments

c. *Credit-risk-weight assignments—Category 1—Zero Percent.* This category, presenting, in the Board's estimation, a nearly non-existent level of credit risk, includes:

—cash owned and held in all offices of an institution or in transit;
—securities issued by the U.S. Government or its agencies (direct obligations), all other claims (including leases) on the U.S. Government or its agencies, portions of all loans and other assets that are collateralized [13] by securities issued or guaranteed by the U.S. Government or its agencies, where the obligations are fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the U.S. Government. Today's proposal includes notes and obligations issued by the Federal Savings and Loan Insurance Corporation in this category.[14] This category does *not* include Government National Mortgage Association ("GNMA") mortgage-related securities or guarantees, which are included in Category 2;
—items collateralized by cash or cash equivalents, such as a loan secured by a deposit in the institution.

Category 2—20 percent. This category includes items viewed as presenting a significantly lower level of risk than standard risk assets. It includes:

—Claims on, or portions of claims guaranteed by, U.S. Government-sponsored agencies and portions of claims collateralized by securities issued or guaranteed by U.S. Government-sponsored agencies. Only that portion of a loan or other asset that is guaranteed or collateralized by a U.S. Government-sponsored agency will be included in this category; the remainder will be assigned to the risk category otherwise appropriate

[11] Accounts related to an asset should be treated in a way that appropriately considers the credit risk of the entire position. For example, a mortgage portfolio may have at least the following related accounts: loans-in-process, specific allowances, general allowances, deferred loan fees, premiums and discounts. The mortgage portfolio would be included in the appropriate risk category without reducing it for the related loans-in-process account because this would result in capital's being provided against the entire loan commitment rather than only the net disbursed amount. The portfolio would be reduced for specific allowances associated with the portfolio because they represent previously recognized credit losses. The portfolio would not be reduced for any general allowances as general allowances are included in the components of capital available to satisfy the minimum capital requirement; the general allowances would be counted twice if they also reduced the asset before risk-weighting the asset. Because deferred loan fees, in effect, represent an adjustment to the investment in the portfolio, they reduce potential credit risk and thus should be included with the portfolio in the appropriate risk category. Premiums and discounts represent an adjustment of the portfolio that affects the total potential credit risk and thus should be included with the portfolio in the appropriate risk category.

[12] Ownership interests in investment companies such as mutual funds, are assigned risk weights based upon the composition of the investment company's underlying portfolio of assets. The thrift's ownership interest in the entire portfolio is assigned to the risk category to which the highest risk asset in the portfolio would be assigned. For example, in the case of portfolios that contain any asset that would be characterized as an equity-risk investment if held by an institution, the thrift's entire ownership interest in that portfolio will be treated as an equity-risk investment.

[13] There are two general approaches for establishing the collateral requirements for rating-agency purposes: cash-flow analysis and market-value analysis. Cash-flow analysis is based primarily on the timing of cash flows while market-value analysis requires that an estimate be made on the market-value of the cash-flow. Instruments whose structure and ratings are based on cash-flow analysis will be considered fully collateralized to the extent they maintain their rating.

[14] Since a major purpose of regulatory capital is protection of the FSLIC, assets already guaranteed by the FSLIC pose no additional risk to the FSLIC. Therefore, assets that are acquired in FSLIC-assisted transactions for which FSLIC provides full capital loss and yield maintenance agreements will be treated as assets guaranteed by the U.S. Government for purposes of this risk-based proposal.

to the obligor. The degree or extent of collateral backing is determined by methodologies prescribed by the major rating agencies. U.S. Government-sponsored agencies are defined as agencies originally established or chartered by the U.S. Government to serve public purposes specified by Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the U.S. Government, such as the Federal Home Loan Mortgage Corporation ("FHLMC"), Federal National Mortgage Association ("FNMA"), Federal Home Loan Bank System, and the Financing Corporation ("FICO"). This category does *not* include equity securities of government-sponsored agencies, such as FHLMC and FNMA, which are assigned to Category 4.

—mortgage-related securities issued or guaranteed by GNMA;

—high quality mortgage-related securities. "High quality mortgage-related securities" are defined as mortgage-related securities qualifying under section 3 (c)(41) of the Securities Exchange Act of 1934 and are commonly referred to as "SMMEA securities." Such securities either represent ownership of one or promissory notes or certificates of interest or participation in such notes secured by first liens on residential real estate which were originated by a qualified mortgage or are secured by such promissory notes or certificates of interest or participations and provide by their terms for payments on such notes, certificates, or participations. Mortgage-related securities with residual characteristics are not included in this category, but fall within Category 4.

—claims on and balances due from Federal Home Loan Banks and Federal Reserve Banks;

—stock of Federal Home Loan Banks, Federal Reserve Banks, and other U.S. Government corporations, but not of U.S. Government-sponsored corporations, which are included in Category 4. The stock of these Banks and other U.S. Government corporations is included in Category 4. The stock of these Banks and other U.S. Government corporations is included in this category because it is redeemable at par.

—general obligations and claims on or guaranteed by the full faith and credit of state and local governments. General obligations of states and political subdivisions include loans, leases and securities such as notes, bonds, and debentures (including tax warrants and tax-anticipation note). Because such general obligation claims are secured by the full faith and credit to the local taxing authority, they are assigned to a lower risk-weight category than revenue bonds issued by state or local governments, which are repayable with revenues from the specific projects financed and are included in Category 3. The Board requests comments on whether it would be useful or appropriate to take ratings of these obligations by rating agencies into account in determining appropriate risk weights.

—balances due from domestic depository institutions. Claims on depository institutions consist of balances due from such institutions, including demand deposits and other transaction accounts, savings deposits, time certificates of deposit, other interest-bearing deposits, and federal funds sold. Among other items considered to be claims on depository institutions are loans to such institutions, including overdrafts and term federal funds, holdings of the institution's own discounted acceptances for which the account party is a depository institution, holdings of bankers acceptances of other depository institutions, and securities issued by depository institutions, except those that qualify as capital (which are included in Category 4 or Category 6, as appropriate; subordinated debt securities would fall within Category 4, for example, while equity securities would fall within Category 6).

—bonds issued by the Financing Corporation;

—cash items in the process of collection.

The Board is proposing to treat all mortgage-related securities the same regardless of issuer so long as the issuer is a U.S. Government agency or corporation or a U.S. Government-sponsored corporation, or the mortgage-related security is of high quality. According to a recent study by the General Accounting Office, privately issued collateralized mortgage obligations ("CMOs") backed by agency collateral yield between 10 and 20 basis points more than similar CMOs issued directly by the agencies. Privately issued CMOs backed by whole mortgage loans yield approximately 50 basis points more than agency issues. Based upon the information available to it at this time, the Board does not wish to distort this market or otherwise hinder the development of private secondary markets by assigning disparate risk weights to these securities.

The Board contemplates treating the credit risk of interest-only and principal-only portions of mortgage-related securities in the same manner as that it treats the underlying securities, since their credit-risk attributes are the same as those of the underlying securities. Their interest-rate-risk attributes are treated under the interest-rate-risk component. (*See* Part III.C) It specifically requests comments on the appropriate credit risk-weighting of interest-only and principal-only interests in mortgage-related securities and other derivative securities. Additionally, it requests comments on the appropriate scope and definition of the term "residual characteristics." The Board anticipates addressing these components in its final capital rule.

The Board recognizes that the placement of GNMA mortgage pools of FHA/VA guaranteed loans in the 20% risk-weight category will result in greater capital being required against such pools than against the underlying FHA/VA guaranteed loans (that are placed in the 0% risk-weight category). This may be inconsistent as GNMA pools of FHA/VA guaranteed loans arguably have a lower credit risk than whole FHA/VA guaranteed loans without the GNMA guarantee of timely payment. The Board requests comments on this anomaly.

While the Board is proposing to place balances due from domestic depository institutions in the 20% risk-weight category, it is also considering placing insured deposits in the 0% risk-weight category and the remainder of balances due from domestic depository institutions in the 100% risk-weight category. The Board requests comments on the appropriate risk-weighting of balances due from domestic depository institutions. Further, the Board requests comment on the appropriate risk-weight category for cash items in the process of collection and claims and balance due from Federal Home Loan Banks and Federal Reserve Banks.

Category 3—50 percent. This category contains assets considered to present a moderate level of credit risk as compared to standard risk assets. It includes:

—public purpose revenue bonds or similar obligations, including loans and leases, that are obligations of state or local governments, but for which the government entity is committed to repay the debt with revenues from the facilities

financed, rather than from general tax funds;
—permanent 1–4 family residential first mortgage loans with a loan-to-value ratio not exceeding 80 percent (at origination), unless backed by private mortgage insurance provided by an investment grade issuer approved by the FHLMC and FNMA ("qualifying mortgage loans"). This weighting assignment is generally consistent with the experience of the thrift industry with this asset, the lower default rates on residential mortgages as compared to other types of assets, and the international agreement among banking regulators. Current indications are that the banking regulators will also place these loans in the 50% category when their final guidelines are issued. The Board will continue to review this category particularly closely. It seeks specific comment with supporting empirical data to assist it in determining whether this weighting assignment should be raised or lowered;
—other mortgage-related securities backed by qualifying mortgage loans, excluding those mortgage-related securities with residual characteristics, which are included in Category 4.

Category 4—100 percent. All assets not classified elsewhere are assigned to this category, which comprises standard risk assets. This category includes:
—consumer loans;
—commercial loans;
—home equity loans;
—one-to-four family residential loans not qualifying under Category 3;
—multi-family mortgage loans;
—residential construction loans;
—land loans and nonresidential construction loans, except those qualifying as equity-risk investments pursuant to 12 CFR 563.9–8(b)(6);
—industrial development bonds and similar obligations issued by state or local governments for the benefit of a private party or enterprise where that party or enterprise, not the government, is committed to pay the principal and interest;
—instruments issued by other depository institutions that qualify as capital, except those that would be classified as equity-risk investments purusant to 12 CFR 563.9–8(b)(2);
—private-issue debt securities;
—fixed assets;
—purchased and excess mortgage servicing rights;
—mortgage-related and other derivative securities with residual characteristics; and
—stock of United States government-sponsored corporations that would not be classified as an equity-risk investment pursuant to 12 CFR 563.9–8.[15]

Category 4 will include all assets that are not specifically included in another category or specifically excluded from risk weighting. In this regard, the Board anticipates that the Office of Regulatory Activities will issue guidelines that will clarify the treatment of items within each category.

Category 5–200 percent. This category includes all intangible assets, except purchased or excess mortgage servicing rights, and an institution's REO.

The most common intangible asset is goodwill, which is generally created in an acquisition accounted for as a purchase. It represents a premium the acquiror pays over the fair value of the net identifiable tangible and intangible assets acquired. In some cases, this premium is "paid" by the assumption of liabilities in excess of assets by the acquiror. Following the acquisition, goodwill is amortized over some future period. At any point in time, then, goodwill represents the unamortized premium paid at the time of a prior transaction. It is difficult to estimate the value that an intangible asset such as goodwill provides to an institution or the FSLIC due to the difficulty inherent in assessing its future benefit. For example, if the institution's condition has deteriorated since the acquisition such that it is apparent the premium paid was excessive, the value of goodwill may be overstated. Conversely, if the source of goodwill were acquisitions that have been substantially amortized over the years, its current value may be understated.

Real estate owned by an institution, most often acquired through foreclosure, or real estate is foreclosure, is of particularly uncertain value. Such assets are often concentrated in economically depressed areas. In some instances, the original appraised value of such real estate before foreclosure may not accurately reflect its current market value. The asset may also have declined in value since foreclosure.

It is difficult to estimate the protection such assets provide to an institution or the FSLIC because of the difficulty inherent in assessing their value. While the Board believes that a 200 percent risk-weight offers the FSLIC protection against the variability of the values of these assets, it requests public comment on the appropriate risk-weighting of these assets, with any supporting data.

In proposing the assignment of goodwill to a risk category of 200 percent, the Board is attempting to strike an appropriate balance between two opposing views of goodwill. The first is represented by the Board's current treatment of goodwill as a reasonable estimate of the franchise value of certain assets acquired in past transactions that were market-based transactions. The second is that implied in the banking regulators' proposal to deduct goodwill from capital (after the transition period) because its value is highly uncertain, especially in situations where an institution is approaching insolvency. Placement of goodwill in a 200 percent risk category recognizes both that it has relatively less certain worth as protection to the FSLIC and that it is an asset that carries some value.

The Board is also considering another alternative treatment of goodwill. This alternative would deduct goodwill from core equity capital, but include it in supplementary capital. This treatment would also recognize that goodwill likely represents some value to the institution, but that the value is likely to be less certain as protection for the FSLIC in the event of insolvency and thus should be considered only as a contribution to supplementary capital.

The Board requests specific comments on the appropriateness of its proposed treatment of goodwill, as well as alternative treatments. Additionally, the Board requests comments on whether some or all of the goodwill acquired through a FSLIC-assisted acquisition of an insured institution or institutions prior to the effective date of the rule should be placed in a different risk category. The Board notes that the federal banking agencies have indicated that they may not treat goodwill acquired through supervisory mergers in the same manner as other goodwill. *See* 53 FR at 8569, 8572, 8581.

Category 6–300 percent. This category includes all equity-risk investments, as defined at 12 CFR 563.9–8(b). Because banks are generally prohibited from investing in equity securities and from taking equity positions in real estate, the

[15] The Board is considering whether its equity-risk investment regulation should be modified to treat all stock of U.S. government-sponsored corporations similarly. Currently, stock of the Student Loan Marketing Association is considered an equity security for purposes of that regulation, while stock of FNMA and FHLMC is not. *See* 12 CFR 563.9–8(b)(2)(i), (d)(1)(iv). If the Board determines that such investments present similar risks to other equity securities and amends its equity-risk investment regulation accordingly, items added as equity-risk investments would fall within Category 6.

banking regulators have not needed to address such investments in their risk-weighted proposals. These assets, which include equity securities and real estate, present a wide range of credit risks. A "blue chip" equity security is often treated by the market as less risky than a high loan-to-value nonresidential construction loan. Both may be more or less risky than a standard commercial loan. Today, the Board is proposing to place equity-risk investments into the 300% risk category. This effectively means that for every $100 invested in equity-risk investments, a thrift must maintain $18 in capital for credit risk, in comparison to $6 in capital for a standard risk asset.

The Board's equity-risk investment regulations, 12 CFR 563.9–8, establishes thresholds, based upon an institution's capital, for determining whether an institution needs supervisory approval for engaging in additional equity-risk investments. The Board's current capital regulation also requires additional capital, in the from of a contingency component, for thrifts whose portfolios reflect a high concentration of equity-risk investments, land loans, and nonresidential construction loans. 12 CFR 563.13(b)(4). The current capital regulation does not attempt to address or in any way evaluate all equity-risk investments in a thrift institution's portfolio. The equity-risk regulation itself only deals with new equity-risk investments.

In the context of a capital rule that attempts to assign risk weights for the credit risks accompanying all assets in a thrift's portfolio, it is appropriate to consider all equity-risk investments, regardless of when they were made, just as all other investments are evaluated regardless of when they became part of the thrift's portfolio. Indeed, the FSLIC's experience in liquidating institutions with equity-risk investments has demonstrated that equity-risk investments entered into before the Board promulgated its equity-risk investment regulation in 1985 have been responsible for substantial losses to the FSLIC. Today's proposal therefore does not "grandfather" existing equity-risk investments.

Although the Board today is only proposing to assign equity-risk investments to a single credit-risk category, 300%, for purposes of its capital regulation, it is considering whether and how to differentiate among equity-risk investments for purposes of assigning some types to higher or lower risk categories. The Board is currently conducting a study of equity-risk investments pursuant to section 1203 of CEBA. It anticipates evaluating data developed in that study, as well as Board and FSLIC experience in this area, in determining whether to distinguish among the credit risks presented by various types of equity-risk investments.

The Board is also considering as an alternative applying the exclusion method discussed earlier in this section to all equity-risk investments, including investments by insured institutions in subsidiaries and service corporations that engage in equity-risk investments as defined in 12 CFR 563.9–8. A thrift's guarantees of the obligations of its subsidiaries and service corporations that are engaged in equity-risk investments would also be added to its capital requirement. This approach would help to insulate the thrift from the obligations of potentially higher risk subsidiaries and to ensure that the thrift maintains adequate capital to support its activities, exclusive of any investment in such subsidiaries. It would simultaneously provide thrifts with the flexibility to conduct lower risk equity-risk investments on a more highly leveraged basis in their subsidiaries.

The variability of risk associated with activities identified under the equity-risk investment rule may be sufficiently great such that it would be inappropriate to specify risk categories for such activities. Assigning such categories could also have the perverse result of discouraging insured institutions from making relatively lower risk investments and encouraging higher risk investments as a result of the maximum leverage requirements that such risk-weighting would impose. As a result, a market-based determination of leverage through the exclusion method might be the most appropriate method of allowing thrifts to exercise their investment authority while protecting the FSLIC insurance fund by requiring that such investment be made with the thrift's excess capital, rather than insured deposits.

The Board is also considering treating mortgage-backed securities with residual characteristics, corporate debt securities that are below investment grade ("junk bonds"), other similar investments, and equity securities of U.S. Government-sponsored corporations such as FHLMC and FNMA in the same manner as equity-risk investments for purpose of capital requirements. These investments also may present uncertain risk to thrift institutions.

The Board therefore requests comments, with supporting empirical data, on (1) whether equity-risk investments should be considered in a credit-risk-weighting system at all; (2) whether and at what levels additional credit-risk categories should be assigned for various types of equity-risk investments; (3) how various types of equity-risk investments should be assigned to risk categories; and (4) whether other investments such as those with residual characteristics and "junk bonds" should be either placed into a higher than 100% risk category or excluded from a credit-risk-weighting system.

2. Off-Balance Sheet Items

a. *Discussion of conversion factors for off-balance sheet items.* The Board is also proposing to incorporate off-balance sheet items in its calculation of risk-weighted assets, using a method similar to that proposed by the federal banking regulators. As discussed in Part II, the Board's current capital regulation requires additional capital to support certain off-balance sheet liabilities as part of its contingency component.

As proposed, risk weights for off-balance sheet items would be determined by a two-step process. First, the notional principal, or face value, amount of the off-balance sheet item is multiplied by a credit conversion factor to arrive at a balance sheet "credit-equivalent amount". The conversion factor is based upon the relative likelihood that a credit obligation will result from the commitment. The credit-equivalent amount is assigned to the appropriate risk category depending upon the obligor (*e.g.*, to the 20% risk category if the obligor or guarantor is a depository institution or a Federal Home Loan Bank or the 100% category if the obligor is a private party.)

The Board has not attempted to include in the listing below all potential off-balance sheet items. Instead, it has listed those items more commonly found in thrift institutions' portfolios. The Board will review additional off-balance sheet activities as they are undertaken by thrift institutions and generally expects to follow the federal banking regulators' approach with respect to those items.

The Office of Regulatory Activities will issue guidelines clarifying the treatment of off-balance sheet items as necessary.

b. *Summary of conversion factors for off-balance sheet items.*

Group A—100%

—Direct credit substitutes, including standby letters of credit

Group B—50%

—Transaction-related contingencies

—Unused commitments not falling in the 0% conversion factor category

Group C—20%

—Short-term, self-liquidating, trade-related contingencies, including commercial letters of credit

Group D—0%

—Unused commitments that are unconditionally cancelable and that the thrift will review before extending

Group E—Interest Rate Contracts

c. *Conversion factors—Group A—100 Percent.* Direct credit substitutes are assigned to Group A. Direct credit substitutes are any irrevocable obligations in which a thrift has essentially the same credit risk as if it had made a direct loan to the obligor or account party. Direct credit substitutes include guarantees (or guarantee-type instruments) backing financial claims, such as outstanding securities, loans, and other financial obligations including those on behalf of subsidiaries. Direct credit substitutes also include standby letters of credit, equivalent obligations, and forward agreements that are legally binding agreements (contractual obligations) to purchase assets with certain drawdowns at specified future dates.

Asset sales with recourse, if not already included on the balance sheet, are treated in the same way as direct credit substitutes. Such sales will be treated as if they did not occur. Capital will be required against the full amount sold for assets sold with recourse, even if recourse is for less than the full amount. The only exception to this treatment occurs when the amount of recourse liability retained by an institution is less than the capital requirement for credit-risk exposure; in such instances, capital must be maintained in an amount equal to the amount of credit-risk exposure retained.[16]

Retention of the subordinated portion of a senior/subordinated loan participation or package of loans will be treated in the same manner as an asset sale with recourse. The minimum amount of capital required against loans sold to an institution with full recourse is determined by the type of obligor.

Group B—50 percent. This group includes transaction-related contingencies and unused commitments not falling within Group D. Transaction-related contingencies include bid bonds, performance bonds, performance standby letters of credit, warranties, and standby letters of credit related to particular transactions. These instruments are different from financial guarantee-type standby letters of credit in that they concern performance of nonfinancial or commercial contracts or undertakings. These instruments generally involve guaranteeing the account party's obligation to deliver a service or product in the conduct of its day-to-day business.

A commitment is defined as any arrangement between an institution and its customer that legally obligates the institution to extend credit to the customer in the form of loans or leases. It also includes such undertakings as overdraft transactions. Normally, a commitment involves a written contract or agreement, a commitment fee, or some other form of consideration.

Commitments are included in risk-weighted assets regardless of whether they contain "material adverse change" clauses or other similar provisions. Commitments with material adverse change clauses are included in this category (rather than in a category carrying a smaller conversion factor) because they represent obligations that may involve risk if an institution funds the commitment before the customer's condition deteriorates, or before the deterioration is recognized. Moveover, while the Board does not wish to discourage the use of material adverse change clauses, some court decisions suggest that the presence of a material adverse change clause cannot necessarily be relied on to relieve an institution of its obligations pursuant to a commitment.

Only the unused portion of a commitment is treated as an off-balance sheet item. Amounts that are already drawn and outstanding under a commitment appear on the balance sheet; such amounts, therefore, will not be included as commitments for purposes of computing the risk-asset ratio.

Group C—20 percent. Group C includes short-term, self-liquidating, trade-related contingencies that arise from the movement of goods, including commercial letters of credit and other documentary letters of credit collaterialized by the underlying shipments.

Group D—Zero Percent. This category includes unused commitments that an institution: (1) Can, at its option, unconditionally (without cause) cancel; and (2) will actually review to determine whether or not it should be extended. Facilities that, at the institution's option, are unconditionally cancelable at any time are not considered to be commitments, provided that the institution makes a separate credit decision before each drawdown under the facility. Unused retail credit card lines are deemed to fall under this group if the thrift has the unconditional option to cancel the card at any time.

Group E—Interest Rate Contracts. Interest-rate contracts, including interest-rate swaps, futures, over-the-counter options, interest-rate options purchased (caps, floors and collars), and forward rate agreements are converted to credit equivalents by utilizing the "current exposure method." Under the current exposure method, the credit equivalent is the total replacement cost of contracts at the end of the reporting quarter. The resulting credit exposure is risk-weighted at 50 percent or lower, depending on the obligor.

C. Interest-Rate Risk

The second major component of the proposed capital requirement is interest-rate risk. Traditionally, thrift institutions have assumed significant interest-rate risk because their asset portfolios have been heavily concentrated in long-term, fixed-rate residential home mortgages. By definition, the cash flows resulting from such assets are less adjustable to interest-rate changes than the primarily short-term deposit liabilities thrifts have held. This maturity mismatch caused or contributed to many of the problems in the thrift industry during the early 1980s and remains a significant risk today.

Because interest-rate risk has so strongly affected the financial position of the thrift industry, the Board's capital regulations since 1980 have incorporated measures to take that risk into account. From 1980 until December 1986, for example, thrifts received a credit to their capital requirement for the amount of adjustable-rate mortgages in their portfolios. Additionally, by issuing fixed-rate liabilities with terms to maturity of more than five years, a thrift could receive a "qualifying balance deduction" and reduce its capital requirement by up to ten percent.

In 1987, the Board added to its capital requirements a maturity-matching credit ("MMC") to incorporate the concept of portfolio risk. Under the MMC component of the current regulation, a thrift institution may receive up to a two percentage point reduction in its capital requirement by maintaining, respectively, one and three year cumulative "maturity gaps" of less than twenty-five percent of assets. These maturity gaps are determined by subtracting the dollar value of liabilities

[16] For instance, if $100 million in qualifying mortgage loans, which carry an effective capital requirement of 3%, are sold and the seller retains a 2% recourse liability, the selling institution would be required to hold capital against this off-balance sheet liability of $2 million. If, on the other hand, the recourse is 5%, the requirements would be $3 million ($100 million × .50 × 6%).

maturing or repricing in one and three years from the dollar value of the thrift's assets maturing or repricing over those respective periods. The MMC was intended to provide institutions with an incentive to reduce the sensitivity of their net interest margins and their book net worth to changes in interest rates.

While the maturity-matching credit does provide a measure of protection to the FSLIC, it has not fully addressed all of the Board's concerns with interest-rate risk. First, by only providing a credit, it may not adequately discourage institutions from asset-liability mismatches. Second, by focusing on two specific maturity gaps (one and three years), the MMC does not reflect the total interest rate risk of the thrift's entire portfolio. Excessive long-term gaps, the effects of which ultimately will be reflected in the thrift's interest income, may erode the institution's value long before they are reflected in the maturity gaps covered by the current regulation.

Since the Board last revised its capital regulation, more sophisticated measures of interest-rate risk have been developed to address these and similar concerns. The revisions proposed today are intended to reflect these developments. This will enable the Board to monitor more closely the financial condition of the institutions it supervises and require, where necessary, additional capital to protect against declines in a thrift's fair value because of changes in interest rates. The Board recognizes that any tools used to measure the effects of changes in interest rates and the attendant risks upon a thrift's portfolio are inherently complex.

At this stage, the capital proposals of the federal banking agencies have dealt with interest-rate risk in a more limited way, by assigning higher credit-risk weights to certain long-term assets. The Board believes that the importance of interest-rate risk to the thrift industry requires it to address interest-rate risk explicitly in its capital rule, using the best available tools for analyzing interest-rate risk that are administratively practicable. While the current "state of the art" methodology may be complex, the Bank Board believes that postponing explicit consideration of interest-rate risk to some later rule or using a simpler, but less accurate, methodology would not be in the best interests of either the FSLIC or the thrift industry. It is, however, clearly important that the thrift industry know how to calculate this critical component of its capital requirements.

Today's proposal thus represents the Board's determination (1) to include an explicit interest-rate risk component in its capital requirements; (2) to construct the component so that it will help protect the FSLIC and thrift institutions against excessive interest-rate risk as well as provide incentives for thrifts to manage their interest-rate risk appropriately; and (3) to measure interest-rate risk on a portfolio basis rather than differentiate among a laundry list of assets and liabilities or look only at a particular time horizon. To ensure maximum flexibility in measuring interest-rate risk while assisting the industry in understanding how to calculate this critical component of the capital regulation, the Board will develop and publish for public comment guidelines containing the instructions and calculations that will be used in determining the interest-rate risk component of the capital regulation. This process, which will take place before a final capital rule goes into effect, will afford the public the opportunity to participate in the development of this tool and will afford the Board the maximum flexibility to modify the component as needed.

The proposed interest-rate risk component would be calculated as follows. A discounted cash-flow analysis will be used to estimate the effect on an institution's value (market value of portfolio equity) of an immediate and permanent 200-basis-point movement in interest rates, either up or down. Such a movement in interest rates in a relatively short period could have a significant effect on an institution.

Additionally, such a shift is sufficiently likely to occur so that an institution should hold sufficient capital against such an eventuality. For example, over the last 10 years, the volatility of long-term interest rates—measured as the standard deviation of the percentage change in weekly interest rates on 10-year Treasury Bonds—has ranged from a low of six percent in 1978 to a high of 22 percent in 1986. The average volatility of long-term rates has been 16 percent over the period. Since the 10-year Treasury bond rate over this time period averaged slightly more than 10 percent, this volatility suggests that rate movements of at least 160 basis points are quite probable. Volatility in short-term rate (6-month Treasury bill rates) averaged 24 percent over the 1978–87 period.

Although this proposed rule does not address greater changes in interest rates, institutions should nevertheless manage their interest-rate risk and capital positions in order to address such changes in interest rates. 12 CFR 563.17–6 and Thrift Bulletins published by the Office of Regulatory Activities impose further safety and soundness requirements on insured institutions regarding interest-rate-risk management.

The calculation of interest-rate-risk exposure will be based on an institution's total portfolio of financial assets including off-balance sheet items. The Board recognizes that changes in interest rates can influence the value of nonfinancial assets such as fixed assets. Due to limited information concerning the relationship between interest-rate movements and the changes in the value of nonfinancial assets, the Board is not proposing at this time to include such assets in its calculation of interest-rate-risk exposure. The Board does request comment on the appropriateness of this exclusion and on ways that the influence of interest-rate movement on such assets can be quantified.

The published guidelines will specify the necessary assumptions, including interest rates, prepayments, and the treatment of other option-type instruments. The Board currently contemplates applying a uniform set of assumptions on a nationwide basis, but requests comments on whether regional assumptions would better serve its needs. It also anticipates that the individual minimum capital requirements currently located in § 563.14 could be used in situations where supervisory personnel determine, or an institution could demonstrate that the assumptions used significantly misrepresented the effect of interest-rate shifts on its portfolio.

Once the interest-rate risk exposure is calculated as described above, an institution will be required to maintain capital in an amount equal to fifty percent of the larger of the possible decreases in the market value of the thrift's net equity consequent to the 200 basis point increase or decrease, as protection against interest-rate risk.

The Board is proposing at this time to limit the interest-rate-risk component to fifty percent of the calculated effect in order to minimize the possibility that the Board's industry-wide calculation of interest-rate-risk exposure may significantly overstate an individual institution's actual exposure. Until the Board has developed further experience with such calculations and their effect on capital requirements, it believes that the better course of action is to proceed cautiously. At some later point, experience may dictate a heavier weight on the interest-rate risk determined portion of the risk-based capital rule and less weight on the credit-risk determined portion of the rule

The Board solicits public comment on several specific potential problems that may arise in implementing an interest-rate-risk component and possible solutions. First, this proposal is designed to capture only prospective interest-rate-risk. It does not adjust either the capital position of the institution or its capital requirement for the effect of changes in interest rates that have already occurred, which may have significantly affected the market value of assets and liabilities already in the institution's portfolio and the future income stream that the portfolio will generate. As a result, it is possible for the interest-rate-risk component of an institution's capital requirement to decline at the same time as the value of its portfolio declines due to increasing interest rates.

One solution would be to change (increase or decrease) the institution's capital position or its capital requirement to reflect the change in value of the portfolio as a result of prior interest-rate shifts. Such a change could be reflected fully (100%) or partially (*e.g.*, 30% or 50%). A partial change could be adopted to address, in part, concerns over the volatile nature of interest-rate movements. the Board believes that this type of approach, while potentially more accurate, could entail significant administrative difficulties and reporting burdens. It would also represent a significant departure from GAAP. The Board seeks public comment on both the desirability of and difficulties with such an approach.

Second, the proposed approach necessarily relies on relatively broad assumptions in calculating institution's interest-rate-risk exposure. While the methodology for undertaking discounted cash-flow analysis is well-established, its application in assessing future interest-rate-risk exposure is dependent on a number of assumptions concerning behavior of borrowers, depositors, and investors in a changing interest-rate environment. Historical data relating to such behavior demonstrates that this behavior can vary substantially based on factors such as geography and demographics. As a result, a broad set of assumptions that may be appropriate on average may distort to some degree any individual institution's interest-rate-risk exposure.

Third, the use of broad assumptions and a single interest rate "shock" of 200 basis points leave the calculation of an institution's interest-rate-risk exposure vulnerable to "gaming" in order to minimize the rule's impact for a given amount of risk.

One option for resolving some of these issues is to permit institutions to supply their own assumptions or calculate their own interest-rate-risk exposure. The present maturity-matching credit provides for such an option. The Board, however, is concerned that this approach caused significant problems for the examination and supervision staff in assessing and enforcing institution's minimum capital requirements. Therefore, the Board is not proposing such an option at this time, although it solicits public comment. Instead, the Board intends to rely on § 563.14 to address those few situations where the application of the broad assumptions results in clearly inappropriate requirements.

A further option that the Board considered in this context was the complete reliance on the individual minimum capital requirement to address interest-rate-risk. The Board is not proposing such an approach at this time because it believes that the industry-wide rule should explicitly address interest-rate-risk and because it is concerned that reliance solely on the individual minimum capital requirement could result in either an unreasonably high administrative burden or the effective exemption of a large part of the industry from the interest-rate-risk component in the minimum capital rule.

The Board recognizes that the necessary simplifying assumption in the proposal will make any projections less "precise" than they could be and that recent volatility in interest rates suggests that institutions should be prepared to deal with relatively rapid shifts in interest rates greater than 200 basis points. Nevertheless, the Board believes that the proposed formulation strikes a reasonable balance. Comments on alternative approaches that would address these concerns are solicited.

D. Collateralized Borrowings

The Board is also proposing to require additional capital to the extent that an institution has collateralized borrowings. For purposes of the proposed capital regulation, collateralized borrowings include any liability against which the institution has pledged specific assets, pledged to maintain a specific value of assets, or for which the structure of a transaction could otherwise result in an effective pledging of assets (e.g., preferred stock issued by a subsidiary). Institutions may use this vehicle in order to raise funds by offering creditors protection in the event of liquidation, a function served for deposit liabilities by FSLIC insurance. The FSLIC receives no insurance premiums on collateralized borrowings to offset its costs if the institution becomes insolvent and is liquidated or is merged in an assisted transaction, however, in contrast to premiums received on deposit liabilities. Unlike noncollateralized liabilities, these borrowings provide no protection to the FSLIC, since, with respect to the specific assets collateralizing the borrowing, the holders have a priority over the FSLIC in liquidation. Since collateralized borrowings can substitute for insured deposits, they can increase the effective risk to the FSLIC, because the FSLIC's premium stream is reduced but its exposure to loss remains unchanged. Currently the industry has approximately $220 billion in advances and reverse repurchase agreements on which the FSLIC forgoes $400 million in premium income each year.

The Board today proposes to require all insured institutions that have specific assets pledged against non-deposit liabilities to maintain additional capital in the amount of three percent of those liabilities. This is intended to approximate the cost advantage an institution receives from these borrowings by avoiding the payment of FSLIC insurance premiums. Unlike insurance premiums, however, these funds will remain in the institution, affording the FSLIC protection by serving as an additional buffer against insolvency. The Board solicits comments about the proposed scope of this "collateralized borrowings" component, whether and how "non-deposit liabilities" should be defined, and other approaches that would address its concerns in this area.

IV. Components of Capital

The definition of capital that the Board is proposing to adopt is generally modeled after the definition of capital in the risk-based capital guidelines that have been jointly proposed by the federal banking agencies for commercial banks and bank holding companies. Although the capital definition in this proposed rule is structured similarly to that contained in the guidelines adopted by the federal banking agencies, the Board is not proposing that the treatment of capital components for insured institutions be precisely the same as that applied to banking organizations.

It is the Board's view that the definition of capital for insured institutions must contain distinctions that reflect statutory requirements and differences in the nature of the thrift and banking industries. Specific distinctions in the Board's proposed definition of capital are more fully explained later in this section.

As proposed, "capital" would consist of a two-tiered requirement, comprised

of "core equity capital" (Tier 1) and "supplementary capital" (Tier 2). Not all components of capital equally serve the dual purposes of protecting the FSLIC and providing a buffer to insured institutions. A two-tiered approach to calculating an institution's capital reflects differences in quality among different components of capital.

Core equity or Tier 1 capital will generally equal GAAP capital. This is similar to modified equity capital as that term is currently defined in 12 CFR 561.13(a), with the exception that as proposed, deferred loan losses and the difference between cost and a lower market value of investments in qualified mutual funds will not be components of Tier 1 capital.[17] These two elements will be considered supplementary capital, along with essentially the same components as definitional capital under current § 561.13(b) and risk analysis reporting items under § 561.13(c).

A. Core Capital (Tier 1)

For stock institutions, core capital would include common stockholders' equity and perpetual preferred stock (less contra accounts such as shareholder receivables). Common stockholders equity includes common stock, surplus and retained earnings. Common stockholders' equity is a relatively permanent source of protection for the insured institution and the FSLIC. Moreover, perpetual preferred stock can provide an insured institution with approximately the same degree of financial strength as common stockholders' equity. Perpetual preferred stock differs from common stockholders' equity primarily in that there is a fixed requirement to pay dividends. These instruments have no maturity and holders of this stock are residual owners of an institution rather than creditors. An institution cannot be forced into insolvency by its requirement to pay dividends on this preferred stock, since the obligation to pay dividends can be suspended when the insured institution encounters financial difficulties. The proposed treatment of perpetual preferred stock as core capital is consistent with the standards adopted in July by the Basle Supervisors' Committee and with the definition of capital that the federal banking regulators are expected to adopt shortly.

Retained earnings are generally the only form of GAAP capital available to mutual institutions. As such, core capital would be equivalent to retained earnings (less any applicable contra-equity accounts) plus any nonwithdrawable accounts and certain minority interests in consolidated subsidiaries.

Tier 1 capital will include minority interests in consolidated subsidiaries unless the Board determines in the case of a particular institution that it does not provide a cushion to absorb losses. This could occur, for example, where the minority interest consists of a preferred interest in the subsidiary.

The Board is not proposing at this point to differentiate between equity as determined in accordance with GAAP and tangible equity for purposes of its capital regulation. Tangible equity is equal to equity determined in accordance with GAAP less certain intangible assets, such as goodwill.

The OCC and the FDIC have proposed generally, except in certain supervisory cases, to deduct goodwill and other intangible assets, except for purchased mortgage servicing rights, from capital for purposes of their proposed definition of capital. The Federal Reserve Board has proposed to deduct goodwill from capital, but to include the value of all other intangible assets, for purposes of its definition of capital for state member banks. In the Bank Board's view, however, neither treatment would be appropriate for thrifts. Specifically, while the value of goodwill may change over time, such value changes on the balance sheet are not limited to goodwill. Due to the use of historical cost accounting, the current value of many, if not all, assets may vary from the amount shown in the financial statements. Furthermore, section 402 of the CEBA authorizes the Board to allow insured institutions to use goodwill in meeting reserve and other regulatory requirements.[18] For purposes of this rule, therefore, the Board has chosen to adhere more closely to capital as determined in accordance with GAAP.

Recognizing the potential for misstatement in estimations of the value of goodwill, the Board intends to monitor closely the amount of goodwill carried by institutions. If, in the Board's judgment, amounts are excessive, it will exercise its authority to set individual minimum capital requirements under 12 CFR 563.14.

B. Supplementary Capital (Tier 2)

Although equity or GAAP capital is the most permanent form of capital and therefore the best protection for the institution and the FSLIC, there are circumstances when issuing equity can prove to be expensive and therefore detrimental to an insured institution. Depending on market conditions, the issuance of equity securities by an insured institution may prove to be very costly in comparison to other forms of capital such as the issuance of debt. Many forms of debt securities can provide a buffer to the FSLIC because the holders are subordinated to depositors and therefore the FSLIC in the event of liquidation. The Board believes such instruments should be included as components of capital for purposes of meeting capital requirements. While the Board strongly believes that an insured institution's core capital should be composed of GAAP capital, it also believes that the definition of total capital should enable institutions to raise capital from less costly sources when appropriate. A number of the components that would comprise supplementary capital under the Board's proposed definition are intended to serve this purpose.

Supplementary capital would be comprised of (1) those debt or equity instruments that are not as permanent as and have less certain value than the components of core equity capital; and (2) those components that offer little protection to an insured institution or the FSLIC, but are statutorily authorized or required to be included as components of capital for insured institutions. Supplementary capital components would include: hybrid debt/capital instruments (capital instruments that combine certain characteristics of equity and certain characteristics of debt) such as mandatory convertible subordinated debt (capital notes and commitment notes), mutual capital certificates, perpetual subordinated debt, mandatory redeemable preferred stock, qualifying subordinated debt, general loss allowances, and deferred loan losses. Additionally, appraised equity capital and other risk analysis reporting ("RAR") items may be included as components of supplementary capital until these items are phased out as capital components.

All components of supplementary capital would not be accorded equivalent treatment under the proposed

[17] Although these items are technically assets, not capital components, they are assets that are not included as assets for purposes of calculation of an institution's risk-weighted assets.

[18] Section 402 of the CEBA added a new section 9 to the HOLA and new section 415 to the NHA that required the Board to impose uniform accounting standards on all insured institutions. On December 21, 1987, the Board adopted a regulation that implemented that statutory requirement. See 53 FR 324 (January 6, 1988). In mandating that the Board impose uniform account standards on all insured institutions, the CEBA also stipulated that the requirements of Section 402 would not affect the authority of the Board to authorize associations to use subordinated debt and goodwill in meeting reserve and other regulatory requirements. See 12 U.S.C. 1467(b) and 1730(b).

rule. While certain components would be eligible for unlimited use in meeting supplementary capital requirements, other instruments would be subject to limitations on the amount maturing in a given year, or, in the case of general loss allowances, subject to a limitation similar to that imposed on general loan loss reserves in the banking industry.

1. Unlimited Supplementary Capital

Under the proposed rule, no limits would be places on an institution's use of mandatory convertible subordinated debt (capital notes), perpetual subordinated debt, mutual capital certificates, income capital certificates ("ICCs"), and net worth certificates ("NWCs") as components of supplementary capital, unless the issuance of such instruments raises supervisory concerns about an institution's ability to meet its debt service requirements.

Capital notes are a form of mandatory convertible debt that will be replaced by equity capital at a specified point in the future. Perpetual subordinated debt instruments share many of the same characteristics as capital notes, except that they do not protect the institution as a going concern because the holders of the notes generally have the right to force liquidation if their claims are not satisfied.

Mutual capital certificates are available to mutual institutions and possess many of the same characteristics of preferred stock for preserving the institution as a going concern. In liquidation, these instruments are subordinate to the claims of general creditors and depositors. Prior to liquidation, they may be available to absorb losses after the exhaustion of all other items in an institution's capital account. Moreover, dividends on these instruments may not be declared if they would impair regulatory capital.

NWCs and ICCs are statutorily created guarantees that the FSLIC can make available to troubled institutions for the purpose of improving their capital position. Institutions use these capital instruments to leverage additional growth. Although statutorily authorized as components of capital, since these instruments are a form of capital provided by the FSLIC, they are liabilities of the FSLIC and thus they afford no protection to the FSLIC itself in the event of an institution's insolvency.

2. Supplementary Capital: Maturing Capital Instruments

The use of commitment notes (a second form of mandatory convertible debt), mandatory redeemable preferred stock, and subordinated debt (collectively, "maturing capital instruments") as components of supplementary capital would be limited by the amount of these instruments in an institution's portfolio that mature in any one year during the final seven years prior to maturity. The Board proposes, as an alternative to the present amortization rule, limiting the total of all such instruments maturing in any one year that can be included as supplementary capital to a set percentage of an institution's regulatory capital, including such instruments. The Board is currently considering percentages in a range from 10 to 20 percent, and solicits comment, with any supporting data, on an appropriate percentage.

In the Board's view, the characteristics of maturing capital instruments require some form of special provision to protect the FSLIC adequately. Although these instruments are required to be structured to protect the FSLIC, they present a refunding risk to the FSLIC and the insured institutions that issue them. If these types of instruments are not refunded they could cause a precipitous reduction in the capital position of an institution.

The Board's present capital rule, which is similar to the approach adopted by the federal banking agencies, requires maturing capital instruments to be amortized for regulatory capital purposes at the rate of 1/7, or approximately 14%, per year during the final seven years to maturity. This rule has several adverse consequences for institutions wishing to issue such instruments that the Board believes may be mitigated without significant reduction of protection to the FSLIC. Under the present amortization rule, maturing capital instruments become an "expensive" form of capital as an instrument comes within seven years of maturity because less of the issue counts toward regulatory capital as it approaches maturity. Insured institutions are reluctant to issue such instruments for terms of less than seven years and they are inclined to refund longer-term instruments when those instruments are within seven years of maturity. Requiring insured institutions to rely on longer-term funds may result in their having to pay higher interest rates or incurring unnecessary transaction costs for refunding instruments earlier than necessary.

To avoid the adverse effects of the present rule, while continuing to protect the FSLIC's interest in strong capital positions, the Board is today proposing a percentage limitation approach for the treatment of maturing capital instruments. This approach would limit (for inclusion in capital for purposes of this regulation) the aggregate amount of capital that matures in any one year during the seven years immediately prior to an instrument's maturity to a set percentage of an institution's regulatory capital. If an insured institution wished to hold, and to count for purposes of this rule, maturing capital that is greater than that set percentage of regulatory capital, it would have to spread the maturities over two or more years so that no more than an amount equal to the set percentage of regulatory capital would mature in any one year. As noted above, the Board is currently considering percentages in the 10–20 percent range.

The Board is also considering another option, which is described in Appendix A, to address this issue. The Board requests specific comments on the appropriateness of each of the options and the elimination of the existing amortization rule. The Board also requests comments on whether institutions should be permitted to choose between the current amortization schedule and that proposed today for purposes of calculating the amount of instruments of this type issued before November 27, 1988, that would be includable in capital.

3. Supplementary Capital: Other Limitations

Other elements of supplementary capital, including general loss allowances, deferred loan losses, appraised equity capital, the excess of cost over market value of liquid asset mutual fund investments, and other RAR components, are considered "limited capital" under today's proposal, because they are not available to institutions as sources for raising funds for capital as are the equity and debt instruments described above. They are included in supplementary capital, however, subject to the limitations described in this section.

General loss allowances are established through a charge against earnings to absorb inherent but unidentified losses on loans. They do not include allowances held for specifically identified losses or earmarked for a specified asset. In the Board's view, general loss allowances represent, effectively, a segregation of retained earnings and therefore are appropriately includable in meeting capital requirements. Because they do represent potential losses to the institution, however, the Board is

proposing that these allowances be treated as a limited element of capital. Under the guidelines proposed by the federal banking agencies, general reserves for loan/lease losses will be limited to 1.25% of risk-weighted assets. The Board is proposing a similar limitation for thrifts' general loss allowances. Because of the substantial differences between the thrift and banking industries, however, the Board seeks specific comments on the appropriateness of the 1.25% limit. If commenters believe this limit is inappropriate, they should also provide any supporting data and address the CEBA provisions on comparability between the banking and thrift industries in regard to losses.

The remaining elements of supplementary capital are limited because they are gradually disappearing from thrift balance sheets as a result of statutory and regulatory changes.

Deferred loan losses are losses that have been realized, but are deferred for regulatory capital purposes in accordance with specific regulatory language. They provide no protection to the FSLIC and are of no value to an insured institution facing financial stress. Nevertheless, section 402 of the CEBA requires the Board to allow institutions with deferred loan losses to continue factoring them into their calculation of capital until the losses are amortized. No similar conditions have been imposed on the federal banking agencies. Institutions are no longer permitted to record new deferred loan losses, so this component of capital will eventually be phased out.

Appraised equity capital represents an estimated gain in the market value of real estate held by an insured institution. In the Board's view, this component affords uncertain protection to an insured institution or the FSLIC, the true value of which can be only determined by frequent appraisals. The current regulatory capital regulation requires this component to be phased out as a form of capital by 1994. The Board is proposing that institutions that do not opt for immediate elimination of appraised equity capital as a component of regulatory capital may continue to include it as a component of supplementary capital on a pro rata basis.

The Basle capital framework allows revaluation reserves to be included as a component of capital. This component includes both revaluation of fixed assets (which resemble appraised equity capital) and revaluation of long-term holdings of equity securities valued on the balance sheet at historical costs of acquisition. Both type of reserves may be legitimate sources of capital that serve the purposes of protecting the FSLIC and the institution. While the federal banking agencies have opted not to count revaluation reserves as a component of capital, the Board requests comment on whether such reserves should count as supplementary capital for thrifts.

Liquid asset mutual funds consist entirely of debt obligations, such as U.S. government securities, that would qualify as liquid assets pursuant to 12 CFR 523.10(g). An investment in this type of mutual fund qualifies as a liquid asset under that section. When the Board implemented uniform accounting standards pursuant to the CEBA, it recognized that under GAAP, an insured institution could invest directly in U.S. government securities and carry that investment at cost. However, GAAP would require an equivalent investment in a mutual fund, the portfolio of which consisted entirely of the same securities, to be carried on the institution's books at the lower of cost or market.[19] Accordingly, the Board decided, as part of the gradual phase-in to GAAP, to permit institutions to include on their unaudited financial reports and statements, investments in shares of liquid asset mutual funds that meet the requirements of § 523.10(g)(8), recorded at historical cost through 1993.[20] This difference, which is neither GAAP capital nor equivalent to bank regulatory capital, will no longer be includable in capital after 1993.

Under present regulations, RAR components represent the cumulative differences between regulatory and GAAP accounting that the Bank Board has permitted to be included in regulatory capital for certain transactions. RAR components include loan origination and commitment fees, futures transactions, sales of real estate by an institution, and accretion of discounts and amortization of premiums. These items will no longer be components of capital by 1994.[21] During the transition to full implementation of the Uniform Accounting Standards regulation in accordance with CEBA, institutions will be permitted to include RAR items as components of supplementary capital subject to the phase-out set forth in § 563.13(f).

V. Required Level and Composition of Capital

In order to satisfy the minimum regulatory capital requirement, by the end of the transition period (*See* Part VI) institutions must have minimum total regulatory capital at least equal to the sum of (1) 6% of risk-weighted assets (credit-risk component); (2) an amount equal to 50% of the effect of a 200 basis point shift in interest rates on the institution's value (interest-rate risk component); and (3) an amount equal to 3% of the institution's collateralized liabilities (collateralized borrowing component). At least one-half of an institution's minimum total capital requirement must be in the form of core equity capital.

In any event, notwithstanding the principal capital requirements based on particular risks discussed above, all insured institutions will be required to maintain a minimum of core equity capital that is at least equal to 2% of *total* assets.[22] The Board believes that all institutions must have some equity capital, no matter how limited their credit and interest-rate risks, in recognition of the fact that these are not the only risks facing a thrift.

Failure to maintain the higher of either minimum capital level (*i.e.*, the number determined by adding the risk-determined components or the alternate determined as a percentage of total assets) or failure to maintain the appropriate ratio of core equity to supplementary capital may result in the Board's requiring the institution to take corrective action, as set forth in current § 563.13(d). The proposal does not amend these provisions.

VI. Transition and Phase-in

Institutions would be expected to adjust their capital bases and asset portfolios so that they will be in full compliance with the requirements of this rule ("fully phased-in capital requirement") by January 1, 1993. The Board believes that it is important that all thrift institutions reach their capital requirement as quickly as possible, but recognizes that some thrifts will require time to restructure their portfolios and raise capital to reach to desired levels of both total capital and core equity capital. The Board therefore contemplates a transition period before the requirements proposed today would be fully effective. During that period, thrifts would be required to attain the minimum capital requirements in two stages: (1) By January 1, 1991, all insured institutions must have capital equal to 80% of their fully phased-in capital requirement and must have core equity capital equal to 2% of total assets; and

[19] *See* 53 FR 324, 332 (Jan. 6, 1988).

[20] *See* 12 CFR 561.13(f) (1988).

[21] *See* 12 CFR 561.13(f) (1988).

[22] Total assets means the consolidated total assets figure required to be computed for and stated in an institution's most recent quarterly report.

(2) By January 1, 1993, all insured institutions must have capital equal to at least their fully phased-in capital requirement. Any *de novo* institution that becomes an insured institution after January 1, 1991, will be required to maintain capital at the fully phased-in level. Until January 1, 1991, the current capital regulation found at 12 CFR 563.13 will be used in measuring institutions' capital adequacy.

The Board solicits comments on the length and stages of this transition period. In this regard, the Board solicits specific comments addressing the appropriate treatment (both during and after the transition period) of forbearances (both supervisory and accounting) given to acquirers as part of a supervisory or FSLIC-assisted acquisition. The Board intends to use care to avoid unintended interference with such forbearances. Commenters addressing this point should discuss the implications of the CEBA-mandated phase-in towards GAAP as implemented by the Uniform Accounting Standards regulation on forbearances. Under that regulation, accounting forbearances were specifically included as regulatory capital under § 561.13(d), which will become effective January 1, 1989.

VII. Summary

For the reasons set forth above, the Board is therefore, pursuant to its authority under Sections 403(b) and 407(t) of the NHA, publishing for notice and comment a risk-based capital regulation. Attached as Appendix B is a sample of how the rule, if adopted, would be applied in determining if a thrift were meeting its minimum capital requirements.

In addition to its general request for public comment on all aspects of this proposal, the Board is specifically requesting comment on the following issues:

(1) The interaction between the individual minimum capital requirement located at 12 CFR 563.14 and the more general capital regulation prescribed in 12 CFR 563.13.

(2) The appropriate definition and treatment of securities with residual characteristics and below investment-grade corporate debt securities in a risk-based capital framework.

(3) The appropriate treatment of interest-only and principal-only interests in mortgage-backed and other derivative securities.

(4) The appropriate treatment of loans bought or sold with recourse and the appropriateness of the definition currently located at 12 CFR 561.8 for purposes of the proposal.

(5) The appropriate treatment of mortgage commitments.

(6) The appropriate asset base (all assets or just financial assets), approaches, and types of assumptions for calculating interest-rate risk exposure and whether any such assumptions should be nationwide or regional.

(7) The appropriate treatment of maturing capital instruments including the amount of any such instruments maturing in any one year that should count as capital.

(8) Whether revaluation reserves should be includable in supplementary capital.

(9) The appropriateness of applying the federal banking agencies' 1.25% limit on the use of general loan loss reserves in capital to thrift institution general loss allowances.

(10) The appropriate risk-weighting for intangible assets, such as goodwill (including whether a distinction should be made for goodwill acquired in a FSLIC-assisted acquisition), and REO.

(11) The appropriate treatment of equity-risk investments.

(12) The consideration of private sector ratings given obligations of state or local governments (rather than the funding repayment sources) for purposes of determining appropriate risk categories.

(13) The placement of qualifying mortgage loans in a higher or lower risk category.

(14) The placement in the 50% risk-weight category of permanent 1–4 family residential mortgage loans with loan-to-value ratios exceeding 80% that are current after 24 months of payments.

(15) The appropriate treatment of supervisory forbearances and accounting forbearances given to acquirers in supervisory or FSLIC-assisted acquisitions.

The Board intends to hold a public hearing on this proposal during which members of the public may present comments on all aspects of the proposal. Notice of the date and time of the hearing will be published in a later issue of the **Federal Register**.

Appendix A—Alternative Treatment of Maturing Capital Instruments

The Board is considering linking the amount of maturing capital instruments that an institution could include as part of its calculation of supplementary capital to the institution's tangible capital as defined in 12 CFR 563.9–8(b)(12). Under this alternative, the allowable percentage of maturing capital that an institution could include as a component of supplementary capital, would be tied each year to a variable scale based on the tangible capital of the institution. All maturing capital would be depreciated on a straight line basis according to the following schedule governed by the tangible capital of the insured institution:

Less than *1% tangible capital*—4 year straight line depreciation starting when capital instruments have 6 years to maturity.

1–2% tangible capital—4 year straight line depreciation starting when capital instruments have 4 years to maturity.

2–3% tangible capital—4 year straight line depreciation starting when capital instruments have 2 years to maturity.

3% tangible capital and above—Maturing instruments would count fully until maturity, without limitation. These depreciation rules would produce the following table, where percentages indicate the percentage of maturing capital instruments that could be counted toward capital:

Percentage of Maturing Capital Includable in Regulatory Capital

YEARS TO MATURITY

Tangible capital	1	2	3	4	5	6
.99 or less	0	0	25	50	75	100
1 to 1.99	25	50	75	100	100	100
2 to 2.99	75	100	100	100	100	100
3 or above	100	100	100	100	100	100

This approach to the treatment of maturing capital instruments as components of capital could provide a strong incentive for institutions with weakening capital positions to seek additional capital. Encouraging institutions to take action to strengthen their capital positions before maturing capital is fully depleted will also enhance the protection available to the FSLIC. In addition, this approach would provide institutions with strong, high quality capital positions with the flexibility to undertake large issues of maturing instruments that mature in the same year, thereby improving access to these instruments and reducing transaction costs.

Appendix B—Sample Capital Requirement Calculation

Calculation of Minimum Capital Requirement

SAMPLE INSTITUTION—CONSOLIDATED

[In millions of dollars]

	Amount
Assets:	
Cash/Treas. Sec.	$90
FNMA MBS	110
1 to 4 Res. Mortg.	100
Equity Risk Inv.	10
Other Assets	100
Total Assets	$410
Liabilities and Capital:	
Deposits	385
Stockholders' Equity	25
Total Liabilities and Capital	410

SAMPLE INSTITUTION—CONSOLIDATED—Continued

[In millions of dollars]

	Amount
Off-Balance Sheet Items (Contingent Liabilities)	
Commitment to fund 1 to 4 Res. Mortg	−40
Unused Retail Credit Card lines of credit	−100
Total Off-Balance Sheet Items	−140

* * * * * * *

Step 1: Convert Off-Balance Sheet Items to On-Balance Sheet Equivalent amounts by multiplying their nominal value by the appropriate conversion factor.

	Nominal value	Conversion factor (percent)	On-balance sheet equivalent
Commitment to fund 1 to 4 Res. Mortg	$40	50	$20
Unused Retail Credit	100	0	0

Step 2: Calculate the credit-risk-weighted assets of institution.

	Book value (or on-balance sheet equiv.)	Risk weight (percent)	Risk-weighted assets
Cash/Treas	$90	0	$ 0
FNMA MBS	110	20	22
1 to 4 Res. Mtg.:			
(On-Bal. Sh.)	100	50	50
(Off-Bal. Sh.)	20	50	10
Equity Risk Investments	10	300	30
Other Assets			
(On-Bal. Sh.)	100	100	100
(Off-Bal. Sh.)	0	100	0
Total	430		212

Step 3: Multiply the sum total of risk-weighted on-balance sheet assets and off-balance sheet credit equivalents by the credit-risk component (6%).

$212 million × 6.0% = $12.72 million

This is the *credit-risk component* of the institution's risk-based capital requirement.

Step 4: Using assumptions provided by the Board, determine the *interest-rate-risk component* of the capital requirement. This is equal to 50% of the change in market value of the institution due to a 200 basis point change in interest rates.

For this example, assume that a 200 basis point change in interest rates results in a reduction in the market value of an institution of $8 million.

Interest-rate risk component:

$8 million × 50% = $4 million

Step 5: Add the credit-risk component ($12.72 million) and the interest-rate-risk component ($4 million) to determine the institution's minimum capital requirement. In this example, this requirement equals $16.72 million.

The example assumes that the institution has no collateralized borrowings.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. Reasons, Objectives, and Legal Basis Underlying the Proposed Rule

These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. Small Institutions to Which the Proposed Rule Would Apply

The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a)(1988). Therefore, small entities to which the proposed rule applies are the 1,651 insured institutions that had assets totaling $100 million or less as of December 31, 1987.

3. Impact of the Proposed Rule on Small Institutions

The proposed rule would apply equally to all insured institutions, as adequate capital is critical to the health of all insured institutions and to protection of the FSLIC as insurer of all insured institutions regardless of size. The Board has attempted, in developing the proposal, to rely to the greatest extent possible on information currently required to be computed for and reported on thrift financial report by all insured institutions. In areas where that has not proved possible, the Board has attempted to suggest the least burdensome alternatives possible.

4. Overlapping or Conflicting Federal Rules

There are no known federal rules of other agencies that duplicate, overlap, or conflict with this proposed rule. To the extent that any current regulations of the Board are determined to duplicate, overlap, or conflict with this proposed rule, the Board contemplates reviewing its regulations to remove such duplication, overlapping or conflicts. Such removal would be made after the opportunity for public notice and comment, if appropriate. Currently, the Board contemplates reviewing its regulations on equity-risk investment, 12 CFR 563.9–8, and finance subsidiaries of federal associations, 12 CFR 545.82, among others in this regard.

5. Alternatives to the Proposed Rule

Alternatives to various aspects of the proposed rule are discussed in **SUPPLEMENTARY INFORMATION.** The Board solicits comments on alternatives that would both address the Board's concerns and be less burdensome on small institutions. The Board has not found any alternatives to date that would be less burdensome and adequate address its concerns.

List of Subjects

12 CFR Part 561

Savings and Loan Associations.

12 CFR Part 563

Bank deposit insurance, Currency, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby proposes to amend Parts 561 and 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

1. The authority for Part 561 continues to read as follows:

Authority: Sec. 1, Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437), Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp. P. 1071.

2. Section 561.13 is revised to read as follows:

§ 561.13 Regulatory Capital.

(a) Regulatory capital is the sum of core equity capital and supplementary capital, each as defined in this section.

(b) Core equity capital is capital as determined in accordance with generally accepted accounting principles (including perpetual preferred stock issued pursuant to § 563.8 of this subchapter) plus certain minority interests in consolidated subsidiaries,

and nonwithdrawable accounts meeting the criteria of § 561.42 of this part.

(c) Supplementary capital is the sum of:

(1) Unlimited supplementary capital, including

(i) Mandatory convertible subordinated debt (capital notes) issued pursuant to § 563.8–1 of this subchapter to the extent that such securities meet the criteria set forth by the Office of Regulatory Activities in supervisory memoranda;

(ii) Perpetual subordinated debt issued pursuant to § 563.8–1 of this subchapter to the extent that such debt meets the criteria set forth by the Office of Regulatory Activities in supervisory memoranda.

(iii) Mutual capital certificates issued pursuant to § 563.7–4 of this subchapter.

(iv) Income capital certificates, net worth certificates issued in accordance with Part 572 of this subchapter or that the Corporation is committed to purchase by virtue of § 572.1(c), accumulated annual income payments on capital certificates not yet due and payable, and pledged certificates and any other nonwithdrawable accounts (excluding any treasury shares held by the institution) to the extent such nonwithdrawable accounts are not included in core equity capital.

(2) Maturing capital instruments, including:

(i) Mandatory convertible subordinated debt (commitment notes) issued pursuant to § 563.8–1 of this subchapter to the extent that such securities meet the criteria set forth by the Office of Regulatory Activities in supervisory memoranda;

(ii) Mandatory redeemable preferred stock issued prior to July 23, 1985 or issued pursuant to § 563.1 of this subchapter, and was approved in writing by the Corporation for inclusion as regulatory capital before or after its issuance, pursuant to § 563.7–5;

(iii) Subordinated debt issued pursuant to § 563.8–1 of this subchapter of the extent that such debt meets the criteria set forth by the Office of Regulatory Activities in supervisory memoranda;

Provided That only the aggregate amount of maturing capital instruments that mature in any one year during the seven years immediately prior to an instrument's maturity that does not exceed 10% of an institution's regulatory capital will qualify as regulatory capital.

(3) Regulatory capital components, including:

(i) General loss allowances established pursuant to § 563.23–3 of this subchapter and Part 563c of this subchapter up to a maximum of 1.25 percent of risk-weighted assets;

(ii) The amount of unamortized loan gains and losses that were deferred pursuant to § 563c.14 of this subchapter;

(iii) Appraised equity capital as defined in paragraph (b)(1) of § 563.13 of this subchapter;

(iv) The excess of historical cost over market value of investments in shares of open-end management investment companies, as defined in § 523.10(g)(8) of this chapter;

(v) The amount of the following items computed by an insured institution in accordance with risk analysis reporting in effect prior to January 1, 1989, and included in its financial statements prior to January 1, 1989. An institution may include an amount that represents the sum of the differences between the treatment of the following items under generally accepted accounting principles and the treatment under risk analysis reporting prior to January 1, 1989:

(A) Sales of real estate developed by the institution or its subsidiary;

(B) Futures transactions;

(C) Accretion of discounts and amortization of premiums on securities; and,

(D) Loan origination and commitment fees.

(d) *Sunset provision.* Authority to include items listed in paragraphs (c)(3)(iii), (iv), and (v) of this section as components of regulatory capital will cease as of December 31, 1993. Institutions may make an irrevocable election upon the filing of their first quarterly report for 1989 to phase-out these items over the period beginning January 1, 1989 and ending December 31, 1993, pursuant to the following schedule: 100 percent of these items are includable in regulatory capital for 1989; 80 percent in 1990; 60 percent in 1991; 40 percent in 1992; 20 percent in 1993; and 0 percent in 1994 and all years thereafter.

PART 563—OPERATIONS

3. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–1948 Comp., p. 1071.

4. Section 563.13 is amended by revising paragraphs (b), (c), (d), (e) and (f), and by adding paragraphs (g), (h) and (i) to read as follows:

§ 563.13 Regulatory capital requirement.

(a) * * *

(b) *General definitions*—(1) *Appraised equity capital* means (i) unrealized and unrecorded equity in office land, buildings, and improvements (including leasehold improvements) owned by the insured institution or a subsidiary thereof, (ii) unamortized deferred profits originating from the sale and leaseback of office properties formerly owned by the insured institution or a subsidiary thereof, and (iii) the value of leasehold interests.

(2) *Collateralized borrowings* means any non-deposit liability against which the insured institution has pledged a specific asset or pledged to maintain a specific value of such assets or for which the structure of a transaction would otherwise result in an effective pledging of assets (*e.g.*, preferred stock issued by a subsidiary).

(3) *Commitment* means any arrangement that obligates an insured institution to: (i) Purchase loans or securities; or (ii) extend credit in the form of loans or leases, participations in loans or leases, overdraft facilities, revolving credit facilities, or similar transactions.

(4) *Direct credit substitutes* means any irrevocable obligation or portion thereof in which an institution has essentially the same credit risk as if it had made a direct loan to the obligor or account party. It includes, but is not limited to, guarantees or guarantee-type instruments backing financial claims such as outstanding securities, loans, and other financial obligations, and financial guarantee-type standby letters of credit.

(5) *Domestic depository institution* means all offices (branch and main, foreign and domestic) of insured institutions and other deposit-taking institutions chartered and headquartered in any of the several states of the United States of America, and District of Columbia, Puerto Rico, and United States territories and possessions with accounts or deposits insured by a federal agency or corporation. This definition includes mutual and stock savings banks, savings or building and loan associations (stock and mutual), commercial banks, cooperative banks, credit unions, and international banking facilities of domestic depository institutions. U.S. branches and agencies of foreign banks are excluded from this definition.

(6) *Fully phased-in capital requirement* means the amount of

capital required by this section at the end of the transition period.

(7) *High quality mortgage-related securities* means any mortgage-related security as defined in section 3(c)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78(c)(41).

(8) *Intangible assets* include, but are not limited to, goodwill, favorable leaseholds, core deposit value, and similar assets.

(9) *Interest-rate contracts* means any single currency interest-rate swap, basis swap, forward-rate agreement, interest-rate option purchased, or any other instrument that, in the opinion of the Board, gives rise to similar risks.

(10) *Mortgage-related securities* means any mortgage-related qualifying security under section 3(c)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78(c)(41), *provided that,* the rating requirements of that section shall not be considered for purposes of this definition.

(11) *Net equity-risk investment* means investments defined as equity-risk investments pursuant to § 563.9–8 of this part, (*Provided,* That paragraph (c)(1) of that section shall not apply for purposes of this section) plus any direct credit substitutes by an institution of the obligations of its subsidiaries or service corporations, plus an institution's ownership interest in an investment company, as defined in the Investment Company Act of 1940, that has any assets in its portfolio that would qualify as an equity-risk investment if held by an institution.

(12) *Perpetual preferred stock* means preferred stock without a fixed maturity date that cannot be redeemed at the option of the holder.

(13) *Qualifying mortgage loan* means a permanent 1–4 family residential first mortgage loan that is performing and not more than 90 days past due with a documented loan-to-value ratio not exceeding 80 percent (at origination) unless insured to at least an 80 percent loan-to-value ratio by private mortgage insurance provided by an issuer approved by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(14) *Residual characteristics* means interests similar to a multiclass pay-through obligation representing the excess cash flow generated from mortgage collateral over the amount required for the issue's debt service and ongoing administrative expenses presenting similar degrees of interest-rate/prepayment risk and principal loss risks.

(15) *State* means any one of the several states of the United States of America, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(16) *Total Assets* means the consolidated total assets figure required to be computed for and stated in an institution's most recent quarterly report.

(17) *Unconditionally cancelable* means, with respect to a commitment-type lending arrangement, including retail credit card lines, that an institution may, at any time, with or without cause, refuse to advance funds or extend credit under the facility.

(18) *United States Government or its agencies* means an instrumentality of the U.S. Government whose debt obligations are fully and explicitly guaranteed as to the payment of principal and interest by the full faith and credit of the United States Government.

(19) *United States Government-sponsored agency or corporation* means an agency or corporation originally established or chartered to serve public purposes specified by the United States Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the United States Government.

(c) *Minimum required amount.* (1) Except as otherwise provided in this section, an institution's minimum regulatory capital requirement for any calendar quarter shall be an amount equal to the sum of: (i) 6% of its risk-weighted assets as measured pursuant to paragraph (d) of this section; (ii) 50% of its interest-rate-risk exposure as measured pursuant to paragraph (e) of this section; and (iii) 3% of its collateralized borrowings as defined in paragraph (b)(2) of this section.

(2) Except as otherwise provided in this section, one-half of an institution's regulatory capital must consist of core equity capital as defined in § 561.13 of this subchapter.

(3) Except as provided in paragraph (c)(4) of this section, no institution may hold less than an amount equal to 2% of its total assets, as defined in paragraph (b)(16) of this section, in core equity capital as defined in § 561.13 of this subchapter.

(4) Any forbearances or other order specifically granted by the Board to an insured institution establishing a different composition of capital for that insured institution will govern that particular institution in accordance with the terms of the forbearance or order. To the extent that the forbearance or order does not specifically address components addressed in this section and § 561.13, the forbearance or order shall not be construed so as to supersede these regulatory provisions.

(d) *Risk-weighted Assets.* Risk-weighted assets equal total assets plus consolidated off-balance sheet items where each asset or item is multiplied by the appropriate risk-weight as set forth in paragraph (d)(1) of this section. Before an off-balance sheet item can be assigned a risk weight, it must be converted to an on-balance sheet credit equivalent amount in accordance with paragraph (d)(2) of this section. The risk weight assigned to a particular asset or on-balance sheet credit equivalent amount determines the percentage of that asset/credit equivalent amount that is included in the calculation of risk-weighted assets for purposes of this rule. Any asset added to an institution's capital requirement in computing capital requirements is not included as part of the institution's risk-weighted assets. The Office of Regulatory Activities of the Federal Home Loan Bank System may issue guidelines to clarify the assignment of items to risk categories.

(1) *On-Balance Sheet Assets*: The risk categories/weights for on-balance sheet assets are:

(i) *Zero percent Risk Weight (Category 1).* (A) Cash owned and held in all offices of an institution or in transit;

(B) Securities issued by the U.S. Government or its agencies whose obligations are fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the U.S. Government, except for mortgage-related securities or guarantees;

(C) Notes and obligations issued by the Corporation;

(D) Items collateralized by cash;

(E) All other claims (including loans and leases) on the U.S. Government or its agencies.

(ii) *20 percent Risk Weight (Category 2).* (A) Claims on United States Government-sponsored agencies;

(B) That portion of assets guaranteed by United States Government-sponsored agencies;

(C) That portion of assets collateralized by securities issued or guaranteed by United States Government-sponsored agencies;

(D) High quality mortgage-related securities, except for those with residual characteristics;

(E) General obligations and claims on or guaranteed by the full faith and credit of any state or any political subdivision thereof, within the meaning of 12 CFR 561.5a, and that portion of any claims guaranteed by any such state or political subdivision;

(F) Stock of Federal Home Loan Banks, Federal Reserve Banks, and

other United States Government corporations;

(G) Bonds issued by the Financing Corporation as defined at 592.1(f) of this chapter;

(H) Cash items in the process of collection;

(I) Balances due from and all claims on domestic depository institutions. This includes demand deposits and other transaction accounts, savings deposits and time certificates of deposit, federal funds sold, loans to other depository institutions, including overdrafts and term federal funds, holdings of the institution's own discounted acceptances for which the account party is a depository institution, holdings of bankers acceptances of other institutions and securities issued by depository institutions, except those that qualify as capital;

(J) Claims on, and balances due from, Federal Reserve Banks and Federal Home Loan Banks.

(iii) *50 percent Risk Weight (Category 3).* (A) Revenue bonds issued by any state or any political subdivision thereof, within the meaning of 12 CFR 561.5a, for which the underlying obligor is the state or political subdivision, but which are repayable solely from the revenues generated from the project financed through the issuance of the obligations;

(B) Qualifying mortgage loans;

(C) Non-high quality mortgage-related securities backed by qualifying mortgage loans, except for those with residual characteristics.

(iv) *100 percent Risk Weight (Category 4).* All assets not classified under paragraphs (d)(1) (i), (ii), (iii), (v) or (vi), or excluded pursuant to this paragraph (d), including, but not limited to:

(A) Consumer loans;

(B) Commercial loans;

(C) Home equity loans;

(D) one-to-four family residential loans not qualifying under paragraph (b)(13);

(E) multi-family mortgage loans;

(F) residential construction loans;

(G) Land loans, except those that qualify as equity-risk investments;

(H) Nonresidential construction loans, except those that qualify as equity-risk investments;

(I) Instruments issued by other depository institutions that qualify as capital of the issuer, except those that qualify as equity-risk investments;

(J) Obligations issued by any state or any political subdivision thereof, within the meaning of 12 CFR 561.5a, for the benefit of a private party or enterprise where that party or enterprise, rather than the issuing state or political subdivision, is responsible for the timely payment of principal and interest on the obligations, *e.g.*, industrial development bonds.

(K) Private-issue debt securities except for those qualifying under paragraph (d)(1)(ii) of this section;

(L) Fixed assets;

(M) Purchased or excess mortgage servicing rights;

(N) Mortgage-related securities with residual characteristics;

(O) Stock of U.S. government-sponsored corporations, except those that qualify as equity-risk investments.

(v) *200 percent risk weight* (Category 5).

(A) all intangible assets except for purchased or excess mortgage servicing rights;

(B) real estate owned by an insured institution or real estate in foreclosure.

(vi) *300 percent risk weight* (Category 6). All net equity-risk investments as defined in paragraph (b)(11) of this section.

(vii) *Ownership interests in investment companies.*

(A) Except as provided in paragraph (d)(1)(vii)(B) of this section, ownership interests in investment companies as defined in the Investment Company Act of 1940 are assigned to risk-weight categories under this section based upon the risk weight that would be assigned to the assets in the portfolio of the investment company.

(B) Where the portfolio of the investment company consists of assets that would fall into different risk-weight categories, the entire ownership interest of the institution will be assigned to the category of the asset with the highest risk weight in the portfolio.

(2) *Off-Balance Sheet Activities.* Risk weights for off-balance sheet items are determined by a two-step process. First, the face amount of the off-balance sheet item is multiplied by the appropriate credit conversion factor detailed in this section. This calculation translates the face amount of an off-balance sheet exposure into an on-balance sheet credit-equivalent amount. Second, the Credit-equivalent amount is then assigned to the appropriate risk category depending on the obligor (*i.e.*, the 20 percent risk category if the obligor is a domestic depository institution or the 100 percent risk category if the obligor is a private party), *Provided,* That the maximum risk-weight assigned to the credit-equivalent amount of an interest-rate contract is 50 percent. Guarantees and other direct credit substitutes by insured institutions of the obligations of their service corporations and subsidiaries that qualify as net equity-risk investments under paragraph (b)(11) of this section are assigned a credit-equivalent amount of the entire value of the direct credit substitute. The following are the credit conversion factors and the off-balance sheet times to which they apply.

(i) *100 percent credit conversion factor (Group A).* (A) Direct credit substitutes, including financial guarantee-type standby letters of credit that support financial claims on the account party. The face amount of a direct credit substitute is netted against the amount of any participations sold in that item except as otherwise provided below. The amount retained by the institution is converted to an on-balance sheet equivalent. If the originating institution remains liable to the beneficiary for the full amount of the standby letter of credit, should the participant fail to perform under its participation agreement, then the full amount of participations sold should be treated as a direct credit substitute. If participations are such that each participant is responsible only for its pro-rata share of the risk, and there is no recourse to the originating institution, the full amount of the participations sold is excluded from the originating institution's risk-weighted assets;

(B) Risk participations purchased in bankers' acceptances and participations purchased in direct credit substitutes;

(C) Assets sold under an agreement to repurchase and the full value of assets sold with recourse, to the extent these assets are not reported on the statement of condition, except where the amount of recourse liability retained by an institution is less than the capital requirement for credit-risk exposure, in which case capital must be maintained equal to the amount of credit-risk exposure retained. This category includes loan strips sold without direct recourse and the retention of the subordinated portion of a loan participation or package of loans;

(D) Forward agreements and other contingent obligations with a certain draw down, *e.g.*, legally binding agreements to purchase assets at a specified future date. On the date an institution enters into a forward agreement or similar obligation, it should convert the principal amount of the assets to be purchased at 100 percent as of that date and then assign this amount to the risk category appropriate to the obligor or guarantor of the item, or the nature of the collateral.

(ii) *50 percent credit conversion factor (Group B).* (A) Transaction-related contingencies, including, *inter alia,* performance bonds and performance-based standby letters of credit related to a particular transaction.

(B) Unused portions of loan commitments, except those qualifying under paragraph (d)(2)(iv)(A) of this section.

(iii) *20 percent credit conversion factor (Group C).* Trade-related contingencies, *i.e.*, short-term, self-liquidating instruments used to finance the movement of goods and collateralized by the underlying shipment. A commercial letter of credit is an example of such an instrument.

(iv) *Zero percent credit conversion factor (Group D):* (A) Unused commitments, if:

(*1*) They are unconditionally cancelable by the institution, and

(*2*) The institution has the contractual right to, and in fact does, make a separate credit decision based upon the borrower's current financial condition, before each drawing under the lending facility.

(B) Unused retail credit card lines that are unconditionally cancelable by the insitution.

(v) *Interest-rate contracts (Group E).* The credit-equivalent amount of such contracts is the current credit exposure. Current credit exposure is the replacement cost of the contract as determined by its current market value at the end of the reporting quarter. Contracts with negative market value are deemed to have no current credit exposure. This credit-equivalent amount is assigned to the 0%, 20% or 50% risk category, depending on the nature of the obligor. Any interest-rate contract that is traded on an exchange requiring the daily posting of maintenance variations margins are not considered in determining an institution's risk-weighted assets.

(e) *Interest-Rate-Risk Exposure.* An institution's interest-rate-risk exposure is the estimated decline in the market value of the portfolio equity of an institution that would result from an immediate and permanent 200 basis-point change in interest rates. This estimated decline in the market value of portfolio equity will equal the present value of the change in earnings that is projected to result from the 200 basis-point change in interest rates using standard present value formulas. An institution's interest-rate-risk exposure will be based on information supplied by each institution regarding the maturities and interest rates for assets and liabilities in their respective portfolios, including both on- and off-balance-sheet items, as well as general assumptions regarding such items as amortization schedules, prepayment speeds, discount rates, and the treatment of options. The Board will publish the assumptions to be used in calculating interest-rate-risk exposure for public comment prior to adoption and implementation.

(f) *Transition period.* (1) By January 1, 1991, all insured institutions must have the level of capital set forth in paragraph (c)(3) of this section.

(2) Institutions are required to attain 80% of their fully phased-in capital by January 1, 1991, *provided that* any de novo institution becoming insured after January 1, 1991 must meet the fully phased-in capital requirement at the time it becomes insured. By January 1, 1993, insured institutions must attain 100% of the minimum required amount calculated pursuant to paragraph (c) of this section.

(g) *Failure to meet minimum regulatory capital requirements.* If an insured institution fails to meet the regulatory capital requirement set forth in paragraph (c) of this section, the Corporation may, whether through enforcement proceedings or otherwise, require such institution to take one or more of the following corrective actions:

(1) Increase the amount of its regulatory capital to a specified level or levels;

(2) Convene a meeting or meetings with the Executive Director, Office of Regulatory Activities, or his designee, for the purpose of accomplishing the objectives of this section;

(3) Reduce the rate of earnings that may be paid on savings accounts;

(4) Limit the receipt of deposits to those made to existing accounts;

(5) Cease or limit the issuance of new accounts of any or all classes or categories, except in exchange for existing accounts;

(6) Cease or limit lending or the making of a particular type or category of loan;

(7) Cease or limit the purchase of loans or the making of specified other investments;

(8) Limit operational expenditures to specified levels;

(9) Increase liquid assets and maintain such increased liquidity at specified levels; or

(10) Take such other action or actions as the Corporation may deem necessary or appropriate for the protection of the Corporation, the insured institution, or depositors or investors in the insured institution.

(h) *Charging of losses to reserves.* Losses charged to reserves shall exhaust all regulatory capital accounts before constituting a charge against mutual capital certificates.

(i) *Transactions for purposes of evasion.* An institution's Principal Supervisory Agent may disregard any transaction entered into primarily for the purpose of reducing the minimum required amount of regulatory capital or otherwise evading the requirements of this section. An institution may seek review and final decision by the Corporation of any such determination.

§ 563.13–2 [Removed]

5. Section 563.13–2 is removed and reserved.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–29303 Filed 12–22–88; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–170–AD]

Airworthiness Directives: McDonnell Douglas Model DC–9 Series Airplanes, Including Model DC–9–80 Series and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede two existing airworthiness directives (ADs), applicable to McDonnell Douglas Model DC–9 series airplanes, including Model DC–9–80 series and Model MD–88 airplanes, which currently require inspection, and repair or replacement, as necessary, of the dorsal fin attach angles. Those actions were prompted by reports from operators of cracks found in the dorsal fin attach angles. This action would rescind the current terminating action, require repetitive inspections, and provide for a new terminating action. This action is prompted by reports of new fatigue cracks found in the dorsal fin attach angles. This condition, if not corrected, could compromise the structural integrity of adjacent structure and cause subsequent failure of the empennage section.

DATE: Comments must be received no later than February 17, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rule Docket No. 88–NM–170–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas

Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Los Angeles Aircraft Certification Office at 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5321.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rule Docket No. 88–NM–170–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

On October 19, 1982, FAA issued AD 82–10–51–R3, Amendment 39–4481 (47 FR 47803; October 28, 1982), to require structural inspections, and repair or replacement, as necessary, of the fuselage skin under the dorsal fin of McDonnell Douglas Model DC–9 series airplanes.

Since issuance of AD 82–10–51–R3, DC–9 operators have reported cracks on the dorsal angles, P/N 5939711–1, -501 and -502. These angles were installed during production or as terminating action to AD 82–10–51–R3. Laboratory analysis at McDonnell Douglas has determined that the cracks found in these angles were attributed to metal fatigue caused by a fastener short edge distance at the taper intersect and preload, due to the absence of shims during the installation of the angles.

On August 19, 1988, the FAA issued telegraphic AD T88–17–51, [and subsequently, Amendment 39–6016 (53 FR 35306; September 13, 1988)] applicable to all Model DC–9 series airplanes, including Model DC–9–80 series and Model MD–88 airplanes, which required a one-time visual inspection to assure that the dorsal fin attach angles are free from cracks, and provided instructions for repair or replacement, as necessary. Inspection and repair or replacement of the angles, if necessary, will minimize the possibility of compromising the structural integrity of adjacent structure and causing subsequent fuselage skin cracks.

The FAA has reviewed and approved McDonnell Douglas DC–9 Alert Service Bulletin A53–223, dated November 30, 1988, and McDonnell Douglas Service Rework Drawing SR09530092, Revision A, dated August 26, 1988, which describe procedures for inspection and repair of cracks along the dorsal attach angles.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD's 82–10–51–R3 and 88–17–51 to: (1) Rescind the terminating action provided by AD 82–10–51, (2) reinstitute required repetitive inspections; and (3) furnish the necessary instructions to install a new terminating action in accordance with the service rework drawing previously mentioned. Although the inspection requirements of AD 88–17–51 would remain unchanged in this document, the FAA considers it logical to supersede AD 88–17–51 and incorporate its requirements into one document (this action) to provide the operators with a single source for AD accountability.

There are approximately 1,520 Model DC–9 series airplanes of the affected design in the worldwide fleet. It is estimated that 824 airplanes of U.S. registry would be affected by this AD, that it would take approximately 47 manhours per airplane to accomplish the required inspections, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,549,120.

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

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291; and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

2. By superseding AD 82–10–51–R3, Amendment 39–4481 (47 FR 47803; October 28, 1982), and AD 88–17–51, Amendment 39–6016 (53 FR 35306; September 13, 1988), with the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–9 series airplanes, including Model DC–9–80 series and Model MD–88, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural failure of the empennage section, accomplish the following:

A. For airplanes equipped with dorsal fin two-piece attach angles, part numbers 5912188–27, -28, -29, and -30, accomplish the following:

1. Within 100 landings after May 17, 1982 (the effective date of Amendment 39–4481), visually inspect, from inside the airplane,

cracks in the area adjacent to the following fuselage stations appropriate to the model being inspected:

Series 10 and 20: Fuselage Stations (FS) 901.400;
Series 30 and C–9: FS 1080.400;
Series 40: FS 1156.400;
Series 50: FS 1251.400; and
Series 80: FS 1422.400.

2. If no cracks are found, accomplish the interim modification in accordance with McDonnell Douglas Service Sketch 3414, Revision D, dated May 11, 1982 (herein after referred to as 3414D), prior to the accumulation of 50 landings after June 7, 1982, for DC–9 and C–9 series aircraft, fuselage numbers 1 through 950; and prior to the accumulation of 400 landings from May 17, 1982, for all other affected airplanes. Verification that no cracks exist must be repeated immediately prior to accomplishment of the interim modification. The visual inspection required by paragraph A.1., above, must be repeated at intervals not to exceed 2,000 landings after the accomplishment of the interim modification. Prior to accumulating 4,000 landings from May 17, 1982, accomplish the terminating actions specified in paragraph D.1., below.

3. If cracks are found, before further flight, accomplish the interim modification described in McDonnell Douglas Service Sketches 3413, Revision J, dated March 3, 1983 (hereinafter referred to as 3413J) and 3414D, and repeat the visual inspection required by paragraph A.1., above, thereafter at intervals not to exceed 2,000 landings. Prior to accumulating 4,000 landings from May 17, 1982, accomplish the terminating action specified in paragraph D.2. below.

B. For airplanes with dorsal fin one-piece attach angle, part number 5912188–5 or -6, accomplish the following:

1. Within 500 landings from May 17, 1982, for airplanes with less than 22,500 landings; and within 100 landings from May 17, 1982, for airplanes with 22,500 or more landings; conduct the visual inspections, from inside the airplane, in accordance with paragraph A.1., above. In addition, conduct a visual inspection of the dorsal fin attach angle, from the outside of the airplane, for cracks.

2. If no angle cracks are found, conduct an eddy current inspection of the angle in accordnace with McDonnell Douglas DC–9 Alert Service Bulletin A53–154, Revision 4, dated August 24, 1982; or conduct a dye penetrant inspection of the angle, within 1,000 additional landings, and thereafter at intervals not to exceed 3,000 landings, until the terminating action specified in paragraph D.1., below, is accomplished.

3. If skin cracks are found, before further flight, accomplish the modification described in McDonnell Douglas Service Sketch 3413J, and conduct eddy current inspections of the angle in accordance with paragraph B.2., above, thereafter at intervals not to exceed 3,000 landings, until the terminating action specified in paragraph D.1., below, is accomplished.

4. If dorsal fin attach angle cracks are found, accomplish the repair described in DC–9 Structural Repair Manual, Chapter 53–05, Figure 19, prior to the accumulation of 50 landings from June 7, 1982, for Model DC–9 and C–9 series airplanes fuselage numbers 1 through 896; and prior to the accumulation of 400 landings from May 17, 1982, for all other affected airplanes. Verification that no skin cracks exist must be repeated immediately prior to accomplishment of the repair.

5. A dye penetrant or eddy current inspection of the angle in accordance with paragraph B.2., above, must be repeated at intervals not to exceed 3,000 landings after the accomplishment of the repair until the terminating action specified in paragraph D.1., below, is accomplished. As an alternative to this procedure, accomplish the interim modification described in McDonnell Douglas Service Sketch 3414D, in accordance with the compliance schedule specified in paragraph B.4., above. The visual inspection required by paragraph B.1., above, must be repeated at intervals not to exceed 2,000 landings after the accomplishment of the interim modification. Prior to the accumulation of 4,000 landings from May 17, 1982, accomplish the terminating action specified in paragraph D.1., below.

C. For airplanes equipped with dorsal fin attach angle part number 5939711–1, –2, –501, or –502, accomplish the following:

1. Prior to the accumulation of 7,500 landings since installation of the above attach angle, or within 100 landings after August 19, 1988 (the effective date of telegraphic AD T88–17–51), whichever occurs later, unless previously accomplished within the last 2,000 landings, conduct a visual inspection of both angles, RH and LH, for cracks.

2. If no angle cracks are found, conduct an eddy current inspection of the angle in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A53–223, dated November 30, 1988, or conduct a dye penetrant inspection of the angle at intervals not to exceed 2,000 landings, until such time as the angles are replaced in accordance with paragraph D.1., below.

3. If dorsal fin attach angle cracks are found, before further flight, replace or modify cracked dorsal fin attach angle(s) in accordance with McDonnell Douglas Alert Service Bulletin A53–223, dated November 30, 1988.

4. If skin cracks are found, before further flight, accomplish the modification in accordance with McDonnell Douglas Service Sketch 3413J.

D. Terminating Action. The following constitutes terminating action for the requirements of this AD:

1. Replacement or modification of the dorsal fin attach angle in accordance with McDonnell Douglas Alert Service Bulletin A53–223 dated November 30, 1988, constitutes terminating action for the inspections required by this AD.

2. Upon accumulation of 30,000 landings after accomplishing the replacement or modification described in paragraph D.1., above, resume repetitive inspections in accordance with paragraph C., above, at intervals not to exceed 2,000 landings.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on December 12, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–29483 Filed 12–22–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–ACE–13]

Proposed Cancellation of Control Zone; Hays, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to cancel the control zone for the Hays, Kansas, Municipal Airport. This action is necessary because the weather observation reporting requirements justifying the designation of the control zone at this airport have not been met.

DATE: Comments must be received on or before January 27, 1989.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic

Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of the Federal Aviation Regulations (14 CFR Part 71) which would cancel the control zone for the Hays, Kansas, Municipal Airport. One of the requirements for the designation of a control zone is that the required weather observations must be disseminated. The Automated Flight Service Station (AFSS), Wichita, Kansas, conducted a survey and has determined that less than one half of the required weather observations at the Hays, Kansas, Municipal Airport are being distributed. Accordingly, since a key requirement for the designation of a control zone is not being met, the FAA is cancelling the Hays, Kansas, control zone.

Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, control zones.

The proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Hays, Municipal Airport, Kansas [Removed]

Issued in Kansas City, Missouri, on December 13, 1988.

Billy G. Peacock,

Acting Manager, Air Traffic Division.

[FR Doc. 88-29488 Filed 12-22-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ACE-21]

Proposed Alteration of Transition Area; Estherville, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to alter the transition area at Estherville, Iowa. An instrument approach procedure for the Estherville, Iowa, Municipal Airport based on the Swan Lake Non-directional Radio Beacon (NDB) has been cancelled. Accordingly, that portion of the Estherville transition area airspace designed to protect this NDB is no longer required and should be deleted from the present transition area description.

DATE: Comments must be received on or before January 27, 1989.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri. An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426–3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on mailing list for further NPRMS should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.181, of the Federal Aviation Regulations (14 CFR Part 71) by altering the transition area at Estherville, Iowa. The Swan Lake NDB serving the Estherville Municipal Airport has been cancelled. Therefore, that portion of the Estherville transition area designation designed to protect this NDB is no longer required and the Estherville transition area should be redescribed to delete this airspace.

Section 71.181 of Part 71 of Federal Aviation Regulations was republished in Handbook 7400.6D, January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS.

1. The authority citation of Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Estherville, Iowa [Revised]

That airspace extending upward from 700 feet above the surface within a 6-½-mile radius of the Estherville Municipal Airport (lat. 43°24'15"N., long. 94°44'45"W.); within 3 miles each side of the 175° radial from the Estherville VOR (lat. 43°24'37"N., long. 94°44'20"W.), extending from the 6-½-mile radius area to 8-½ miles south of the VOR; within 3 miles each side of the 340° radial from the Estherville VOR extending from the 6-½-mile radius area to 8-½ miles north of the VOR, excluding that portion that overlies the Emmetsburg, Iowa, Transition Area.

Issued in Kansas City, Missouri, on December 13, 1988.

Billy G. Peacock,

Acting Manager, Air Traffic Division.

[FR Doc. 88–29489 Filed 12–22–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–ACE–22]

Proposed Alteration of Transition Area; Sac City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to alter the transition area at Sac City, Iowa. An instrument approach procedure for the Sac City Municipal Airport, utilizing the 138° bearing of the Sac City Non-directional Radio Beacon (NDB) has been cancelled. Accordingly, that portion of the Sac City transition area airspace designed to protect this NDB is no longer required and should be deleted from the present transition area description.

DATE: Comments must be received on or before January 27, 1988.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRMS

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426–3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.181, of the Federal Aviation Regulations (14 Part 71) by altering the transition area at Sac City, Iowa, An instrument approach utilizing the 138° bearing of the Sac City, Iowa NDB has been cancelled. Therefore, that portion of the Sac City transition area designation designed to protect this NDB is no longer required, and the Sac City transition area should be redescribed to delete this airspace.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and

routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the FAR (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Sac City Iowa [Revised]

That airspace extending upward from 700 feet above the surface within a 6½-mile radius of the Sac City Municipal Airport (lat. 42°22'30" N., long. 94°58'45" W.), and within 3 miles each side of the 172° bearing from the Sac City NDB (lat. 42°22'22" N., long. 94°58'51" W.), extending from the 6½-mile radius area to 8½ miles south of the NDB.

Issued in Kansas City, Missouri, on December 13, 1988

Billy G. Peacock,

Acting Manager, Air Traffic Division.

[FR Doc. 88–29490 Filed 12–22–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–ACE–23]

Proposed Alteration of Transition Area; Vinton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the transition area at Vinton, Iowa. An instrument approach procedure for the Vinton Veterans Memorial Airpark, Vinton, Iowa, utilizing the 310° bearing of the Garrison Non-directional Radio Beacon (NDB) has been cancelled. Accordingly, that portion of the Vinton, Iowa, transition area airspace designated to protect this NDB is no longer required and should be deleted from the present transition area description.

DATE: Comments must be received on or before January 27, 1989.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540. FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426–3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.181, of the Federal Aviation Regulations (14 CFR Part 71) by altering the transition area at Vinton, Iowa. An instrument approach utilizing the 310° bearing of the Garrison NDB has been discontinued. Therefore, that portion of the Vinton, Iowa, transition area designation designed to protect this NDB is no longer required and the Vinton transition area should be redescribed to delete this airspace.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D. January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS.

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Vinton, Iowa [Reported]

That airspace extending from 700 feet above the surface within a 5-mile radius of the Vinton Veterans Memorial Airpark (lat. 42°13'03"N., long. 92°01'43"W.) and within 2 miles each side of the Garrison NDB (lat. 42°13'18"N., long. 92°01'12"W) 103° bearing, extending from the 5-mile radius area to 7 miles east of the airport.

Issued in Kansas City, Missouri, on December 13, 1988.

Billy G. Peacock,

Acting Manager, Air Traffic Division.

[FR Doc. 88-29487 Filed 12-22-88; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 89-1, Notice No. 1]

National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices; Work Zone Traffic Control Standards Revision

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR 655, Subpart F and recognized as the national standard for traffic control devices on all public roads. The FHWA has been considering options for restructuring and reformatting Part VI of the MUTCD with the objective of improving the application of effective traffic control devices in a construction zone. This notice makes a Public Information Package covering recommended changes to Part VI available to the public for review and comment.

DATE: Comments on action and materials cited in this notice must be received on or before March 15, 1989. Comments received after that date will be considered to the extent practicable.

ADDRESS: Submit written, signed comments, to FHWA Docket 89-1, Notice No. 1, Federal Highway Administration, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION OR A COPY OF THE PUBLIC INFORMATION PACKAGE CONTACT: Mr. Philip O. Russell, Office of Traffic Operations, (202) 366-2184, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The Manual on Uniform Traffic Control Devices (MUTCD) is approved by the Federal Highway Administration as the National Standard for highways open to public travel. Part VI "Traffic Controls For Street and Highway Construction and Maintenance Operations" of the MUTCD sets forth basic principles and prescribes standards for traffic control during construction and maintenance operations on streets and highways in the United States. It has been determined that Part VI needs to be revised to better serve the highway community. The title of Part VI is being changed to "Traffic Controls for Street and Highway Construction, Maintenance, Utility and Emergency Operations." A contractor has been retained by the FHWA to review and prepare recommended changes to Part VI. The text of Part VI is to be expanded to include "utility" and "emergency" subject areas as well as to include recent research results and other areas not adequately covered in these documents. Also improved graphics will be added along with the clarification of ambiguous language. This notice announces the availability of a Public Information Package that provides a detailed summary of the contractor's recommended changes to Part VI. The contractor will be working very closely with the FHWA's Office of Traffic Operations to insure that all of the comments are appropriately considered. This notice is being published to inform the public of the status of the contract to rewrite Part VI of the MUTCD and to request comments on the work done thus far.

The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for $44.00 (domestic price) from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 950-036-00000-1. The purchase of a MUTCD includes a subscription service for adopted revisions. The FHWA both receives and initiates requests for amendments to the MUTCD. The MUTCD is a promulgation of uniform national traffic control devices (TCDs) standards and applications for use on all streets and highways open to public travel regardless of type or class or the governmental agency having jurisdiction.

Issued on December 16, 1988.

Robert E. Farris,

Federal Highway Administrator.

[FR Doc. 88-29524 Filed 12-22-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 53 and 56

[EE-154-78]

Lobbying by Public Charities; Lobbying by Private Foundations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document revises proposed regulations published in 1986 and also supersedes portions of proposed regulations published in 1980. The proposed regulations relate to lobbying expenditures by certain tax-exempt public charities and by private foundations. Changes to the tax laws governing lobbying by public charities were made by the Tax Reform Act of 1976 (the "Act"). The proposed regulations will provide organizations the guidance needed to comply with the Act, and will affect public charities electing the expenditure test under section 501(h) of the Internal Revenue Code of 1986 ("electing public charities"). The proposed regulations will also provide organizations with clearer guidance needed to comply with the requirements of section 4945 (relating to lobbying expenditures by private foundations). Finally, in light of the unique charitable and educational purposes shared by all organizations described in section 501(c)(3) as well as the similarity of the statutory schemes governing lobbying by private foundations and by electing public charities, the regulations ensure that the rules regarding lobbying by private foundations are consistent with the rules regarding lobbying by electing public charities. However, these proposed regulations are not applicable to lobbying by ineligible or nonelecting public charities, which continue to be covered by the "substantial part" test regarding lobbying activities.

DATES: Written comments and/or requests to appear (with an outline of the oral comments to be presented) at a public hearing scheduled for Monday, April 3, 1989, at 10:00 a.m., and continuing, if necessay, at the same time on Tuesday, April 4, 1989, must be

delivered or mailed by March 23, 1989. The proposed regulations published in the **Federal Register** on November 5, 1986 (51 FR 40211), as amended by this document, are proposed to be effective for tax years beginning after the publication of final regulations.

ADDRESS: Send comments, requests to appear at the public hearing, and outlines of oral comments to be presented at the public hearing to: Commissioner of Internal Revenue, Attention: CC:CORP:T:R (EE–154–78), Washington, DC 20224. The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerome P. Walsh Skelly of the Office of Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:CORP:T:R (EE–154–78), telephone 202–535–3818 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Prior Law

A publicly supported charity is not an organization described in section 501(c)(3) ("a section 501(c)(3) organization") if its lobbying activities are more than an insubstantial part of its activities. If it is determined that a substantial part of a publicly supported section 501(c)(3) organization's activities consists of attempts to influence legislation, the organization will lose its tax-exempt status as a charity. Before the passage of the Tax Reform Act of 1976, there was uncertainty about what constituted a "substantial part" of an organization's activities. Congress was aware both of the severity of loss of tax exemption as a sanction and of the belief that the vague standards of the substantial part test tended to create uncertainty and allow subjective and selective enforcement.

Expenditure Test

Under sections 501(h) and 4911, which were added by section 1307 of the Tax Reform Act of 1976, certain publicly supported section 501(c)(3) organizations may elect to spend up to a certain percentage of their "exempt purpose expenditures" to influence legislation without incurring tax or losing qualification for tax-exempt status. Thus, if an eligible organization elects the "expenditure test" of sections 501(h) and 4911, specific statutory dollar limits on the organization's lobbying expenditures apply. Under the expenditure test, there are limits both upon the amount of the organization's grass roots lobbying expenditures and upon the total amount of the organization's direct and grass roots lobbying expenditures. In contrast to the substantial part test, however, the expenditure test imposes no limit on lobbying activities that do not require expenditures, such as certain unreimbursed lobbying activities conducted by bona fide volunteers. In general, if either or both of the expenditure test limits are exceeded, a 25 percent excise tax is imposed upon the greater of: (1) The amount by which the organization's grass roots lobbying expenditures exceed its grass roots lobbying limit, or (2) the amount by which an organization's total direct and grass roots lobbying expenditures exceed its total lobbying limit. Additionally, if an organization's grass roots expenditures or total lobbying expenditures normally exceed 150 percent of the applicable limitation on its lobbying expenditures, the organization will cease to be described in section 501(c)(3), and, therefore, will cease to be exempt from income tax and will no longer be eligible to receive tax deductible charitable contributions.

Background

On November 25, 1980, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 162, 6001, and 6033 of the Internal Revenue Code of 1954 (relating to grass roots lobbying expenditures by business corporations) and to the Foundation and Similar Excise Taxes (26 CFR Part 53) under section 4945 of the Internal Revenue Code of 1954 (relating to lobbying expenditures by private foundations) (45 FR 78167) ("the 1980 NPRM").

On November 5, 1986, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1), Temporary Income Tax Regulations under the Tax Reform Act of 1976 (26 CFR Part 7), Estate Tax Regulations (26 CFR Part 20), Gift Tax Regulations (26 CFR Part 25), and Foundation and Similar Excise Taxes (26 CFR Part 53), and also proposed regulations on Public Charity Excise Taxes (26 CFR Part 56), under sections 170, 501(c)(3), 501(c)(4), 501(h), 504, 2055, 2522, 4911, 4945, 6001, 6011, and 6033 of the Internal Revenue Code of 1954 (51 FR 40211) ("the 1986 NPRM").

This document supersedes a portion of the 1980 NPRM and revises portions of the 1986 NPRM. Specifically, it supersedes that portion of the 1980 NPRM that proposed amendments to the regulations under section 4945 of the Internal Revenue Code (relating to lobbying expenditures by private foundations). It revises portions of the 1986 NPRM relating to proposed regulations on Public Charity Excise Taxes (26 CFR Part 56) under section 4911 of the Internal Revenue Code. In addition, it revises portions of the 1986 NPRM that proposed amendments to the regulations under sections 501(h) and 4945. Thus, where this document proposes to amend any portion of the regulations under section 501(h) or section 4945, the proposed amendment in this document supersedes any proposed amendment of that portion of the regulations that was published in the 1986 NPRM.

The amendments to the Foundation and Similar Excise Taxes are necessary to provide guidance to organizations that must comply with the requirements of section 4945 and will also ensure that the regulations regarding lobbying by private foundations are consistent with the regulations regarding lobbying by electing public charities. The amendments proposed on November 5, 1986, as amended in this document, are proposed to conform the regulations to section 1307 of the Tax Reform Act of 1976 (90 Stat. 1720) as well as to ensure consistency between the similar schemes governing lobbying expenditures by electing public charities and by private foundations. The proposed regulations are to be issued under the authority in sections 501(h)(6), 504(b), 4911(f)(3) and 7805 of the Internal Revenue Code of 1986 (26 U.S.C. 501(h)(6), 504(b), 4911(f)(3), 7805).

Public Comment Process of Previous Notices of Proposed Rulemaking

Several thousand written comments were received concerning the 1986 NPRM. Numerous written comments were also received concerning the 1980 NPRM. In addition, on May 11 and 12, 1987, the Internal Revenue Service ("Service") held public hearings concerning the 1986 NPRM.

The numerous public comments and the two days of public hearings have been helpful in formulating this revised notice of proposed rulemaking. In addition, possible revisions of the controversial sections of the proposed regulations have been discussed at length with the Commissioner's Exempt Organizations Advisory Group (comprised of legal and other representatives of exempt organizations as well as academics) at public meetings held on September 17, 1987, and February 26, 1988.

Every effort has been made in the drafting of this revised notice of proposed rulemaking to be as responsive as possible to the many comments received from the public. This effort required a careful balancing of the statutory mandate limiting the amount of lobbying expenditures by section 501(c)(3) organizations with the desire of the affected organizations and individuals to involve themselves in the public policymaking process to the greatest extent consistent with that statutory mandate. Extensive revisions have been made to the prior notices of proposed rulemaking in an effort to achieve this difficult balance. For example, the proposed regulations contain a definition of grass roots lobbying that is less inclusive than is permitted by the broad statutory language defining grass roots lobbying.

Numerous portions of the 1986 NPRM were not controversial, however, and gave rise to little or no public comment. Those portions of the proposed regulations have been retained and are, in general, not affected by the revisions proposed in this document. For example, proposed §§ 1.501(h)–1 and 1.501(h)–3, proposed in the 1986 NPRM, describe the application of the expenditure test to electing public charities, including that an electing public charity may undertake a certain amount of lobbying expenditures without being subject to tax or having its tax-exempt status revoked. With minor exceptions, these portions of the proposed regulations are not affected by the revisions proposed in this document.

Summary of Comments Received on the Previous Notices of Proposed Rulemaking and Explanation of Provisions

1. Proposed Effective Date

Many of the comments on the 1986 NPRM's proposed regulations regarding lobbying expenditures by electing public charities opposed the proposed effective date of the proposed regulations (generally for tax years beginning after December 31, 1976). On April 9, 1987, the Service issued an information release, IR–87–49, stating that final regulations will be effective only prospectively from the date of publication of final regulations. Accordingly, the amendments proposed in this document and in the 1986 NPRM, as revised by this document, are hereby proposed to be effective on a prospective-only basis for tax years beginning after the date of publication of final regulations.

2. Definition of Grass Roots Lobbying

The 1986 NPRM proposed to define grass roots lobbying as a communication that:

(i) Pertains to legislation being considered by a legislative body, or seeks or opposes legislation,

(ii) Reflects a view with respect to the desirability of the legislation (for this purpose, a communication that pertains to legislation but expresses no explicit view on the legislation shall be deemed to reflect a view on legislation if the communication is selectively disseminated to persons reasonably expected to share a common view of the legislation), and

(iii) Is communicated in a form and distributed in a manner so as to reach individuals as members of the general public, that is, as voters or constituents, as opposed to a communication designed for academic, scientific, or similar purposes. A communication may meet this test even if it reaches the public only indirectly, as in a news release submitted to the media.

Most commentators expressed opposition to the breadth of the definition of grass roots lobbying contained in the 1986 NPRM. The primary objections were that the definition did not require a communication to have a "call to action" or some other encouragement to action on the part of the communication's recipients; that the definition considered an otherwise balanced discussion of a piece of legislation to reflect a view on that legislation based on the persons to whom the discussion was disseminated; and that the definition did not require the legislation to be pending or imminently to be introduced. Several commentators also expressed concern that the third part of the proposed definition of grass roots lobbying, regarding communications that reach the public only indirectly, could include testimony on a bill before a legislative committee if the press was in attendance.

In response to the numerous comments on the 1986 NPRM, this document substantially revises the proposed definition of grass roots lobbying. The modifications include the removal of the phrases "pertains to," "seeks or opposes legislation," and "selectively disseminated to persons reasonably expected to share a common view of the legislation."

In place of the definition contained in the 1986 NPRM, this document proposes to define the term "grass roots lobbying communication" (except with regard to a limited number of mass media communications discussed below) to include only those communications that: (1) Refer to specific legislation; (2) reflect a view on such legislation; and (3) encourage the recipient of the communication to take action with respect to such legislation.

Thus, under the rules proposed in this document, a communication is not a grass roots lobbying communication unless the communication's reference to legislation is to "specific legislation." As indicated in this document, this term includes both legislation that has already been introduced in a legislative body and a specific legislative proposal that the organization either supports or opposes.

The rules proposed in this document also indicate that a communication is not a grass roots lobbying communication unless it encourages its recipients to take action with respect to the specific legislation. As indicated in this document, a communication encourages its recipients to take action only if the communication:

(1) States that the recipient should contact a legislator or an employee of a legislative body, or should contact any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of urging contact with the government official or employee is to influence legislation);

(2) States the address, telephone number, or similar information of a legislator or an employee of a legislative body;

(3) Provides a petition, tear-off postcard or similar material for the recipient to communicate his or her views to a legislator or an employee of a legislative body, or to any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of so facilitating contact with the government official or employee is to influence legislation); or

(4) Specifically identifies one or more legislators who will vote on the legislation as: (a) Opposing the communication's view with respect to the legislation; (b) being undecided with respect to the legislation; (c) being the recipient's representative in the legislature; or (d) being a member of the legislative committee that will consider the legislation. Encouraging the recipient to take action under this fourth category does not include naming the main sponsor(s) of the legislation for purposes of identifying the legislation.

Communications that are described in categories (1) through (3) above are deemed not only to encourage action

with respect to legislation, but also to "directly encourage" action with respect to legislation. This distinction is important because only communications in category (4), which encourage the recipient to take action with respect to legislation without "directly encouraging" such action, may be within the exception for nonpartisan analysis, study or research and, as a result, not be grass roots lobbying communications.

This revised definition is a major modification to the definition proposed in the 1986 NPRM. The lobbying definition contained in this document (with an exception for a limited number of mass media communications discussed below) not only requires that the communication contain a reference to specific legislation, but also requires that the communication both reflect a view with respect to such legislation and encourage the recipient to take action. Under such a definition, communications could advocate or oppose specific legislation and not be considered lobbying, so long as the communications do not encourage the recipients to take action with respect to the legislation. The 1986 NPRM, in contrast, included within the definition of lobbying certain communications that did not encourage the recipient to take action with respect to legislation. Also in contrast to this document's definition, the definition proposed in 1986 provided that a communication not directly taking a position on legislation could be lobbying based upon the selective dissemination of the communication.

The one exception to the above three-part definition of lobbying is a special rule for certain mass media communications. If within two weeks before a vote by a legislative body, or committee thereof, on a highly publicized piece of legislation, an organization makes a communication in the mass media that reflects a view on the general subject of such legislation and either (1) refers to the highly publicized legislation or (2) encourages the public to communicate with their legislators on the general subject of such legislation, then the communication will be presumed to be a grass roots lobbying communication. An organization can rebut this presumption by demonstrating that the communication is a type of communication regularly made by the organization in the mass media without regard to the timing of legislation (that is, a customary course of business exception) or that the timing of the communication was for reasons unrelated to the upcoming legislative action. For purposes of this special rule, the term "mass media" means television, radio, and certain general circulation newspapers and magazines. Any mass media communication that is not made within two weeks before a legislative vote on a highly publicized piece of legislation will be tested by the general three-part test for grass roots lobbying.

Under the proposed regulations, testimony on a bill before a legislative committee, which is often a direct lobbying communication, is not grass roots lobbying merely because the testimony indirectly reached the public through press coverage of the organization's testimony.

In addition to the rules discussed above, numerous examples are provided to assist organizations in evaluating the facts and circumstances of each individual case. In general, those examples amplify the rule that a communication that advocates or opposes specific legislation is generally not a grass roots lobbying communication unless it encourages the recipient to take action with respect to the legislation, such as by requesting recipients to contact legislators or by providing the names of undecided legislators.

As noted above, under the proposed regulations, a communication will be considered to encourage recipients to take action with respect to legislation only if the communication is described in one of the four listed categories. The Service will, however, continue to study communications and, if other methods of encouraging recipients to take action are identified, will propose amendments to the regulations.

In order to achieve the balance between the statutory mandate limiting expenditures for grass roots lobbying and the desire of many charitable organizations to participate in the public policy process, the definition of grass roots lobbying proposed in this document is a less inclusive definition than is permitted by the broad statutory language defining grass roots lobbying. The Service believes that any definition of grass roots lobbying less inclusive than that proposed in this document could, in effect, eliminate the statutory limitation Congress has placed on grass roots lobbying expenditures by electing public charities.

3. Definition of Direct Lobbying

Some commentators criticized the definition of direct lobbying contained in the 1986 NPRM in that the definition was based on the grass roots lobbying definition. The primary objections were that the definition considered an otherwise balanced discussion of a piece of legislation to reflect a view on legislation based on the dissemination of the communication, and that the definition did not require the legislation to be pending or imminently to be introduced.

This document proposes to modify the definition of direct lobbying by removing the phrases "pertains to," "seeks or opposes legislation," and "selectively disseminated to persons reasonably expected to share a common view of the legislation." In place of the definition contained in the 1986 NPRM, this document proposes to define the term "direct lobbying communication" to include only those communications to legislators or certain other government officials that (1) refer to specific legislation, and (2) reflect a view on such legislation.

4. Allocation Rules

Many commentators expressed concern about the allocation rules proposed in the 1986 NPRM, particularly the special rules relating to advertising, fundraising, and mixed lobbying purposes.

This document revises the proposed allocation rules. Under the allocation rule proposed in this document, a mixed grass roots and direct lobbying expenditure is to be treated as a grass roots expenditure, except to the extent that the organization demonstrates that the expenditure was incurred *primarily* (rather than the *solely* standard contained in the 1986 NPRM) for direct lobbying purposes, in which case a reasonable allocation shall be made between the direct and grass roots lobbying purposes served by the communication.

This document removes the two special rules with respect to fundraising and advertising contained in the 1986 NPRM. For lobbying communications that also serve a bona fide nonlobbying purpose, this document proposes two different allocation rules. Which rule is used depends upon whether the communication is sent primarily to members or nonmembers.

For communications that are sent primarily to bona fide members (that is, for communications sent to more members than nonmembers), an organization must make a reasonable allocation between the amount expended for the lobbying purpose and the amount spent for the nonlobbying purpose. Including as a lobbying expenditure only the amount expended for the specific sentence or sentences that encourage the recipient to action is not considered a reasonable allocation.

For lobbying communications that are not sent primarily to bona fide members, all costs attributable to those parts of the communication that are on the same specific subject as the lobbying message must be included as lobbying expenditures for allocation purposes. Under the rules proposed in this document, however, the costs attributable to parts of a lobbying communication that are not on the same specific subject as the lobbying message are not considered lobbying expenditures. Whether or not a portion of a communication is on the same specific subject as the lobbying message will depend on the surrounding facts and circumstances. In general, a portion of a communication will be on the same specific subject as the lobbying message if that portion discusses an activity that would be directly affected by the proposed legislation that is the subject of the lobbying message. Moreover, discussion of the background or consequences of either the proposed legislation or of an activity directly affected by the proposed legislation will also be considered to be on the same specific subject as the lobbying communication.

5. Research and Preparation Costs

Some commentators expressed concern that, under the 1986 NPRM, the research and preparation costs incurred in producing a nonlobbying communication could be treated as a lobbying expenditure because of subsequent use of the communication in a lobbying campaign by that organization, a related organization, or an unrelated organization.

This document attempts to make clear that the costs of researching and preparing nonlobbying communications would be treated as lobbying expenditures only in cases of abuse. Except in such cases, the regulations proposed in this document would not treat as lobbying expenditures the research and preparation costs of a communication that is not itself a lobbying communication merely because the communication was also used in a lobbying campaign.

A communication that reflects a view on specific legislation but that is not a lobbying communication will be treated as a lobbying communication because of subsequent use of the communication in a lobbying effort only if the primary purpose of the organization in preparing the communication was for use in lobbying. The primary purpose of an organization in preparing a document is not lobbying if, prior to or contemporaneously with the use of the communication in lobbying, the organization makes a substantial nonlobbying distribution of the communication.

Where a communication's nonlobbying distribution is not substantial, all of the facts and circumstances must be weighed to determine the organization's primary purpose in preparing the communication. Two factors of particular importance are (1) the relative scope of the nonlobbying and subsequent lobbying distributions, and (2) whether the subsequent lobbying distribution is made by the organization itself, a related organization or an unrelated organization. Where the subsequent distribution is made by an unrelated organization, clear and convincing evidence will be required to establish that the primary purpose for preparing the communication was for use in lobbying.

6. Communications with Members

With respect to the exception for an organization's communications with its members, many commentators stated that their organizations have only a mailing list of supporters, without a formal membership, or have a single mailing list that includes both formal members and nonmember supporters.

This document does not revise the proposed definition of membership because the statutory use of the term "bona fide member", combined with the legislative history, indicates Congress intended that the exception for communications with members not include persons simply included on a mailing list or those whose financial support of the organization is in the distant past. However, the proposed regulations relating to communications with members have been slightly modified to reflect the revisions to the definition of direct and grass roots lobbying.

7. Exception for Nonpartisan Analysis, Study or Research

Some commentators expressed concern that the statutory exception for nonpartisan analysis should apply to some of the examples under the 1986 NPRM's general definition section for grass roots lobbying

The section 4945 regulations currently provide that engaging in and making available nonpartisan analysis, study or research does not constitute lobbying. This same exception was included in the 1986 NPRM's proposed section 4911 regulations by cross-reference to the section 4945 regulations. This document proposes to include in the section 4911 regulations the full text of the section 4945 regulations' exception for nonpartisan analysis, study or research, rather than merely a cross-reference to the section 4945 regulations. As requested by the comments, the examples proposed in this document note where the nonpartisan analysis exception clearly applies. As a result of the narrow definition of grass roots lobbying proposed in this document, many communications addressing legislation will not be grass roots lobbying communications. Because fewer communications will be lobbying communications, organizations will not have to depend on the nonpartisan analysis exception to the extent necessary under the 1986 NPRM. That is to say, under the rules proposed in this document, many communications that address legislation will fail to be lobbying communications as a result of the narrow definition of lobbying rather than because of the nonpartisan analysis exception.

The comments received by the Service indicated some confusion regarding the scope of the nonpartisan analysis exception. To remove this confusion, this document proposes to clarify in both the section 4945 and section 4911 regulations that a communication is not within the nonpartisan analysis exception if the communication *directly* encourages recipients of the communication to contact legislators or certain other governmental officials in favor of or in opposition to specific legislation. As stated above, a communication would encourage the recipient to take action with respect to legislation, but not *directly* encourage such action, if the communication does no more than specifically identify legislators as: Opposing the communication's view with respect to the legislation; being undecided with respect to the legislation; being the recipient's representative in the legislature; or being a member of the legislative committee that will consider the legislation.

This document proposes an additional amendment to the regulations regarding the nonpartisan analysis, study or research exception. Under the rules proposed in this document, analysis, study or research that reflects a view on specific legislation is not nonpartisan if an organization's primary purpose for undertaking the analysis, study or research is for use in lobbying *and* the analysis, study or research is subsequently used as, or with, a lobbying communication that directly encourages recipients to take action with respect to specific legislation. However, the primary purpose of the organization in undertaking analysis,

study or research will not be considered to be lobbying if, prior to or contemporaneously with the use of the analysis, study or research in lobbying, the organization makes a substantial distribution of the analysis, study or research (without an accompanying lobbying message). Whether a distribution is substantial will be determined by reference to all of the facts and circumstances, including the normal distribution pattern of similar nonpartisan analyses, studies, or research.

8. Exception for Discussion of Broad Social, Economic and Similar Problems

Some commentators requested that the "discussion of broad social, economic and similar problems" exception to the definition of lobbying be included in the text of the section 4911 regulations (relating to lobbying expenditures by electing public charities). The section 4945 regulations currently provided that discussions of broad social, economic and similar problems are not lobbying activities. This document proposes that the full text of the exception be included in the section 4911 regulations. In response to confusion about the scope of the exception, this document proposes that the exception, for purposes of both section 4945 and section 4911, does not apply where a communication directly encourages recipients of the communication to contact legislators or certain other government officials in favor of or in opposition to specific legislation. Because of the revised definition of grass roots lobbying proposed in this document, many communications will not be grass roots lobbying, and thus very few, if any, communications that actually constitute grass roots lobbying communications will be within the exception for discussion of broad social, economic and similar problems. That is, the revised definition of grass roots lobbying will reduce or eliminate the need for organizations to depend upon the exception for discussion of broad social, economic and similar problems.

9. Grants by Private Foundations to Electing Public Charities

Some commentators noted that the 1986 NPRM would expand certain rules relating to restrictions on grants by private foundations to electing public charities beyond the scope of a private letter ruling issued by the Service in 1977. These commentators suggested that the additions to the Service's 1977 private ruling are inappropriate and unnecessary.

With respect to grants by private foundations to electing public charities, this document revises the 1986 NPRM to conform to the Service's 1977 private letter ruling by removing the additional restrictions. Additionally, this document states that a private foundation can rely on the assertions of the grantee regarding the nonlobbying nature of the funded activities, unless the private foundation doubts or, in light of all the facts and circumstances, reasonably should doubt the accuracy or reliability of the documents provided by the grantee.

10. Effect on 1980 Notice of Proposed Rulemaking

In the 1980 NPRM, the Service proposed amendments to the regulations on Foundations and Similar Excise Taxes in order to provide clearer guidance to organizations that must comply with the requirements of section 4945, relating to the making of lobbying expenditures by private foundations. Regulations under section 162(e)(2) were also proposed to be amended in that same notice of proposed rulemaking. This document proposes to revise the regulations regarding lobbying by private foundations by conforming them to the regulations governing lobbying by electing public charities. It does not propose any revisions to the regulations under section 162(e)(2).

11. Rules Regarding Affiliated Organizations

Several commentators objected to the 1986 NPRM's standard that organizations are affiliated where the governing instruments of the "controlled" organization require that the "controlled" organization "take into account" the position of the "controlling" organization on a legislative issue.

In response to those comments, this document slightly modifies the affiliation rules by removing the "take into account" language and directly tracking the statutory language.

12. Definition of Term "Separate Fundraising Units"

Several commentators objected to the use of the term "substantial" in the 1986 NPRM's definition of the term "separate fundraising units." Their objections were with regard to both the term's lack of precision and its expansive scope.

In response to such objections, this document slightly modifies the proposed rule to include only those persons who spend a majority, rather than a substantial part, of their time on fundraising for the organization.

13. Miscellaneous Technical Revisions

Finally, some commentators suggested that, for a variety of reasons, certain portions of the proposed regulations needed minor technical changes. In response to those comments, this document proposes several minor technical revisions to the 1986 NPRM. The Service specifically welcomes further comments suggesting any additional technical revisions necessary for proper implementation of the underlying statutes.

Several sections in the regulations have been reserved. This is simply for the convenience of the **Federal Register** reader.

Rulings Regarding Application of the Regulations

Under its ruling program (see Rev. Proc. 83–36, 1983–1 C.B. 763 and Rev. Proc. 88–8, 1988–4 I.R.B. 22), the Service will consider requests for private letter rulings to clarify the application of these regulations to particular fact patterns.

Comments, Requests To Appear at the Public Hearing, and Outline of Oral Comments To Be Presented at the Public Hearing

Before adopting these prposed regulations, consideration will be given to any written comments that are submitted (preferably nine copies) to the Commissioner of Internal Revenue. All comments, requests to appear at, and outlines of oral comments to be presented at the public hearing will be available for public inspection and copying. In light of the extensive comments upon and full discussion of the issues in this document since the enactment of the Tax Reform Act of 1976 and the publication of the 1986 NPRM, the Service has scheduled a publich hearing to be held on Monday, April 3, 1989, at 10:00 a.m., and continuing, if necessary, at the same time on Tuesday, April, 4, 1989, in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure

requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Supersession

These regulations, when published in final form in the **Federal Register**, will supersede section 7.0(c)(4) of the Temporary Income Tax Regulations under the Tax Reform Act of 1976. This document supersedes that portion of the notice of proposed rulemaking published in the **Federal Register** on November 25, 1980 (45 FR 78167) that proposed amendments to the regulations on Foundations and Similar Excise Taxes (26 CFR Part 53). Where this document proposes to amend any portion of the regulations under Title 26 of the Code of Federal Regulations, the proposed amendment in this document supersedes any proposed amendment of that portion of the regulations that was previously published in the **Federal Register** on November 5, 1986 (51 FR 40211).

Drafting Information

The principal author of this document was Jerome P. Walsh Skelly of the Office of Assistant Chief Counsel (Employee Benefits and Exempt Organizations Division). Other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.501(a)–1—1.528–10

Income taxes, Exempt organizations, Foundations, Nonprofit organizations, Cooperatives, Political organizations, Homeowners associations.

26 CFR Part 53

Excise taxes, Foundations, Investments, Trusts and trustees.

26 CFR Part 56

Excise tax, Lobbying expenditures, Exempt purpose expenditures, Affiliated organizations, Administration and procedure.

Proposed Amendments to the Regulations

Accordingly, (I) the proposed amendments to 26 CFR Part 53 that were published on November 25, 1980 (45 FR 78167) are withdrawn, and (II) the notice of proposed rulemaking (to amend 26 CFR Parts 1 and 53 and add a new Part 56) that was published on November 5, 1986 (51 FR 40211), is amended, and additional amendments of Part 53 are proposed, as follows:

PART 1—[AMENDED]

Paragraph 1. The authority citation for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 1.504–1 and 1.504–2 also issued under 26 U.S.C. 504(b).

Par. 2. Proposed § 1.501(h)–2 is amended by revising paragraph (b)(2)(vi) to read:

§ 1.501(h)–2 Electing the expenditure test.

* * * * *

(b) *Organizations eligible to elect the expenditure test.* * * *

(2) *Certain organizations listed.* * * *

(vi) Section 509(a)(3) (relating to organizations supporting public charities), except that for purposes of this paragraph (b)(2), section 509(a)(3) shall be applied without regard to the last sentence of section 509(a).

* * * * *

Par. 3. Proposed § 1.501(h)–3 is amended by revising paragraph (c)(4) and adding new Examples (4) and (5) to paragraph (e), to read:

§ 1.501(h)–3 Lobbying or grass roots expenditures normally in excess of ceiling amount.

* * * * *

(c) *Definitions.* * * *

(4) The term "grass roots expenditures" means expenditures for grass roots lobbying communications as defined in section 4911(c)(3) or section 4911(f)(4)(A) and §§ 56.4911–2 and 3.

* * * * *

(e) *Examples.* * * *

Example (4) Organization M made the expenditure test election under section 501(h) effective for taxable years beginning with 1977 and has not revoked the election. M has $500,000 of exempt purpose expenditures during each of the years 1981 through 1984. In addition, during each of those years, M spends $75,000 for direct lobbying and $25,000 for grass roots lobbying. Since the amount expended for M's lobbying (both total lobbying and grass roots lobbying) is within the respective nontaxable expenditure limitations, M is not liable for the 25 percent excise tax imposed under section 4911(a) upon excess lobbying expenditures, nor is M denied tax-exempt status by reason of section 501(h).

Example (5) Assume the same facts as in Example (4), except that, on behalf of M, numerous unpaid volunteers conduct substantial lobbying activities with no reimbursement. Since the substantial lobbying activities of the unpaid volunteers are not counted towards the expenditure limitations and the amount expended for M's lobbying is within the respective nontaxable expenditure limitations, M is not liable for the 25 percent excise tax under section 4911, nor is M denied tax-exempt status by reason of section 501(h).

PART 53—[AMENDED]

Par. 4. The authority citation for Part 53 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 5. Section 53.4945–2 is amended as follows:

1. Paragraph (a)(1) is revised, paragraph (a)(2) is removed and reserved, proposed paragraph (a)(6) is revised, and, in proposed paragraph (a)(7)(ii), Examples (1), (2), and (3) are revised and new Examples (10) through (13) are added and the introductory text is republished to read as set forth below.

2. Paragraphs (b) and (c) are removed and reserved.

3. Paragraph (d)(1)(i) is revised to read as set forth below.

4. In paragraph (d)(1)(iv), the last sentence is revised to read as set forth below.

5. Paragraph (d)(1)(v), *Examples*, is redesignated as paragraph (d)(1)(vii), Examples (4) and (5) are revised, and new Examples (8) through (11) are added, to read as set forth below.

6. New paragraphs (d)(1)(v) and (d)(1)(vi) are added, to read as set forth below.

7. Paragraph (d)(4) is revised to read as set forth below.

§ 53.4945–2 Propaganda influencing legislation.

(a) *Propaganda influencing legislation, etc.*—(1) *In general.* Under section 4945(d)(1) the term "taxable expenditure" includes any amount paid or incurred by a private foundation to carry on propaganda, or otherwise to attempt, to influence legislation. An expenditure is an attempt to influence legislation if it is for a direct or grass roots lobbying communication, as defined in § 56.4911–2 (without reference to §§ 56.4911–2(b)(3) and 56.4911–2(c)) and § 56.4911–3. See, however, paragraph (d) of this section for exceptions to the general rule of this paragraph (a)(1).

(2) [Reserved]

* * * * *

(6) *Grants to public organizations that attempt to influence legislation*—(i) *General Support Grant.* A general support grant by a private foundation to an organization described in section 509(a)(1), (2), or (3) (a "public charity" for purposes of paragraphs (a) (6) and (7) of this section) does not constitute a taxable expenditure under section 4945(d)(1) to the extent that the grant is not earmarked, within the meaning of § 53.4945–2(a)(5)(i), to be used in an attempt to influence legislation. The preceding sentence applies without

regard to whether the public charity has made the election under section 501(h).

(ii) *Specific Project Grant.* A grant by a private foundation to fund a specific project of a public charity is not a taxable expenditure by the foundation under section 4945(d)(1) to the extent that—

(A) The grant is not earmarked, within the meaning of § 53.4945–2(a)(5)(i), to be used in an attempt to influence legislation, and

(B) The amount of the grant, together with other grants by the same private foundation for the same project for the same year, does not exceed the amount budgeted, for the year of the grant, by the grantee organization for activities of the project that are not attempts to influence legislation. If the grant is for more than one year, the preceding sentence applies to each year of the grant with the amount of the grant divided equally between years, or as otherwise actually disbursed by the private foundation. This paragraph (a)(6)(ii) applies without regard to whether the public charity has made the election under section 501(h)

(iii) *Reliance upon grantee's budget.* For purposes of determining the amount budgeted by a prospective grantee for specific project activities that are not attempts to influence legislation under paragraph (a)(6)(ii) of this section, a private foundation may rely on budget documents or other sufficient evidence supplied by the grantee organization (such as a signed statement by an authorized officer, director or trustee of such grantee organization) showing the proposed budget of the specific project, unless the private foundation doubts or, in light of all the facts and circumstances, reasonably should doubt the accuracy or reliability of the documents.

(7) *Grants to organizations that cease to be described in 501(c)(3)—* * * *

(ii) *Examples.* The provisions of paragraphs (a)(6) and (a)(7) of this section are illustrated by the following examples:

Example (1). W, a private foundation, makes a general support grant to Z, a public charity described in section 509(a)(1). Z informs W that, as an insubstantial portion of its activities, Z attempts to influence the State legislature with regard to changes in the mental health laws. The use of the grant is not earmarked by W to be used in a manner that would violate section 4945(d)(1). Even if the grant is subsequently devoted by Z to its legislative activities, the grant by W is not a taxable expenditure under section 4945(d).

Example (2). X, a private foundation, makes a specific project grant to Y University for the purpose of conducting research on the potential environmental effects of certain pesticides. X does not earmark the grant for any purpose that would violate section 4945(d)(1) and there is no oral or written agreement or understanding whereby X may cause Y to engage in any activity described in section 4945(d) (1), (2), or (5), or to select any recipient to which the grant may be devoted. Further, X determines, based on budget information supplied by Y, that Y's budget for the project does not contain any amount for attempts to influence legislation. X has no reason to doubt the accuracy or reliability of the budget information. Y uses most of the funds for the research project; however, Y expends a portion of the grant funds to send a representative to testify at Congressional hearings on a specific bill proposing certain pesticide control measures. The portion of the grant funds expended with respect to the Congressional hearings is not treated as a taxable expenditure by X under section 4945(d)(1).

Example (3). M, a private foundation, makes a specific project grant of $150,000 to P, a public charity described in section 509(a)(1). In requesting the grant from M, P stated that the total budgeted cost of the project is $200,000, and that of this amount $20,000 is allocated to attempts to influence legislation related to the project. M relies on the budget figures provided by P in determining the amount P will spend on influencing legislation and M has no reason to doubt the accuracy or reliability of P's budget figures. In making the grant, M did not earmark any of the funds from the grant to be used for attempts to influence legislation. M's grant of $150,000 to P will not constitute a taxable expenditure under section 4945(d)(1) because M did not earmark any of the funds for attempts to influence legislation and because the amount of its grant ($150,000) does not exceed the amount allocated to specific project activities that are not attempts to influence legislation ($200,000 − $20,000 = $180,000).

* * * * *

Example (10). X, a private foundation, makes a specific project grant to Y, a public charity described in section 509(a). In requesting the grant, Y stated that it planned to use the funds to purchase a computer for purposes of computerizing its research files and that the grant will not be used to influence legislation. Two years after X makes the grant, X discovers that Y has also used the computer for purposes of maintaining and updating the mailing list for Y's lobbying newsletter. Because X did not earmark any of the grant funds to be used for attempts to influence legislation and because X had no reason to doubt the accuracy or reliability of Y's documents representing that the grant would not be used to influence legislation, X's grant is not treated as a taxable expenditure.

Example (11). G, a private foundation, makes a specific project grant of $300,000 to L, a public charity described in section 509(a)(1) for a three-year specific project studying child care problems. L provides budget material indicating that the specific project will expend $200,000 in each of three years. L's budget materials indicate that attempts to influence legislation will amount to $10,000 in the first year, $20,000 in the second year and $100,000 in the third year. G intends to pay its $300,000 grant over three years as follows: $200,000 in the first year, $50,000 in the second year and $50,000 in the third year. Since the amount of the grant in each of the three years, when divided equally between the three years ($100,000 for each year), is not more than the nonlobbying expenditures of L on the specific project for any of the three years, none of the grant is treated as a taxable expenditure under section 4945(d)(1).

Example (12). P, a private foundation, makes a $120,000 specific project grant to C, a public charity described in section 509(a) for a three-year project. P intends to pay its grant to C in three equal annual installments of $40,000. C provides budget material indicating that the specific project will expend $100,000 in each of three years. C's budget materials, which P reasonably does not doubt, indicate that the project's attempts to influence legislation will amount to $50,000 in each of the three years. After P pays the first annual installment to C, but before P pays the second installment to C, reliable information comes to P's attention that C has spent $90,000 of the project's $100,000 first-year budget on attempts to influence legislation. This information causes P to doubt the accuracy and reliability of C's budget materials. Because of the information, P does not pay the second-year installment to C. P's payment of the first installment of $40,000 is not a taxable expenditure under section 4945(d)(1) because the grant in the first year is not more than the nonlobbying expenditures C projected in its lobbying materials that P reasonably did not doubt.

Example (13). Assume the same facts as in Example (12), except that P pays the second-year installment of $40,000 to C. In the project's second year, C once again spends $90,000 of the project's $100,000 annual budget in attempts to influence legislation. Because P doubts or reasonably should doubt the accuracy or reliability of C's budget materials when P makes the second-year grant payment, P may not rely upon C's budget documents at that time. Accordingly, although none of the $40,000 paid in the first installment is a taxable expenditure, only $10,000 ($100,000 minus $90,000) of the second-year grant payment is not a taxable expenditure. The remaining $30,000 of the second installment is a taxable expenditure within the meaning of section 4945(d)(1).

* * * * *

(b) [Reserved]

(c) [Reserved]

(d) * * *

(1) * * *

(i) *In general.* A communication is not a direct lobbying communication described in § 56.4911–2(b)(1) or a grass roots lobbying communication described in § 56.4911–2(b)(2) if the communication constitutes engaging in nonpartisan analysis, study or research and making available to the general public or a segment or members thereof or to governmental bodies, officials, or employees and results of such work. Accordingly, an expenditure for such a

communication does not constitute a taxable expenditure under section 4945(d)(1) and § 53.4945–2(a)(1).

(ii) * * *

(iii) * * *

(iv) *Making available results of nonpartisan analysis, study, or research.* * * * For purposes of this paragraph (d)(1)(iv), such communications may not be limited to, or be directed toward, persons who are interested solely in one side of a particular issue.

(v) *Subsequent lobbying use of nonpartisan analysis, study or research.* For purposes of this paragraph, a nonlobbying communication is any communication that reflects a view on specific legislation but that is not a lobbying communication as described in § 56.4911–2(b). This § 56.4945–2(d)(1)(v) governs any nonlobbying communication that is nonpartisan analysis, study or research (within the meaning of § 56.4945–2(d)(1)) *and* that is: subsequently used with an accompanying lobbying communication that directly encourages recipients to take action with respect to legislation; or subsequently altered so that it is itself a lobbying communication that directly encourages recipients to take action with respect to legislation. In such a case, the communication is not within the exception for nonpartisan analysis, study or research and will be treated as a lobbying communication if the organization's primary purpose in preparing the communication was for use in lobbying; consequently, the expenses of preparing and distributing the communication will be treated as lobbying expenditures. The primary purpose of the organization in undertaking analysis, study, or research will not be considered to be for use in lobbying if, prior to or contemporaneously with the use of the analysis, study, or research in lobbying, the organization makes a substantial distribution of the analysis, study, or research (without an accompanying lobbying message). Whether a distribution is substantial will be determined by reference to all of the facts and circumstances, including the normal distribution pattern of similar nonpartisan analyses, studies, or research. Where the nonlobbying distribution of a communication governed by this paragraph is not substantial, all of the facts and circumstances must be weighed to determine whether the organization's primary purpose in preparing the communication was for use in lobbying. While not the only factor, the extent of the organization's nonlobbying distribution of the communication is particularly relevant, especially when compared to the extent of the communication's distribution with the lobbying message. Another particularly relevant factor is whether the subsequent lobbying use of a communication is by the organization that prepared the document, a related organization, or an unrelated organization. Where the subsequent lobbying distribution is made by an unrelated organization, clear and convincing evidence will be required to establish that the primary purpose for preparing the communication was for use in lobbying.

(vi) *Directly encouraging action by recipients of a communication.* A communication that reflects a view on specific legislation is not within the nonpartisan analysis, study or research exception of this § 53.4945–2(d)(1) if the communication directly encourages the recipient to take action with respect to such legislation. For purposes of this section, a communication directly encourages the recipient to take action with respect to legislation if the communication is described in § 56.4911–2(b)(2)(iii)(A) through (C). As described in § 56.4911–2(b)(2)(iv), a communication would encourage the recipient to take action with respect to legislation, but not *directly* encourage such action, if the communication does no more than specifically identify one or more legislators who will vote on the legislation as: Opposing the communication's view with respect to the legislation; being undecided with respect to the legislation; being the recipient's representative in the legislature; or being a member of the legislative committee that will consider the legislation.

(vii) *Examples.* * * *

Example (4). Publishes a bi-monthly newsletter to collect and report all published materials, ongoing research, and new developments with regard to the use of pesticides in raising crops. The newsletter also includes notices of proposed pesticide legislation with impartial summaries of the provisions and debates on such legislation. The newsletter does not encourage recipients to take action with respect to such legislation, but is designed to present information on both sides of the legislative controversy and does present such information fully and fairly. It is within the exception for nonpartisan analysis, study, or research.

Example (5). X is satisfied that A, a member of the faculty of Y University, is exceptionally well qualified to undertake a project involving a comprehensive study of the effects of pesticides on crop yields. Consequently, X makes a grant to A to underwrite the cost of the study and of the preparation of a book on the effect of pesticides on crop yields. X does not take any position on the issues or control the content of A's output. A produces a book which concludes that the use of pesticides often has a favorable effect on crop yields, and on that basis argues against pending bills which would ban the use of pesticides. A's book contains a sufficiently full and fair exposition of the pertinent facts, including known or potential disadvantages of the use of pesticides, to enable the public or an individual to form an independent opinion or conclusion as to whether pesticides should be banned as provided in the pending bills. The book does not directly encourage readers to take action with respect to the pending bills. Consequently, the book is within the exception for nonpartisan analysis, study, or research.

Example (6). * * *

Example (7). * * *

Example (8). Organization Z researches, writes, prints and distributes a study on the use and effects of pesticide X. A bill is pending in the U.S. Senate to ban the use of pesticide X. Z's study leads to the conclusion that pesticide X is extremely harmful and that the bill pending in the U.S. Senate is an appropriate and much needed remedy to solve the problems caused by pesticide X. The study contains a sufficiently full and fair exposition of the pertinent facts, including known or potential advantages of the use of pesticide X, to enable the public or an individual to form an independent opinion or conclusion as to whether pesticides should be banned as provided in the pending bills. In its analysis of the pending bill, the study names certain undecided Senators on the Senate committee considering the bill. Although the study meets the three part test for determining whether a communication is a grass roots lobbying communication, the study is within the exception for nonpartisan analysis, study or research, because it does not directly encourage recipients of the communication to urge a legislator to oppose the bill.

Example (9). Assume the same facts as in Example (8), except that, after stating support for the pending bill, the study concludes: "You should write to the undecided committee members to support this crucial bill." The study is not within the exception for nonpartisan analysis, study or research because it directly encourages the recipients to urge a legislator to support a specific piece of legislation.

Example (10). Organization X plans to conduct a lobbying campaign with respect to illegal drug use in the United States. It incurs $5,000 in expenses to conduct research and prepare an extensive report primarily for use in the lobbying campaign. Although the detailed report discusses specific pending legislation and reaches the conclusion that the legislation would reduce illegal drug use, the report contains a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent conclusion regarding the effect of the legislation. The report does not encourage readers to contact legislators regarding the legislation. Accordingly, the report does not, in and of itself, constitute a lobbying communication.

Copies of the report are available to the public at X's office, but X does not actively distribute the report or otherwise seek to make the contents of the report available to the general public. Whether or not X's distribution is sufficient to meet the requirement in § 53.4945–2(d)(1)(iv) that a nonpartisan communication be made available, X's distribution is not substantial (for purposes of § 53.4945–2(d)(v)) in light of all of the facts and circumstances, including the normal distribution pattern of similar nonpartisan reports. X then mails copies of the report, along with a letter, to 10,000 individuals on X's mailing list. In the letter, X requests that individuals contact legislators urging passage of the legislation discussed in the report. Because X's research and report were primarily undertaken by X for lobbying purposes and X did not make a substantial distribution of the report (without an accompanying lobbying message) prior to or contemporaneously with the use of the report in lobbying, the report is a grass roots lobbying communication that is not within the exception for nonpartisan analysis, study or research. Thus, the expenditures for preparing and mailing both the report and the letter are taxable expenditures under section 4945.

Example (11). Assume the same facts as in Example (10), except that before using the report in the lobbying campaign, X sends the research and report (without an accompanying lobbying message) to universities and newspapers. At the same time, X also advertises the availability of the report in its newsletter. This distribution is similar in scope to the normal distribution pattern of similar nonpartisan reports. In light of all of the facts and circumstances, X's distribution of the report is substantial. Because of X's substantial distribution of the report, X's primary purpose will be considered to be other than for use in lobbying and the report will not be considered a grass roots lobbying communication. Accordingly, only the expenditures for copying and mailing the report to the 10,000 individuals on X's mailing list, as well as for preparing and mailing the letter, are expenditures for grass roots lobbying communications.

* * * * *

(4) *Examinations and discussions of broad social, economic, and similar problems.* Examinations and discussions of broad social, economic, and similar problems are neither direct lobbying communications under § 56.4911–2(b)(1) nor grass roots lobbying communications under § 56.4911–2(b)(2) even if the problems are of the type with which government would be expected to deal ultimately. Thus, under §§ 56.4911–2(b) (1) and (2), lobbying communications with members of legislative bodies or governmental employees, the general subject of which is also the subject of legislation before a legislative body so long as such discussion does not address itself to the merits of a specific legislative proposal and so long as such discussion does not directly encourage recipients to take action with respect to legislation. For example, this paragraph excludes from grass roots lobbying under § 56.4911–2(b)(2) an organization's discussions of problems such as environmental pollution or population growth that are being considered by Congress and various State legislatures, but only where the discussions are not directly addressed to specific legislation being considered, and only where the discussions do not directly encourage recipients of the communication to contact a legislator, an employee of a legislative body, or a government official or employee who may participate in the formulation of legislation.

PART 56—[AMENDED]

Par. 6. Proposed §§ 56.4911–1 through 56.4911–3 are revised to read:

§ 56.4911–1 Tax on excess lobbying expenditures.

(a) *In general.* Section 4911(a) imposes an excise tax of 25 percent on the excess lobbying expenditures (as defined in paragraph (b) of this section) for a taxable year of an organization for which the expenditure test election under section 501(h) is in effect. The limit on expenditures for influencing legislation on which no tax is due from an organization for a taxable year is the lobbying nontaxable amount, or, on expenditures for influencing legislation through grass roots lobbying, the grass roots nontaxable amount (see paragraph (c) of this section). For rules concerning the application of the excise tax imposed by section 4911(a) to the members of an affiliated group of organizations (as defined in § 56.4911–7(e)), see § 56.4911–8.

(b) *Excess lobbying expenditures.* For any taxable year for which the expenditure test election under section 501(h) is in effect, the amount of an organization's excess lobbying expenditures is the greater of—

(1) The amount by which the organization's lobbying expenditures (within the meaning of § 56.4911–2(a)) exceed the organization's lobbying nontaxable amount, or

(2) The amount by which the organization's expenditures for grass roots lobbying communications (within the meaning of §§ 56.4911–2 and –3)) exceed the organization's grass roots nontaxable amount.

(c) *Nontaxable amounts*—(1) *Lobbying nontaxable amount.* Under section 4911(c)(2), the lobbying nontaxable amount for any taxable year for which the expenditure test election is in effect is the lesser of—

((i)) $ 1,000,000, or

(ii) To the extent of the organization's exempt purpose expenditures (within the meaning of § 56.4911–4) for that year, the sum of 20 percent of the first $500,000 of such expenditures, plus 15 percent of the second $500,000 of such expenditures, plus 10 percent of the third $500,000 of such expenditures, plus 5 percent of the remainder of such expenditures.

(2) *Grass roots nontaxable amount.* Under section 4911(c)(4), an organization's grass roots nontaxable amount for any taxable year is 25 percent of its lobbying nontaxable amount for that year.

(d) *Examples.* The provisions of this section are illustrated by the examples in § 1.501(h)–3.

§ 56.4911–2 Lobbying expenditures, direct lobbying communications, and grass roots lobbying communications.

(a) *Lobbying expenditures.* If an organization has in effect for any year the expenditure test election under section 501(h), its lobbying expenditures for that year are the sum of its expenditures during that year for direct lobbying communications ("direct lobbying expenditures") plus its expenditures during that year for grass roots lobbying communications ("grass roots expenditures").

(b) *Influencing legislation: direct and grass roots lobbying communications defined*—(1) *Direct lobbying communication*—(i) *Definition.* A direct lobbying communication is any attempt to influence any legislation through communication with:

(A) Any member or employee of a legislative body; or

(B) Any government official or employee (other than a member or employee of a legislative body) who may participate in the formulation of the legislation, but only if the principal purpose of the communication is to influence legislation.

(ii) *Required elements.* A communication with a legislator or government official will be treated as a direct lobbying communication under this § 56.4911–2(b)(1) only if the communication:

(A) Refers to specific legislation; and

(B) Reflects a view on such legislation.

(iii) *Definition of specific legislation.* For purposes of paragraphs (b)(1) and (b)(2) of this section, specific legislation includes both legislation that has already been introduced in a legislative body and a specific legislative proposal that the organization either supports or opposes.

(2) *Grass roots lobbying communication*—(i) *Definition.* A grass roots lobbying communication is any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof.

(ii) *Required elements.* A communication will be treated as a grass roots lobbying communication under this § 56.4911–2(b)(2) only if the communication:

(A) Refers to specific legislation;

(B) Reflects a view on such legislation; and

(C) Encourages the recipient of the communication to take action with respect to such legislation. (For special rules regarding certain mass media communications, see § 57.4911–2(b)(5)).

(iii) *Definition of encouraging recipient to take action.* For purposes of this section, encouraging a recipient to take action with respect to legislation means that the communication:

(A) States that the recipient should contact a legislator or an employee of a legislative body, or should contact any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of urging contact with the government official or employee is to influence legislation);

(B) States the address, telephone number, or similar information of a legislator or an employee of a legislative body;

(C) Provides a petition, tear-off postcard or similar material for the recipient to communicate his or her views to a legislator or an employee of a legislative body, or to any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of so facilitating contact with the government official or employee is to influence legislation); or

(D) Specifically identifies one or more legislators who will vote on the legislation as: Opposing the communication's view with respect to the legislation; being undecided with respect to the legislation; being the recipient's representative in the legislature; or being a member of the legislative committee that will consider the legislation. Encouraging the recipient to take action under this paragraph (b)(2)(iii)(D) does not include naming the main sponsor(s) of the legislation for purposes of identifying the legislation.

(iv) *Definition of directly encouraging recipient to take action.* Communications described in § 56.4911–2(b)(2)(iii) (A) through (C) not only "encourage," but also "directly encourage" the recipient to take action with respect to legislation. Communications described in § 56.4911–2(b)(2)(iii)(D), however, do not directly encourage the recipient to take action with respect to legislation. Thus, a communication would encourage the recipient to take action with respect to legislation, but not *directly* encourage such action, if the communication does no more than identify one or more legislators who will vote on the legislation as: Opposing the communication's view with respect to the legislation; being undecided with respect to the legislation; being the recipient's representative in the legislature; or being a member of the legislative committee that will consider the legislation. Communications that encourage the recipient to take action with respect to legislation but that do not *directly* encourage the recipient to take action with respect to legislation may be within the exception for nonpartisan analysis, study or research (see § 56.4911–2(c)(1)) and thus not be grass roots lobbying communications.

(v) *Subsequent lobbying use of nonlobbying communication that is not nonpartisan analysis, study or research.* For purposes of this paragraph, a nonlobbying communication is any communication that reflects a view on specific legislation but that is not a lobbying communication as described in § 56.4911–2(b). This § 56.4911–2(b)(2)(v) governs any nonlobbying communication that is not nonpartisan analysis, study or research (within the meaning of § 56.4911–2(c)(1)) *and* that is subsequently used with an accompanying lobbying communication or is altered so that it is itself a lobbying communication. In such a case, the communication will be treated as a lobbying communication if the organization's primary purpose in preparing the communication was for use in lobbying, and the expenses of preparing and distributing the communication will be treated as lobbying expenditures. The primary purpose of the organization in preparing a communication governed by this paragraph will not be considered to be for use in lobbying if, prior to or contemporaneously with the use of the communication in lobbying, the organization makes a substantial distribution of the communication (without an accompanying lobbying message). Whether a distribution is substantial will be determined by reference to all of the facts and circumstances. Solely for purposes of this paragraph (b)(2)(v), the nonlobbying distribution of a communication will not be considered "substantial" unless that distribution is at least as extensive as the lobbying distribution of the communication. Where the nonlobbying distribution of a communication governed by this paragraph is not substantial, all of the facts and circumstances must be weighed to determine whether the organization's primary purpose in preparing the communication was for use in lobbying. While not the only factor, the extent of the organization's nonlobbying distribution of the communication is particularly relevant, especially when compared to the extent of the communication's distribution with the lobbying message. Another particularly relevant factor is whether the lobbying use of a communication is by the organization that prepared the document, a related organization, or an unrelated organization. Where the subsequent lobbying distribution is made by an unrelated organization, clear and convincing evidence will be required to establish that the primary purpose for preparing the communication was for use in lobbying. To illustrate this paragraph, assume a nonlobbying "report" (that is not nonpartisan analysis, study or research) is prepared by an organization, but distributed to only 50 people. The organization then sends the report to 10,000 people along with a letter urging recipients to write their Senators about the legislation discussed in the report. Because the report's nonlobbying distribution is not as extensive as its lobbying distribution, the report's nonlobbying distribution is not substantial for purposes of this paragraph. Accordingly, the organization's primary purpose in preparing the report must be determined by weighing all of the facts and circumstances. In light of the relatively minimal nonlobbying distribution and the fact that the lobbying distribution is by the preparing organization rather than by an unrelated organization, and in the absence of evidence to the contrary, both the report and the letter are grass roots lobbying communications. Accordingly, the organization's expenditures for preparing and mailing the two documents are grass roots lobbying expenditures.

(3) *Exceptions to the definition of influencing legislation.* A communication is not a direct or grass roots lobbying communication under § 56.4911–2(b) (1) or (2) if it falls within one of the exceptions listed in paragraph (c) of this section. See paragraph (c)(1), Nonpartisan analysis, study or research; paragraph (c)(2), Examinations and discussions of broad social, economic

and similar problems; paragraph (c)(3), Requests for technical advice; and paragraph (c)(4), Communications pertaining to self-defense by the organization. In addition, see § 56.4911–5, which provides special rules regarding the treatment of certain lobbying communications directed in whole or in part to members of an electing public charity.

(4) *Examples.* This paragraph (b)(4) provides examples to illustrate the rules set forth in this section regarding direct and grass roots lobbying. Except where otherwise explicitly stated, the expenditure test election under section 501(h) is assumed to be in effect for all organizations discussed in the examples in this paragraph (b)(4). In addition, it is assumed that the special rules of § 56.4911–5, regarding certain of a public charity's communications with its members, do not apply to any of the examples in this paragraph (b)(4).

(i) *Direct lobbying.* The provisions of this section regarding direct lobbying communications are illustrated by the following examples:

Example (1). Organization P's employee, X, is assigned to approach members of Congress to gain their support for a pending bill. X drafts and P prints a position letter on the bill. P distributes the letter to members of Congress. Additionally, X personally contacts several members of Congress or their staffs to seek support for P's position on the bill. The letter and the personal contacts are direct lobbying communications.

Example (2). Organization M's president writes a letter to the Congresswoman representing the district in which M is headquartered, requesting that the Congresswoman write an administrative agency regarding proposed regulations recently published by that agency. M's president also requests that the Congresswoman's letter to the agency state the Congresswoman's support of M's application for a particular type of permit granted by the agency. The letter written by M's president is not a direct lobbying communication.

Example (3). Organization Z prepares a paper on a particular state's environmental problems. The paper does not reflect a view on any specific pending legislation or on any specific legislative proposal that Z either supports or opposes. Z's representatives give the paper to a state legislator. Z's paper is not a direct lobbying communication.

Example (4). State X enacts a statute that requires the licensing of all day care providers. Agency B in State X is charged with preparing rules to implement the bill enacted by State X. One week after enactment of the bill, organization C sends a letter to Agency B providing detailed proposed rules that organization C suggests to Agency B as the appropriate standards to follow in implementing the statute on licensing of day care providers. Organization C's letter to Agency B is not a lobbying communication.

Example (5). Organization B researches, prepares and prints a code of standards of minimum safety requirements in an area of common electrical wiring. Organization B sells the code of standards booklet to the public and it is widely used by professionals in the subject area. A number of states have codified all, or part, of the code of standards as mandatory safety standards. On occasion, B lobbies state legislators for passage of the code of standards for safety reasons. The research, preparation, printing and public distribution of the code of standards is not an expenditure for a direct (or grass roots) lobbying communication. Costs incurred in lobbying state legislators for passage of the code of standards into law are expenditures for direct lobbying communications.

Example (6). On the organization's own initiative, representatives of organization F, present written testimony to a Congressional committee. The news media reports on the testimony of organization F detailing F's opposition to a pending bill. The testimony is a direct lobbying communication but is not a grass roots lobbying communication.

(ii) *Grass roots lobbying.* The provisions of this section regarding grass roots lobbying communications are illustrated in paragraph (b)(4)(ii)(A) of this section by examples of communications that are not grass roots lobbying communications and in paragraph (b)(4)(ii)(B) by examples of communications that are grass roots lobbying communications. The provisions of this section are further illustrated in paragraph (b)(4)(ii)(C), with particular regard to the exception for nonpartisan analysis, study, or research:

(A) Communications that are not grass roots lobbying communications

Example (1). Organization L places in its newsletter an article that asserts that lack of new capital is hurting State W's economy. The article recommends that State W residents either invest more in local businesses or increase their savings so that funds will be available to others interested in making investments. The article is an attempt to influence opinions with respect to a general problem that might receive legislative attention and is distributed in a manner so as to reach and influence many individuals. However, the article does not refer to specific legislation that is pending in a legislative body, nor does the article refer to a specific legislative proposal the organization either supports or opposes.

Example (2). Assume the same facts as Example (1), except that the article refers to a bill pending in State W's legislature that is intended to provide tax incentives for private savings. The article praises the pending bill and recommends that it be enacted. However, the article does not encourage readers to take action with respect to the legislation.

Example (3). Organization B sends a letter to all persons on its mailing list. The letter includes an update on numerous environmental issues with a discussion of general concerns regarding pollution, proposed federal regulations affecting the area, and several pending legislative proposals. The letter endorses two pending bills and opposes another pending bill, but does not name any legislator involved (other than the sponsor of one bill, for purposes of identifying the bill), nor does it otherwise encourage the reader to take action with respect to the legislation.

Example (4). A pamphlet distributed by organization Z discusses the dangers of drugs and encourages the public to send their legislators a coupon, printed with the statement "I support a drug-free America." The term "drug-free America" is not widely identified with any of the many specific pending legislative proposals regarding drug issues. The pamphlet does not refer to any of the numerous pending legislative proposals, nor does the organization support or oppose a specific legislative proposal.

Example (5). A pamphlet distributed by organization B encourages readers to join an organization and "get involved in the fight against drugs." The text states, in the course of a discussion of several current drug issues, that organization B supports a specific bill before Congress that would establish an expanded drug control program. The pamphlet does not encourage readers to communicate with legislators about the bill (such as by including the names of undecided or opposed legislators).

Example (6). Organization E, an evnronmental organization, routinely summarizes in each edition of its newsletter the new environment-related bills that have been introduced in Congress since the last edition of the newsletter. The newsletter identifies each bill by a bill number and the name of the legislation's sponsor. The newsletter also reports on the status of previously introduced environment-related bills. The summaries and status reports do not encourage recipients of the newsletter to take action with respect to legislation, as described in paragraphs (b)(2)(iii) (A) through (D) of this section. Although the summaries and status reports refer to specific legislation and often reflect a view on such legislation, they do not encourage the newsletter recipients to take action with respect to such legislation.

(B) Communications that are grass roots lobbying communications

Example (1). A pamphlet distributed by organization Y states that the "President's plan for a drug-free America," which will establish a drug control program, should be passed. The pamphlet encourages readers to "write or call your senators and representatives and tell them to vote for the President's plan." No legislative proposal formally bears the name "President's plan for a drug-free America," but that and similar terms have been widely used in connection with specific legislation pending in Congress that was initially proposed by the President. Thus, the pamphlet refers to specific legislation, reflects a view on the legislation, and encourages readers to take action with respect to the legislation.

Example (2). Assume the same facts as in Example (1), except that the pamphlet does not encourage the public to write or call representatives, but does list the members of the committee that will consider the bill.

Example (3). Assume the same facts as in Example (1), except that the pamphlet encourages readers to "write the President to urge him to make the bill a top legislative priority" rather than encouraging readers to communicate with members of Congress.

Example (4). Organization B, a nonmembership organization, includes in one of three sections of its newsletter an endorsement of two pending bills and opposition to another pending bill and also identifies several legislators as undecided on the three bills. The section of the newsletter devoted to the three pending bills is a grass roots lobbying communication.

Example (5). Organization D, a nonmembership organization, sends a letter to all persons on its mailing list. The letter includes an extensive discussion concluding that a significant increase in spending for the Air Force is essential in order to provide an adequate defense of the nation. Prior to a concluding fundraising request, the letter encourages readers to write their Congressional representatives urging increased appropriations to build the B–1 bomber.

Example (6). State Y plans to conduct a binding voter referendum on a proposition to permit gambling in the state. Organization Z places an advertisement in a general circulation newspaper encouraging voters to vote against the proposition.

Example (7). Organization F mails letters requesting that each recipient contribute money to or join F. In addition, the letters express F's opposition to a pending bill that is to be voted upon by the U.S. House of Representatives. Although the letters are form letters sent as a mass mailing, each letter is individualized to report to the recipient the name of the recipient's congressional representative.

(C) Additional examples

Example (1). The newsletter of an organization concerned with drug issues is circulated primarily to individuals who are not members of the organization. A story in the newsletter reports on the prospects for passage of a specifically identified bill, stating that the organization supports the bill. The newsletter story identifies certain legislators as undecided, but does not state that readers should contact the undecided legislators. The story does not provide a full and fair exposition sufficient to qualify as nonpartisan analysis, study or research. The newsletter story is a grass roots lobbying communication.

Example (2). Assume the same facts as in Example (1), except that the newsletter story provides a full and fair exposition sufficient to qualify as nonpartisan analysis, study or research. The newsletter story is *not* a grass roots lobbying communication because it is within the exception for nonpartisan analysis, study or research.

Example (3). Assume the same facts as in Example (2), except that the newsletter story explicitly asks readers to contact the undecided legislators. Because the newsletter story directly encourages readers to take action with respect to the legislation, the newsletter story is not within the exception for nonpartisan analysis, study or research. Accordingly, the newsletter story is a grass roots lobbying communication.

Example (4). Assume the same facts as in Example (1), except that the story does not identify any undecided legislators. The story is not a grass roots lobbying communication.

Example (5). X organization places an advertisement that specifically identifies and opposes a bill that X asserts would harm the farm economy. The advertisement is not a mass media communication described in § 56.4911–2(b)(5)(ii) and does not directly encourage readers to take action with respect to the bill. However, the advertisement does state that Senator Y favors the legislation. Because the advertisement refers to and reflects a view on specific legislation, and also encourages the readers to take action with respect to the legislation by specifically identifying a legislator who opposes X's views on the legislation, the advertisement in a grass roots lobbying communication.

Example (6). Assume the same facts as in Example (5), except that instead of identifying Senator Y as favoring the legislation, the advertisement identifies the "junior Senator from State Z" as favoring the legislation. The advertisement is a grass roots lobbying communication.

Example (7). Assume the same facts as in Example (5), except that instead of identifying Senator Y as favoring the legislation, the advertisement states: "Even though this bill will have a devastating effect upon the farm economy, most of the Senators from the Farm Belt states are inexplicably in favor of the bill." The advertisement does not specifically identify one or more legislators as opposing the advertisement's view on the bill in question. Accordingly, the advertisement is not a grass roots lobbying communication because it does not encourage readers to take action with respect to the legislation.

(5) *Mass media communications*—(i) *In general.* All mass media communications, other than those described in paragraph (b)(5)(ii) of this section, are evaluated by the three-part grass roots lobbying definition contained in paragraph (b)(2) of this section.

(ii) *Special rule for certain mass media communications.* If within two weeks before a vote by a legislative body, or committee thereof, on a highly publicized piece of legislation, an organization makes a communication in the mass media that reflects a view on the general subject of such legislation and either: Refers to the highly publicized legislation; or encourages the public to communicate with legislators on the general subject of such legislation, then the communication will be presumed to be a grass roots lobbying communication. An organization can rebut this presumption by demonstrating that the communication is a type of communication regularly made by the organization in the mass media without regard to the timing of legislation (that is, a customary course of business exception) or that the timing of the communication was unrelated to the upcoming legislative action. Notwithstanding the fact that an organization successfully rebuts the presumption, a mass media communication described in this paragraph (b)(5)(ii) is a grass roots lobbying communication if the communication would be a grass roots lobbying communication under the rules contained in paragraph (b)(2) of this section.

(iii) *Definitions*—(A) *Mass media.* For purposes of this paragraph (b)(5), "mass media" means television, radio, and general circulation newspapers and magazines. General circulation newspapers and magazines do not include newspapers or magazines published by an organization for which the expenditure test election under section 501(h) is in effect, except where both: The total circulation of the newspaper or magazine is greater than 100,000; and fewer than one-half of the recipients are members of the organization (as defined in § 56.4911–5(f)).

(B) *Highly publicized.* For purposes of this paragraph (b)(5), "highly publicized" means frequent coverage on television, radio, and general circulation newspapers and magazines during the two weeks preceding the vote by the legislative body.

(iv) *Examples.* The special rule of this paragraph (b)(5) is illustrated by the following examples. The expenditure test election under section 501(h) is assumed to be in effect for all organizations discussed in the examples in this paragraph (b)(5)(iv):

Example (1). Organization X places a television advertisement advocating one of the President's major foreign policy initiatives, as outlined by the President in a series of speeches. The initiative is popularly known as "the President's World Peace Plan," and is voted upon by the Senate four days after X's advertisement. The advertisement concludes: "SUPPORT THE PRESIDENT'S WORLD PEACE PLAN!" The President's plan and position are highly publicized during the two weeks before the Senate vote, as evidenced by: coverage of the plan on several nightly television network news programs; more than one article about the plan on the front page of a majority of the country's ten largest daily general circulation newspapers; and an editorial about the plan in four of the country's ten largest daily general circulation newspapers. Although the

advertisement does not encourage readers to contact legislators or other government officials, the advertisement does refer to specific legislation and reflects a view on the general subject of the legislation. The communication is presumed to be a grass roots lobbying communication.

Example (2). Assume the same facts as in Example (1), except that the advertisement appears three weeks before the Senate's vote on the plan. Because the advertisement appears more than two weeks before the legislative vote, the advertisement is *not* within the scope of the special rule for mass media communications on highly publicized legislation. Accordingly, the advertisement is a grass roots lobbying communication only if it is described in the general definition contained in paragraph (b)(2) of this section. Because the advertisement does not encourage recipients to take action with respect to the legislation in question, the advertisement is not a grass roots lobbying communication.

Example (3). Organization Y places a newspaper advertisement advocating increased government funding for certain public works projects the President has proposed and that are being considered by a legislative committee. The advertisement explains the President's proposals and concludes: "SUPPORT FUNDING FOR THESE VITAL PROJECTS!" The advertisement does not encourage readers to contact legislators or other government officials nor does it name any undecided legislators, but it does name the legislation being considered by the committee. The issue of funding public works, however, is not highly publicized during the two weeks before the vote: there has been little coverage of the issue on nightly television network news programs, only one front-page article on the issue in the country's ten largest daily general circulation newspapers, and only one editorial about the issue in the country's ten largest daily general circulation newspapers. Two days after the advertisement appears, the committee votes to approve funding of the projects. Although the advertisement appears less than two weeks before the legislative vote, the advertisement is *not* within the scope of the special rule for mass media communications on highly publicized legislation because the issue of funding for public works projects is not highly publicized. Thus, the advertisement is a grass roots lobbying communication only if it is described in the general definition contained in paragraph (b)(2) of this section. Because the advertisement does not encourage recipients to take action with respect to the legislation in question, the advertisement is not a grass roots lobbying communication.

Example (4). A binding referendum is held in State X. At issue is Proposition 1, a citizen initiated proposition that, if enacted, would ban the manufacture and sale of handguns in State X. The proposition is controversial and highly publicized during the two weeks preceding the vote, as evidenced by numerous front-page articles, editorials, and letters to the editor published in the state's general circulation daily newspapers, as well as frequent coverage of the proposition by the television and radio stations serving the state. During the two weeks before the election, Organization Y places advertisements on radio stations serving the state. The advertisements do not encourage listeners to vote against the proposition, but do attack the legislation as being unconstitutional and ineffective. Because the advertisements are mass media communications made within two weeks of a vote on highly publicized legislation and because the advertisements refer to that highly publicized legislation and reflect a view on the general subject of such legislation, the advertisements are presumed to be grass roots lobbying communications.

(c) *Exceptions to the definitions of direct lobbying communication and grass roots lobbying communication*—(1) *Nonpartisan analysis, study, or research exception*—(i) *In general.* Engaging in nonpartisan analysis, study, or research and making available to the general public or a segment or members thereof or to governmental bodies, officials, or employees the results of such work constitute neither a direct lobbying communication under § 56.4911–2(b)(1) nor a grass roots lobbying communication under § 56.4911–2(b)(2).

(ii) *Nonpartisan analysis, study, or research.* For purposes of this section, "nonpartisan analysis, study, or research" means an independent and objective exposition of a particular subject matter, including any activity that is "educational" within the meaning of § 1.501(c)(3)–1(d)(3). Thus, "nonpartisan analysis, study, or research" may advocate a particular position or viewpoint so long as there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion. The mere presentation of unsupported opinion, however, does not qualify as "nonpartisan analysis, study, or research". Activities of a noncommercial educational broadcasting station or network (television or radio) constitute "nonpartisan analysis, study, or research" if the station or network adheres to the Federal Communications Commission regulations and its "fairness doctrine," interpreted as in effect on January 1, 1987 (requiring balanced, fair, and objective presentation of issues).

(iii) *Presentation as part of a series.* Normally, whether a publication or broadcast qualifies as "nonpartisan analysis, study, or research" will be determined on a presentation-by-presentation basis. However, if a publication or broadcast is one of a series prepared or supported by an electing organization and the series as a whole meets the standards of paragraph (c)(1)(ii) of this section, then any individual publication or broadcast within the series is not a direct or grass roots lobbying communication even though such individual broadcast or publication does not, by itself, meet the standards of paragraph (c)(1)(ii) of this section. Whether a broadcast or publication is considered part of a series will ordinarily depend upon all the facts and circumstances of each particular situation. However, with respect to broadcast activities, all broadcasts within any period of six consecutive months will ordinarily be eligible to be considered as part of a series. If an electing organization times or channels a part of a series which is described in this paragraph (c)(1)(iii) in a manner designed to influence the general public or the action of a legislative body with respect to a specific legislative proposal, the expenses of preparing and distributing such part of the analysis, study, or research will be expenditures for a direct or grass roots lobbying communication, as the case may be.

(iv) *Making available results of nonpartisan analysis, study, or research.* An organization may choose any suitable means, including oral or written presentations, to distribute the results of its nonpartisan analysis, study, or research, with or without charge. Such means include distribution of reprints of speeches, articles and reports; presentation of information through conferences, meetings and discussions; and dissemination to the news media, including radio, television and newspapers, and to other public forums. For purposes of this paragraph (c)(1)(iv), such communications may not be limited to, or be directed toward, persons who are interested solely in one side of a particular issue.

(v) *Subsequent lobbying use of nonpartisan analysis, study or research.* For purposes of this paragraph, a nonlobbying communication is any communication that reflects a view on specific legislation but that is not a lobbying communication as described in § 56.4911–2(b). This § 56.4911–2(c)(1)(v) governs any nonlobbying communication that is nonpartisan analysis, study or research (within the meaning of § 56.4911–2(c)(1)) *and* that is: subsequently used with an accompanying lobbying communication that directly encourages recipients to take action with respect to legislation; or subsequently altered so that it is itself a lobbying communication that directly encourages recipients to take action with respect to legislation. In such a case, the communication is not within the exception for nonpartisan analysis,

study or research and will be treated as a lobbying communication if the organization's primary purpose in preparing the communication was for use in lobbying; consequently, the expenses of preparing and distributing the communication will be treated as lobbying expenditures. The primary purpose of the organization in undertaking analysis, study, or research will not be considered to be for use in lobbying if, prior to or contemporaneously with the use of the analysis, study, or research in lobbying, the organization makes a substantial distribution of the analysis, study, or research (without an accompanying lobbying message). Whether a distribution is substantial will be determined by reference to all of the facts and circumstances, including the normal distribution pattern of similar nonpartisan analyses, studies, or research. Where the nonlobbying distribution of a communication governed by this paragraph is not substantial, all of the facts and circumstances must be weighed to determine whether the organization's primary purpose in preparing the communication was for use in lobbying. While not the only factor, the extent of the organization's nonlobbying distribution of the communication is particularly relevant, especially when compared to the extent of the communication's distribution with the lobbying message. Another particularly relevant factor is whether the lobbying use of a communication is by the organization that prepared the document, a related organization, or an unrelated organization. Where the subsequent lobbying distribution is made by an unrelated organization, clear and convincing evidence will be required to establish that the primary purpose for preparing the communication was for use in lobbying.

(vi) *Directly encouraging action by recipients of a communication.* A communication that reflects a view on specific legislation is not within the nonpartisan analysis, study, or research exception of this paragraph (c)(1) if the communication directly encourages the recipient to take action with respect to such legislation. For purposes of this section, a communication directly encourages the recipient to take action with respect to legislation if the communication is described in § 56.4911–2(b)(2)(iii) (A) through (C). As described in § 56.4911–2(b)(2)(iv), a communication would encourage the recipient to take action with respect to legislation, but not *directly* encourage such action, if the communication does no more than specifically identify one or more legislators who will vote on the legislation as: Opposing the communication's view with respect to the legislation; being undecided with respect to the legislation; being the recipient's representative in the legislature; or being a member of the legislative committee that will consider the legislation.

(vii) *Examples.* The provisions of this paragraph (c)(1) may be illustrated by the following examples:

Example (1). Organization M establishes a research project to collect information for the purpose of showing the dangers of the use of pesticides in raising crops. The information collected includes data with respect to proposed legislation, pending before several State legislatures, which would ban the use of pesticides. The project takes favorable positions on such legislation without producing a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion on the pros and cons of the use of pesticides. This project is not within the exception for nonpartisan analysis, study, or research because it is designed to present information merely on one side of the legislative controversy.

Example (2). Organization N establishes a research project to collect information concerning the dangers of the use of pesticides in raising crops for the ostensible purpose of examining and reporting information as to the pros and cons of the use of pesticides in raising crops. The information is collected and distributed in the form of a published report which analyzed the effects and costs of the use and nonuse of various pesticides under various conditions on humans, animals and crops. The report also presents the advantages, disadvantages, and economic cost of allowing the continued use of pesticides unabated, of controlling the use of pesticides, and of developing alternatives to pesticides. Even if the report sets forth conclusions that the disadvantages as a result of using pesticides are greater than the advantages of using pesticides and that prompt legislative regulation of the use of pesticides is needed, the project is within the exception for nonpartisan analysis, study, or research since it is designed to present information on both sides of the legislative controversy and presents a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion.

Example (3). Organization O establishes a research project to collect information on the presence or absence of disease in humans from eating food grown with pesticides and the presence or absence of disease in humans from eating food not grown with pesticides. As part of the research project, O hires a consultant who prepares a "fact sheet" which calls for the curtailment of the use of pesticides and which addresses itself to the merits of several specific legislative proposals to curtail the use of pesticides in raising crops which are currently pending before State Legislatures. The "fact sheet" presents reports of experimental evidence tending to support its conclusions but omits any reference to reports of experimental evidence tending to dispute its conclusions. O distributes ten thousand copies to citizens' groups. Exependitures by O in connection with this work of the consultant are not within the exception for nonpartisan analysis, study, or research.

Example (4). P publishes a bi-monthly newsletter to collect and report all published materials, ongoing research, and new developments with regard to the use of pesticides in raising crops. The newsletter also includes notices of proposed pesticide legislation with impartial summaries of the provisions and debates on such legislation. The newsletter does not encourage recipients to take action with respect to such legislation, but is designed to present information on both sides of the legislative controversy and does present such information fully and fairly. It is within the exception for nonpartisan analysis, study, or research.

Example (5). X is satisfied that A, a member of the faculty of Y University, is exceptionally well qualified to undertake a project involving a comprehensive study of the effects of pesticides on crop yields. Consequently, X makes a grant to A to underwrite the cost of the study and of the preparation of a book on the effect of pesticides on crop yields. X does not take any position on the issues or control the content of A's output. A produces a book which concludes that the use of pesticides often has a favorable effect on crop yields, and on that basis argues against pending bills which would ban the use of pesticides. A's book contains a sufficiently full and fair exposition of the pertinent facts, including known or potential disadvantages of the use of pesticides, to enable the public or an individual to form an independent opinion or conclusion as to whether pesticides should be banned as provided in the pending bills. The book does not directly encourage readers to take action with respect to the pending bills. Consequently, the book is written the exception for nonpartisan analysis, study, or research.

Example (6). Assume the same facts as Example (2), except that, instead of issuing a report, X presents within a period of 6 consecutive months a two-program television series relating to the pesticide issue. The first program contains information, arguments, and conclusions favoring legislation to restrict the use of pesticides. The second program contains information, arguments, and conclusions opposing legislation to restrict the use of pesticides. The programs are broadcast within 6 months of each other during commensurate periods of prime time. X's programs are within the exception for nonpartisan analysis, study, or research. Although neither program individually could be regarded as nonpartisan, the series of two programs constitutes a balanced presentation.

Example (7). Assume the same facts as in Example (6), except that X arranged for televising the program favoring legislation to restrict the use of pesticides at 8:00 on a

Thursday evening and for televising the program opposing such legislation at 7:00 on a Sunday morning. X's presentation is not within the exception for nonpartisan analysis, study, or research, since X disseminated its information in a manner prejudicial to one side of the legislative controversy.

Example (8). Organization Z researches, writes, prints and distributes a study on the use and effects of pesticide X. A bill is pending in the U.S. Senate to ban the use of pesticide X. Z's study leads to the conclusion that pesticide X is extremely harmful and that the bill pending in the U.S. Senate is an appropriate and much needed remedy to solve the problems caused by pesticide X. The study contains a sufficiently full and fair exposition of the pertinent facts, including known or potential advantages of the use of pesticide X, to enable the public or an individual to form an independent opinion or conclusion as to whether pesticides should be banned as provided in the pending bills. In its analysis of the pending bill, the study names certain undecided Senators on the Senate committee considering the bill. Although the study meets the three part test for determining whether a communication is a grass roots lobbying communication, the study is within the exception for nonpartisan analysis, study or research, because it does not directly encourage recipients of the communication to urge a legislator to oppose the bill.

Example (9). Assume the same facts as in Example (8), except that, after stating support for the pending bill, the study concludes: "You should write to the undecided committee members to support this crucial bill." The study is not within the exception for nonpartisan analysis, study or research because it directly encourages the recipients to urge a legislator to support a specific piece of legislation.

Example (10). Organization X plans to conduct to lobbying campaign with respect to illegal drug use in the United States. It incurs $5,000 in expenses to conduct research and prepare an extensive report primarily for use in the lobbying campaign. Although the detailed report discusses specific pending legislation and reaches the conclusion that the legislation would reduce illegal drug use, the report contains a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent conclusion regarding the effect of the legislation. The report does not encourage readers to contact legislators regarding the legislation. Accordingly, the report does not, in and of itself, constitute a lobbying communication.

Copies of the report are available to the public at X's office, but X does not actively distribute the report or otherwise seek to make the contents of the report available to the general public. Whether or not X's distribution is sufficient to meet the requirement in § 56.4911–2(c)(1)(iv) that a nonpartisan communication be made available, X's distribution is not substantial (for purposes of § 56.4911–2(c)(1)(v)) in light of all of the facts and circumstances, including the normal distribution pattern of similar nonpartisan reports. X then mails copies of the report, along with a letter, to 10,000 individuals on X's mailing list. In the letter, X requests that individuals contact legislators urging passage of the legislation discussed in the report. Because X's research and report were primarily undertaken by X for lobbying purposes and X did not make a substantial distribution of the report (without an accompanying lobbying message) prior to or contemporaneously with the use of the report in lobbying the report is a grass roots lobbying communication that is not within the exception for nonpartisan analysis, study or research.

Example (11). Assume the same facts as in Example (10), except that before using the report in the lobbying campaign, X sends the research and report (without an accompanying lobbying message) to universities and newspapers. At the same time, X also advertises the availability of the report in its newsletter. This distribution is similar in scope to the normal distribution pattern of similar nonpartisan reports. In light of all of the facts and circumstances, X's distribution of the report is substantial. Because of X's substantial distribution of the report, X's primary purpose will be considered to be other than for use in lobbying and the report will not be considered a grass roots lobbying communication. Accordingly, only the expenditures for copying and mailing the report to the 10,000 individuals on X's mailing list, as well as for preparing and mailing the letter, are expenditures for grass roots lobbying communications.

(2) *Examinations and discussions of broad social, economic, and similar problems.* Examinations and discussions of board social, economic, and similar problems are neither direct lobbying communications under § 56.4911–2(b)(1) nor grass roots lobbying communications under § 56.4911–2(b)(2) even if the problems are of the type with which government would be expected to deal ultimately. Thus, under §§ 56.4911–2(b) (1) and (2), lobbying communications do not include public discussion, or communications with members of legislative bodies or governmental employees, the general subject of which is also the subject of legislation before a legislative body, so long as such discussion does not address itself to the merits of a specific legislative proposal and so long as such discussion does not directly encourage recipients to take action with respect to legislation. For example, this paragraph excludes from grass roots lobbying under § 56.4911–2(b)(2) an organization's discussions of problems such as environmental pollution or population growth that are being considered by Congress and various State legislatures, but only where the discussions are not directly addressed to specific legislation being considered, and only where the discussions do not directly encourage recipients of the communication to contact a legislator, and employee of a legislative body, or a government official or employee who may participate in the formulation of legislation.

(3) *Requests for technical advice.* A communication is neither a direct lobbying communication under § 56.4911–2(b)(1) nor a grass roots lobbying communication under § 56.4911–2(b)(2) if the communication is the providing of technical advice or assistance to a governmental body, a governmental committee, or a subdivision of either in response to a written request by the body, committee, or subdivision, as set forth in § 53.4945–2(d)(2).

(4) *Communications pertaining to "self-defense" by the organization.* A communication is neither a direct lobbying communication under § 56.4911–2(b)(1) nor a grass roots lobbying communication under § 56.4911–2(b)(2) if:

(i) The communication is an appearance before, or communication with, any legislative body with respect to a possible action by the body that might affect the existence of the organization, its powers and duties, its tax-exempt status, or the deductibilty of contributions to the organization, as set forth in § 53.4945–2(d)(3);

(ii) The communication is by a member of an affiliated group of organizations (within the meaning of § 56.4911–7(e)), and is an appearance before, or communication with, a legislative body with respect to a possible action by the body that might affect the existence of any other member of the group, its powers and duties, its tax-exempt status, or the deductibility of contributions to it;

(iii) The communication is by an organization that has a membership consisting solely of other organizations that are described in section 501(c)(3), and is an appearance before, or communication with, any legislative body with respect to a possible action by the body which might affect the existence of one or more of the member organizations, their powers, duties, or tax-exempt status, or the deductibility of contributions to one or more of the member organizations; or

(iv) The communication is by an organization that is a member of a limited affiliated group of organizations under § 56.4911–10, and is an appearnace before, or communication with, the Congress of the United States with respect to a possible action by the Congress that might affect the existence of any member of the limited affiliated group, its powers and duties, tax-exempt

status, or the deductibility of contributions to it.

(d) *Certain transfers treated as lobbying expenditures*—(1) *Transfer earmarked for grass roots purposes.* A transfer is a grass roots expenditure to the extent that it is earmarked (as defined in § 56.4911–4(f)(4)) for grass roots lobbying purposes and is not described in § 56.4911–4(e).

(2) *Transfer earmarked for direct and grass roots lobbying.* A transfer that is earmarked for direct lobbying purposes or for direct lobbying and grass roots lobbying purposes is treated as a grass roots expenditure in full except to the extent the transferor demonstrates that the amounts transferred were expended for direct lobbying purposes. This paragraph (d)(2) shall not apply to any expenditure described in § 56.4911–4(e).

(3) *Certain transfers to organizations that lobby.* A transfer that is neither a controlled grant (as defined in § 56.4911–4(f)(3)) nor an expenditure described in § 56.4911–4(e), and that is made to an organization not described in section 501(c)(3) that engages in attempts to influence legislation, is treated as a grass roots expenditure to the extent of the lesser of the amount of the transfer or the transferee's expenditures for grass roots lobbying. If the amount of the transfer exceeds the transferee's expenditures for grass roots lobbying, the excess will be treated as an expenditure for direct lobbying to the extent of the transferee's expenditures for direct lobbying. In applying the two preceding sentences, the expenditures of the transferee will be determined as if the regulations under section 4911 applied to the transferee.

(e) *Definitions.* For purposes of section 4911 and the regulations thereunder—

(1) *Legislation.* "Legislation" includes action by the Congress, any state legislature, any local council, or similar legislative body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. "Legislation" includes a proposed treaty required to be submitted by the President to the Senate for its advice and consent from the time the President's representative begins to negotiate its position with the prospective parties to the proposed treaty.

(2) *Action.* The term "action" is limited to the introduction, amendment, enactment, defeat or repeal of Acts, bills, resolutions, or similar items.

(3) *Legislative body.* "Legislative body" does not include executive, judicial, or administrative bodies.

(4) *Administrative bodies.* "Administrative bodies" includes school boards, housing authorities, sewer and water districts, zoning boards, and other similar Federal, State, or local special purpose bodies, whether elective or appointive. Thus, for example, for purposes of section 4911, the term "any attempt to influence any legislation" does not include attempts to persuade an executive body or department to form, support the formation of, or to acquire property to be used for the formation or expansion of, a public park or equivalent preserves (such as public recreation areas, game, or forest preserves, and soil demonstration areas) established or to be established by act of Congress, by executive action in accordance with an act of Congress, or by a State, municipality, or other governmental unit described in section 170(c)(1), as compared with attempts to persuade a legislative body, a member thereof, or other governmental offical or employee, to promote the appropriation of funds for such an acquisition or other legislative authorization of such an acquisition. Therefore, for example, an organization would not be influencing legislation for purposes of section 4911, if it proposed to a Park Authority that it purchase a particular tract of land for a new park, even though such an attempt would necessarily require the Park Authority eventually to seek appropriations to support a new park. However, in such a case, the organization would be influencing legislation, for purposes of section 4911, if it provided the Park Authority with a proposed budget to be submitted to a legislative body, unless such submission is described by one of the exceptions set forth in paragraph (c) of this section.

§ 56.4911–3. Expenditures for direct and/or grass roots lobbying communications.

(a) *Definition of term "expenditures for"*—(1) *In general.* Expenditures for a direct or grass roots lobbying communication ("lobbying expenditures") include amounts paid or incurred as current or deferred compensation for an employee's services attributable to the direct or grass roots lobbying communication, and the allocable portion of administrative, overhead, and other general expenditures attributable to the direct or grass roots lobbying communication. Except as otherwise indicated in this paragraph (a), all costs of preparing a direct or grass roots lobbying communication are included as expenditures for direct or grass roots lobbying. For example, except as otherwise provided in this paragraph (a), all expenditures for researching, drafting, reviewing, copying, publishing and mailing a direct or grass roots lobbying communication, as well as an allocable share of overhead expenses, are included as expenditures for direct or grass roots lobbying.

(2) *Allocation of mixed purpose expenditures*—(i) *Nonmembership communications.* Except as provided in paragraph (a)(2)(ii) of this section, lobbying expenditures for a communication that also has a bona fide nonlobbying purpose must include all costs attributable to those parts of the communication that are on the same specific subject as the lobbying message. All costs attributable to those parts of the communication that are not on the same specific subject as the lobbying message are not included as lobbying expenditures for allocation purposes. Whether or not a portion of a communication is on the same specific subject as the lobbying message will depend on the surrounding facts and circumstances. In general, a portion of a communication will be on the same specific subject as the lobbying message if that portion discusses an activity or specific issue that would be directly affected by the proposed legislation that is the subject of the lobbying message. Moveover, discussion of the background or consequences of the proposed legislation, or discussion of the background or consequences of an activity or specific issue affected by the proposed legislation, is also considered to be on the same specific subject as the lobbying communication.

(ii) *Membership communications.* In the case of lobbying expenditures for a communication that also has a bona fide nonlobbying purpose and that is sent only or primarily to members, an organization must make a reasonable allocation between the amount expended for the lobbying purpose and the amount expended for the nonlobbying purpose. An organization that includes as a lobbying expenditure only the amount expended for the specific sentence or sentences that encourage the recipient to take action with respect to legislation has not made a reasonable allocation. For purposes of this paragraph, a communication is sent only or primarily to members if more than half of the recipients of the communication are members of the organization making the communication within the meaning of § 56.4911–5. See § 56.4911–5 for separate rules on communications sent only or primarily to members. Nothing in this paragraph shall change any allocation required by § 56.4911–5.

(3) *Allocation of mixed lobbying.* If a communication (to which § 56.4911–5 does not apply) is both a direct lobbying

communication and a grass roots lobbying communication, the communication will be treated as a grass roots lobbying communication except to the extent that the organization demonstrates that the communication was made primarily for direct lobbying purposes, in which case a reasonable allocation shall be made between the direct and the grass roots lobbying purposes served by the communication.

(b) *Examples.* The provisions of paragraph (a) of this section are illustrated by the following examples. Except where otherwise explicitly stated, the expenditure test election under section 501(h) is assumed to be in effect for all organizations discussed in the examples of this paragraph (b). See § 56.4911–5 for special rules applying to the member communications described in some of the following examples.

Example (1). Organization R makes the services of E, one of its paid executives, available to S, an organization described in section 501(c)(4) of the Code. E works for several weeks to assist S in developing materials that urge voters to contact their congressional representatives to indicate their support for specific legislation. In performing this work, E uses office space and clerical assistance provided by R. R pays full salary and benefits to E during this period and receives no reimbursement from S for these payments or for the other facilities and assistance provided. All expenditures of R, including allocable office and overhead expenses, that are attributable to this assignment are grass roots expenditures because E was engaged in an attempt to influence legislation.

Example (2). An organization distributes primarily to nonmembers a pamphlet with two articles on unrelated subjects. The total cost of preparing, printing and mailing the pamphlet is $11,000, $1,000 for preparation and $10,000 for printing and mailing. The cost of preparing one article, a nonlobbying communication, is $600. The article is printed on three of the four pages in the pamphlet. The cost of preparing the second article, a grassroots lobbying communication that addresses only one specific subject, is $400. This article is printed on one page of the four page pamphlet. In this situation, $400 of preparation costs and $2,500 (25% of $10,000) of printing and mailing costs are expenditures for a grass roots lobbying communication.

Example (3). Assume the same facts as in Example (2), except that the pamphlet is distributed only to members. In addition, assume the second article states that the recipient members should contact their congressional representatives. The organization allocates $400 of preparation costs and $2,500 of printing and mailing costs as expenditures for direct lobbying (see § 56.4911–5(c)). The allocation is reasonable for purposes of § 56.4911–3(a)(2)(ii).

Example (4). Organization J places a full-page advertisement in a newspaper. The advertisement urges passage of pending legislation to build three additional nuclear powered submarines, and states that readers should write their Congressional representatives in favor of the legislation. The advertisement also provides a general description of J's purposes and activities, invites readers to become members of J and asks readers to contribute money to J. Except for the cost of the portion of the advertisement describing J's purposes and activities and the portion specifically seeking members and contributions, the entire cost of the advertisement is an expenditure for grass roots lobbying communication, because the entire advertisement, except for the lines specifically describing J and specifically seeking members and contributions, is on the same specific subject as the grass roots lobbying message.

Example (5). Assume the same facts as in Example (4), except that J places in the newspaper two separate half-page advertisements instead of one full-page advertisement. One of the two advertisements discusses the need for three additional nuclear powered submarines and urges readers to write their Congressional representatives in favor of the pending legislation to build the three submarines. The other advertisement contains only the membership and fundraising appeals, along with a general description of J's purposes and activities. The half-page advertisement urging readers to write to Congress is a grass roots lobbying communication and all of J's expenditures for producing and placing that advertisement are expenditures for a grass roots lobbying communication. J's expenditures for the other half-page advertisement are not expenditures for a grass roots or direct lobbying communication.

Example (6). Assume the same facts as in Example (4), except that the communication by J is in a letter mailed only to members of J, rather than in a newspaper advertisement, and the invitation to become a member of J is an invitation to join a new membership category. In addition, assume that the communication states that the member recipients should ask nonmembers to write their Congressional representatives. J allocates one-half of the cost of the mailing as an expenditure for a grass roots lobbying communication (see § 56.4911–5(d)). Because the communication had both bona fide nonlobbying (e.g., membership solicitation and fundraising) purposes as well as lobbying purposes, J's allocation of one-half of the cost of the communication to grass roots lobbying and one-half to nonlobbying is reasonable for purposes of § 56.491–3(a)(2)(ii).

Example (7). A particular monthly issue of organization X's newsletter, which is distributed mainly to nonmembers of X, has three articles of equal length. The firt article is a grass roots lobbying communication, the sole specific subject of which is pending legislation to help protect seals from being slaughtered in certain foreign countries. The second article discusses the rapid decline in the world's whale population, particularly because of the illegal hunting of whales by foreign countries. The third article deals with air pollution and the acid rain problem in North America. Because the first article is a grass roots lobbying communication, all of the costs allocable to that article (e.g., one-third of the newsletter's printing and mailing costs) are lobbying expenditures. The second article is not a lobbying communication and the pending legislation relating to seals addressed in the first article does not affect the illegal whale hunting activities. Because the second and third articles are not lobbying communications and are also not on the same specific subject as the first article, no portion of the costs attributable to those articles is a grass roots lobbying expenditure.

Example (8). Organization T, a nonmembership organization prepares a three page document that is mailed to 3,000 persons on T's mailing list. The first two pages of the three page document, titled "The Need for Child Care," support the need for additional child care programs, and include statistics on the number of children living in homes where both parents work or in homes with a single parent. The two pages also make note of the inadequacy of the number of day care providers to meet the needs of these parents. The third page of the document, titled "H.R. 1," indicates T's support of H.R. 1, a bill pending in the U.S. House of Representatives. The document states that H.R. 1 will provide for $10,000,000 in additional subsidies to child care providers, primarily for those providers caring for lower income children. The third page of the document also notes that H.R. 1 includes new federal standards regulating the quality of child care providers. The document ends with T's request that recipients contact their congressional representative in support of H.R. 1. The entire three page document is on the same specific subject, and, therefore, all expenditures of preparing and distributing the three page document are grass roots lobbying expenditures.

Example (9). Assume the same facts as in Example (8), except that T is a membership organization, 75 percent of the recipients of the three page document are members of T, and 25 percent of the recipients are nonmembers and are not subscribers within the meaning of § 56.4911–5(f)(5). Assume also that the document states that readers should write to Congress, but does not state that the readers should urge nonmembers to write to Congress. T treats the document as having a bona fide nonlobbying purpose, the purpose of educating its members about the need for child care. Accordingly, T allocates one-half of the cost of preparing and distributing the document as a lobbying expenditure (see § 56.4911–5(e)(2)(i)), of which 75 percent is a direct lobbying expenditure (see § 56.4911–5(e)(2)(iii)) and 25 percent is a grass roots lobbying expenditure (see § 56.4911–5(e)(2)(ii)). The remaining one-half is allocated as a nonlobbying expenditure. T's allocation is reasonable for purposes of § 56.4911–3(a)(2)(ii) and is correct for purposes of § 56.4911–5(e).

Example (10). Assume the same facts as in Example (9), except that T allocates one percent of the cost of preparing and distributing the document as a lobbying expenditure (for purposes of § 56.4911–5(e)(2)) and 99 percent as a nonlobbying expenditure. T's allocation is based upon the fact that out of 200 lines in the document,

only two lines state that the recipient should contact legislators about the pending legislation. T's allocation is unreasonable for purposes of § 56.4911–3(a)(2)(ii).

Example (11). Organization F, a nonmembership organization, sends a one page letter to all persons on its mailing list. The only subject of the letter is the organization's opposition to a pending bill allowing private uses of certain national parks. The letter requests recipients to send letters opposing the bill to their congressional representatives. A second one page letter is sent in the same envelope. The second letter discusses the broad educational activities and publications of the organization in all areas of environmental protection and ends by requesting the recipient to make a financial contribution to organization F. Since the separate second letter is on a different subject from the lobbying letter, and the letters are of equal length, 50 percent of the mailing costs must be allocated as an expenditure for a grass roots lobbying communication.

Example (12). Assume the same facts as in Example (11), except that F is a membership organization and the letters in question are sent primarily (90 percent) to members. The other 10 percent of the recipients are nonmembers and are not subscribers within the meaning of § 56.4911–5(f)(5). Assume also that the first letter does not state that readers should urge nonmembers to write to legislators. F allocates one-half of the mailing costs as a lobbying expenditure, of which 90 percent is a direct lobbying expenditure and 10 percent is a grass roots lobbying expenditure (see § 56.4911–5(e)(2)). F's allocation is reasonable for purposes of § 56.4911–3(a)(2)(ii) and is correct for purposes of § 56.4911–5.

Par. 7. Proposed § 56.4911–4 is amended by revising paragraphs (b)(2), (b)(5), (b)(6), (c)(7), and (f)(2) to read as follows:

§ 56.4911–4 Exempt purpose expenditures.

* * * * *

(b) *Included expenditures.* * * *

(2) Amounts paid or incurred as current or deferred compensation for an employee's services for a purpose enumerated in section 170(c)(2)(B).

* * * * *

(b) *Included expenditures.* * * *

(5) Amounts paid or incurred for activities described in § 56.4911–3,

(6) Amounts paid or incurred for activities described in § 56.4911–5 that are not lobbying expenditures, and

* * * * *

(c) *Included expenditures.* * * *

(7) Amounts paid or incurred for the production of income, whether or not described in section 512(a)(1).

* * * * *

(f) *Definitions.*

(2) For purposes of paragraph (c) of this section, a separate fund raising unit of any organization must consist of either two or more individuals a majority of whose time is spent on fund raising for the organization, or any separate accounting unit of the organization that is devoted to fund raising.

* * * * *

Par. 8 Proposed § 56.4911–5 is amended as follows, to read as set forth below:

1. Paragraphs (a) through (d) and paragraph (e)(1) are revised to read as set forth below.

2. Paragraph (f)(6) is revised to read as set forth below.

3. A new paragraph (f)(8) is added, to read as set forth below.

§ 56.4911–5 Communications with members.

(a) *In general.* For purposes of section 4911 and § 56.4911–2, expenditures for certain communications between an organization and its members are treated as expenditures for direct lobbying, as expenditures for grass roots lobbying, or as other than lobbying expenditures in accordance with this section.

(b) *Communication directed only to members; excepted communication.* Expenditures for a communication that refers to, and reflects a view on, specific legislation are not lobbying expenditures if the communication satisfies the following requirements:

(1) The communication is directed only to members of the organization;

(2) The specific legislation the communication refers to, and reflects a view on, is of direct interest to the organization and its members;

(3) The communication does not directly encourage the member to engage in direct lobbying (whether individually or through the organization); and

(4) The communication does not directly encourage the member to engage in grass roots lobbying (whether individually or through the organization).

(c) *Communication directed only to members: expenditures for direct lobbying.* Expenditures for a communication that refers to, and reflects a view on, specific legislation and that satisfies the requirements of paragraphs (b)(1), (b)(2), and (b)(4) of this section, but does not satisfy the requirements of paragraph (b)(3) of this section, are treated as expenditures for direct lobbying.

(d) *Communication directed only to members: grass roots expenditures.* Expenditures for a communication that refers to, and reflects a view on, specific legislation and that satisfies the requirements of paragraphs (b)(1) and (b)(2) of this section, but does not satisfy the requirements of paragraph (b)(4) of this section, are treated as grass roots expenditures (whether or not the communication satisfies the requirements of paragraph (b)(3) of this section.

(e) *Written communications directed to members and nonmembers*—(1) *In general.* Expenditures for any written communication that is designed primarily for members of an organization (but not directed only to members) and that refers to, and reflects a view on, specific legislation of direct interest to the organization and its members, are treated as expenditures for direct or grass roots lobbying in accordance with paragraph (e)(2) or (e)(3) of this section. For purposes of this section, a communication is designed primarily for members of an organization if more than half of the recipients of the communication are members of the organization.

* * * * *

(f) *Definitions and special rules.* * * *

* * * * *

(6) *Directly encourages*—(i) *Direct lobbying*—(A) *In general.* For purposes of this section, a communication directly encourages a recipient to engage in direct lobbying, whether individually or through the organization, if the communication:

(*1*) States that the recipient should contact a legislator or an employee of a legislative body, or should contact any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of urging contact with the government official or employee is to influence legislation);

(*2*) States the address, telephone number, or similar information of a legislator or an employee of a legislative body; or

(*3*) Provides a petition, tear-off postcard or similar material for the recipient to communicate his or her views to a legislator or an employee of a legislative body, or to any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of so facilitating contact with the government official or employee is to influence legislation).

(B) *"Self-defense" exception for communications with members.*

Notwithstanding the provisions of paragraph (f)(6)(i)(A) of this section, for purposes of paragraphs (b)(3), (e)(2)(i), and (e)(3)(ii) of this section, a communication that directly encourages a member to engage in direct lobbying activities that are described in section 4911(d)(2)(C) and that would not be attempts to influence legislation if engaged in directly by the organization is treated as a communication that does not directly encourage a member to engage in direct lobbying.

(ii) *Grass roots lobbying.* For purposes of paragraphs (b)(4) and (e)(3)(i) of this section, a communication directly encourages recipients to engage individually or collectively (whether through the organization or otherwise) in grass roots lobbying if the communication:

(A) States that the recipient should encourage any nonmember to contact a legislator or an employee of a legislative body, or to contact any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of urging contact with the government official or employee is to influence legislation);

(B) States that the recipient should provide to any nonmember the address, telephone number, or similar information of a legislator or an employee of a legislative body; or

(C) Provides (or requests that the recipient provide to nonmembers) a petition, tear-off postcard or similar material for the recipient (or nonmember) to use to ask any nonmember to communicate views to a legislator or an employee of a legislative body, or to any other government official or employee who may participate in the formulation of legislation, but only if the principal purpose of so facilitating contact with the government official or employee is to influence legislation. For purposes of this paragraph, a petition is provided for the recipient to use to ask any nonmember to communicate views if, for example, the petition has an entire page of preprinted signature blocks. Similarly, for purposes of this paragraph, where a communication is distributed to a single member and provides several tear-off postcards addressed to a legislator, the postcards are presumed to be provided for the member to use to ask a nonmember to communicate with the legislator.

* * * * *

(8) *Reasonable allocation rule.* In the case of lobbying expenditures for a communication that also has a bona fide nonlobbying purpose and that is sent only or primarily to members, an organization must make a reasonable allocation between the amount expended for the lobbying purpose and the amount expended for the nonlobbying purpose. See § 56.4911–3(a)(2)(ii).

Par. 9. Proposed § 56.4911–6, paragraphs (a)(3), (a)(4), (b)(2), and (b)(3), are revised to read as follows:

§ 56.4911–6 Records of lobbying and grass roots expenditures.

(a) *Records of lobbying expenditures.* * * *

(3) The portion of amounts paid or incurred as current or deferred compensation for an employee's services for direct lobbying;

(4) Amounts paid for out-of-pocket expenditures incurred on behalf of the organization and for direct lobbying, whether or not incurred by an employee;

* * * * *

(b) *Records of grassroots expenditures.* * * *

(2) The portion of amounts paid or incurred as current or deferred compensation for an employee's services for grass roots lobbying;

(3) Amounts paid for out-of pocket expenditures incurred on behalf of the organization and for grass roots lobbying, whether or not incurred by an employee;

* * * * *

Par. 10. Proposed § 56.4911–7 is amended by revising paragraph (c) to read:

§ 56.4911–7 Affiliated group of organizations.

* * * * *

(c) *Governing instrument.* One organization (the "controlling" organization) is affiliated with a second organization (the "controlled" organization) by reason of the governing instruments of the controlled organization if the governing instruments of the controlled organization expressly or by implication limit the independent action of the controlled organization on legislative issues by requiring it to be bound by decisions of the other organization on legislative issues.

* * * * *

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–29304 Filed 12–22–88; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendments

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the North Dakota permanent regulatory program (hereinafter referred to as the North Dakota program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment concerns the reclamation bond liability period for surface coal mining acreage disturbed for sediment ponds and associated access roads, surface water diversions, and soil stockpiles.

This notice sets forth the times and locations that the North Dakota program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m., m.s.t. January 23, 1989. If requested, a public hearing on the proposed amendments will be held on January 17, 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m., m.s.t. on January 9, 1989.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Jerry R. Ennis at the address listed below. Copies of the North Dakota program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSMRE's Casper Field Office.

Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 E. B Street, Room 2128, Casper, Wyoming 82601–1918, Telephone: (307) 261–5776.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343–5492.

Edward J. Englerth, Director, Reclamation Division, North Dakota Public Service Commission, Bismarck, North Dakota 58505–0165, Telephone: (701) 224–4096.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, at the address or telephone number listed in "**ADDRESSES.**"

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 1980, the Secretary of the Interior approved the North Dakota program. Information regarding the general background on the North Dakota program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the North Dakota program can be found in the December 15, 1980 **Federal Register** (45 FR 82246). Subsequent actions taken with regard to North Dakota's program and program amendments can be found at 30 CFR 934.14, 934.15, and 934.16.

II. Proposed Amendments

North Dakota's Administrative Code (NDAC) at Section 69–05.2–12–09, requires that the reclamation performance bond liability period for acreage disturbed by mining operations be a minimum of 10 years. NDAC Section 69–05.2–22–07 specifies that the 10-year period of bond liability for a reclamation tract begins after the last year of augmented seeding, planting, fertilization, irrigation or other work. NDAC 69–05.2–16–09 specifies that sedimentation ponds for a reclamation tract may not be removed sooner than 2 years after the last augmented seeding. The combined effect of these regulations is that reclaimed sedimentation ponds and associated structures (access roads, surface water diversions, and soil stockpiles) have a reclamation bond liability period that in most cases ends two years later than the reclamation bond liability period for other adjacent mining-related disturbances.

On November 8, 1988, North Dakota submitted to OSMRE, a proposed amendment to its approved program. North Dakota proposes to add subsection (b) to NDAC 69–05.2–22–07 to allow North Dakota on a case-by-case basis, to set a reclamation bond liability period for sedimentation ponds and associated disturbances that would end at the same time as the reclamation bond liability period for other disturbances within the reclamation tract. The State would allow such practices when "the permittee affirmatively demonstrates that reclamation of facilities will provide equal or greater protection to the environment and to the public health and safety."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h)(10), OSMRE is now seeking comment on whether the amendments proposed by North Dakota satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the North Dakota program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m., m.s.t. on January 9, 1989. Location and time of day of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare the adequate and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 934

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: December 16, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88–29470 Filed 12–22–88; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Proposed Amendment to the Bank Secrecy Act Regulations Relating to Identification Required to Purchase Bank Checks, Cashier's Checks, Traveler's Checks, and Money Orders

AGENCY: Departmental Offices, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Section 6185(b) of Title VI of the Anti-Drug Abuse Act of 1988, Pub. L. No. 100–690, November 18, 1988, requires that the Secretary of the Treasury issue regulations prescribing what identification shall be provided by purchasers of cashier's checks, traveler's checks, money orders and bank checks, in amounts or denominations of $3,000 or more. Treasury is issuing this Advance Notice to solicit comments from the public on how best to implement this provision.

DATE: Comments are due on January 23, 1989.

ADDRESS: Comments should be sent to Amy Rudnick, Director, the Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Scott, Attorney Advisor, Office of the Assistant General Counsel (Enforcement), (202) 566–9947.

SUPPLEMENTARY INFORMATION: Section 6185(b) of Title VI of the Anti-Drug Abuse Act of 1988 added a new section 5325 to the Bank Secrecy Act:

§ 5325. Identification required to purchase certain monetary instruments.

(a) In general.—No financial institution may issue or sell a bank check, cashier's check, traveler's check, or money order to any individual in connection with a transaction or group of such contemporaneous transactions which involves United States coins or currency (or such other monetary instruments as the Secretary may prescribe) in amounts or denominations of $3,000 or unless—

(1) the individual has a transaction account with such financial institution and the financial institution—

(A) verifies that fact through a signature card or other information maintained by such institution in connection with the account of such individual; and

(B) records the method of verification in accordance with regulations which the Secretary of the Treasury shall prescribe; or

(2) the individual furnishes the financial institution with such forms of identification as the Secretary of the Treasury may require in regulations which the Secretary shall prescribe and the financial institution verifies and records such information in accordance with regulations which such Secretary shall prescribe.

(b) Report to Secretary upon request.—Any information required to be recorded by any financial institution under paragraph (1) or (2) of subsection (a) shall be reported to the Secretary of the Treasury at the request of such Secretary.

(c) Transaction account defined.—For purposes of this section, the term "transaction account" has the meaning given to such term in section 19(b)(1)(C) of the Federal Reserve Act.

The legislative history indicates that Congress clearly felt that there was a need for this provision, based on the fact that the purchase of these instruments for amounts under $10,000 is a common money laundering technique. The House Committee Report noted that the only indentification records required for persons who conduct currency transactions in amounts under $10,000 are those needed to open an account, thus permitting non-account-holders to conduct under-$10,000 transactions without having to identify themselves. The Committee indicated that it expects affected financial institutions to be "fully cooperative and responsive to this law enforcement effort." H. Rep. No. 100–716, 100th Cong., 2d Sess. 7.

Treasury was asked to formally comment on this provision while still a legislative proposal and stated that it believed that such a requirement would be a "useful deterrent" to the practice of money laundering through the repeated purchase of bank checks (sometimes denominated as drafts), traveler's checks, cashier's checks, and money orders in amounts of less than $10,000. Treasury noted that it did not feel that the proposal would be overly burdensome and stated that it envisioned that financial institutions would need to keep only a chronological log of the purchases of these instruments and report the log to Treasury upon request. *See* Statement of the Honorable Gerald L. Hilsher, Deputy Assistant Secretary (Law Enforcement), before the Committee on Banking, Finance and Urban Affairs, U.S. House of Representatives, June 8, 1988.

Prior to issuing a Notice of Proposed Rulemaking to propose specific regulatory changes, Treasury wishes to solicit comments from the public, particularly affected financial institutions, on the most effective and least burdensome way to implement this new requirement. Treasury at the present time envisions, as noted above, that each financial institution as defined in 31 CFR 103.11(g) would keep a chronological log of cash purchases of these instruments in amount of $3,000 and above that includes particular information about the transaction and, in the case of accountholders, the method of verifying the account relationship or, in the case of non-accountholders, the particular form of identification used to verify the individual's identity. The log could be maintained either manually or by computer, and must be provided to the Secretary of the Treasury upon request.

Treasury requests that the affected financial institutions suggest alternative ideas on implementing this requirement in a way which would be least burdensome to them, but also would provide full information easily accessible to the Treasury Department. Treasury also requests comments on how the account relationship and identification verification requirements could be implemented. Use of the notation "Signature card on file" will not be permitted. Finally, Treasury also requests comments from the financial institutions on the feasibility of using their present systems to aggregate purchases of these instruments.

After review and consideration of all the comments, Treasury will issue a Notice of Proposed Rulemaking proposing specific regulatory changes and will solicit again the views of the public before issuing a Final Rule implementing this requirement. There is no requirement to comply with the statutory provision prior to the effective date of a Final Rule.

Submission of Comments

Treasury requests comments from all interested persons concerning the proposed amendments. All comments received before the closing date will be carefully considered. Oral comments must be reduced to writing and submitted to Treasury to receive consideration. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future action. The Treasury Department will not recognize any materials to comments, including the name of any person submitting comments, as confidential. Any material not intended to be disclosed to the public should not be included in comments. All comments submitted will be available for public inspection during the hours that the Treasury Library is open to the public. The Treasury Library is located in Room 5030, 1500 Pennsylvania Ave. NW., Washington, DC 20220. Appointments must be made to view the comments. Persons wishing to view the comments submitted should contact the Office of Financial Enforcement at the number listed above.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

Dated: December 14, 1988.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 88–29482 Filed 12–22–88; 8:45 am]

BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 798 and 799

[OPTS–46017, FRL–3496–7]

Mouse Visible Specific Locus Test Requirement; Proposed Amendment in Test Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the requirement for the mouse visible specific locus test (MVSL; 40 CFR 798.5200) for both final and proposed test rules promulgated under section 4(a) of the Toxic Substances Control Act (TSCA). Because of the potential unavailability of test facilities for the MVSL, EPA is proposing to allow test sponsors for these or future test rules to choose either the MVSL or the mouse biochemical specific locus test (MBSL) in testing for heritable gene mutations in mammals, if notified by EPA that such testing is necessary. EPA believes that both the MBSL and MVSL are

comparable tests and acceptable for detecting heritable gene mutations in mammals. The test guideline for the MBSL is being proposed in this document under 40 CFR 798.5195. EPA is proposing a reporting requirement of 51 months for the completion of testing for either the MVSL or MBSL. EPA is also proposing certain specimen retention modifications of the TSCA Good Laboratory Practice Standards for the MBSL and MVSL. Current rules including this testing requirement and affected by this proposal include: The final test rules for fluoroalkenes, mesityl oxide (MO), oleylamine (Phase I and Phase II), and commercial hexane, and the proposed test rules for unsubstituted phenylenediamines, triethylene glycol monomethyl, monoethyl, and monobutyl ethers, isopropanol, and tributyl phosphate.

DATES: Submit written comments on or before January 23, 1989. If persons request an opportunity to submit oral comments by February 6, 1989, EPA will hold a public meeting on this rule in Washington, DC. For further information on arranging to speak at the meeting, see UNIT VI. of this preamble.

ADDRESS: Written comments must be identified by the docket number as follows:

1. For comments on the test guidelines in 40 CFR 798.5195 and/or 798.5200, identify the comments by the docket number [OPTS–46017].

2. For comments on a chemical substance subject to either the mouse visible specific locus (40 CFR 798.5195) or the mouse biochemical specific locus (40 CFR 798.5200), identify the comments by the docket number [OPTS–46017/ and the docket number for the specific chemical] as follows:

[OPTS–46017/42002H]—Fluoroalkenes (vinyl flouride, vinylidene fluoride, hexafluoropropene, and tetrafluoroethane).
[OPTS–46017/42008E]—Unsubstituted phenylenediamines.
[OPTS–46017/42030F]—Mesityl oxide (MO).
[OPTS–46017/42061D]—Oleylamine.
[OPTS–46017/42080C]—Triethylene glocol monomethyl, monoethyl, and monobutyl ethers.
[OPTS–46017/42084G]—Commercial hexane.
[OPTS–46017/42097A]—Isopropanol.
[OPTS–46017/42100A]—Tributyl phosphate.

Comments, in triplicate, should be submitted to: TSCA Public Docket Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. EB–55, 401 M Street SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: EPA is proposing under TSCA section 4(a) to amend the requirement for the MVSL in the final test rules for four fluoroalkenes, mesityl oxide, oleylamine (Phase I and Phase II) and commercial hexane, and in proposed test rules for unsubstituted phenylenediamines, triethylene glycol monomethyl, monoethyl, and monobutyl ethers, isopropanol, and tributyl phosphate, to allow the test sponsor for these or future test rules to use either the MVSL or the MBSL for the testing of chemical substances for their potential to elicit heritable gene mutations in mammals, if notified by EPA that such testing is necessary.

Public reporting burden for this collection of information is estimated to average 535 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate 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 Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Introduction

In the **Federal Register** published on May 23, 1985 (50 FR 21398), EPA issued a final rule requiring testing of diethylenetriame (DETA), which included the MVSL, triggered by a positive result in the *Drosophila* sex-linked recessive lethal test. In the **Federal Register** published on April 10, 1986 (51 FR 12344), EPA proposed test standards and reporting requirements for the testing of DETA which were finalized in the **Federal Register** published on February 3, 1987 (52 FR 3230). The Synthetic Organic Chemical Manufacturers Association and Texaco Chemical Corporation challenged this final rule in the U.S. Court of Appeals for the Third Circuit (No. 87–3265), arguing that the MVSL, required by the rule, would be impossible to perform due to unavailability of a laboratory to perform the test.

The MVSL requirement also appears in four other final test rules: Fluoroalkenes (52 FR 21516; June 8, 1987); mesityl oxide (52 FR 19088; May 20, 1987); oleylamine (Phase I; 52 FR 31962; August 24, 1987); and commercial hexane (53 FR 3382; February 5, 1988). Persons subject to these rules did not challenge the MVSL requirement, although two of the rules (fluoroalkenes and mesityl oxide) were challenged on different grounds.

A petition challenging the test rule for mesityl oxide (MO) is currently pending in the Court of Appeals for the Fifth Circuit. In a decision rendered in August of 1987, 862 F.2d 295 (5th Cir. 1987), the court remanded the test rule for MO to EPA for reconsideration of an issue distinct from the subject of this proposed rulemaking. EPA will complete its reconsideration of the MO test rule by early 1989 and, if EPA decides to require testing of MO, the modifications proposed in this rule would apply to the testing of MO.

During the course of discussions with the DETA petitioners, EPA learned that there were factual inaccuracies in the rulemaking record concerning the availability of the Oak Ridge National Laboratory (ORNL) to conduct the MVSL in accordance with EPA's TSCA Good Laboratory Practice Standards (GLPS) described in 40 CFR Part 792. EPA had, in part, based its conclusion that testing facilities would be available to perform the MVSL on information obtained during a meeting with representatives from the U.S. Department of Energy (DOE), which operates ORNL, held on October 3, 1986. A summary of this meeting (Ref. 1) has been placed in the rulemaking record for this proposed rule, was contained in the rulemaking record for the final Phase II test rule for DETA, and had been reviewed by DOE. From this meeting, EPA had understood that ORNL had previously conducted the MVSL for another substance at industry's expense according to the U.S. Food and Drug Administration's GLPS (similar to EPA's GLPS), and was interested in conducting the MVSL for test sponsors pursuant to EPA's TSCA section 4(a) test rules. EPA's understanding was incorrect.

In the Third Circuit, EPA and the DETA petitioners filed a joint motion for additional time to correct the record before filing briefs. The Court denied this motion and suggested that such corrections could only be made after a

remand of the rule to EPA. EPA and the petitioners then jointly moved the Court to issue an order under TSCA section 19(b) (15 U.S.C. 2618(b)) providing that EPA correct, complete, and supplement the record and provide an opportunity for additional submissions and presentations to EPA on the MVSL issue. On July 23, 1987, the Court granted this joint motion and required the parties to file a joint statement of the status of the administrative proceedings every 90 days. Since that time, EPA has determined that a positive test result was not obtained for DETA in the sex-linked recessive lethal test in *Drosophila*, the triggering test for the MVSL. Accordingly, the petitioners and EPA have asked the Court to dismiss the DETA case. However, EPA believes that the MVSL issue needs to be addressed in a general context and in the context of the availability of another, comparable test, the MBSL, and also specifically in reference to the remaining final and proposed test rules listed in this preamble.

II. Comparison Between the MVSL and MBSL

Both the MVSL and MBSL are capable of detecting chemical substances which elicit heritable gene mutations in mammals and are acceptable for TSCA testing requirements. For an indepth discussion of the MVSL and MBSL, a Work Group Report (Ref. 2) prepared for EPA's GENE-TOX Program and other recommended publications (Refs. 3 and 4) should be consulted. In the MVSL, the mutations which are inherited by the offspring (*e.g.*, changes in coat color, eye color, hair structure, or the morphology of the external ear) are readily visible to the naked eye. By comparison, the mutations which are inherited by the offspring in the MBSL test (changes in the chemical structure and electrophoretic properties of certain enzymes contained in the blood or kidneys) are not visible to the naked eye, but require biochemical analyses of blood and kidney biological preparations to detect the altered enzymes resulting from mutations. For blood preparations, starch-gel electrophoresis is performed, followed by specific enzyme staining to demonstrate migration patterns. For kidney preparations, broad-range isoelectric focusing is performed, followed by similar staining procedures. The altered enzymes exhibit different migration patterns following these analytical procedures than those obtained from animals in which mutations affecting these enzymes have not occurred. In both tests, the males are generally exposed to the test substance and subsequently mated with untreated females. With both tests, it is possible to detect mutations which are elicited at two important stages of development of the male sperm cell: The spermatogonial stem cell stage and the postspermatogonial stage. For that reason, the MVSL (40 CFR 798.5200), and the MBSL (40 CFR 798.5195) proposed in this rule, are constructed such that mutations elicited during the spermatogonial stem cell stage and all postspermatogonial stages of sperm development will be observed. In addition, although both of these guidelines do not specify more than one dose level, at least two dose levels will be specified in each individual test rule, so that the data obtained will be useful for risk assessment purposes.

Since the 1981 Work Group Report (Ref. 2), the MBSL has become commercially available (Ref. 5). EPA currently believes that both the MVSL and MBSL are equally acceptable for detecting chemicals which elicit heritable gene mutations in mammals. EPA is soliciting public comment on this issue, as described in Unit IV. of this preamble.

III. Proposed Amendment of MVSL Requirements

For all of the final and proposed test rules listed in this preamble, EPA is proposing to amend the final or proposed test standards in three ways. First, EPA is proposing that test sponsors have the option of conducting either the MVSL, according to 40 CFR 798.5200, or the MBSL, according to the TSCA Health Effects Test Guideline for the MBSL which EPA is proposing under 40 CFR 798.5195 in this rule. Second, EPA is proposing that the MVSL or MBSL be conducted in accordance with modified TSCA GLPS, as proposed in Unit III.B. of this preamble. Third, EPA is proposing to amend the reporting requirements so that the final report on either the MVSL or MBSL is due no later than 51 months following EPA's notification that such testing is necessary, with 6-month interim reports required, the first of which is due 6 months following notification of the test sponsor.

A. Option of Using Either the MVSL or MBSL

EPA is proposing to amend the MVSL test requirement for each of the final and proposed TSCA section 4(a) test rules described in this preamble, such that the test sponsors for these or future test rules may select either the MVSL or the MBSL, using the modifications to EPA's TSCA GLPS proposed in Unit IV. of this preamble, to determine whether a given chemical substance elicits heritable gene mutations in mammals.

This amendment would provide a test sponsor with four alternatives:

1. Independently negotiate with ORNL or a commercial laboratory already possessing the required historical control data to conduct the MVSL according to the TSCA Health Effects Test Guideline (40 CFR 798.5200).

2. Independently negotiate with a commercial laboratory not already possessing the required historical control data to conduct the MVSL, with the cost of developing the necessary historical control data to be borne by the party or parties specified in the negotiated contract.

3. Independently negotiate with Research Triangle Institute (RTI) or another laboratory already possessing the required historical control data to conduct the MSBL as specified in the TSCA Health Effects Test Guideline under 40 CFR 798.5195 which EPA is proposed for this test in this document.

4. Independently negotiate with a laboratory not already possessing the required historical control data specified in the proposed TSCA Health Effects Test Guideline to conduct the MBSL with the cost of the necessary historical control data to be borne by the party or parties specified in the negotiated contract.

This proposal is the result, in part, of EPA's further consideration of mutagenicity testing requirements in light of new information and developments in the DETA litigation. EPA continues to believe that each of the test rules is valid and that EPA has made appropriate statutory findings to establish these test rules. In addition, EPA continues to believe that it should require testing of chemical substances, as appropriate, for their potential mutagenicity. Consequently, EPA believes that a valid for detecting heritable gene mutations in mammals, such as the MVSL, is necessary when certain lower-tier mutagenicity tests are positive.

The MVSL, however, is rarely used. ORNL is currently the only laboratory in the United States which has experience conducting the MVSL and the control data required by 40 CFR 798.5200 (d)(4). In addition, it is not clear whether ORNL is available and willing to perform the MVSL for industrial test sponsors in accordance with TSCA GLPS. On September 16, 1987, EPA sent a letter (Ref. 6) to the contractor that oversees the operation of ORNAL for DOE inquiring about: The terms of availability of the MVSL at ORNL for industrial test sponsors; ORNL's ability

to conduct the MVSL with adherence to TSCA GLPS; the cost of the MVSL at ORNL; and the possible terms of a potential interagency agreement (IGA) between EPA and ORNAL to ensure the availability of the MVSL for industrial test sponsors requiring this test pursuant to EPA's TSCA section 4(a) test rules.

On December 10, 1987, EPA received a letter (Ref. 7) from DOE indicating that DOE was concerned that the use of ORNL's facilities and personnel for conducting the MVSL for industrial tests sponsors pursuant to EPA's TSCA section 4(a) test rule requirements might have an adverse impact on the DOE health effects research program at ORNL. Furthermore, DOE indicated that it would require an interagency memorandum of understanding (MOU) between EPA and DOE before it would consider committing significant resources to this effort. EPA has decided not to enter into such an interagency MOU with DOE. This decision is consistent with EPA's policy of avoiding any direct involvement with negotiations on the part of test sponsors with testing facilities to secure contractual agreements for testing required under TSCA section 4(a) test rules. However, this decision does not in any way limit the opportunity for test sponsors to conduct independent negotiations with DOE to utilize ORNL for the conduct of the MVSL for substances subject to a requirement for such testing.

After learning that the MBSL, another mutagenicity assay which is capable of detecting heritable gene mutations in mammals, might be currently available at RTI, a commercial laboratory, EPA sent a letter (Ref. 8) to RTI on September 16, 1987. The letter inquired about: (1) The commercial availability of the MBSL to industrial test sponsors; (2) RTI's ability to conduct the MBSL under TSCA GLPS; (3) the cost of the MBSL under various assumptions; (4) the adequacy of RTI's historical control data for the MBSL; (5) the number of chemicals which could be tested per year given various assumptions; (6) the length of time required to conduct the MBSL for one substance under various assumptions; and (7) the amount of lead time the laboratory would require before initiating testing, including the time required for contract negotiations and all other activities necessary before the initiation of testing.

In a letter (Ref. 5) dated October 20, 1987, RTI replied to EPA that it would be prepared to conduct the MBSL for industrial test sponsors requiring such testing pursuant to TSCA section 4(a) test rules, and that RTI was fully capable of conducting the MBSL with adherence to TSCA GLPS. In addition, in a letter (Ref. 9) dated December 15, 1987, RTI indicated to EPA that the laboratory would also be available and willing to conduct the MVSL for industrial test sponsors, provided that the test sponsors would fund the development of the required positive and negative historical control data, and that RTI would be able to obtain the appropriate test animals from ORNL or another source. EPA has received estimates that this required historical control data could cost as much as $1 million to develop. RTI also indicated to EPA that it would be able to conduct the MVSL with adherence to TSCA GLPs.

In view of all of the information which EPA has received since promulgation of the final Phase II test rule for DETA, EPA has concluded that the MBSL is as acceptable as the MVSL for determining the potential of a substance to elicit heritable gene mutations in mammals (see Unit II. of this preamble), and EPA solicits public comment on this issue (see Unit IV. of this preamble). In addition, the MBSL currently appears to be less costly for a test sponsor to obtain from a commercial testing facility than is the MVSL, since it is commercially available at a laboratory already possessing all of the required historical control data (Ref. 5). In this notice, EPA is also requesting further public comment on the availability and cost of each of these two tests.

In each of the final and proposed test rules for which amendments are proposed, EPA made a commitment to conduct a public program review (triggered by the test sponsor's notification of EPA that a positive result for the sex-linked recessive lethal gene mutation test in Drosophila had been observed for a given substance) before deciding whether testing of the substance for eliciting heritable gene mutations in mammals should be required. EPA is now proposing that the public program review would consider all of the mutagenicity test results available for the substance in question, the relative cost of testing of the MBSL as opposed to the MVSL, the availability of testing facilities, and other matters relating to whether the MVSL or MBSL should be conducted. If EPA decides that testing in the MVSL or MBSL should be initiated, EPA would notify the test sponsor either by certified letter or **Federal Register** notice. The choice of the test utilized would be made by the test sponsor.

B. Revision of GLPS and Reporting Requirements

Following EPA's promulgation of the final Phase II test rule for DETA, the DETA petitioners held independent discussions with ORNL on the prospects for ORNL to conduct the MVSL test on DETA. As a consequence of these discussions, ORNL sent EPA a letter (Ref. 10) inquiring about the possible modification of EPA's TSCA GLPS for this test. EPA, in turn, sent letters and copies of the GLPS to both ORNL (Ref. 11) and RTI (Ref. 12) asking for recommendations on what specific aspects of the GLPS might be modified for the MVSL and MBSL tests. Although all testing required by TSCA section 4(a) test rules is required to be conducted according to EPA's TSCA GLPS, as presented in 40 CFR Part 792, based upon discussion with ORNL and RTI, EPA is proposing certain specimen retention modifications of these GLPS for the MVSL and MBSL. EPA believes that these modifications of EPA's TSCA GLPS with respect to the MVSL and MBSL will result in significant reductions in the costs of these tests without sacrificing the quality or integrity of the data obtained.

EPA is proposing to finalize proposed modifications to the GLPS for these two tests by incorporating the specific modifications to the GLPS in 40 CFR 798.5200 for the MVSL and in the proposed 40 CFR 798.5195 rule for the MBSL, rather than specifying modifications of the GLPS for these tests in each test rule in which they are contained. Thus, by specifying the TSCA Health Effects Testing Guideline for either of these tests, EPA would be automatically granting the modifications of the GLPS contained within each guideline. As described in Unit IV. of this preamble, EPA is soliciting public comment on the appropriateness of the proposed modifications of TSCA GLPS for these two tests.

1. *Mouse Visible Specific Locus Test.* EPA is proposing to modify §§ 792.190(a) and 792.195(c) for the MVSL. The existing paragraphs, as written, would require the frozen storage of the carcasses of all mutant animals, their siblings, and their parents. EPA believes that frozen storage of such a large number of carcasses would be extremely expensive and would add nothing to the scientific validity of the study. Such storage would also constitute a poor utilization of valuable laboratory space. EPA believes that retention of 35-mm color photographs (and negatives) of all mutant animals, their siblings, and their parents would

suffice, together with individual animal records, to assure the validity of the data obtained, with no required retention of the animal carcasses. EPA proposes to effect this modification by adding § 798.5200(h) (1) and (2) to the MVSL guideline.

EPA is also proposing in this notice to revise § 798.5200(f)(5), the test report provision of the MVSL guideline, changing "reporting recommendations" as specified under 40 CFR Part 792 to "reporting requirements".

2. *Mouse Biochemical Specific Locus Test.* EPA is proposing the MBSL under 40 CFR 798.5195. Sections 798.5195(h) (1) and (2) of this proposed rule modify certain aspects of §§ 792.190(a) and 792.195(c) for the MBSL. In the MBSL test, mutations are detected in the offspring after sacrifice by subjecting biological preparations of blood to broad-range electrofocussing and staining or biological preparations of kidneys to starch-gel electrophoresis and staining. Comparisons are then made between the migration patterns of certain enzymes contained in these preparations obtained from suspected mutants and those obtained with preparations from control animals. EPA believes that frozen storage of the blood and kidney biological preparations would be both costly and unproductive, since some of the enzymes studied deteriorate after long periods, even when properly frozen. In addition, the starch gels and electrofocussing columns on which the migration patterns are exhibited for preparations of kidneys and blood, respectively, deteriorate after a few months of storage, even when carefully stored. EPA believes that retention of adequately identified 35-mm photographs (and negatives) of the starch gels and electrofocussing columns exhibiting the migrating patterns obtained from all mutant animals, their siblings, and their parents would suffice, together with individual animal records, to assure the validity of the data obtained, with no required retention of the starch gels or electrofucussing columns.

C. Revision of Reporting Requirements

The final test rule for MO, and the proposed reporting requirements for oleylamine, isopropanol, unsubstituted phenylenediamines, and tributyl phosphate require that the final report on the MVSL, if conducted, be submitted to EPA no later than 48 months following notification of the test sponsor that such testing is required, with 6-month interim reports required, the first of which is due 6 months following EPA's notification of the test sponsor. The final test rule for the four fluoroalkenes requires that the final report on the MVSL be submitted to EPA within 51 months following notification that such testing is required, with 6-month interim reports required, the first of which is due 6 months following EPA's notification of the test sponsor.

For all of these rules, EPA is proposing to amend the reporting requirements so that the final report on either the MVSL or MBSL would be due no later than 51 months following EPA's notification that such testing is necessary, with 6-month interim reports required, the first of which is due 6 months following notification of the test sponsor. Amending the date at which the final report on the MVSL or MBSL would be due makes this reporting requirement consistent with that contained in the final test rule for the fluoroalkenes. EPA now believes that the 51-month time period is needed, since it includes the time required for contract negotiations and preparations at the testing facility prior to the initiation of testing, as well as the time allowed for conduct of the MVSL or MBSL and the preparation of final test reports.

IV. Issues for Comment

EPA is soliciting public comment on the following issues:

1. Is the MBSL equivalent to the MVSL for detecting chemical substances which elicit heritable gene mutations in mammals?

2. Are the modifications which EPA is proposing to the Agency's TSCA GLPS (40 CFR Part 792) for the MVSL and MBSL reasonable, in that they do not affect the integrity and validity of the data obtained from these tests? What other modifications of the TSCA GLPS might be appropriate for these two tests?

3. What is the current availability of laboratories to conduct the MVSL and MBSL for test sponsors requiring such testing pursuant to TSCA section 4(a) test rules?

4. If EPA's TSCA GLPS were strictly adhered to, what would be the test costs for the MVSL and MBSL for a two-dose test suitable for risk assessment purposes?

5. If EPA's TSCA GLPS were modified as proposed in this rule, what would be the costs for the MVSL and MBSL for a two-dose test suitable for risk assessment purposes? What would be the cost if additional modifications to the GLPS were allowed for these two tests (comments should describe the specific modification of EPA's TSCA GLPS contemplated in considering the costs)?

V. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting subsequent to the close of the public comment period in Washington, DC. Written comments submitted to EPA and oral presentations made at the public meeting will be considered only if they specifically relate to the contents of this proposed rule. For example, comments on the general mutagenicity policy utilized in TSCA section 4(a) test rules or the necessity of requiring tests for detecting chemical substances capable of eleciting heritable gene mutations in mannals in such rules would be viewed by EPA as inappropriate with respect to this rulemaking and will not be considered. Persons who wish to attend or to present comments at the meetings should call the TSCA Asssistance Office (TAO): (202) 554–1404, by February 6, 1989. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arrange to present comments and to designated EPA participants. Attendees should call TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the rulemaking record. Participants are invited, but not required, to submit copies of their statements to EPA either prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VI. Rulemaking Record

Within each of the existing records for the remaining final and proposed TSCA section 4(a) test rules currently containing a requirement for the MVSL (Fluoroalkenes, OPTS–42002H; Unsubstituted phenylenediamines, OPTS–42008E; Mesityl oxide, OPTS–42030F; Oleylamine, OPTS–42061D; Triethylene glycol monomethyl, monoethyl, and monobutyl ethers, OPTS–42080C; Commercial hexane, OPTS–42084G; Isopropanol, OPTS–42097A; and Tributyl phosphate, OPTS–42100A) EPA has established a record for this rulemaking.

This record contains the basic information considered by EPA in developing this proposed rule, including:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule, consisting of:

(a) Final test rules for diethylenetriamine (DETA: 52 FR 3230; February 3, 1987); mesityl oxide (MO; 52 FR 19088; May 20, 1987; fluoroalkenes (52 FR 21516; June 8, 1987); oleylamine (52 FR 31962; August 24, 1987 and 53 FR 48542; December 1, 1988) and commercial hexane (53 FR 3382; February 5, 1988).

(b) Proposed test rules for unsubstituted phenylenediamines (53 FR 913; January 14, 1988); triethylene glycol monomethyl, monoethyl, and monobutyl ether (51 FR 17883; May 15, 1986); isopropanol (53 FR 8638; March 16, 1988); and tributyl phosphate (52 FR 43346; November 12, 1987).

(c) The TSCA health effects testing guideline for the mouse visible specific locus test (40 CFR 798.5200; July 1, 1987).

(2) Communications, consisting of:

(a) Written public comments and letters.

(b) Contract reports of telephone conversations.

(c) Meeting summaries.

B. References

(1) U.S. Environmental Protection Agency, Office of Toxic Substances (OTS). Meeting summary of OTS/U.S. Department of Energy (DOE) meeting on availability of the mouse visible specific locus test (MVSL) at Oak Ridge National Laboratory (ORNL). (October 3, 1986).

(2) Russell, L.B., *et al.* D"The Mouse specific-locus test with agents other than radiations: Interpretation of data and recommendations for future work." *Mutation Research* 86:329–354. (1981).

(3) National Research Council. "Identifying and Estimating the Genetic Impact of Chemical Environmental Mutagens." (Washington, DC: National Academy Press, pp. 134–139, 1982).

(4) Department of Health and Human Services, U.S. Public Health Service. National Toxicology Program Fiscal Year 1987 Annual Plan. (Research Triangle Park: National Toxicology Program, pp. 59–61, 1987).

(5) Research Triangle Institute. Research Triangle Park, NC, 27709. Letter to Michael Cimino, OTS, Health and Environmental Review Division. (October 28, 1987).

(6) OTS, Test Rules Development Branch. Letter to Roger Ward, Manager, Contracts Division, Martin Marietta Energy Systems, Inc. (September 16, 1987).

(7) DOE. Letter to Gary Timm, Test Rules Development Branch, OTS. (December 3, 1987).

(8) OTS, Health and Environmental Review Division. Letter to Susan Lewis, Research Triangle Institute. (September 16, 1987).

(9) Research Triangle Institute. Research Triangle Park, NC, 27709. Letter to Raymond Locke, OTS, Test Rules Development Branch. (December 15, 1987).

(10) Oak Ridge National Laboratory. Oak Ridge, TN, 37831. Letter to Raymond Locke, OTS, Test Rules Development Branch. (July 8, 1987).

(11) OTS. Test Rules Development Branch. Letter to L.B. Russell, ORNL. (April 22, 1988).

(12) OTS. Test Rules Development Branch. Letter to Susan E. Lewis, RTI. (April 22, 1988).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Rm. G–004, NE Mall, 401 M St., SW., Washington, DC., from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. EPA will supplement this record periodically with additional relevant information as received.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that the amendments to these test rules would not be major because they do not meet any of the criteria set forth in section 1(b) of the Order, *i.e.*, they would not have any annual effect on the economy of at least $100 million, would not cause a major increase in prices, and would not have a significant adverse effect on competition or the ability of U.S. enterprise to compete with foreign enterprises.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this rule, if promulgated, would not have a significant impact on a substantial number of small businesses because: (1) They are not likely to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor cost, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to average 535 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate 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; OMB; 726 Jackson Place, NW., Washington, DC 20503 marked "Attention: Desk Officer for EPA". The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Parts 798 and 799

Chemicals, Environmental protection, Hazardous substances, Testing, Laboratories, Recordkeeping and reporting requirements.

Dated: November 28, 1988.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR, Chapter I, Subchapter R, be amended as follows:

PART 798—[AMENDED]

1. In Part 798:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603.

b. By adding § 798.5195 to read as follows:

§ 798.5195 Mouse biochemical specific locus test.

(a) *Purpose.* The mouse biochemical specific locus test (MBSL) may be used to detect and quantitate mutations originating in the germ line of a mammalian species.

(b) *Definitions.* (1) A biochemical, specific locus mutation is a genetic change resulting from a DNA lesion causing alterations in proteins that can be detected by electrophoretic methods.

(2) The germ line is comprised of the cells in the gonads of higher eukaryotes, which are the carriers of the genetic information for the species.

(c) *Reference substances.* Not applicable.

(d) *Test method*—(1) *Principle.* The principle of the MBSL is that heritable damage to the genome can be detected by electrophoretic analysis of proteins in the tissues of the progeny of mice treated with germ cell mutagens.

(2) *Description.* For technical reasons, males rather than females are generally treated with the test chemical. Treated males are then mated to untreated females to produce F1 progeny. Both

blood and kidney samples are taken from progeny for electrophoretic analysis. Up to 33 loci can be examined by starch-gel electrophoresis and broad-range isoelectric focussing. Mutants are identified by variations from the normal electrophoretic pattern. Presumed mutants are bred to confirm the genetic nature of the change.

(3) *Animal selection*—(i) *Species and strain.* Mice shall be used as the test species. Although the biochemical specific locus test could be performed in a number of inbred strains, in the most frequently used cross, C57BL/6 females are mated to DBA/2 males to produce (C57BL/6 × DBA/2) F1 progeny for screening.

(ii) *Age.* Healthy, sexually-mature (at least 8 weeks old) animals shall be used for treatment and breeding.

(iii) *Number.* A decision on the minimum number of treated animals should take into account possible effects of the test chemical on the fertility of the treated animals. Other considerations should include:

(A) The production of concurrent spontaneous controls.

(B) The use of positive controls.

(C) The power of the test.

(4) *Control groups*—(i) *Concurrent controls.* An appropriate number of concurrent control loci shall be analyzed in each experiment. These should be partly derived from matings of untreated animals (from 5–20 percent of the treated matings), although some data on control loci can be taken from the study of the alleles transmitted from the untreated parent in the experimental cross. However, any laboratory which has had no prior experience with the test shall produce a spontaneous control sample of about 5,000 progeny animals and a positive control (using 100 mg/kg ethylnitrosourea) sample of at least 1,200 offspring.

(ii) *Historical controls.* Long-term, accumulated spontaneous control data (currently, 1 mutation in 1,200,000 control loci screened) are available for comparative purposes.

(5) *Test chemicals*—(i) *Vehicle.* When possible, test chemicals shall be dissolved or suspended in distilled water or buffered isotonic saline. Water-insoluble chemicals shall be dissolved or suspended in appropriate vehicles. The vehicle used shall neither interfere with the test compound nor produce major toxic effects. Fresh preparations of the test chemical should be employed.

(ii) *Dose levels.* Usually, only one dose need be tested. This should be the maximum tolerated dose (MTD), the highest dose tolerated without toxic effects. Any temporary sterility induced due to elimination of spermatogonia at this dose must be of only moderate duration, as determined by a return of males to fertility within 80 days after treatment. For evaluation of dose-response, it is recommended that at least two dose levels be tested.

(iii) *Route of administration.* Acceptable routes of administration include, but are not limited to, gavage, inhalation, admixture with food or water, and intraperitoneal or intravenous injections.

(e) *Test performance*—(1) *Treatment and mating.* Male DBA/2 mice shall be treated with the test chemical and mated to virgin C57BL/6 females immediately after cessation of treatment. Each treated male shall be mated to new virgin C57BL/6 females each week. Each pairing will continue for a week until the next week's mating is to begin. This mating schedule permits sampling of all postspermatogonial stages of germ-cell development during the first 7 weeks after exposure. Spermatogonial stem cells are studied thereafter. Repeated mating cycles should be conducted until sufficient offspring have been obtained to meet the power criterion of the assay for spermatogonial stem cells.

(2) *Examination of offspring*—(i) *Birth and weaning.* Offspring shall be examined at birth and at weaning for externally detectable changes in morphology and behavior; these could be due to dominant mutations. Such characteristics may include, but are not limited to, variations in coat color, appearance of eyes, size (in which case weighing of variant animals and littermates should be carried out), fur texture, etc. Gross changes in external form and behavior shall also be sought. Scrutiny of such visible characteristics of all animals shall be made during all subsequent manipulations of the animals.

(ii) *Tissue sampling.* Blood (about 0.1 mL) and one kidney shall be removed from progeny mice under anesthesia. Both tissues are then prepared for analysis by electrophoresis.

(iii) *Electrophoresis.* The gene products of 6 loci shall be analyzed in the blood sample by broad-range isoelectric focussing and of 27 loci in the kidney sample by starch-gel electrophoresis and enzyme-specific staining. Details on these procedures are included in paragraphs (g) (1) through (3) of this section.

(iv) *Mutant identification.* Presumptive electrophoretic mutants shall be identified by variation from the normal electrophoretic banding patterns. Reruns of all variant samples shall be performed to confirm the presence of altered banding patterns. Samples from parents of progeny exhibiting banding pattern variations shall be assayed to determine whether the variant was induced by the experimental treatment or was pre-existing. All treatment-induced variants are bred to determine the genetic nature of the change.

(f) *Data and reports*—(1) *Treatment of results.* Data shall be presented in tabular form and shall permit independent analysis of cell stage-specific effects, and dose-dependent phenomena. The data shall be recorded and analyzed in such a way that clusters of identical mutations are clearly identified. The individual mutants detected shall be thoroughly described. In addition, concurrent positive control data (if employed) and spontaneous control data shall also be tabulated. These concurrent controls shall be added to, as well as compared with, the historical control data.

(2) *Statistical evaluation.* Data shall be evaluated by appropriate statistical methods.

(3) *Interpretation of results.* (i) There are several criteria for determining a positive response, one of which is a statistically significant dose-related increase in the frequency of electrophoretic mutations. Another criterion may be based upon detection of a reproducible and statistically significant positive response for at least one of these test points.

(ii) A test chemical which does not produce a statistically significant increase in the frequency of electrophoretic mutations over the spontaneous frequency, or a statistically significant and reproducible positive response for at least one of the test points, is considered nonmutagenic in this system, provided that the sample size is sufficient to exclude a biologically significant increase in mutation frequency.

(iii) Both biological and statistical significance should be considered together in the evaluation.

(4) *Test evaluation.* (i) Positive results in the MBSL indicate that, under the test conditions, the test chemical induces heritable gene mutations in a mammalian species.

(ii) Negative results indicate that, under the test conditions, the test chemical does not induce heritable gene mutations in a mammalian species.

(5) *Test report.* In addition to the reporting requirements as specified under 40 CFR Part 792, Subpart J, and paragraph (h) of this section, the following specific information shall be reported:

(i) Strain, age and weight of animals used; numbers of animals of each sex in experimental and control groups.
(ii) Test chemical vehicle, doses used, rationale for dose selection, and toxicity data, if available.
(iii) Route and duration of exposure.
(iv) Mating schedule.
(v) Number of loci screened for both treated and spontaneous data.
(vi) Criteria for scoring mutants.
(vii) Number of mutants found/locus.
(viii) Loci at which mutations were found.
(ix) Use of concurrent negative and positive controls.
(x) Dose-response relationship, if applicable.

(g) *References.* For additional background information on this test guideline, the following references should be consulted:

(1) Barnett, L.B., C.F. Felton, B.J. Gibson, D.S. Sharpe, M.D. Shelby and S.E. Lewis. "No heritable mutations are induced by ethylene dibromide at electrophoretically expressed loci." (In preparation for publication in *Mutation Research,* expected in 1988–1989).

(2) Johnson, F.M., G.T. Roberts, R.K. Sharma, F. Chasalow, R. Zweidinger, A. Morgan, R.W. Hendren, and S.E. Lewis. "The detection of mutants in mice by electrophoresis: Results of a model induction experiment with procarbazine." *Genetics* 97:113–124 (1981).

(3) Johnson, F.M. and S.E. Lewis. "Mutation rate determinations based on electrophoretic analysis of laboratory mice." *Mutation Research* 82:125–135 (1981a).

(4) Johnson, F.M. and S.E. Lewis. "Electrophoretically detected germinal mutations induced by ethylnitrosourea in the mouse." *Proceedings of the National Academy of Sciences* 78: 3138–3141 (1981b).

(5) Lewis, S.E., C. Felton, L.B. Barnett, W. Generoso, N. Cacheiro, and M.D. Shelby. "Dominant visible and electrophoretically expressed mutations induced in male mice exposed to ethylene oxide by inhalation." *Environmental Mutagenesis* 8:867–872 (1986).

(h)(1) *Exemptions to certain Good Laboratory Practice Standards requirements.* Testing facilities conducting the mouse biochemical specific locus test in accordance with this section shall be exempt from the provisions of §§ 792.190(a) and 792.195 (b) and (c) of this chapter solely with respect to the storage and retention of the biological preparations of blood and kidneys obtained from mutant mice, their siblings, and their parents, and with respect to the stained isoelectric-focussing columns and the stained starch-gels obtained with these preparations of blood and kidneys, respectively, to demonstrate the migration patterns of certain enzymes in these tissues from mutant and nonmutant animals.

(2) *Additional requirements.* Testing facilities conducting the mouse biochemical specific locus test under the provisions of paragraph (h)(1) of this section shall, instead of retaining frozen biological preparations of blood and kidneys and stained starch-gels and isoelectric-focussing columns, obtain, adequately identify, and retain for at least 10 years of acceptable 35-mm photographs (and their negatives) of the stained isoelectric-focussing columns and the stained starch-gels obtained following analyses of blood and kidney preparations, respectively, from mutant mice, their siblings, and their parents.

c. By revising § 798.5200(f)(5) introductory text and adding paragraph (h) to read as follows:

§ 798.5200 Mouse visible specific locus test.

* * * * *

(f) * * *

(5) *Test report.* In addition to the reporting requirements as specified under 40 CFR Part 792, Subpart J, and paragraph (h) of this section, the following specific information shall be reported:

* * * * *

(h)(1) *Exemptions to certain Good Laboratory Practice Standards requirements.* Testing facilities conducting the mouse visible specific locus test in accordance with this section shall be exempt from the provisions of § 792.190(a) and § 792.195(b) and (c) of this chapter solely with respect to the collection, storage, and retention of the carcasses of mutant mice, their siblings, and their parents.

(2) *Additional requirements.* Testing facilities conducting the mouse visible specific locus test under the provisions of paragraph (h)(1) of this section shall, instead of retaining the frozen carcasses, obtain and retain for at least 10 years acceptable 35-mm color photographs (and their negatives) demonstrating the visible mutations observed in mutant animals and the lack of such mutations in their siblings and parents.

PART 799—[AMENDED]

2. In Part 799:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. By revising § 799.1700(c)(1)(i)(C)(*1*), (ii)(A), and (d) to read as follows:

§ 799.1700 Fluoroalkenes.

* * * * *

(c) * * *
(1) * * *
(i) * * *
(C) * * *

(*1*) A mouse visible specific locus assay (MVSL) shall be conducted with VF, VDF, TFE, and HFP in accordance with § 798.5200 of this chapter, except for the provisions of paragraph (d)(5) of § 798.5200, or a mouse biochemical specific locus assay (MBSL) shall be conducted with VF, VDF, TFE, and HFP in accordance with § 798.5195 of this chapter, except for the provisions of paragraph (d)(5) of § 798.5195, for whichever of these substances produces a positive test result in the sex-linked recessive lethal test in *Drosophila melanogaster* conducted pursuant to paragraph (c)(1)(i)(B) of this section if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated.

* * * * *

(ii) * * *

(A) Mutagenic effects-gene mutation tests shall be completed and the final reports shall be submitted to EPA as follows: Somatic cells in culture assay, within 6 months after the effective date of the final rule; *Drosophila* sex-linked recessive lethal, within 9 months (for VF and VDF) and within 15 months (for TFE and HFP) after the effective date of the final rule; MVSL or MBSL, within 51 months after the date of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing shall be initiated.

* * * * *

(d) *Effective dates.* (1) The effective date of this rule is July 22, 1987, except for the provisions of paragraphs (c)(1)(i)(C)(*1*), and (ii)(A) of this section, which are effective (insert date 44 days after publication of the final rule in the **Federal Register**).

(2) The guidelines and other test methods cited in this section are referenced as they exist on the effective date of the final rule.

* * * * *

c. By adding § 799.2155(c)(5)(i)(D); (ii)(A)(*4*) and (C); and revising paragraph (d) to read as follows:

§ 799.2155 Commercial hexane.

* * * * *

(c) * * *
(5) * * *
(i)* * *

(D)(*1*) Unless the results of the sex-linked recessive lethal test in *Drosophila melanogaster* conducted with commercial hexane pursuant to paragraph (c)(5)(i)(C) of this section are negative, EPA shall conduct a public program review of all of the mutagenicity data available for this substance. If, after this review, EPA decides that testing of commercial hexane for causing heritable gene mutations in mammals is necessary, it shall notify the test sponsor by certified letter or **Federal Register** notice that testing shall be initiated in either the mouse visible specific locus test or the mouse biochemical specific locus test. The mouse visible specific locus test, if conducted, shall be performed for commercial hexane in accordance with §798.5200 of this chapter except for the provisions in paragraphs (d)(5)(ii) and (iii) of § 798.5200. The mouse biochemical specific locus test, if conducted, shall be performed for commercial hexane in accordance with § 798.5195 of this chapter except for the provisions of paragraphs (d)(5)(ii) and (iii) of § 798.5195.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *Dose levels.* A minimum of two dose levels shall be tested. The highest dose tested shall be the highest dose tolerated without toxic effects, provided that any temporary sterility induced due to eliminating of spermotogonia is of only moderate duration, as determined by a return of males to fertility with 80 days of treatment, or shall be the highest dose attainable below the lower explosive limit concentration of commercial hexane. Exposure shall be for 6 hours a day. Duration of exposure shall be dependent upon the accumulated total dose desired for each group.

(*ii*) *Route of administration.* Animals shall be exposed to commercial hexane by inhalation.

* * * * *

(ii) * * *

(A) * * *

(*4*) The mouse visible specific locus test or the mouse biochemical specific locus test shall be completed and a final report shall be submitted to EPA within 51 months of the date on which the test sponsor is notified by EPA by certified letter or **Federal Register** notice that testing shall be initiated.

* * * * *

(C) Interim progress reports for either the mouse visible specific locus test or the mouse biochemical specific locus test shall be submitted to EPA at 6-month intervals, beginning 6 months after EPA's notification of the test sponsor that testing should be initiated, until the applicable final report is submitted to EPA.

* * * * *

(d) *Effective dates.* (1) The effective date of this final rule is November 17, 1988, except for the provisions of paragraphs (c)(5)(i)(D), (ii)(A)(*4*) and (C) of this section, which are effective (insert date 44 days after publication of the final rule in the **Federal Register**).

(2) The guidelines and other test methods cited in this section are referenced as they exist on the effective date of the final rule.

* * * * *

d. By revising § 799.2500(c)(3)(i)(E), (ii)(D)(*1*), (iii)(A)(*3*) and (C), and (d) to read as follows:

§ 799.2500 Mesityl oxide (MO).

* * * * *

(c) * * *

(3) * * *

(i) * * *

(E) A mouse visible specific locus test (MVSL) or a mouse biochemical specific locus test (MBSL) shall be conducted for MO if it produces a positive result in the sex-linked recessive lethal test in *Drosophila melanogaster* pursuant to paragraph (c)(3)(i)(B) or (D) of this section.

* * * * *

(ii) * * *

(D) * * *

(*1*) The MVSL shall be conducted with MO in accordance with § 798.5200 of this chapter, except for the provisions of paragraphs (d)(5)(ii) and (iii) of § 798.5200, or the MBSL shall be conducted with MO in accordance with § 798.5195 of this chapter, except for the provisions of paragraphs (d)(5)(ii) and (iii) of § 798.5195.

* * * * *

(iii) * * *

(A) * * *

(*3*) The MVSL or MBSL shall be completed and the final report submitted to EPA within 51 months of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing shall be initiated.

* * * * *

(C) Progress reports shall be submitted to EPA for the MVSL or the MBSL at 6-month intervals, the first of which is due within 6 months of EPA's notification of the test sponsor that testing shall be initiated.

* * * * *

(d) *Effective dates.* (1) The effective date of this rule is July 6, 1987, except for the provisions of paragraphs (c)(3)(i)(E), (ii)(D)(*1*), (iii)(A)(*3*) and (C) of this section, which are effective (insert date 44 days after publication of the final rule in the **Federal Register**).

(2) The guidelines and other test methods cited in this section are referenced as they exist on the effective date of the final rule.

* * * * *

e. By revising § 799.3175(c)(3)(i)(C), adding (ii)(C), (iii)(A)(*3*), (C) and revising paragraph (d) to read as follows:

§ 799.3175 Oleylamine.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(C) A mouse visible specific locus test (MVSL) or a mouse biochemical specific locus test (MBSL) shall be conducted for ODA if it produces a positive result in the sex-linked recessive lethal test in *Drosophila melanogaster* conducted pursuant to paragraph (c)(3)(i)(B) of this section and if so required in a **Federal Register** notice or certified letter sent to test sponsors.

* * * * *

(ii) * * *

(C)(*1*) The MVSL or MBSL shall be conducted with ODA in accordance with §§ 798.5200 or 798.5195 of this chapter, respectively, except for the provisions of paragraph (d)(5)(iii) of each of these sections.

(*2*) For purposes of this section, the following provision also applies.

(*i*) *Route of administration.* The route of exposure shall be oral by gavage.

(*ii*) [Reserved]

* * * * *

(iii) * * *

(A) * * *

(*3*) The MVSL or MBSL shall be completed and the final report submitted to EPA within 51 months of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing shall be initiated.

* * * * *

(C) Progress reports shall be submitted to EPA for the MVSL or the MBSL at 6-month intervals, the first of which is due within 6 months of EPA's notification of the test sponsor that testing shall be initiated.

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(d) *Effective date.* (1) The effective date of this rule is October 7, 1987, except for the provisions of paragraphs (c)(3)(i)(C), (ii)(C), (iii)(A)(*3*), and (C) of this section, which are effective (insert date 44 days after publication of the final rule in the **Federal Register**).

(2) The guidelines and other test methods cited in this section are

referenced as they exist on the effective date of the final rule.

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[FR Doc. 88-29496 Filed 12-22-88; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 1001

Medicare and Medicaid Programs; Fraud and Abuse; OIG Anti-Kickback Provisions

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

ACTION: Proposed rule.

SUMMARY: These proposed regulations are designed to implement section 14 of Pub. L. 100-93, the Medicare and Medicaid Patient and Program Protection Act of 1987, by specifying various payment practices which, although potentially capable of inducing referrals of business under Medicare, would not be considered kickbacks for purposes of criminal prosecution or civil remedies.

DATES: To assure consideration, public comments must be mailed and delivered to the address provided below by February 21, 1989.

ADDRESS: Address comments in writing to: Office of Inspector General, Department of Health and Human Services, Attention: LRR-17-P, Room 5246, 330 Independence Avenue SW., Washington, DC 20201.

If you prefer, you may deliver your comments to Room 5551, 330 Independence Avenue, SW., Washington, DC. In commenting, please refer to file code LRR-17-P.

Comments will be available for public inspection beginning approximately two weeks after publication in Room 5551, 330 Independence Avenue SW., Washington, DC on Monday through Friday of each week from 9:00 a.m. to 5:00 p.m., (202) 472-5270.

FOR FURTHER INFORMATION CONTACT:
Harvey Yampolsky, Office of the General Counsel, (202) 472-5335
Joel Schaer, Office of Inspector General, (202) 472-5270

For paperwork reduction and information collection requirements: Allison Herron, Office of Management and Budget, (202) 395-7316.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1128B(b) of the Social Security Act, previously codified at sections 1877 and 1909, provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration in order to induce business reimbursed under the Medicare or State health care programs. The offense is classified as a felony, and is punishable by fines of up to $25,000 and imprisonment for up to 5 years.

This provision is extremely broad. The types of remuneration covered specifically include kickbacks, bribes, and rebates made directly or indirectly, overtly or covertly, or in cash or in kind. In addition, prohibited conduct includes not only remuneration intended to induce referrals of patients, but remuneration also intended to induce the purchasing, leasing, ordering, or arranging for any good, facility, service, or item paid for by Medicare or State health care programs.

The leading case regarding this statute illustrates its broad scope. In *United States* v. *Greber*, 760 F.2d 68 (3d Cir.) *cert. denied*, 474 U.S. 988, 106 S.Ct. 396 (1985), the Third Circuit Court of Appeals was asked to examine the nature of payments between a medical diagnostic company, providing holter monitor services, and physicians. The company billed Medicare for the monitoring service it performed, and forwarded 40 percent of those payments (up to $65 per patient) to the referring physician.

The defendant in this case alleged that these payments were merely "interpretation fees" paid to the referring physicians for their initial consultation and for explaining the test results to the patients. *Id.* at 70. The court, however, declined to examine whether there might have been a legitimate purpose behind those payments, concluding: "if one purpose of the payment is to induce future referrals, the medicare statute has been violated." *Id.* at 69.

Since the statute on its face is so broad, and the court has recognized its full breadth, concern has arisen among a number of health care providers that many relatively innocuous, or even beneficial, commercial arrangements are technically covered by the statute and are, therefore, subject to criminal prosecution.

Public Law 100-93

Public Law 100-93, the Medicare and Medicaid Patient and Program Protection Act of 1987, added two new provisions addressing the anti-kickback statute. Section 2 specifically provided new authority to the Office of Inspector General (OIG) to exclude a person or entity from participation in the Medicare and State health care programs if it is determined that the party is engaged in a prohibited remuneration scheme. This new sanction authority is intended to provide an alternative civil remedy, short of criminal prosecution, that will be a more effective way of regulating abusive business practices than is the case under criminal law.

In addition, section 14 of Pub. L. 100-93 requires the promulgation of regulations specifying those payment practices that will not be subject to criminal prosecution under section 1128B of the Act and that will not provide a basis for exclusion from the Medicare program or from the State health care programs under section 1128(b)(7). This section reflects the generally accepted view that the language proscribing remuneration that induces referrals is so broadly written as to encompass many harmless or efficient arrangements as well.

In accordance with the stipulation of Pub. L. 100-93, these proposed regulations have been developed in consultation with the Department of Justice.

Notice of Intent

The legislative history of section 14 of Pub. L. 100-93 indicates that Congress expected the Department of Health and Human Services to consult with affected provider, practitioner, supplier and beneficiary representatives before promulgating regulations. In order to most effectively address issues related to this provision, we published a notice of intent to develop regulations (52 FR 38794, October 21, 1987) soliciting comments from interested parties prior to developing proposed regulations. As a result of that notice, the OIG received a total of 137 timely comments, recommendations and suggestions on generic criteria that can be applied to particular types of business arrangements in order to determine if such arrangements are inappropriate for civil or criminal sanctions.

II. Provisions of the Proposed Rule

We are proposing to amend 42 CFR Part 1001 by adding a new § 1001.952 to set forth those specific payment practices that would not be treated as a criminal offense under section 1128B of the Act and would not serve as the basis for an exclusion from the Medicare and State health care programs. Before we discuss the various payment practices that we are proposing to exempt, we will clarify the effect of not having a

particular business arrangement exempted, and we invite public comments on the issues of advisory opinons, notice to beneficiaries, and preferred provider organizations.

Business Arrangements Not Exempt—We are aware that it is the unique position physicians occupy in the medical marketplace that has led to the examination of their relationship with varying business arrangements. It is the physician who controls access to a large array of medical items and services in order for third party reimbursement to be available. This is a highly competitive market that is constantly expanding with new drugs, medical devices and tests. While this competitive marketplace is important, it is necessary for the fiscal integrity of the Medicare and Medicaid programs to assure that physicians exercise sound, objective medical judgment when controlling admittance to this market. We have attempted in these proposed regulations to permit physicians to freely engage in business practices and arrangements that encourage competition, innovation and economy. However, we have added criteria to each "safe harbor" in order to reduce the potential for abuse.

In order for a business arrangement to comply with one of the exemptions set forth below, each provision of that exemption must be met. If, however, the business arrangement involves several payments, for example, rental of both space and equipment, then each payment will be analyzed to determine if all the provisions of each applicable exemption have been fulfilled. Thus, fully complying with one exemption may not grant that individual or entity complete immunity under the statute.

Several commenters responding to our notice of intent have asked that we clarify what it means if a particular business arrangement does not fully comply with each element of a particular exemption. In many instances, the failure to comply fully with one of the exemptions will be of no consequence because the arrangement does not fall within the proscriptions of the statute at all. However, where individuals and entities have entered into arrangements that are covered by the statute, where they have chosen not to fully comply with one of the exemptions proposed in these regulations, they would risk scrutiny by the OIG and may be subject to civil to criminal enforcement action.

Continuing Guidance—Congress intended that the regulations set forth on "safe harbors" be an evolving rule that would be periodically updated to reflect changing business practices and technologies. In the House Committee Report accompanying Pub. L. 100–93, the Committee stated that it "believes that a mechanism for periodic public input is necessary to ensure that the regulations remain relevant in light of changes in health care delivery and payment and to ensure that published interpretations of the law are not impeding legitimate and beneficial activities. Accordingly, the Committee expects that the Secretary will formally reevaluate the anti-kickback regulations on a periodic basis and, in doing so, will solicit public comments at the outset of the review process." Moreover, there may be a need for the Department to respond to changing modes of health care delivery or business arrangements more quickly and informally than through the regulatory process to keep the industry abreast of our enforcement policy.

We, therefore, invite public comments on how we can best achieve the twin goals of keeping the industry aware of our views of particular business practices, and assuring that our regulations remain current with new developments. Comments should address how affected parties can make their questions or views known on a continuing or regular basis, and how the Department can best respond to such concerns. For example, it has been suggested that it would be useful for the Department to create a mechanism for offering advice, such as selective opinions on generic issues or periodic intermediary and carrier notices, or Inspector General letters. We should note that questions have been raised regarding the practicality and effectiveness of such an approach given that often an assessment of circumstances (1) cannot accurately be made based solely on a written presentation, (2) could divert limited resources from enforcement efforts, and (3) could be used to impede subsequent cases against other parties.

Notice to Beneficiaries—We considered including in several of the proposed "safe harbors" a requirement that a person notify each Medicare beneficiary or Medicaid State health care program of the financial relationship that exists and any person to whom he or she refers the beneficiary for items or services. This requirement may serve to provide an additional safeguard against the abuse for which there is always some potential when such financial relationships exist. Furthermore, it reiterates the ethical responsibility of physicians as reflected in the Current Opinions of the Council on Ethical and Judicial Affairs of the American Medical Association, and it is a duty imposed by some State statutes as well.

However, such notice requirements may be unduly burdensome compared with the potential benefits to health care consumers. We therefore have not included the requirement in the ownership and financial relationship safe harbors at this time. However, we invite public comments on this issue.

Preferred Provider Organizations—We are aware that there are an increasing variety of arrangements among providers grouped under the generic headings "preferred provider organizations" (PPOs) or "managed care." Unlike HMOs, PPOs and managed care arrangements do not have a single unique identifying structure or concept. In addition, unlike HMOs, there is no single entity that is recognized as the "provider." For these reasons, there is no safe harbor specifically delineated for these arrangements. Rather, we believe that the safe harbors we have designated would cover many relationhips in preferred provider and managed care networks. Furthermore, the anti-kickback statute would not apply to participants in PPOs where the discounts and financial relationships are obviously not designed to improperly induce referrals. However, we invite comments from the public regarding additional safe harbors that would provide further assurance to PPOs.

Relationship to Other Laws—The safe harbors being proposed in these regulations are only for purposes of the Federal Medicare and Medicaid anti-kickback statute. They would not provide immunity from civil or criminal prosecution or other sanctions under any other Federal or State laws. For example, a particular arrangement permissible under a safe harbor may violate a law administered by the Federal Trade Commission or the Securities and Exchange Commission (SEC), or may run afoul of a State law that is applied by the State in a stricter fashion than the Federal law.

Proposed Safe Harbors

Set forth below is a description of the various payment practices that we are proposing to exempt and the rationale for their inclusion in this proposed rulemaking.

A. Investment Interests

As written, the anti-kickback provision applicable to the Medicare and State health care programs is so broad that it could be interpreted literally, for example, to prohibit a physician from receiving dividend payments from a large publicly traded

pharmaceutical company if he or she prescribed one of the company's products for a Medicaid patient, knowing that ordering that product would increase his or her dividend payment.

We do not believe that Congress intended to bar all forms of investment or ownership by referral sources in health providers. This conclusion is based on the fact that there are other provisions of Medicare law that pertain specifically to physican-owned home health agencies. Obviously, these provisions would make little sense if the kickback provision prohibited, *per se*, referrals by physicians to entities in which they had any investment interest.

To reflect this view that Congress did not intend to absolutely bar any investment by physicians in other health care entities, we have included a "safe harbor" for some investment interests, so long as the arrangement meets certain standards and includes specified safeguards against abuse.

On the other hand, many commenters have described to us situations where health care entities sell limited partnership interests at nominal cost solely to investors who are in a position to make referrals to the entity, and where the profit distribution in the first year, and each year thereafter, is substantially in excess of the original investment. Competitors of these entities complain of losing a significant share of the market to an entity that establishes a limited partnership with physicians in the service area. We have been urged not to include a "safe harbor" for such practices.

We have crafted an exemption to the anti-kickback statute in § 1001.952(a), Investment interests, for legitimate investment interests, without providing a "safe harbor" for these potentially abusive limited partnership arrangements. Accordingly, this proposed "safe harbor" is intended to draw a sensible and well-defined line between payments that are derived from legitimate investments and those that are suspect.

As drafted, this subsection has been designed to permit the following three "safe harbors" with respect to investment interests: (1) Investment interests in large corporations that are available to the general public; (2) investment interests in other entities, such as limited partnerships, where a bona fide opportunity to invest is made on an equal basis to people in a position to make referrals as well as others, where there are no requirments to make referrals, where there has been disclosure to a referred patient, and where payments are not related to referrals; and (3) managing partnership interests where there is disclosure to a referred patient, and where payments are not related to referrals.

We have created one "safe harbor" restricted to investments in large companies. We have done this to assure that the companies are sufficiently large enough so that the return on investment is, at most, tangentially related to any referrals of items or services made by a shareholder, for example, the prescribing of a drug by an investing physician. This "safe harbor" describes a minimum number of shareholders and a minimum amount of assets the company must have in order to qualify under this exemption. We have adopted the same bright line employed by the SEC. The SEC applies these same standards to determine which companies are required to register with it, regardless of whether they are traded on a national securities exchange (15 U.S.C. 78*l*(g) and 17 CFR 240.12g–1). We believe this bright line will be useful to health care providers as it sets forth a standard for permissible investments under this "safe harbor" that can be easily determined.

B. Space Rental

The anti-kickback statute is so broadly written that it could be interpreted to cover rental payments where one party is in a position to make referrals to the other party, even if there is no explicit or implicit understanding regarding referrals. While many rental arrangements are legitimate, we have been informed of many situations where rental payments were simply a device used to mask the real nature of the payments, that is, to induce referrals.

Some examples of these kinds of arrangements are where: (1) A health care entity rents space at a rate above market value from a physician by the hour—with the space being used solely to provide care or services to patients referred by the physician—and the hours per week, and thus the payments, varying in direct relationship to the number of referrals; (2) a physician rents space to a health care entity at a rate above what the market would ordinarily bear, but the entity agrees to the high rent because of an understanding that the physician will refer his or her patients to that entity; or (3) a physician rents space to a health care entity on a month-to-month lease, with the rent varying each month based on the number of referrals from the physician in the preceding month. These arrangements obviously fall within the scope of the anti-kickback law, and provide the potential to abuse the Medicare and State health care programs.

Typically, the abusive arrangements involve rental payments either substantially in excess or below the fair market value of the rental space. The Ninth Circuit Court of Appeals, in *United States v. Lipkis*, 770 F.2d 1447 (9th Cir. 1985), emphasized the importance of determining fair market value when assessing the legitimacy of payments between parties who are in a position to make referrals. In *Lipkis*, a medical management company providing services to a physician group entered into an arrangement with a laboratory where the laboratory returned 20 percent of its revenues obtained from the physician group's referrals back to the management company. The defendant alleged that these payments were fair compensation for "specimen collection and handling services." *Id.* at 1449. The court rejected this defense, concluding: "The fair market value of these services was substantially less than the [amount paid], and there is no question that [the laboratory] was paying for referrals as well as the described services." *Ibid.* Accordingly, one fundamental principle is whether the payment is based on fair market value, regardless of whether the payment is for space rental, equipment rental, personal services, or management contracts.

We have, therefore, crafted an exemption to the antikickback law in these proposed regulations for rental arrangements that would require certain standards and safeguards in order to limit the opportunity for abusive relationships that are intended to induce referrals. Proposed § 1001.952(b), Rent, specifically would establish "safe harbors" in cases of rental agreements where: (1) In instances when access is for periodic intervals, those intervals are set in advance in the lease, rather than allowed to vary week-to-week on the basis of the number of referred patients to be served at the premises; (2) the lease is for at least one year so it cannot be readjusted every month based on the number of referrals; and (3) the charges reflect fair market value.

C. Equipment Rental

Diagnostic and other items of medical equipment are sometimes rented rather than purchased. Obviously, there is no *per se* violation of the anti-kickback statute solely because the owner of the equipment refers a patient to the entity who is paying the individual rent for the equipment. However, we have had situations brought to our attention where payment for the use of the

equipment, just like rent for space, is simply a vehicle to provide reimbursement for referrals.

For example, we have had described to us arrangements where a provider rents equipment from a hospital and reimburses the hospital on an hourly basis each time he or she uses the equipment. Under this type of arrangement, the hospital knows it will be paid a fee by the provider each time it refers a patient to the provider for services requiring the use of the equipment. In another case, an ophthalmologist may rent diagnostic equipment to an optometrist at a rate significantly below the usual market rate. In this instance, there is an understanding between the parties that the rate will be adjusted periodically depending on the referral rate of patients from the optometrist to the ophthalmologist. The reduction in the rental charge, which becomes larger as the number of referrals increase, could obviously be construed as the offer of remuneration in order to induce referrals.

We have, therefore, provided in § 1001.952(c), a "safe harbor" for equipment rentals similar to those applied to real estate rental discussed above, along with the appropriate conditions and safeguards to limit the potential for abuse.

D. Personal Services/Management Contracts

Medical practitioners and providers often have agreements to perform services for each other on a mutually beneficial basis.

Sometimes these agreements call for the party requiring the service to pay a fixed amount or hourly rate to the party performing the service. In other instances, both parties may be allegedly contributing some service or benefit to a so-called "joint venture," and taking compensation in the form of a share of the profits generated by the venture. In still other situations, a party may perform a service acting in the capacity of agent for a company. For example, the agent may perform management services for the company, or handle certain billing and collection services.

None of these arrangements is *per se* illegal solely because referrals between the parties, or to the joint venture, occur. However, if the nature of the agreement is such that payments are intended to induce referrals, or there is an implicit or explicit arrangement where the amount of the payment varies with the volume of referral, the anti-kickback law would apply.

Examples of abusive arrangements that would fall into this category are where: (1) An orthopedist is under contract with a physical therapist to provide billing services for patients he or she refers for the service, thereby receiving compensation in an amount that varies directly with the volume of the referrals; (2) a hospital-employed respiratory therapist is paid by a supplier for servicing home oxygen equipment, but only in cases where the therapist is the source of the patient referral and (3) a hospital stores and delivers medical equipment to discharged patients on behalf of a supplier and is compensated through a disproportionate share of the net profits of the supplier, although the hospital's only other "service" to the joint venture is the referral of the discharged patients. The variations on these examples are virtually limitless.

We have established in § 1001.952(d) a "safe harbor" for joint ventures and other arrangements involving payments for personal services or management contracts, but only if certain standards are met and safeguards are present to limit the opportunity to provide financial incentives in exchange for referrals. This exemption includes the determination of whether services are paid at fair market value, and is predicated on the same type of standards and qualifications as set forth in the exemption for space and equipment rental.

E. Sale of Practice

It has been brought to our attention that another approach sometimes employed by hospitals to assure a referral of business is to buy, or appear to buy, a physician's practice. Unlike the traditional sale of a practice by a retiring physician to another physician, in these cases the physician continues to practice on the staff of the hospital. Thus, the hospital is able to assure that it will be the provider of both physician services and any hospital services required by any of the physician's patients. The physician's patients, in most cases, may be totally unaware that the physician has "sold" his or her practice to the hospital. Further, such sales often involve much higher rates of compensation than would be the case if a retiring physician sold a comparable practice to another physician. The additional compensation in these instances reflects the value of the referrals.

Another approach in the sale of a practice is for the hospital to pay a practicing physician a monthly fee to keep alive its so-called "option" to purchase his or her practice. We have been advised that in these situations neither party intends for the hospital to ever exercise its option, but that the payments are for referrals and will continue only so long as the physician meets his or her monthly quota of referrals.

We are also aware of practices between practitioners such as optometrists and ophthalmologists whereby the ophthalmologist "buys" the optometrist's practice, but the optometrist keeps practicing, only now substantially salaried by the ophthalmologist. The only purpose of this sale was to lock up referrals.

The "safe harbor" we are proposing in § 1001.952(f) would exist for the sale of physician practices when occurring as the result of retirement or some other event that removes the physician from the practice of medicine or from the service area in which he or she was practicing, but not when the sale is for the purpose of obtaining an ongoing source of patient referrals.

F. Referral Services

Professional societies and other consumer-oriented groups often operate referral services, with a fee sometimes paid to cover the costs of such a service. Because such a service fee could be construed as a payment in order to obtain a referral, we have concluded that it is appropriate to establish a specific "safe harbor" for this type of practice. The proposed regulations at § 1001.952(g), referral services, provides standards and safeguards to assure that the "safe harbor" is not abused by persons who would attempt to operate exclusive or selective referral services for which they would impose high participation fees.

G. Warranties

We believe that it is in the public interest to have companies offer warranties as an inducement to the consumer to purchase a product. Section 1001.952(h) reflects this belief and provides a "safe harbor" for such purposes. We are aware, however, that some companies, such as some pacemaker manufacturers, offer so-called "warranties" on *other* manufacturers' products. The reason this occurs is that the Medicare program will reimburse the full costs of a replacement product. As a result, if a patient has no out-of-pocket expenses, he or she can easily be persuaded to make use of another manufacturer's product, and the manufacturer can, in turn, look to the Medicare program for reimbursement. These so-called warranties do not meet the Federal Trade Commission definition of warranty, and these regulations would

not provide a "safe harbor" for such warranties.

H. Waiver of Deductibles for Inpatient Hospital Care

With the advent of the prospective payment system in 1984 for reimbursing hospitals for inpatient care, some hospitals have advertised the routine waiver of Medicare coinsurance and deductible amounts as a means of attracting patients to their facilities. Because the Federal anti-kickback statute does not distinguish between categories of individuals who are prohibited from receiving something of value as an inducement to arrange for care from a particular provider, as a technical matter, the statute prohibits hospitals from engaging in this kind of practice. However, because a hospital will receive the same prospective payment amount for each patient discharged within a diagnostic category regardless of whether inpatient hospital deductible amounts are collected, and since peer review organizations have been established to monitor for unnecessary admissions, the Department believes that there is no substantial Federal harm resulting from this marketing practice and that there is an obvious financial advantage for Medicare beneficiaries. For these reasons, we have proposed a safe harbor for this practice. However, the safe harbor is only for inpatient hospital care, only up to the deductible amount, is available only where there is no cost to the Medicare program, and only where the benefit is offered to all Medicare beneficiaries without regard to their diagnoses or lengths of stay. In any other situations where deductible amounts are waived to induce business, we believe the anti-kickback statute is violated.

I. Discounts, Employees and Group Purchasing Organizations

The "safe harbors" relating to discounts, employees and group purchasing organizations are specifically required under section 1128B of the Act. The proposed regulations, at § 1001.952 (i), (j) and (k), respectively, set forth guidance on the scope of these exemptions.

1. Discounts—The proposed discount exemption we are proposing is intended to meet the legislative intent of encouraging price competition that benefits the Medicare and Medicaid programs.

The exemption applies to individuals and entities, including providers, who solicit or receive price reductions, and to individuals and entities who offer or pay them. However, while the exemption places certain requirements on individuals or entities who solicit or receive the discount, we are not proposing any requirements on the individuals or entities offering or paying it in order for them to qualify for the exemption. In addition, the exemption also applies regardless whether the discount is offered for bulk purchases, prompt payment or other purposes, and whether the buyer buys directly from the seller or through a group purchasing organization.

This proposed discount exemption closely follows the statutory language, limiting its application to reductions in the amount a seller charges in a specific transaction for a good or service to a buyer. We are specifically requiring that the discount be itemized and appear clearly on the invoice or statement. This discount may take the form of a direct and explicit reduction in price, or of an indirect reduction that results from the offer of an extra quantity of the item purchased "at no extra charge." This exemption specifically does not apply to remuneration in the form of other things of value, such as rebates of cash, other free goods or services, redeemable coupons, or credit towards the future purchases of other goods or services. It also does not apply to any reductions in price offered to beneficiaries, such as routine reductions or waiver of coinsurance and deductible amounts owed by program beneficiaries, unless permitted under these regulations for inpatient hospital care.

We have proposed to limit the scope of this exemption because we have become aware of numerous practices whereby practitioners and providers have been offered a variety of things of value, which are not legitimate "discounts," in return for referrals of Medicare or State health care program business. Such forms of remuneration include, among other things, trips, computers or computer terminals, coupons, cash rebates, or in kind offers, such as the inclusion of one free item when one hundred are purchased. We believe that these practices should not qualify for the discount exemption because many of them are subject to abuse and because their benefits cannot be realized by the Medicare and Medicaid programs.

In addition, we believe that it would not be feasible to enforce the requirements of the exemption if remuneration other than price discounts were permitted here. Such an enforcement effort would require the Department to know the precise amount and value of these other goods or services and then be able to apportion that value to each claim or request for payment. It would be very easy for providers seeking to evade enforcement to conceal or undervalue some part of these good or services. However, we are interested in receiving comments on the prevalence of such arrangements and mechanisms that could be used to recognize other cash or inkind discounts where the benefits can be realized by the Medicare and Medicaid programs.

For the purposes of qualifying for this discount exemption, we have divided providers, practitioners, and suppliers into three categories, depending on how they are reimbursed under the programs: (1) Payments based on reasonable cost, acquisition cost, and prospectively determined payment amounts, such PPS payments to hospitals, the composite rate paid to providers of maintenance renal dialysis services, or payments made *exclusively* on a fee schedule; (2) payments based in whole or in part on charges; and (3) payments based on a capitated risk sharing basis under section 1876 of the Act or on a similar basis.

With respect to the first category, cost-based or PPS paid providers, the exemption merely requires the individual or entity to report the discount. Of course, we expect that the *full* amount of the discount to be reported. For the most part, this would be accomplished through the cost report.

For example, the reasonable cost rules at 42 CFR 413.98 specify how to report discounts. In other cases, such as with payments based on acquisition costs, the discount could alternatively be reported on the claim or request for payment.

With respect to the second category, those paid in whole or in part on the basis of charges, the exemption applies only if the discount is reported, and the actual charge is reduced by the full amount of the discount.

This second discount exemption applies to all individuals or entities that are reimbursed based on the lesser of actual charges or fee schedule amounts. We are aware of many situations, particularly in the case of laboratory-to-laboratory discounts offered by one clinical diagnostic laboratory to another, where fee schedule amounts are being paid by Medicare but if the discount were properly reported and fully reflected, the actual charge would be reduced to below the fee schedule amount.

With respect to the third category, we are proposing not to impose any requirements on risk sharing health maintenance organizations or competitive medical plans paid on a capitated basis under section 1876 of the

Act or on a similar basis. Since we do not perceive any circumstance where the Medicare or State health care programs will benefit from any price reductions obtained by these entities, we see no purpose in imposing any requirements on them to comply with this exemption.

2. Employees—This statutory exemption permits an employer to pay an employee in whatever manner he or she chooses for having that employee assist in the solicitation of Medicare or State health care program business. The proposed exemption follows the statute in that it applies only to bona fide employee-employer relationships. We have decided to adopt the definition of employee from the Internal Revenue Service set forth in 26 U.S.C. 3121(d)(2).

In response to the October 21, 1987 request for comments, many commenters suggested that we broaden the exemption to apply to independent contractors paid on a commission basis. We have declined to adopt this approach because we are aware of many examples of abusive practices by sales personnel who are paid as independent contractors and who are not under appropriate supervision. We believe that if individuals and entities desire to pay salesperson on the basis of the amount of business they generate, then to be exempt from civil or criminal prosecution, they should make these salespersons employees where they can and should exert appropriate supervision for the individual's acts.

3. Group Purchasing Organizations—This exemption applies to payments made by a vendor of goods or services to a person authorized to act as a group purchasing organization (GPO) for a number of individuals or entities who are furnishing Medicare or State health care program services. The exemption closely follows the statute, and requires a written agreement between the GPO and the individual or entity that specifies the amount the GPO will be paid. Where the entity is a provider, the exemption requires the GPO to disclose in writing to the provider at least annually the amounts received from each vendor with respect to purchases made on behalf of that provider. Providers must make such disclosures available to the Department upon request, but we are not proposing at this time to require that these disclosures be submitted on a routine basis. In addition, we are not proposing more specific requirements as to the content of the disclosure. At this time, we have concluded that the purposes of this statutory exemption are fulfilled with these limited disclosure requirements. Of course, providers and GPOs remain free to supplement these requirements as they see fit.

III. Regulatory Impact Statement

A. Introduction

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the Executive Order criteria for a "major rule," that is, that would be 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, individuals, 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. In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 6712), unless the Secretary certifies that a proposed reulation would not have a significant economic impact on a substantial number of small entities.

B. Impact on Providers and Practitioners

The provison providing new authority to the OIG to exclude a person or entity from Medicare and State health care programs if engaged in a prohibited remuneration scheme would ensure that the Department could seek action against those practicing in such prohibited schemes short of criminal prosecution. This provision is a result of the statute and not this proposed rule. In addition, this proposed rule attempts to specify various business and payment practices that would not be considered a kickback for purposes of criminal or civil remedies. The regulations serve to clarify departmental policy as to the legality of various commercial arrangements. We believe that the great majority of providers and practitioners do not engage in illegal remuneration schemes, and that the aggregate economic impact of this provison should, in effect, be minimal, affecting only those who have chosen to interpret the kickback statute broadly and who have engaged in prohibited payment schemes in violation of the statutory intent.

C. Conclusion

For these reasons, we have determined that a regulatory impact analysis is not required. Further we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a number of small business entities. Therefore, we have not prepared a regulatory flexibility analysis.

IV. Paperwork Reduction Act

Section 1001.952 of this proposed rule contains information collection requirements. As required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), we have submitted a copy of this proposed rule to the Executive Office of Management and Budget (EOMB) for its review of these requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should follow the instructions in the ADDRESS section of this preamble.

V. Response to Comments

Because of the large number of comments we normally receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble to that rule.

List of Subjects in 42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicare.

42 CFR Chapter V, Part 1001 would be amended as set forth below:

PART 1001—PROGRAM INTEGRITY—MEDICARE

1. The authority citation for Part 1001 would be revised to read as follows:

Authority: Secs. 1102, 1128, 1128B, 1842(j), 1842(k), 1862(d), 1862(e), 1866(b)(2)(D), (E) and (F), and 1871 of the Social Security Act (42 U.S.C. 1302, 1302a-7, 1320a-7b, 1395u(j), 1395u(k), 1395y(d), 1395(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh), unless otherwise noted.

2. The table of contents for Part 1001 would be amended by adding a new Subpart E to read as follows:

* * * * *

Subpart E—Permissive Exclusions

Sec.

1001.951 Fraud, kickbacks and other prohibited activities.

1001.952 Exceptions.

3. A new Subpart E consisting of §§ 1001.951 and 1001.952 would be added to read as follows:

Subpart E—Permissive Exclusions

§ 1001.951 Fraud, kickbacks and other prohibited activities.

The OIG may exclude any individual or entity that it determines has committed an act described in section 1128B of the Social Security Act, subject to the exceptions set forth in § 1001.952.

§ 1001.952 Exceptions.

The following payment practices shall not be treated as a criminal offense under section 1128B of the Act and shall not serve as the basis for an exclusion.

(a) *Investment Interests.* As used in section 1128B of the Act, "remuneration" does not include any payment that—

(1) Is a return, such as a dividend, capital gains distribution, or interest income, from an investment obtained for fair market value in the investment securities (including shares in a corporation, bonds, debentures, notes, or other debt instruments) of a corporation that, at the end of the corporation's fiscal year preceding the purchase of the securities, had:

(i) Total assets exceeding $5,000,000, and

(ii) A class of equity security held of record by at least 500 persons;

(2) Results from the distribution of profits to an investor in an entity where—

(i) A bona fide opportunity to purchase the investment that is the basis for the payment was made available on an equal basis to:

(A) Persons (or their families) who are able to make or influence the referral of individuals for items or services; and

(B) Persons who are not able to make or influence such referrals;

(ii) There are no requirements that the investor be in a position to make referrals for items or services as a condition for the person to continue as an investor;

(iii) The amount of the payment is proportional to the amount of the capital investment (including the fair market value of any pre-operational services rendered); and

(iv) The amount of the capital investment cannot be related to the volume of referrals from the investor to the entity; or

(3) Results from the distribution of profits to an investor in an entity where—

(i) The investor has a significant management role in the entity in which he or she is an investor;

(ii) The amount of the payment is proportional to the amount of the capital investment (including the fair market value of any pre-operational services rendered); and

(iii) The amount of the capital investment cannot be related to the volume of referrals from the investor to the entity.

For the purposes of this section, the term "investor" means any person who has contributed services to a business or venture prior to the start-up of its operations, or who has paid money, in order to obtain a financial interest in the business or venture. The term includes, but is not limited to, proprietors, general partners, limited partners, and corporate shareholders.

(b) *Space Rental.* As used in section 1128B of the Act, "remuneration" does not include payments made by a lessee to a lessor for the use of premises, as long as—

(1) The lease agreement is set out in writing and signed by the parties;

(2) The lease specifies the premises covered by the lease;

(3) If the lease is intended to provide the lessee with access to the premises for periodic intervals of time, rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals, their precise length, their periodicity, and the exact rent for such intervals;

(4) The term of the lease is for not less than one year; and

(5) The rental charge is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals of business between the parties reimbursed under Medicare or Medicaid.

For purposes of this section, the term "fair market value" means the value of the rental property for general commercial purposes (not taking account of its intended use), but shall not be adjusted to reflect the additional value the prospective lessee or lessor would attribute to the property as a result of its proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.

(c) *Equipment rental.* As used in section 1128B of the Act, "remuneration" does not include payments made by a lessee of equipment to the owner ("lessor") of the equipment for the use of the equipment, as long as—

(1) The lease agreement is set out in writing and signed by the parties;

(2) The lease specifies the equipment covered by the lease;

(3) If the lease is intended to provide the lessee with use of the equipment for periodic intervals of time rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals, their precise length, their periodicity, and the exact rent for such intervals;

(4) The term of the lease is for not less than one year; and

(5) The rental charge is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals of business between the parties reimbursed under Medicare or Medicaid.

For purposes of this section, the term "fair market value" mean the value of the equipment when obtained from a manufacturer or professional distributor, but shall not be adjusted to reflect the additional value the prospective lessee or lessor would attribute to the equipment as a result of its proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.

(d) *Personal services and management contracts.* As used in section 1128B of the Act, "remuneration" does not include payments made by a principal to an agent as compensation for the services of the agent, as long as—

(1) The agency agreement is set out in writing and signed by the parties;

(2) The agency agreement specifies the services to be provided by the agent;

(3) If the agency agreement is intended to provide for the services of the agent on a periodic, sporadic or part-time basis, rather than on a full-time basis for the term of the agreement, the agreement specifies exactly the schedule of such intervals, their precise length, their periodicity, and the exact charge for such intervals;

(4) The term of the agreement is for not less than one year; and

(5) The aggregate compensation paid to the agent over the term of the agreement is set in advance, is consistent with air market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals of business between the parties that is reimbursed under Medicare or any State health care program.

For purposes of this section, an agent of a principal is any person, other than a bona fide employee, who has an agreement to perform services for, or on behalf of, the principal.

(e) *Sale of practice.* As used in section 1128B of the Act, "remuneration" does not include payments made to a practitioner by another practitioner where one practitioner is selling his or her practice to another practitioner, as long as—

(1) The period from the date of any agreement pertaining to the sale to the completion of the sale is not more than one year; and

(2) The practitioner who is selling his or her practice will not be in a professional position to make referrals to the purchasing practitioner after one year from the date of the agreement.

(f) *Referral services.* As used in section 1128B of the Act, "remuneration" does not include payments by a physician to an entity which offers to the public that it will refer a person to a physician for medical services, as long as—

(1) The entity does not exclude any qualified physician from participation in the referral service;

(2) Any fee for participation in the referral service is charged equally to all physicians and is reasonably related to the cost of operating the referral service;

(3) The entity imposes no requirements on the manner in which the physician provides services to a referred person, except that the entity may require that these services be furnished free of charge or at reduced charge to the patient; and

(4) The entity makes a disclosure to each person referred as to (i) the manner in which it selects a physician for the person, (ii) the nature of the relationship between the entity and the physicians to whom it makes referrals, and (iii) the nature of any restrictions that would exclude a physician from the pool of physicians to whom referrals are made.

(g) *Warranties.* As used in section 1128B of the Act, "remuneration" does not include payments by a manufacturer or supplier of an item to the purchaser of the item as compensation for any loss sustained by the purchaser due to the failure of the item to operate as intended, as long as the payment—

(1) Is made in accordance with a written affirmation made in connection with the original sale of the item by the supplier to the purchaser, with such affirmation relating to the nature of the material or workmanship and affirming or promising that such material or workmanship is defect-free or will meet a specified level of performance over a specified period of time; and,

(2) Is reasonably related to the economic loss that would otherwise be sustained by the purchaser, including, but not limited to.

(i) Either a refund of the purchase price or the repair or replacement of the defective item, and

(ii) Reimbursement of any costs associated with replacing the product.

(h) *Waiver of deductibles for inpatient hospital care.* As used in section 1128B of the Act, "remuneration" does not include any amount up to a Medicare beneficiary's aggregate obligation for deductibles that a hospital offers to waive for inpatient hospital services that Medicare pays for under the prospective payment system, as long as:

(1) The hospital does not later claim the amount as a bad debt for Medicare reimbursement purposes;

(2) The cost to the hospital of waiving the amount is not in any other way passed on to the Medicare program; and

(3) The offer to waive deductible amounts is made equally to all Medicare beneficiaries of inpatient hospital care, without regard to the reason for the admission, the length of stay of the beneficiary, or the diagnostic related group for which the claim for Medicare reimbursement is filed.

(i) *Discounts.* (1) As used in section 1128B of the Act, a discount is a reduction in the amount a seller charges for a good or service to a buyer (who buys either directly or through a contact with a group purchasing organization) that appears on the invoice or statement. Discounts do not include rebates of cash, other kinds of free goods or services, redeemable coupons, credit towards the future purchase of any goods or services, routine reductions or waivers of any coinsurance or deductible amount owed by program beneficiaries for other than inpatient hospital services, or other remuneration in cash or in kind.

(2) A reduction in a seller's charge is considered a discount as long as an individual or entity that solicits or receives such discount—

(i) On an item or service for which payment is made on the basis of a reasonable cost, acquisition cost, or prospectively determined payment amounts (such as prospective payments system payments to hospitals, or the composite rate paid to providers of maintenance renal dialysis services), fully and accurately reports the discount in the applicable cost reporting mechanism or claim for payment filed with the Department, a State agency or one of their agents;

(ii) On an item or service for which payment is made in whole or in part on the basis of charges,

(A) Fully and accurately reports the discount in the applicable claim for payment filed with the Department, a State agency, or one of their agents, and

(B) Reduces the charge to the program or the beneficiary by the full amount of the discount; or

(iii) Is a health maintenance organization or competitive medical plan paid for by Medicare as a risk contractor under the Tax Equity and Fiscal Responsibility Act of 1982, as authorized under section 1876 of the Act, or by a Medicaid State agency on a similar basis.

(j) *Employees.* As used in section 1128B of the Act, "remuneration" does not include any amount paid by an employer to an employee, who has a bona fide employment relationship with the employer, for employment in the provision of covered items or services.

For purposes of this section, the term "employee" has the same meaning as it does for purposes of 26 U.S.C. 3121(d)(2).

(k) *Group purchasing organizations.* As used in section 1128B of the Act, "remuneration" does not include payments by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursed by Medicare or Medicaid, as long as—

(1) The purchasing agent has a written agreeement with each individual or entity in the group that specifies the amount the agent will be paid by each vendor (where such amount may be a fixed sum or a fixed percentage of the value of purchases made from the vendor by the members of the group under the contract between the vendor and the purchasing agent); and

(2) In the case of an entity that is a provider of services, the agent discloses in writing to the entity at least annually, and to the Secretary upon request, the amount received from each vendor with respect to purchases made by or on behalf of the entity.

Dated: December 9, 1988.

Richard P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: December 21, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-29615 Filed 12-22-88; 8:45 am]

BILLING CODE 4110-60-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 5

Policies and Procedures For Testimony, Production and Disclosure of Material or Information By FEMA Employees

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: The Director of the Federal Emergency Management Agency (FEMA) is amending FEMA regulations

(44 CFR Part 5, Subpart F) which govern the production and disclosure of records and information contained in materials generated, developed or held by FEMA. The amendment publicizes the delegation to the General Counsel, contained in FEMA Instruction No. 1130.1 (March 3, 1982), of the Director's authority to approve production or disclosure of FEMA materials or information in response to subpoenas or other demands. The amendment seeks to clarify the prohibition against the production or disclosure of Agency records in response to a subpoena duces tecum by any officer or employee without prior approval of the General Counsel. In addition, new material will be added governing oral testimony of employees in response to subpoenas or other official demands. The new subpart generally provides that FEMA employees may not give testimony as part of their official duties in litigation in which the United States or FEMA is not a party. This general prohibition is, of course, subject to waiver by the General Counsel at his or her discretion. The purpose of this regulation is to maintain FEMA's policy of strict impartiality with respect to private litigants and to minimize the disruption of official duties.

DATES: Public comments on the proposed rule should be submitted no later than February 21, 1989. The rule shall become effective 30 days after it is published in final form in the **Federal Register.**

ADDRESSES: Comments should be sent to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 840, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, General Attorney, Federal Emergency Management Agency, Room 840, 500 C Street SW., Washington, DC 20472, (202 646–4111).

SUPPLEMENTARY INFORMATION: With increasing regularity, employees of the Federal Emergency Management Agency are requested or subpoenaed to produce Agency documents or to give testimony in litigation in which neither the United States nor FEMA are parties. Typically, such requests are made for purposes of authenticating Agency documents in compliance with evidentiary rules, acquiring the testimony of an employee who has some knowledge of facts at issue in a lawsuit, or acquiring the testimony of an employee as an expert or opinion witness on the basis of knowledge gained by the employee during the course of performing his or her official duties. In the past, requests or demands for documents or testimony have generated confusion among employees as to the appropriate response. This rule is intended to eliminate such confusion on the part of employees and the resulting inconsistency in response by prescribing a uniform policy for employee conduct in these types of situations. In addition, this rule is intended to clarify for private parties FEMA's position on attempts to subpoena Agency documents and employee testimony. With respect to the related issue of subpoenas for the testomony of FEMA employees in litigation or other adjudicatory proceedings in which the United States or FEMA is a party, this rule provides the Agency the flexibility to substitute other FEMA employees for those named in the subpoena where the public interest and smooth functioning of the Agency so requires.

Subpoenas to testify concerning information which employees have acquired in the course of performing official duties, or to produce documents, are essentially legal actions against the United States as to which there has been no statutory waiver of sovereign immunity. The courts have recognized the authority of federal agencies to limit compliance with such subpoenas. *See United States ex rel. Touhy v. Ragen,* 340 U.S. 462 (1951); *Swett* v. *Schenk,* 792 F.2d 1447 (9th Cir. 1986); *Giza v. Secretary of HEW,* 628 F.2d 748 (1st Cir. 1980); *Reynolds Metals Co. v. Crowther,* 572 F. Supp. 288 (D. Mass. 1982). Moreover, subpoenas by State courts or legislative committees which attempt to assert jurisdiction over federal agencies are inconsistent with the Supremacy Clause of the U.S. Constitution, and a federal regulation prohibiting compliance with such subpoenas reinforces this principle. *See McCullouch v.* Maryland, 17 U.S. (4 Wheat.) 316 (1819); *U.S. v.* McLeod, 385 F.2d 734 (5th Cir. 1967); *Municipal Couret v.* Civiletti, 172 Cal Rptr. 83, 116 Cal. App. 3d 105 (1981).

The current regulation (44 CFR part 5, Subpart F) governing response to subpoenas duces tecum provides that such subpoenas should be served on the appropriate Regional Director for regional records or the General Counsel for any other records held by FEMA. It further provides that employees (other than the General Counsel or Regional Directors) served with a subpoena duces tecum should, unless, otherwise directed by the Director, decline to produce the requested documents on the grounds that they are without authority to do so. By FEMA Instruction 1130.1, dated March 3, 1982, the Director delegated to the General Counsel the authority to determine whether Agency personnel should disclose documents or information in response to subpoenas or other demands. The proposed amendment to the rule, therefore, makes clear that no Agency records are to be produced in response to a subpoena duces tecum even where served upon an official authorized to acknowledge service of subpoenas, without the approval of the General Counsel. This provision for the central handling of subpoenas is designed to prevent the improper disclosure of Agency documents. It in no way impacts upon the Agency's present policy of providing documents for use in private litigation to the fullest extent permitted by law. The proposed amendment also makes clear that absent the approval of the General Counsel to respond in strict compliance with the terms of the subpoena, the appropriate response to a subpoena duces tecum is to furnish the private litigant with authenticated copies of Agency documents. This amendment is proposed in the interest of preserving resources for performance of the official work of the Agency.

FEMA regulations do not currently address the terms on which FEMA employees may testify in response to subpoenas ad testificandum. Accordingly, this rule is intended to fill that void by prohibiting, subject to waiver by the General Counsel, any employee from appearing in proceedings on behalf of any party other than the United States to testify as to any material contained in the files of the Agency or any information acquired by an employee as part of that person's official duties or because of that person's official status, including the meaning of official Agency documents. The general prohibition against voluntary appearances and compliance with subpoenas is designed to maintain the Agency's policy of strict impartiality with respect to private litigants. Moreover, to the extent that such requests or demands are designed to elicit testimony on official actions and policies, FEMA believes that the best proof can be derived from FEMA records.

FEMA recognizes that there are situations where the Agency would wish to cooperate with State or local authorities as part of the joint responsibility for developing and enforcing floodplain management regulations and other policies. This rule does not preclude such activities in cases where, in the discretion of the General Counsel, a determination is made that such activity (including the

testimony of FEMA employees) would directly further a FEMA interest and not infringe upon the Agency's resources or its objectivity.

This proposed rule is an administrative action in support of maintaining normal day-to-day Agency operations, a category of action which has been determined by FEMA to have no significant effect on the human environment. 44 CFR 10.8(c)(2)(viii). Therefore, neither an environmental impact statement nor an environmental assessment will be prepared.

This proposed rule relates solely to internal Agency management and, therefore, is not a "major" rule subject to the requirements of Executive Order 12291.

No information collection requirements are imposed by this proposed rule. Therefore, the rule is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), FEMA certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed rule represents a change in Agency procedures and practices regarding the availability of Agency documents and employees under compulsory legal process and, therefore, does not have a particular effect on small entities.

List of Subjects in 44 CFR Part 5

Testimony, Production, Disclosure of information.

For the reasons set forth in the preamble, 44 CFR Part 5, Subpart F is amended to read as follows:

PART 5—[AMENDED]

1. The authority citation for Part 5 is revised to read as follows:

Authority: 5 U.S.C. 552 as amended by sections 1801–1804 of the Omnibus Antifreedom of Information Reform Act of 1986 (Pub. L. 99–570); 5 U.S.C. 301 (Pub. L. 85–619); Reorganization Plan No. 3 of 1978; E.O. 12127; and E.O. 12148.

1a. The heading for Subpart F is revised to read as follows:

Subpart F—Subpoenas or Other Legal Demands for Testimony or the Production or Disclosure of Records or Other Information

2. Section 5.80 is revised to read as follows:

§ 5.80 Scope and applicability.

(a) This subpart sets forth policies and procedures with respect to the disclosure or production by FEMA employees, in response to a subpoena, order or other demand of a court or other authority, of any material contained in the files of the Agency or any information relating to material contained in the files of the Agency or any information acquired by an employee as part of the performance of that person's official duties or because of that person's official status.

(b) This subpart applies to State and local judicial, administrative and legislative proceedings, and federal judicial and administrative proceedings.

(c) This subpart does not apply to Congressional requests or subpoenas for testimony or documents, or to an employee making an appearance solely in his or her private capacity in judicial or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents, domestic relations, etc.).

3. Section 5.81 is amended by revising paragraphs (a) and (b) to read as follows:

§ 5.81 Statement of policy.

(a) It is the policy of FEMA to make its records available to private litigants to the same extent and in the same manner as such records are made available to members of the general public, except where protected from disclosure by litigation procedural authority (e.g., Federal Rules of Civil Procedure) or other applicable law.

(b) It is FEMA's policy and responsibility to preserve its human resources for performance of the official functions of the Agency and to maintain strict impartiality with respect to private litigants. Participation by FEMA employees in private litigation in their official capacities is generally contrary to this policy.

§ 5.85 [Redesignated from § 5.82]

4. Section 5.82 is redesignated as § 5.85 and a new § 5.82 is added to read as follows:

§ 5.82 Definitions.

For purposes of this subpart, the following terms have the meanings ascribed to them in this section:

(a) "Demand" refers to a subpoena, order, or other demand of a court of competent jurisdiction, or other specific authority (e.g., an administrative or state legislative body), signed by the presiding officer, for the production, disclosure, or release of FEMA records or information or for the appearance and testimony of FEMA personnel as witnesses in their official capacities.

(b) "Employee of the Agency" includes all officers and employees of the United States appointed by or subject to the supervision, jurisdiction or control of the Director of FEMA.

(c) "Private litigation" refers to any legal proceeding which does not involve as a named party the United States government, or the Federal Emergency Management Agency, or any official thereof in his or her official capacity.

5. A new § 5.83 is added to read as follows:

§ 5.83 Authority to accept service of subpoenas.

In all legal proceedings between private litigants, a subpoena duces tecum or subpoena testificandum or other demand by a court or other authority for the production of records held by FEMA or for the oral or written testimony of FEMA employees should be addressed to the General Counsel, FEMA, Washington, DC 20472. For Regional records or testimony by Regional employees, the subpoena should be addressed to the appropriate Regional Director listed in §5.26. No other official or employee of FEMA is authorized to accept service of subpoenas on behalf of the Agency.

6. A new § 5.84 is added to read as follows:

§ 5.84 Production of documents in private litigation.

(a) The production of records held by FEMA in response to a subpoena duces tecum or other demand issued pursuant to private litigation, whether or not served in accordance with the provisions of § 5.83 of this subpart, is prohibited absent authorization by the General Counsel.

(b) Whenever an official or employee of FEMA, including any Regional Director, receives a subpoena or other demand for the production of Agency documents or material, he or she shall immediately notify and provide a copy of the demand to the General Counsel.

(c) The General Counsel, in consultation with appropriate officials, shall determine whether to disclose the material or documents indentified in the subpoena or other demand. Generally, authorization to furnish the requested material or documents will not be withheld unless their disclosure is prohibited by relevant law or for other compelling reasons.

(d) Whenever a subpoena or demand commanding the production of any record is served upon any Agency employee other than as provided in § 5.83 of this subpart, or the response to a demand is required before the receipt of instructions from the General Counsel, such employee shall appear in

response thereto, respectfully decline to produce the record(s) on the ground that it is prohibited by this section and state that the demand has been referred for the prompt consideration of the General Counsel.

(e) Where the release of documents in response to a subpoena duces tecum is authorized by the General Counsel, the official having custody of the requested records will furnish, upon the request of the party seeking disclosure, authenticated copies of the documents. No official or employee of FEMA shall respond in strict compliance with the terms of a subpoena duces tecum unless specifically authorized by the General Counsel.

7. Newly redesignated § 5.85 is revised to read as follows:

§5.85 Authentication and attestation of copies.

The Director, Deputy Director, Associate Directors, Administrators, the General Counsel, the Docket Clerk, Inspector General, Regional Directors, and their designees, and other heads of offices having possession of records are authorized in the name of the Director to authenticate and attest for copies or reproduction of records. Appropriate fees will be charged for such copies or reproduction based on the fee schedule set forth in § 5.46 of this part.

8. A new § 5.86 is added to read as follows:

§5.86 Production of documents in litigation or other adjudicatory proceeding in which the United States is a party.

Subpoenas duces tecum issued pursuant to litigation or any other adjudicatory proceeding in which the United States is a party shall be handled as provided at §5.8.

9. A new §5.87 is added to read as follows:

§ 5.87 Testimony of FEMA employees in private litigation.

(a) No FEMA employee shall in response to a subpoena or other demand testify in private litigation as to any information relating to material contained in the files of the Agency, or any information acquired as part of the performance of that person's official duties or because of that person's official status, including the meaning of Agency documents.

(b) Whenever a demand is made upon a FEMA employee for the disclosure of information described in paragraph (a) of this section, that employee shall immediately notify the Office of General Counsel. The General Counsel, upon receipt of such notice and absent waiver at his or her discretion, shall arrange with the appropriate United States Attorney the taking of such steps as are necessary to quash the subpoena or seek a protective order.

(c) In the event that an immediate demand for testimony or disclosure is made in circumstances which would preclude prior notice to and consultation with the General Counsel, the employee shall respectfully request from the demanding authority a stay in the proceedings to allow sufficient time to obtain advice of counsel.

(d) If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with paragraph (c) of this section pending consultation with counsel, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to tesify or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing these regulations and *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

10. A new §5.88 is added to read as follows:

§5.88 Testimony in litigation in which the United States is a party.

(a) Whenever, in any legal proceeding in which the United States is a party, the attorney in charge of presenting the case for the United States requests it, the General Counsel shall arrange for an employee of the Agency to testify as a witness for the United States.

(b) The attendance and testimony of named employees of the Agency may not be required in any legal proceeding by the judge or other presiding officer, by subpoena or otherwise. However, the judge or other presiding officer may, upon a showing of exceptional circumstances (such as a case in which a particular named FEMA employee has direct personal knowledge of a material fact not known to the witness made available by the Agency) require the attendance and testimony of named FEMA personnel.

11. A new §5.89 is added to read as follows:

§5.89 Waiver.

The General Counsel may grant, in writing, a waiver of any policy or procedure prescribed by this subpart, where waiver is considered necessary to promote a significant interest of the Agency or for other good cause. In granting such waiver, the General Counsel shall attach to the waiver such reasonable conditions and limitations as are deemed appropriate in order that a response in strict compliance with the terms of a subpoena duces tecum or the providing of testimony will not interfere with the duties of the employee and will otherwise conform to the policies of this part. The Director may, in his or her discretion, review a decision by the General Counsel to authorize a waiver of any policy or procedure prescribed by this subpart.

Date: December 9, 1988.

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 88-29326 Filed 12-22-88; 8:45 am]

BILLING CODE 6718-21-M

Notices

Federal Register
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Friday, December 23, 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

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.

Date: February 8–10, 1989.

Time: 8:00 a.m.–5:00 p.m., February 8, 1989; 8:00 a.m.–5:00 p.m., February 9, 1989; 8:00 a.m.–12:00 Noon, February 10, 1989.

Place: Embassy Suites Hotel, 1250 22nd Street NW., Washington, DC 20037.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will be preparing a report assessing the President's proposed FY 1990 budget for agricultural research and extension agencies.

Contact Person for Agenda and More Information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 432–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2200; telephone (202) 447–3684.

Done in Washington, DC, this 15th day of December 1988.

John Patrick Jordan,

Administrator.

[FR Doc. 88–29553 Filed 12–22–88; 8:45 am]

BILLING CODE 3410–22–M

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) proposes the establishment of a Privacy Act System of Records to be maintained by the Federal Crop Insurance Corporation (FCIC), entitled USDA/FCIC–2 "FCIC Compliance Review Cases, USDA/FCIC."

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on February 21, 1989, unless modified by a subsequent notice to incorporate comments received from the public. USDA invites comments from the public on this proposal to be received by the contact person listed below on or before January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Ralph F. Satterfield, Federal Crop Insurance Corporation, Room 4606, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 382–9714.

SUPPLEMENTARY INFORMATION: The USDA is developing a system of records to be maintained by the Federal Crop Insurance Corporation (FCIC), pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) (the "Act"). The records system will contain detailed information pertaining to cases in which the Office of Compliance of FCIC is involved..

It is also proposed that the system be exempted from certain access, amendment, and other provisions of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(2) and 7 CFR 1.123. A proposed rule amending 7 CFR 1.123 was published at 53 FR 30435, on August 12, 1988.

The information is collected during the course of reviews and investigations conducted by the Office of Compliance and includes investigative notes, signed statements, affirmations and affidavits, correspondence, case history and status, contractual information, financial data and other related information, and reported findings by the Office of Compliance and other entities such as the Office of Inspector General, USDA.

The system of records provides documentation of all cases involving FCIC Office of Compliance. It also provides status reports with respect to the disposition of all cases.

A "Report on New System," required by 5 U.S.C. 552a(o), has been sent to the President of the Senate, the Speaker of the House of Representatives, and the Office of Management and Budget.

Accordingly, notice is hereby given that USDA is establishing a system of records to be maintained by the Federal Crop Insurance Corporation (FCIC) titled "USDA/FCIC–2–FCIC Compliance Review Cases, USDA/FCIC", to read as set forth below.

Signed at Washington, DC, on December 14, 1988.

Peter C. Myers,

Acting Secretary.

USDA/FCIC–2

SYSTEM NAME:

FCIC Compliance Review Cases, USDA/FCIC.

SYSTEM LOCATION:

Office of Compliance, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Room 4068, South Building, 14th and Independence Avenue, SW., Washington, DC 20250, and Branch Offices of the Office of Compliance located in strategic cities throughout the United States. Addresses of each Branch Office may be obtained from the Assistant Manager for Compliance, Office of Compliance, FCIC, at the address listed above.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FCIC employees, Insurance Companies under an Agency Sales and Service Contract, Insurance Companies whose policies of crop insurance are reinsured by FCIC under a Reinsurance Agreement, Insurance Industry Committee or Board Members, agents, loss adjusters, or other employees, and any other individuals alleged to be violators of program or contractual provisions or who are otherwise the subject of a compliance review.

CATEGORIES OF RECORDS MAINTAINED IN THE SYSTEM:

The system consists of compliance review files containing evidence gathered in the course of Office of Compliance reviews. These files also

contain reports by other entities including the Office of Inspector General, USDA, as well as intra and interdepartmental recommendations. The records system also includes a tracking system maintained by computer which provides current status reports on all cases involving FCIC including reports and conclusions by other entities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Office of Compliance is responsible for compliance activities with respect to programs administered by FCIC under the authority of 7 U.S.C. 1501–1520 and 7 CFR 2.23(h).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

(1) Records contained in this system may be referred to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility for investigating or prosecuting a violation of law, or for enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Records contained in this system may be referred to the Department of Justice when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(3) Records from this system may be disclosed in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States, where the agency determines litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(4) Records from this system may be disclosed in response to a request for discovery or for the appearance of a witness, to the extent that the agency determines that the information sought is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and in computer data files at the addresses listed under "System location."

RETRIEVABILITY:

The records filed in this system are issued a primary individual name or company name and a case number. A secondary name indicating the subject under compliance review is also issued. The records are filed in order of occurrence. Files are retrieved by identifying the individual or company name, subject, and case number.

SAFEGUARDS:

Records are stored in file folders and computer data files accessible only to authorized personnel. The computer data base is accessed through a secure system procedure by Office of Compliance Staff and by the FCIC ADP Security Officers. Offices containing these records are locked when not in use during nonbusiness hours and when offices are otherwise vacant. All records are accessible to Office of Compliance Staff and FCIC ADP Security Officers.

RETENTION AND DISPOSAL:

Magnetic tape records are maintained indefinitely. Hard copy records are maintained subject to the Disposal of Field Records retention schedule (FCIC Issuance System–M5–P2–C8, Exhibits 1, 2, and 5).

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Federal Crop Insurance Corporation, USDA, Washington, DC 20250.

Assistant Manager for Compliance, Federal Crop Insurance Corporation, USDA, Washington, DC 20250.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to the provisions of 5 U.S.C. 552a(k)(2), material in this system of records is exempt from the requirements of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) because it contains investigatory material compiled for law enforcement purposes. See 7 CFR 1.123.

5 U.S.C. 552a(d) requires that an individual be given access to and the right to amend files pertaining to himself or herself. Such individual access to these files could hamper reviews in progress by alerting subjects involved in compliance reviews that their actions are under scrutiny, and allow them time to take measures to prevent detection of any illegal activities or escape prosecution. Release of these records would also disclose investigatory techniques and review procedures employed by Office of Compliance, FCIC and other agencies, which may impair law enforcement activities.

5 U.S.C. 552a(c)(3) requires that an accounting of disclosures be made available to an individual. This would impair compliance reviews by alerting the subject of the review to the existence of those compliance reviews.

The release of information from these files could result in the destruction or alteration of documentary evidence necessary to prosecution, improper influencing of witnesses, and other activities which could impede or compromise the review. 5 U.S.C. 552a(e)(1) permits the maintenance of only such information as is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. Exemption from this provision is required because determination of relevance and necessity can be made only after information is evaluated. Evaluation at the time of collection is too time consuming for the effective conduct of a compliance review. Further, the determination of relevance or necessity of specific information at the early stages of the compliance review is not possible.

5 U.S.C. 552a(e)(4) (G) and (H), and (f) provide for notification and access procedures. If these requirements are followed it would necessarily alert subjects of the compliance review to the existence of the review and could impair the outcome of the review. Similarly, access to the records could interfere with compliance review and ultimate

law enforcement proceedings; disclose confidential informants and information; constitute an unwarranted invasion of the personal privacy of others; and, reveal confidential investigative techniques and procedures. 5 U.S.C. 552a(e)(4)(I) requires that categories of records in each system be published. Application of this provision could disclose investigative techniques and procedures employed by compliance reviewers and result in sources not giving information because of fear of reprisal, or fear of breach of promises of anonymity or confidentiality resulting in a compromise of the ability to conduct a compliance review.

[FR Doc. 88-29480 Filed 12-22-88; 8:45 am]

BILLING CODE 3410-08-M

Forest Service

Stanley Basin Allotment Management Plan Revision; Sawtooth National Forest, Custer County, Challis; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to revise the allotment management plan for the Stanley Basin C&H Allotment. The majority of the allotment is within the boundaries of the Sawtooth National Recreation Area (SNRA), which is administered by the Sawtooth National Forest. The remaining portion is within the boundaries of the Challis National Forest and managed by the Sawtooth National Forest. The proposal is to resolve conflicts associated with permitted livestock on the Stanley Basin C&H Allotment. The primary conflicts are fisheries, recreation, and highway safety.

The Sawtooth National Forest Land and Resource Management Plan has been prepared, Record of Decision signed September 16, 1987. The management goal of the plan is to "bring allotments to their reasonable grazing potential "(Chapter IV of the Plan) while "ensuring that resource management best provides for the needs of high value salmon and steelhead fisheries" and "minimize impacts on resident fisheries through habitat improvement" (IV of the Plan). This direction is consistent with the legislation establishing the SNRA (Public Law 92-400).

A range of alternatives, including No Action, will be considered. Other possible alternatives range from elimination of all livestock grazing to maintaining current grazing numbers with extensive mitigation measures. The No Action Alternative will analyze the impacts of the current grazing system on the environment.

Over the past couple of years, issues and concerns have been identified by several organizations, state, federal and local governments, and individuals concerning grazing conflicts with fisheries, recreation, and highway safety. Development of an EIS will provide all interested parties a chance to revisit the issues and concerns and will include:

1. Identification of new or additional issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues.

The Fish and Wildlife Service, Department of Interior, will be invited to participate as a cooperating agency to evaluate the potential impact on threatened and endangered species habitat if any such species are found to exist in the allotment.

Roland M. Stoleson, Forest Supervisor, Sawtooth National Forest, Twin Falls, Idaho, is the responsible official.

The analysis is expected to take about six (6) months. The draft environmental impact statement should be available for public review by March, 1989. The final environmental impact statement is scheduled to be completed by July, 1989.

Written comments and suggestions concerning the analysis should be sent to Roland M. Stoleson, Forest Supervisor, Sawtooth National Forest, 2647 Kimberly Road East, Twin Falls, Idaho 83301.

Questions about the proposed action and environmental impact statement should be directed to Bert Webster, Range Staff Officer, Sawtooth National Forest, telephone 208-737-3200.

Date: December 16, 1988.

Roland M. Stoleson,

Forest Supervisor, Sawtooth National Forest.

[FR Doc. 88-29548 Filed 12-22-88; 8:45 am]

BILLING CODE 3410-11-M

Arctic Research Commission

Meeting

Notice is hereby given that the United States Arctic Research Commission will hold its 16th Meeting in San Francisco on 20-21 January, 1989. The meeting will start at 8:30 a.m. in the Toyon A and B rooms of the San Francisco Hilton Hotel at 333 O'Farrell Street. Agenda items include: (1) Report from the Chairman; (2) Approval of minutes of the 15th Meeting; (3) Policy for joint sponsorship of events; (4) Coordination with the Interagency Arctic Research Policy Committee and review of the revision of the Arctic Research Plan and other policy guidance; (5) International Science Cooperation; and (6) Future plans of the Commission.

From 9:00 a.m. until 3:00 p.m. on January 21, 1989 the Commission will meet in Executive Session to review legal advice and plans.

Contact Person for More Information: Philip L. Johnson, Executive Director, U.S. Arctic Research Commission (202) 371-9631.

Jennifer Loporcaro,

Administrative Assistant, U.S. Arctic Research Commission.

[FR Doc. 88-29523 Filed 12-22-88; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 80861-8161]

Foreign Availability Determination; Marine Water Tube Boilers

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of foreign availability determination.

SUMMARY: The Office of Foreign Availability (OFA) of the Bureau of Export Adminstration pursuant to section 5 (f) and (h) of the Export Administration Act of 1979, as amended, initiates and reviews claims of foreign availability on items controlled for national security purposes.

OFA has completed an assessment of marine water tube boilers controlled under ECCN 2409A(e) defined as:

Naval equipment—Marine boilers designed to have any of the following characteristics: heat release rate (at maximum rating) equal to or in excess of 190,000 BTU per hour per ft^3 of furnace volume; or ratio of steam generated in pounds per hour (at maximum rating) to the dry weight of the boiler in pounds equal to or in excess of 0.83.

Marine water tube boilers are also controlled under ECCN 4409B:

Water tube boilers, marine type, designed to have a heat release rate (at maximum rating) equal to 180,000 BTU, up to but not including 190,000 BTU per hour per ft^3 of furnace volume; boiler superheaters, feedwater heaters, and economizers therefor; and parts and accessories therefor.

Based on this assessment and following consultation with the Department of Defense, the Department of Commerce has found foreign availability for this commodity.

FOR FURTHER INFORMATION CONTACT: Donald Brychczynski, Office of Foreign Availability, Bureau of Export Administration, Washington, DC 20230, Telephone: (202) 377–8074.

SUPPLEMENTARY INFORMATION:

Foreign Availability Determination

The purpose of the assessment was to determine whether national security export controls should be continued. The Office of Foreign Availability has completed an assessment of the availability from foreign sources of the above described equipment and has recommended a finding of foreign availability as defined by law. Based on such assessment and recommendation, I hereby determine that foreign availability of such equipment exists within the meaning of section 5(f) of the Export Administration Act of 1979, as amended.

Based on this determination, the Bureau of Export Administration is publishing regulations in the Rules section of today's **Federal Register** that amend the national security export controls on these marine water tube boilers to remove the individual validated license requirement for marine water tube boilers with a heat release rate less than 190,000 BTU to all destinations except Country Groups S and Z and those with a heat release rate equal to or greater than 190,000 BTU to destinations in Country Groups T and V, except the People's Republic of China and Afghanistan.

The Bureau of Export Administration will also begin the process whereby the United States Government will work with COCOM member governments to reach agreement on an orderly change in the multilateral controls maintained on such marine water tube boilers when exported to controlled countries.

If the Office of Foreign Availability receives substantive new evidence affecting this foreign availability determination, the assessment will be reevaluated. Inquiries concerning the scope of this assessment may be directed to the Office of Foreign Availability.

Dated: December 20, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88–29514 Filed 12–22–88; 8:45 am]

BILLING CODE 3510–DT–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Korea

December 20, 1988.

AGENCY: Committee for the Implementation of Textile Agreements(CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 28, 1988.

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–8041. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

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).

The current limits for Groups II and III and certain sublevels within Groups I, II and III are being adjusted, variously, for swing and carryover.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 161, published on January 5, 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 20, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on December 28, 1988 the directive of December 30, 1987 is amended to include adjustments to the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Korea:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
300/301	5,838,304 pounds.
317/326	18,558,955 square yards.
625/626/627/628/629.	13,582,418 square yards.
669–T [2]	8,362,297 pounds.
Group II	
239, 330–354, 359, 431–448, 459, 630–654, and 659, as a group.	694,147,748 square yards equivalent.
Sublevels in Group II	
333/334	77,135 dozen.
335	78,980 dozen.
336	46,094 dozen.
338/339	814,249 dozen.
340	273,300 dozen.
347/348	345,552 dozen.
433/434	17,772 dozen of which not more than 13,824 dozen shall be in Category 433.
447	87,621 dozen.
459–W [3]	193,036 pounds
631	252,520 dozen pairs.
633/634/635.	1,471,885 dozen.
636	234,082 dozen.
634	773,917 numbers.
647/648	1,243,962 dozen.
659–H [4]	2,629,373 pounds.
Group III	
831–844 and 847–859, as a group.	14,691,815 square yards equivalent.
Sublevel in Group II	
835	29,452 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 669–T, only TSUSA numbers 386.1105 and 389.6210.

[3] In Category 459–W, only TSUSA numbers 702.7500 and 702.8000.

[4] In Category 659–H, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703 1620, 703.1630, 703.1640 and 703.1650.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provision of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-29511 Filed 12-22-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

December 20, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 28, 1988.

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-6735. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

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)

The current limits for certain cotton, wool and man-made fiber textile products in Group I are being adjusted, variously, for carryforward, swing and carryover.

A description of the textile and apparel categories in terms of T.S.U.S.A numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 163, published on January 5, 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 20, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Philippines and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on December 28, 1988, the directive of December 30, 1987 is being amended to adjust the limits for the following categories, under the terms of the current textile agreement between the Governments of the United States and the Philippines:

Category levels in group I	12-month limit [1]
239	13,721,209 pounds.
347/348	1,166,159 dozen.
369-S [2]	1,001,365 pounds.
445/446	26,626 dozen.
631	2,882,670 dozen pairs.
634	275,044 dozen.
635	275,280 dozen.
649	4,631,748 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 369-S, only TSUSA number 366.2840.

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. 88-29512 Filed 12-22-88; 8:45 am]

BILLING CODE 3510-DR-M

Cancellation of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

December 20, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs cancelling export visa requirements.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

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).

Since the bilateral textile agreement between the Governments of the United States and Costa Rica on Categories 340/640 expires on December 31, 1988, shipments of goods in Categories 340/640 exported from Costa Rica on and after January 1, 1989 will no longer require a visa.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 26820, published on January 29, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on January 26, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes, among other things, export visa requirements for cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Costa Rica.

Effective on January 1, 1989, a visa will not be required for cotton and man-made fiber textile products in Categories 340/640 which are exported from Costa Rica on and after January 1, 1989.

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. 88-29513 Filed 12-22-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: January 23, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On August 26, October 14 and November 4, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 32642, 40252, and 44646) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1989:

Commodities

Maintenance Kit, Window—1560-00-450-3622
Blanket, Bed—7210-00-177-4986
Binder, Looseleaf, Flight Crew—7510-00-766-4269
Liner, Flyer's Jacket—8415-00-844-9811; 8415-00-844-9812; 8415-00-844-9813; 8415-00-844-9814

Services

Commissary Shelf Stocking, Custodial and Warehouse Service, Ellsworth Air Force Base, South Dakota
Janitorial/Custodial, Waco Distribution Center, 1801 Exchange Park, Waco, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 88-29520 Filed 12-22-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received a proposal to add to Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

Comments must be received on or before: January 23, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverely Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Commodities

Blackboard—7110-00-132-6650; 7110-00-843-7917

Services

Food Service Attendant; Homestead Air Force Base, Florida
Janitorial/Custodial, Headquarters Building 1001, Fort Hood, Texas
Janitorial/Custodial, Food and Drug Administration Laboratory, Canyon Park Business Center, Bothell, Washington

Beverly L. Milkman,

Executive Director.

[FR Doc. 88-29521 Filed 12-22-88; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Navy

Finding of No Significant Impact for the Continued Operation of the Navy EMPRESS I Facility on the Solomons Annex of the Patuxent River Naval Air Station, Solomons, MD

Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act (§ 1508.13 of Title 40, Code of Federal Regulations) the Department of the Navy hereby gives notice that an Environmental Assessment has been prepared and an Environmental Impact Statement is not being prepared for the continued operation of the Navy Electromagnetic Pulse Radiation Environment Simulator for Ships (EMPRESS I) facility on the Solomons Annex of the Patuxent River Naval Air Station, Solomons, Calvert County, Maryland.

On 27 June 1988 the Navy announced in the **Federal Register** the availability of the EMPRESS I Environmental Assessment (EA). This EA had been distributed to various Federal, Maryland state and local governmental agencies and special interest groups. In addition, copies of the EA were available for viewing during normal business hours, at several public locations near EMPRESS I in St. Mary's and Calvert Counties, Maryland.

The announcement in the **Federal Register** also scheduled a public meeting which was held on 9 August 1988, in Prince Frederick, Maryland. This meeting was held for the purpose of affording the above mentioned agencies, special interest groups, and individuals an opportunity to comment publicly regarding the EA and the proposed action. Comments were received by the Navy during this meeting and subsequent to it.

The EMPRESS I facility, originally built in 1972, is located on Pt. Patience, Maryland, which extends out into the Patuxent River in southern Calvert County, Maryland.

EMPRESS I is a highly specialized radio transmitter that broadcasts a pulse of electromagnetic energy for the purpose of assessing its effects on Navy electronic equipment. This pulse, known as electromagnetic pulse (EMP), is of extremely short duration and high intensity. It is capable of upsetting and even damaging electronic equipment under certain conditions. The testing is conducted so that the Navy can identify problems and then take the necessary steps to protect its equipment from such upset and damage.

Three alternatives to the proposed action were considered: (1) Land-based testing at other existing EMP facilities, and ship testing at a new EMP facility (EMPRESS II); (2) the use of analysis, computer modeling, and laboratory testing in lieu of full-scale, free-field EMP testing; and (3) no action, i.e., the discontinuation of all Navy EMPRESS I operations and termination of all EMP testing conducted at the Patuxent Naval Air Station, Solomons Annex. The first alternative is considered to be a reasonable alternative to the proposed action.

The second alternative is a useful supplement to full-scale, free field testing, but cannot replace it entirely and therefore was classed as an unacceptable alternative. Computer and scale modeling is useful to predict effects on simple geometries, but these techniques have not been developed to the point where they can be used to accurately predict electromagnetic coupling to something as complex as a ship with its irregular structures, thousands of pieces of equipment, and miles of cables. Laboratory testing by direct injection of EMP transients into electronic components or individual pieces of equipment is also useful to determine the effects of these transients on the operation of components or equipment. However, the level and type of signal to inject must be known and this can only be determined from prior full ship EMP tests.

The third alternative (no action) is unacceptable from a national security standpoint. Based on the extensive EMP experience of the Navy, Air Force, Army, and Defense Nuclear Agency, there continues to be a need to test, harden, and retest Navy equipment, systems and ships, to reduce their vulnerability to upset and damage from EMP.

Alternatives two and three would not allow the Navy to achieve its mission of hardening its electronic equipment and equipment systems. They were therefore rejected.

The impacts on the environment that would occur from the implementation of the proposed action and its alternatives were analyzed and documented. They include: Instances of upset and damage of sensitive electronic equipment on Navy property on the Solomons Annex, infrequent upset of very sensitive marine electronic equipment on boats in the Patuxent River within about one-half mile of the EMPRESS I facility, atmospheric releases of small quantities of Freon and sulfur hexafluoride, restrictions on certain government/contractor operations (only on military property) during EMPRESS I pulsing, and minor land-use restrictions on the Solomons Annex.

The major measures taken to mitigate the impacts on the environment were in the area of modifications to operational procedures. They include: advance notification of pulsing operations so that sensitive electronic equipment on the Solomons Annex can be disconnected prior to pulsing; the placement of two observers on Pt. Patience during pulsing operations to ensure that no one is near the hazardous high-voltage electrical components, that no pulsing occurs if boats or aircraft enter into areas (within ½ mile of the main antenna) where their electronic equipment could be damaged from pulses, and that no large sailboats enter into areas (within ½ mile of the main antenna) within which induced electrical shock could prove annoying to people aboard the vessel. In addition, no pulsing is conducted when ordnance and explosive devices are handled or transported on the Solomons Annex, no gasoline is dispensed from the gas pumps at the Third Cover adjacent to the EMPRESS I facility during pulsing, and no operations involving painting or the use of flammable liquids are permitted in a nearby paint spraying compound during pulsing. Finally, pacemaker warning signs are posted at the 5,000 volt per meter (V/m) contour prior to pulsing operations, and pulsing is suspended when any boat enters the 5,000 V/m contour until it either leaves the area or it has been ascertained by Navy personnel that no pacemaker wearers are on board. (The volt per meter is the standard unit used to measure electric fields; the 5,000 V/m contour is located 700 feet from the main antenna). In addition, all future ship testing will be conducted with the ship at the Destroyer pier. The Navy will remove the two buoys in the Patuxent River. This will result in fewer restrictions on access to surface waters and river bottoms.

The EMPRESS I facility has operated for the past 16 years, and has generated over 35,000 EMP pulses. During this time, the facility has had a history of safe operation, and has had no significant environmental impact. The continued use of the EMPRESS I will not have a significant impact on the environment, within the context of the National Environmental Policy Act.

Responses to the comments received by the Navy during the public review of the EMPRESS I EA are presented below.

Analysis and computer modeling are not viable alternatives to EMPRESS I testing. As discussed previously and on pages 20–21 of the EA, there currently exists no alternative that can replace the need for full scale free-field EMP testing of electronic equipment and systems.

During the past two decades, many studies were conducted to determine if there could be adverse effects on biological organisms due to the absorption of EMP into their bodies. These studies were discussed in the EA. A few of these studies showed minor effects on the organisms studied. None of these effects were considered to be harmful effects, and all of them were produced by EMP field strengths far in excess of those produced by EMPRESS I. While definitive answers to all biological issues investigated were not obtained, sufficient results were obtained to support the conclusion that there will be no significant impact on biological organisms, including humans, as a result of the proposed action.

One comment addressed the possibility that EMP could cause cancer in humans. This issue was discussed in detail in the EA. There is no evidence that EMP has ever caused caner. No determination has ever been made, as a result of litigation, that anyone has ever contracted leukemia as a result of EMP exposure.

Another comment disagreed with the Navy's conclusion that continued operation of EMPRESS I is needed, and asserts that the reasonable alternative (alternative 1) would have less impact than the continued operation of EMPRESS I. The EMPRESS I Environmental Assessment concludes that impacts on the environment from both continued operation of EMPRESS I and from the reasonable alternative (alternative 1) are comparable, with both options resulting in no significant impact on the environment. As to need, EMPRESS I continues to be used to conduct low-level tests on smaller ships (one such test was conducted in Oct. 1987). Although EMPRESS II is now available, it can currently only be operated in the ocean during the summer months. There is still a need for the capability to conduct tests year-round. Low level EMPRESS I tests on

smaller ships can also be performed at a lower cost.

One review comment stated that the crab pots mentioned in the EA, as placed in the Patuxent River around Pt. Patience, are assumed to be eel pots, and that crab pots are not allowed in the area. The Navy accepts that they may have been eel pots rather than crab pots. That same comment addressed the testing of eels for adverse effects due to exposure to EMP. Tests were conducted by the University of Maryland's Horn Point Laboratory, Cambridge, Maryland, to determine if exposure to EMP would produce any noticeable effects on American eels. No EMP related effects were observed.

The Navy has concluded that, with the above mitigation measures in place, marine electronic equipment on boats in the Patuxent River near EMPRESS I will not be damaged by the pulses that are generated, and that any upsets of such equipment will be of a minor nature and will not pose a hazard to navigation.

One comment addressed the surface waters restrictions in the Patuxent River (100 yards around any vessel anchored there) that would occur if a ship were anchored in the river during testing. The 1987 EMPRESS I test of USNS POWHATAN was conducted with that vessel tied up to the end of the Destroyer Pier. The Navy plans to remove the two large mooring buoys in the Patuxent River south of Pt. Patience, and has no plans to conduct any further ship tests at any location other than at the Destroyer Pier. The result of this will be less restriction on access to surface waters and river bottoms.

The use of boat watchers with radios stationed on Pt. Patience is adequate to prevent pulsing when boats with sensitive marine electronic equipment are within the 1,350 V/m area. (1,350 V/m was established in the EMPRESS II EIS as the safe level for commercial electronics; this was based on previous tests conducted by other agencies as well as tests conducted by the Navy at EMPRESS I on civilian marine electronics). The determination of whether a boat has sensitive marine electronic equipment aboard is made based primarily on visual inspection of the boat, and on a determination of the type of boat. For example, a small rowboat would be expected to have no electronics aboard, whereas a large cabin cruiser with visible antennas topside would obviously have electronics aboard.

One comment addressed the effects of EMPRESS I pulses on fly-by-wire (computer-controlled) aircraft which it claims cannot be safely exposed to fields in excess of 200 V/m. This comment is in error. The comment refers to the **Federal Register** of May 16, 1988 in which the FAA announced special test requirements that apply only to Boeing 767 aircraft, and only those 767 aircraft which use a new Pratt & Whitney PW4000 series engine that uses a digital electronic propulsion control system. These requirements include direct lightning strikes of 10,000 to 200,000 amperes, and a combination of tests and analysis to demonstrate that this digital control system will not be adversely affected by the worst case RF threat due to *continuous* RF emitters. The field strengths given as the threat include 1000 volts per meter over the 3–30 MHz band (wherein lies most of the EMP energy); moreover, the 1000 volts per meter is a continuous exposure to RF, and therefore contains much more energy than a 1000 volt per meter pulse lasting less than one-millionth of a second. In any event, commercial aircraft do not use the airspace around EMPRESS I, which is controlled by the Patuxent River Naval Air Station.

Tests by Georgia Tech and the Defense Nuclear Agency have shown that the 5,000 V/m threshold established for safe exposure of cardiac pacemakers is adequate. No pacemakers will be adversely affected as a result of EMPRESS I operations.

The EA addressing this action is on file and copies may be obtained by interested parties from: Naval Surface Warfare Center, White Oak Laboratory, Benjamin M. Plotkin, Esq., Office of Counsel, Code C71W, 10901 New Hampshire Avenue, Silver Spring, MD 20903–5000, (301) 394–1999.

Date: December 19, 1988.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 88–29554 Filed 12–22–88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by January 15, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3517) requires that the Director of the Office of Management and Budget (OMB) provide interested agencies and persons an early and meaningful opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden; and (6) Abstract. Because an expedited review by OMB is requested, the information collection request is also included as an attachment to this notice.

Dated: December 20, 1988.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Expedited

Title: Continuation Application for the Follow Through Program

Abstract: Existing grantees need the application form to apply for

continuation funding. The department needs this information to make awards and insure that proposed projects meet the requirements of regulations. This application contains the following Standard Forms: SF424, SF424A, and SF424B.

Additional Information: The Follow Through Program is requesting expedited review for these continuation applications in order to process grant awards in a timely fashion and to ensure the progress of grantees towards achievement of planned objectives for the second year of funding.

Frequency: Annually

Affected Public: State or local governments

Reported Burden:
Responses: 63
Burden Hours: 315

Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

BILLING CODE 4000-01-M

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY
FOR ELEMENTARY AND SECONDARY EDUCATION

Dear Colleague:

I am writing to you concerning procedures to apply for a noncompeting continuation award for fiscal year 1989 under the Follow Through Program. Since the Department is not publishing a Federal Register notice inviting continuation applications, this letter contains the information you previously found in the Federal Register.

The deadline date for transmittal of Follow Through continuation applications is _____ In order to be assured of consideration, your application must be prepared in accordance with the application instructions. The original and two copies must be mailed or hand delivered in accordance with the mailing instructions contained in the application package.

the narrative section of the application should describe project accomplishments, any changes in the project plan as approved in the original application, and specific objectives and approaches for the second year of the project. Please address each of the components pertinent to the type of project being implemented (i.e., educational component, parent participation component, etc.).

The amount available for awards to Follow Through projects in fiscal year 1989 is _____. Each applicant should make every effort to request an amount not to exceed the first year grant award.

Please review all of the information in the application package carefully. If you have any questions concerning the application requirements, please contact the Follow Through program officer, Barbara Little at (202) 732-4700.

Sincerely,

Beryl Dorsett
Assistant Secretary

DRAFT

400 MARYLAND AVE SW WASHINGTON DC 20202

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U.S. DEPARTMENT OF EDUCATION
WASHINGTON, DC 20202

FOLLOW THROUGH PROGRAM
INSTRUCTIONS FOR COMPLETILNG APPLICATION
FOR FEDERAL ASSISTANCE (Nonconstruction Programs)

No funds will be awarded unless this application is completed and filed according to existing law and regulations (42 U.S.C. 2929; C.F.R. 215).

This form shall be used for applying for Federal assistance for the Follow Through program of the Department of Education (ED). This form shall be used to request supplemental assistance, to propose changes or amendments, and to request continuation or refunding for approval grants.

PART I

Part I of this application consists of the standard face page for Federal applications and concomitant instructions. (SF 424)

The following SUPPLEMENTAL instructions for items given below are to be used in lieu of or along with the standard instructions for the items:

Item 5 - If an individual's name and/or title is desired on the payment instrument, the name and/or title of the designated individual must be specified here.

Item 6 - If the applicant organization has been assigned an ED entity number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full ED entity number in item 6.

Item 10 - Preprinted.

Item 11 - Enter the descriptive name of this project: "Self-sponsored Local Project", "Sponsored Local Project", or "Sponsor Project".

PART II

See General Instructions for the Budget Information (SF-424A).

PART III

PROGRAM NARRATIVE
Section A

Prepare the program narrative statement in accordance with the following instructions. Requests for supplemental assistance should respond to question 2 only.

1. The program narrative is the section of the application in which the applicant states the objectives of the continuation project and how they are to be accomplished, any changes in the original approved plan, and project accomplishments to date. The narrative for a self-sponsored and sponsored local project should address all of the items in Section 215.4 of the regulations. The narrative for Follow Through sponsor project should address Section 215.5 of the regulations. The narrative should be concise, free from superfluous detail and repetition.

2. For supplemental assistance requests, explain the reason for the request and justify the need for additional funding.

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DEPARTMENT OF EDUCATION
Washington, D.C. 20202

DRAFT

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project (1810-0003), Washington, D.C. 20503

PROGRAM NARRATIVE FORM FOR LOCAL PROJECTS
Section B

NOTE: All applicants for "Local Projects" must respond to the material below.

1. ESTIMATE OF SCHOOL YEAR ENROLLMENT IN FOLLOW THROUGH

Give the number of children who will participate in the Follow Through project during the academic year for which funds are requested.

Preschool participation[1]/	Number of Children Enrolled[2]/				
	PUBLIC SCHOOL		NON PUBLIC SCHOOL		TOTAL
	Low-Income	Non Low-Income	Low-Income	Non Low-Income	
Head Start or equivalent experience					
No Head Start or equivalent experience					

1/ Each child in Follow Through should be counted as having previously participated in a full year of Head Start or similar federally-financed program of a compensatory nature or as not having so participated.

2/ Each child participating in Follow Through should be counted as either coming from a low-income family as specified by the local educational agency or from a non low-income family.

[FR Doc. 88-29539 Filed 12-22-88; 8:45 am]
BILLING CODE 4000-01-C

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by January 18, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3517) requires that the Director of the Office of Management and Budget (OMB) provide interested agencies and persons an early and meaningful opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden; and (6) Abstract. Because an expedited review by OMB is requested, the information collection request is also included as an attachment to this notice.

Dated: December 20, 1988.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Expedited

Title: Application for Handicapped Infants and Toddlers Program, under Part H of the Education of the Handicapped Act

Abstract: This form will be used by State agencies to apply for funding under Part H of the Education of the Handicapped Act. The Department uses the information to make grant awards.

Additional Information: An expedited review is requested for this revised State application form to allow States adequate time to establish a policy which incorporates all of the components of a statewide system as required by Section 675(b) (A), (B) and (C) of Part H of the Education of the Handicapped Act. Allowing for the normal review period would adversely affect States, as adopting such policy may require special action of the Governor and/or legislature in each of the States. This submission contains the standard form SF–424, Federal Assistance Face Sheet.

Frequency: Annually

Affected Public: State or local governments

Reporting Burden:

Responses: 57

Burden Hours: 456

Recordkeeping:

Recordkeepers: 0

Burden Hours: 0

BILLING CODE 4000–01–M

ED/OSERS/OSEP

PART I. SUBMISSION STATEMENT, ASSURANCES, & CERTIFICATIONS

Public reporting burden for this collection of information is estimated to average eight hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Special Education Programs, Division of Educational Services, 400 Maryland Avenue, S.W., Washington, D.C. 20202 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

A. Submission Statement

I, the undersigned authorized official of the _____ (Name of State and official name of State agency), have been designated by the Governor of this State to submit this application for FY 1989 funds under Part H of the Education of the Handicapped Act.

I certify that the State of _____ will operate its Part H Program in accordance with the assurances required by the statute. I also certify that the requirements stated in 34 CFR 76.104 of the Education Department General Administrative Regulations (EDGAR) have also been met.

_____ _____

Signature of Authorized Official Date

DRA

_____

Typed Name and Title

B. Required Assurances

The State of _____ makes the following asssurances and provisions as required by Part H of the Education of the Handicapped Act:

1. Funds received under Part H will be used by the State to plan, develop, and implement the statewide system of early intervention services required by Section 676 of Part H. (Sec. 678(a)(3) and Sec. 675(b)(1)(B))

2. The State will: (a) provide reports containing information that the Secretary may require, and (b) keep records and afford access to those records as the Secretary may find necessary to assure the correctness and verification of reports and proper disbursement of funds provided under this part. (Sec. 678(b)(4))

3. The control of Federal funds made available under Part H and title to property acquired with those funds is in a public agency for the uses and purposes provided by Part H, and a public agency administers the funds and property. (Sec. 678(b)(3))

4. Federal funds made available under Part H will not be commingled with State funds. (Sec. 678(b)(5)(A))

5. Federal funds made available under Part H will be used to supplement and increase the level of State and local funds expended for infants and toddlers with handicaps and their families and in no case will be used to supplant such State and local funds. (Sec. 678(b)(5)(B))

6. Fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under Part H. (Sec. 678(b)(6))

7. The State will not use its Part H funds to satisfy a financial commitment for services which would have been paid for from another public or private source but for the enactment of Part H--except that whenever considered necessary to prevent a delay in the timely provision of services to an eligible child or family, the Part H funds may be used to pay the provider of services, pending reimbursement from the agency which has the ultimate responsibility for the payment. (Secs. 678(b)(2) and 681(a))

8. The State agrees that it will not construe anything in this part to reduce medical or other assistance available or to alter eligibility under Title V of the Social Security Act (relating to Maternal and Child Health) or Title XIX of the Social Security Act (relating to medicaid) within the State. (Secs. 678(b)(2) & 681(b))

9. Federal funds paid to the State under Part H for developing a statewide early intervention system will be expended in accordance with the provisions of Part H. (Sec. 678(b)(1))

DRAFT

ED/OSERS/OSEP

C. Certifications Required by EDGAR

In accordance with 34 CFR 76.104 the lead agency of the State of _____ assures:

1. That the application is submitted by the State agency that is eligible to submit the application.

2. That the State agency has authority under State law to perform the functions of the State under the program.

3. That the State legally may carry out each provision of the application.

4. That all provisions of the application are consistent with State law.

5. That a State officer, specified by title in the certification, has authority under State law to receive, hold, and disburse Federal funds made available under the application.

6. That the State officer who submits this application, specified by title in the certification, has authority to submit the application.

7. That the agency that submits the application has adopted or otherwise formally approved the application.

8. That the application is the basis for State operation and administration of the program.

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ED/OSERS/OSEP

D. Information Required under Executive Order 12372

I certify that the Part H application for the State of _____ was submitted to the State's "single point of contact" under Executive Order 12372 on _____ (Month/Day/Year).

_____
Signature of Authorized Official

_____
Date

_____
Typed Name and Title

DRAFT

ED/OSERS/OSEP

DRAFT

PART II - GENERAL APPLICATION REQUIREMENTS

A. Lead Agency. Include information showing that the Governor has designated your agency to be the lead agency responsible for the administration of Part H in the State. (678(a)(1); 676(a)(9))

B. State Interagency Coordinating Council. Include the information in either B-1 OR B-2, below:

1. New Councils. Include information demonstrating that your State has a State Interagency Coordinating Council that meets the requirements in Section 682 of the Act (e.g., in terms of the establishment, composition, meetings, and functions of the Council). (Secs. 674, 678(a)(2), & 682)

2. Existing Councils. If your State is using a council that was established before September 1, 1986, include information demonstrating that the existing advisory council is comparable to the Council required in Sec. 682 (e.g., in terms of its composition, meetings, and functions). (Sec. 682(g)) */

C. Description of use of funds. Describe how your State will use its Part H funds for fiscal year 1989. The description must include the following information -- presented separately for the lead agency and the Council:

1. Administrative Positions: Include the following information:

a. A list of administrative positions in the lead agency (and a list of positions in the Council), with salaries, and a description of duties for each person whose salary is paid in whole or in part with Part H funds; and

b. For each position, the percentage of salary paid from Part H.

2. Planning, Development & Implementation Activities. Include the following:

a. A description of the nature and scope of each major activity to be carried out with Part H funds in planning, developing, and implementing the statewide system of early intervention services (e.g., a description of the State's projected plans during the coming year to develop a coordinated child find system); and

b. The approximate amount of funds to be spent for each activity.

*/ Section 682(g) provides that "[w]ithin four years after the date the State accepts funds under section 673, such State shall establish a council that complies in full with the Council described in Section 682 of the EHA."

3. Direct Services. Include a description of any direct services that your State expects to provide to eligible children and their families with Part H funds during the fiscal year covered by this application. The description must include information about each type of service to be provided, including --

   a. The method used to provide each type of service (e.g., contracts or other arrangements with specified public or private organizations);

   b. The approximate amount of funds to be used for the service; and

   c. Whether the service --

      (1) Is a service not otherwise provided from other public or private resources; or

      (2) Expands and improves on a service that is otherwise available. (Sec. 679)

4. Activities by Other Agencies. If other agencies are to receive funds from the lead agency (or, as appropriate, from the Council), include the following information: (1) the name of each agency, (2) the estimated amount of funds each agency will receive, and (3) the purposes for which the funds will be used.

Note: The information required in C-1 through C-4 must be presented separately for the lead agency and the Council.

D. Public Participation. Include the following information to demonstrate that the public participation requirements in Section 678(a)(4) have been met by your State:

   a. Copies of news releases and advertisements used to provide notice of public hearings and opportunity to comment on the application, and on the adoption of the policy described in the application. (The news releases and advertisements should include the dates and locations of the hearings, and the length of the comment period.)

   b. A summary of the public comments received on the application, and on the adoption of the policy described in the application.

   c. The State's responses to those comments.

E. Equitable Distribution of Resources. Describe the procedure used by your State to ensure an equitable distribution of resources made available under Part H among all geographic areas within the State. (Sec. 678(a)(6))

DRAFT

ED/OSERS/OSEP

PART III. ADOPTION OF STATE POLICY OR REQUEST FOR A WAIVER

INSTRUCTIONS: Include the information requested under III-A OR III-B, below.

A. Policy Adoption. Include in your State's third year application information and assurances demonstrating to the satisfaction of the Secretary that --

1. The State has adopted a policy to plan, develop, and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with handicaps and their families;

2. The State's policy incorporates all of the components of a statewide system of early intervention services, as required in Sec. 676 of the Act; and

3. Except as provided in Sec. 675(b)(1)(C) of the Act, the statewide system will be in effect before the beginning of the State's fourth year of participation under Part H.

B. Request for a Waiver. If your State intends to adopt a policy, but has been unable to do so within the required timeline, your third year application must contain a request for a waiver that includes the following:

1. Information demonstrating that the State has made a good faith effort to adopt a policy that meets the requirements in III-A-1 and A-2, above.

2. The reasons why your State was unable to meet the timeline, and the steps remaining before the policy will be adopted.

3. An assurance that, except as provided in Sec. 675(b)(1)(C) of the Act, the policy will be adopted and go into effect before the beginning of the fourth year of the State's participation under Part H.

DRAFT

[FR Doc. 88-29540 Filed 12-22-88; 8:45 am]
BILLING CODE 4000-01-C

Office of Postsecondary Education

Invitation for Field Readers for Educational Opportunity Center Program et al.

AGENCY: Department of Education.

ACTION: Invitation for Individuals Interested in Serving as Field Readers for the (1) Educational Opportunity Centers Program, (2) the Ronald E. McNair Post-Baccalaureate Achievement Program, (3) the School, College, and University Partnerships Program, (4) the Student Support Services Program, (5) the Talent Search Program, (6) the Training Program for Special Programs Staff and Leadership Personnel Program, and the (7) Upward Bound Program.

SUMMARY: The Assistant Secretary for Postsecondary Education invites interested individuals to apply to serve as field readers evaluating grant applications for the (1) Educational Opportunity Centers Program, (2) the Ronald E. McNair Post-Baccalaureate Achievement Program, (3) the School, College, and University Partnerships Program, (4) the Student Support Services Program, (5) the Talent Search Program, (6) the Training Programs for Special Programs Staff and Leadership Personnel Program, and the (7) Upward Bound Program.

Duties and Compensation of Field Readers: Field readers will review applications according to the applicable published selection criteria. All reviews of applications will take place in Washington, DC. Each field reader will serve for a period of approximately 5 to 10 days. Each field reader who is selected will receive compensation for certain travel expenses, and an honorarium.

Program Descriptions and Field Reader Qualifications: The Educational Opportunity Centers Program provides Federal financial assistance to institutions of higher education, public and private agencies and organizations, and in exceptional cases secondary schools to establish and operate Educational Opportunity Centers that provide information regarding financial and academic assistance for disadvantaged persons desiring to pursue a program of postsecondary education; and assistance in the admission process at participating institutions that provide a postsecondary education. Field readers are needed who have: (a) Counseling, tutoring youth, or related experience at the secondary school level; (b) experience directing programs which provide instructional counseling and tutoring assistance to disadvantaged youth or adults; (c) knowledge and experience in program evaluation; (d) experience in community outreach programs; (e) program design and management experience; (f) knowledge and experience in methods of information dissemination; or (g) knowledge and experience in postsecondary schools admissions policies and practices.

The Ronald E. McNair Post-Baccalaureate Achievement Program provides grants for higher education institutions to prepare low-income, first generation college students, and students from groups underrepresented in graduate education, for doctoral study. Field readers are needed who have experience: (a) In counseling, tutoring, or teaching in programs for disadvantaged students at the undergraduate and/or graduate level; (b) in the design, establishment, administration or coordination of educational programs at the graduate level; and (c) in planning and designing other educational support programs on college campuses. A new competition in Fiscal Year 1989 will be held for the Ronald E. McNair Post-Baccalaureate Achievement Program.

The School, College, and University Partnerships Program supports partnerships between institutions of higher education and secondary schools serving low-income students to conduct programs that improve the academic skills of public and private nonprofit secondary school students, thereby increasing the students chances of continuing a program of education after secondary school and enhancing the students prospects for employment after secondary school. Field readers are needed who have: (a) Two or more years of teaching experience at the secondary school level; (b) two or more years of experience in counseling, tutoring, or teaching in programs for disadvantaged students either at the secondary or postsecondary level; (c) experience in designing, administering, or coordinating educational programs at the secondary school level; (d) experience in developing, administering, or coordinating school-college partnerships; or (e) experience in business, industry, vocational education, or youth employment programs.

The Student Support Services Program awards grants to institutions of higher education for projects that provide support services to low-income, first generation or physically handicapped college students to enhance their academic skills, increase their retention and graduation rates, and as appropriate, facilitate entrance into four-year colleges or graduate and professional programs. Field readers are needed who have experience: (a) Counseling, tutoring, or teaching, in programs for disadvantaged students at the postsecondary level; (b) planning and designing other educational support programs on college campuses; (c) designing, establishing, administering, or coordinating educational programs at the postsecondary level; and (d) administering, teaching or counseling in an educational program for the handicapped at the postsecondary level.

The Talent Search Program provides Federal financial assistance to projects designed to assist participants to continue in and graduate from secondary schools and enroll in postsecondary educational programs. Field readers are needed who have: (a) Two or more years of experience in counseling, education, or a related field at the secondary or postsecondary level; (b) two or more years of secondary or postsecondary experience; (c) experience counseling, tutoring, or teaching in programs for disadvantaged youth or adults at the secondary level; (d) experience in program evaluation; (e) experience in community and outreach programs; (f) knowledge of schools and social services linkages; (g) program design and management experience; and (h) experience in appropriate uses of standardized tests and student assessment procedures.

The Training Program for Special Programs Staff and Leadership Personnel Program provides grants to institutions of higher education, and other public and private nonprofit institutions and organizations for projects that improve the operation of the Special Programs for Students from Disadvantaged Backgrounds (Talent Search, Upward Bound, Student Support Services, and Educational Opportunity Centers) by providing training for staff and leadership personnel employed in, or preparing for employment in such programs and projects. Field readers are needed who have: (a) A degree in education, social science, psychology, or public administration; (b) experience in cost effective uses of computers and/or other advanced educational technology; (c) experience in appropriate uses of standardized tests and student assessment procedures; (d) experience in educational services to disabled students at the secondary and postsecondary level; (e) experience directing training workshops, seminars, or internship programs; and (f) experience directing programs which provide instructional counseling and

tutoring assistance to disadvantaged youth or adults.

The Upward Bound Program provides Federal financial assistance to projects designed to generate in participants skills and motivation necessary for success in education beyond high school. Field readers are needed who have: (a) Experience in compensatory education at the secondary level; (b) experience in curriculum design for disadvantaged students; (c) experience in student or program evaluation; (d) experience directing programs which provide teaching, instructional, personal counseling, and tutoring assistance to disadvantaged youth; (e) experience in appropriate uses of standardized tests and student assessment procedures; (f) knowledge and experience in community and outreach programs; and (g) program design and management experience. A new competition in Fiscal Year 1989 will be held for the Upward Bound Program.

Each field reader must have the expertise necessary to accurately assess the grant proposals submitted to the Department of Education.

Application Process: Any individual interested in serving as a field reader should mail his/her resume to the address listed below indicating the program or programs for which he or she is interested in serving as a field reader.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 78, and 79. Regulations for these programs are found at 34 CFR Parts 644, 646, 643, 642, and 645.

FOR FURTHER INFORMATION CONTACT: For Educational Opportunity Centers, Talent Search, and Upward Bound Programs; Mrs. Goldie Hodgdon; and for Ronald E. McNair Post-Baccalaureate Achievement Program, School, College, and University Partnerships, Student Support Services, and Training Program for Special Programs Staff and Leadership Personnel Programs, Mrs. Jowava Leggett, Division of Student Services, U.S. Department of Education, ROB 3, Room 3060, 400 Maryland Avenue, SW., Washington, DC 20202-5249.

Program Authority: 20 U.S.C. 1070d, 1070d-1c; 20 U.S.C. 1105a-1105c; 20 U.S.C. 1070d, 1070d-1b; 20 U.S.C. 1070d, 1070d-1; 20 U.S.C. 1070d, 1070d-1d; and 20 U.S.C. 1070d, 1070d-1a.

Dated: December 16, 1988.

(Catalog of Federal Domestic Assistance Program Numbers 84.066A, 84.217A, 84.204, 84.042A, 84.044A, 84.103, and 84.047A)

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88-29542 Filed 12-22-88; 8:45 am]

BILLING CODE 4000-01-M

Invitation for Field Readers for Law School Clinical Experience Program et al.

AGENCY: Department of Education.

ACTION: Invitation for Individuals Interested in Serving as Field Readers for the (1) Law School Clinical Experience Program, (2) the Minority Participation in Graduate Education Program, (3) the Patricia Roberts Harris Graduate and Professional Study Fellowships Program, and (4) the Patricia Roberts Harris Public Service Education Fellowships Program.

SUMMARY: The Assistant Secretary for Postsecondary Education invites interested individuals to apply to serve as field readers evaluating grant applications for the Law School Clinical Experience Program, the Minority Participation in Graduate Education Program, the Patricia Roberts Harris Graduate and Professional Study Fellowships Program, and the Patricia Roberts Harris Public Service Education Fellowships Program.

Program Descriptions and Field Reader Qualifications: The Law School Clinical Experience Program provides financial assistance to accredited law schools to establish or expand programs of clinical experience for students in the practice of law. Field readers are needed who have: (a) Clinical law experience; (b) a working knowledge of the judicial system including the actual preparation and trial of cases; (c) knowledge of the resources available to persons needing legal representation; or (d) experience in investigative research and legal analysis.

The Minority Participation in Graduate Education Program awards grants to institutions of higher education to identify and recruit talented undergraduate students who demonstrate financial need from minority groups that are traditionally underrepresented in graduate education and engage those students in a program of research and scholarly activities designed to provide them with effective preparation for graduate study. Field readers are needed who have: (a) Two or more years administrative experience at the graduate level; (b) experience teaching, counseling, or tutoring minorities at the graduate level; (c) experience in program design and evaluation; or (d) academic backgrounds in engineering, life sciences, mathematics and computer science, psychology, business administration, physical sciences, social sciences, and the arts and humanities.

Under the Patricia Roberts Harris Fellowships Program, Graduate and Professional Study Fellowship and Public Service Education Fellowship grants are awarded to institutions of higher education to support fellowships to students who demonstrate financial need and are from groups who are traditionally underrepresented in graduate and professional study areas or who plan to pursue leadership careers in areas of public service, respectively. Field readers are needed who have: (a) Experience in designing, administering, or coordinating educational programs for students from traditionally underrepresented groups at the graduate level; (b) program design and management experience at the graduate level; (c) a graduate degree in physical science, engineering, mathematics and computer science, psychology, law, business administration, social sciences, or arts and the humanities; (d) leadership positions in public service at the local, state, or Federal levels; and (e) two or more years experience in curriculum development at the graduate level.

All field readers should be acknowledged experts in their particular field of study. Each field reader must have the expertise necessary to accurately assess the grant proposals submitted to the Department of Education.

Duties and Compensation of Field Readers: Field readers will review applications according to the applicable published selection criteria. All reviews will take place in Washington, DC. Each field reader will serve for a period of approximately 5 days. Each field reader will receive compensation for certain travel expenses, and an honorarium.

Application Process: Any individual interested in serving as a field reader should mail his/her résumé to the address listed below indicating the program or programs for which he or she is interested in serving as a field reader.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78. The regulations for these programs are found at 34 CFR Part 639 (Law School Clinical Program) and 34 CFR Part 649 (Patricia Roberts Harris Fellowships Program). A Notice Inviting Applications for Fiscal

Year 1988 Under the Grants to Institutions to Encourage Minority Participation in Graduate Education, which contains a description of the program, was published in the Federal Register on July 8, 1988 (53 FR 25653).

FOR FURTHER INFORMATION CONTACT: For Law School Clinical Experience Program, Patricia Roberts Harris Fellowships Program; Dr. Charles H. Miller; and for Minority Participation in Graduate Education Program, Mr. Walter T. Lewis, Division of Higher Education Incentive Programs, U.S. Department of Education, ROB 3, Room 3022, 400 Maryland Avenue SW., Washington, DC 20202–5251.

Program Authority: 20 U.S.C. 1134s–1134t, 20 U.S.C. 1134–1134b, 20 U.S.C. 1134d–1134f.

Dated: December 16, 1988.

(Catalog of Federal Domestic Assistance Program Numbers 84.097A, 84.202, 84.094B, and 84.094C.)

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–29545 Filed 12–22–88; 8:45 am]

BILLING CODE 4000–01–M

Invitation for Field Readers for Minority Science Improvement Program

AGENCY: Department of Education.

ACTION: Invitation for individuals interested in serving as field readers for the Minority Science Improvement Program.

SUMMARY: The Assistant Secretary for Postsecondary Education invites interested individuals to apply to serve as field readers evaluating grant applications for the Minority Science Improvement Program.

The Minority Science Improvement Program awards grants to support projects that propose to effect long-range improvement in science and engineering education at predominantly minority institutions and to increase the participation of underrepresented ethnic minorities in scientific and technological careers.

Duties and Compensation of Field Readers: Field readers will review applications according to the applicable published selection criteria. All reviews of applications will take place in Washington, DC. Each field reader will serve for a period of approximately 4 to 5 days. Each field reader will receive compensation for certain travel expenses, and an honorarium.

Field Reader Qualifications: All field readers should be acknowledged experts in their particular field of study. Field readers are needed who have: (a) Knowledge of problems faced by minority students in science and mathematics at all instructional levels; (b) knowledge of the state-of-the-art in science and technology programs at postsecondary institutions; or (c) knowledge of issues pertaining to the underrepresentation of minorities in science and technology. Each field reader must have the expertise necessary to accurately assess the grant proposals submitted to the Department of Education.

Application Process: Any individual interested in serving as a field reader should mail his/her resume to the address listed below indicating the program for which he or she is interested in serving as a field reader.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78. The regulations for this program are found at 34 CFR Part 637.

FOR FURTHER INFORMATION CONTACT: Dr. Argelia Velez-Rodriguez, Division of Higher Education Incentive Programs, U.S. Department of Education, Room 3022, 400 Maryland Avenue SW., Washington, DC 20202–5251.

Program Authority: 20 U.S.C. 1135b–1135b–3 and 1135d–1135d–6.

Dated: December 16, 1988.

(Catalog of Federal Domestic Assistance Program Numbers 84.120A and 84.120B)

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–29544 Filed 12–22–88; 8:45 am]

BILLING CODE 4000–01–M

Invitation for Field Readers for Strengthening Institutions Program

AGENCY: Department of Education.

ACTION: Invitation for individuals interested in serving as field readers for the Strengthening Institutions Program, title III, Part A of the Higher Education Act of 1965, as amended.

SUMMARY: The Assistant Secretary for Postsecondary Education invites interested individuals to apply to serve as field readers evaluating grant applications for the Strengthening Institutions Program, title III, Part A of the Higher Education Act of 1965, as amended.

The Strengthening Institutions Program provides grants to eligible institutions of higher education to enable them to improve their academic quality, institutional management, and fiscal stability in order to increase their self-sufficiency, and strengthen their capacity to make a substantial contribution to the higher education resources of the Nation.

Dates and Compensation of Field Readers: Field readers will review applications according to the applicable published selection criteria. All reviews of applications will take place in Washington, DC. Each field reader will serve for a period of approximately 5 days. Each field reader will receive compensation for certain travel expenses, and an honorarium.

Field Reader Qualifications: All field readers should be acknowledged experts in their particular field of study. Field readers are needed who have higher education experience: (a) In an administrative decision-making position that involves institutional planning and development in an administrative, an academic, or a fiscal area; (b) in the development or management of programs at institutions serving minorities or educationally and economically disadvantaged students; or (c) with computers and other equipment used in strengthening management and academic programs. Field readers should also have experience in the administration of an institution of higher education. Each field reader must have the expertise necessary to accurately assess the grant proposals submitted to the Department of Education.

Application Process: Any individual interested in serving as a field reader should mail his/her resume to the address listed below indicating the program for which he or she is interested in serving as a field reader.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78. The regulations for this program are found at 34 CFR Part 607 (52 FR 30526, August 14, 1987).

FOR FURTHER INFORMATION CONTACT: Dr. Caroline J. Gillin, Director, Division of Institutional Development, U.S. Department of Education, ROB 3, Room 3042, 400 Maryland Avenue SW., Washington, DC 20202–5250.

Program Authority: 20 U.S.C. 1057.

Dated: December 16, 1988.

(Catalog of Federal Domestic Assistance Program Number 84.031A)

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–29543 Filed 12–22–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.064]

Veterans Education Outreach Program; Invitations for Applications for New Awards for Fiscal Year 1989

Purpose: Provides funds to institutions of higher education to provide outreach and recruitment activities, counseling and tutorial services, and special programs for disabled, incarcerated and educationally disadvantaged veterans.

Deadline for Transmittal of Applications: May 15, 1989.

Applications Available: March 10, 1989.

Available Funds: $2,838,000

Estimated Range of Awards: $1,000–$50,000.

Estimated Average Size of Awards: $5,000.

Estimated Number of Awards: 700.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, and 77; and (b) the regulations for this program in 34 CFR Part 629. Final regulations for this program were published in the Federal Register on August 11, 1987 (52 FR 29824).

FOR APPLICATIONS OR INFORMATION CONTACT: Neil McArthur or Charles I. Griffith, U.S. Department of Education, 400 Maryland Avenue SW., Room 3022, Washington, DC 20202–5251. Telephone: (202) 732–4406 or 732–4389.

Program Authority: 20 U.S.C. 1070e–1.

Dated: December 19, 1988.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–29541 Filed 12–22–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No.: WP–89]

Intent To Revise Wholesale Power Rates To Become Effective October 1, 1989

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Intent. *BPA File No.:* WP–89. BPA requests that all comments and documents which become part of the Official Record compiled in the process of adjusting wholesale power rates contain the file number designation WP–89.

SUMMARY: BPA has determined it may be necessary to adjust wholesale power rates effective October 1, 1989. This notice should not be interpreted as BPA's decision that rates must be revised regardless of changing circumstances. Rather, the function of this notice is to comply with the requirement that BPA publish a notice of intent to generally revise rates at least 9 months prior to the effective date of the rate adjustment. BPA expects to have formulated its initial rate proposal by February 1989. In that event, notice of the proposed rates would be published in the Federal Register.

The February 1989 notice would also announce BPA's proposed schedule for formal hearings as specified in section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act. A final schedule would be established by the Hearings Officer who presides over BPA's rate hearings. These hearings would give interested persons an opportunity to present both oral and written comments on the proposal.

Ms. Shirley Melton, Director, Division of Contracts and Rates, is the official responsible for the development of BPA rates.

DATE: Written suggestions and recommendations concerning the development of proposed wholesale power rates will be accepted through 4 p.m., January 25, 1989. Pursuant to the *ex parte* limitations, BPA will not be able to accept oral recommendations on substantive issues, except in meetings for which notice has been given.

ADDRESS: Written comments should be submitted to the Public Involvement Office-ALP, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne H. Sugai, Public Involvement Office, at the address listed above, or telephone 503–230–3478. Oregon callers may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, Suite 400, 201 Queen Anne Ave., Seattle, Washington 98109–1030, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6225.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomas Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Thomas H. Blankenship, Boise District Manager, 1527 Holipark Drive, 550 West Fort Street, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

BPA, an agency of the U.S. Department of Energy, is the Federal power marketing agency in the Pacific Northwest. BPA markets hydroelectric power from 30 U.S. Army Corps of Engineers and U.S. Bureau of Reclamation projects on the Columbia River and its tributaries, as well as thermal power it acquires in the region. In addition, BPA owns, operates, and maintains the nation's largest high-voltage transmission system grid.

BPA supplies about 50 percent of the electric energy consumed in the Pacific Northwest and accounts for about 80 percent of the region's high-voltage transmission capacity. BPA sells power to 168 publicly owned and investor-owned utilities, Federal and State agencies, and direct-service industries (DSIs). The power is sold to BPA utility customers for resale to ultimate consumers, and is sold directly to BPA's industrial and Federal-agency customers. In addition, BPA sells power that is surplus to the needs of the Pacific Northwest to customers outside the region.

The rates that BPA charges its customers must produce revenues that are sufficient to repay, with interest, the Federal investment in generation, conservation, and transmission facilities. Revenues must also pay BPA's operation and maintenance expenses, purchased power costs, and certain other miscellaneous expenses.

BPA's last wholesale power rate adjustment became effective on an interim basis on October 1, 1987. BPA is preparing revenue requirement studies to determine the extent to which anticipated revenue requirements for

Fiscal Years 1990 and 1991 would be recovered from expected revenues collected under the current rates. If it is determined that an increase in revenues will be necessary to meet the revenue requirements, BPA will develop various studies to be used in designing rates.

II. Major Issues

The development of BPA's rates is a complex process, raising numerous issues for resolution. The following is a brief explanation of several of the major issues to be addressed in formulating rates.

A. Revenue Requirement

BPA develops a Revenue Requirement Study that projects the costs of providing electricity and services to BPA's customers. The revenue requirement calculation will be a major factor in determining whether or not it will be necessary to adjust wholesale power rates.

BPA has completed its Programs in Perspective process in which BPA undertook a public review of Fiscal Year 1990 and 1991 proposed program levels. This public process will affect revenue requirement data for BPA's rate case. Accordingly, if a rate adjustment were proposed, the Administrator would not reopen program-level decisions in the rate case.

B. Sales and Revenue Forecasting

BPA forecasts sales and revenues for the current Fiscal Year and for the rate period. These forecasts determine the need for a rate adjustment and affect the level of any adjustment.

Load forecasts and resource projections are the basis for the sales and revenues forecasts and consequently are given close scrutiny in the rate development process. Projections of surplus firm power and nonfirm energy sales and revenues also affect the need for a rate adjustment and the level of any adjustment. Surplus firm power and nonfirm energy sales are highly dependent on market and water conditions which are uncertain and largely uncontrollable by BPA. Because of the uncertainty, surplus firm power and nonfirm energy revenue projections are likely to be major issues.

C. Risk Protection and Financial Flexibility

BPA believes it is necessary to have some methods to protect and enhance its financial health. These methods will provide assurance of BPA's ability to meet U.S. Treasury payments, stabilize long-term rates, provide the financial strength to allow BPA to take advantage of debt refinancing opportunities, and make progress in reducing BPA's accumulated net loss. Potential methods include:

1. Cost Recovery Adjustment Clause—An adjustment clause that triggers an adjustment in several of BPA's major rates if actual financial performance is below the projected performance by a specified amount for a specified period.

2. Planned Net Revenues—An amount included in BPA's revenue requirement sufficient to provide an acceptable probability of meeting BPA's financial objectives, which include added assurance that BPA's payments to the U.S. Treasury will be made on a timely basis.

3. Reserve Funds—One or more reserve funds which could be used to protect BPA's ability to make U.S. Treasury payments and, if revenues allow, to reduce its fixed costs by redeeming high-interest debt or deferring new borrowing, thereby reducing BPA's total debt obligations.

Following publication of an initial proposal in the **Federal Register** (February 1989), both general public field hearings and formal public hearings would be conducted by BPA. If a rate adjustment is proposed, written comments would be accepted through the hearing process. A final comment deadline would be announced in a future **Federal Register** notice. Following the hearings, BPA would announce its final proposed wholesale power rates and submit them by July 31, 1989, to the Federal Energy Regulatory Commission for approval.

Issued in Portland, Oregon, on December 13, 1988.

Steven G. Hickok,

Executive Assistant Administrator.

[FR Doc. 88-29537 Filed 12-22-88; 8:45 am]

BILLING CODE 6450-01-M

[BPA File No.: TR-89]

Intent To Revise Transmission Rates To Become Effective October 1, 1989

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Intent. *BPA File No.:* TR-89. BPA requests that all comments and documents which become part of the Official Record compiled in the process of adjusting transmission rates contain the file number designation TR-89.

SUMMARY: BPA has determined it may be necessary to adjust rates for the transmission of electric power of other entities over Federal facilities, which would become effective October 1, 1989. This notice should not be interpreted as BPA's decision that rates must be revised regardless of changing circumstances. Rather, the function of this notice is to comply with the requirement that BPA publish a notice of intent to generally revise rates at least 9 months prior to the effective date of rate adjustment. BPA expects to have formulated its initial rate proposal by February 1989. In that event, notice of the proposed rates would be published in the **Federal Register**.

The February 1989 notice would also announce BPA's proposed schedule for formal hearings as specified in section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act. A final schedule would be established by the Hearings Officer who presides over BPA's rate hearings. These hearings would give interested persons an opportunity to present both oral and written comments on the proposal.

Ms. Shirley Melton, Director, Division of Contracts and Rates, is the official responsible for the development of BPA rates.

DATE: Written suggestions and recommendations concerning the development of proposed transmission rates will be accepted through 4 p.m., January 25, 1989. Pursuant to the *ex parte* limitations, BPA will not be able to accept oral recommendations on substantive issues, except in meetings for which notice has been given.

ADDRESS: Written comments should be submitted to the Public Involvement Office–ALP, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne H. Sugai, Public Involvement Office, at the address listed above, or telephone 503–230–3478. Oregon callers may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George E. Gwinnut, Lower Columbia Area Manager, Suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–687–6952

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060

Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509–662–4377, extension 379

Mr. Terence G. Esvelt, Puget Sound Area Manager, Suite 400, 201 Queen Anne Avenue, Seattle, Washington 98109–1030, 206–442–4130

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6225

Mr. Robert N. Laffel, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706

Mr. Thomas H. Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208–334–9137

SUPPLEMENTARY INFORMATION: The Federal Columbia River Transmission System (FCRTS) is owned and operated by BPA, an agency of the U.S. Department of Energy. The FCRTS encompasses approximately 80 percent of the capacity of the high-voltage electric transmission system within the Pacific Northwest. Electric power from Federal and non-Federal generating units is integrated and transmitted utilizing the FCRTS. Interregional transmission services to customers outside the Pacific Northwest are also provided by BPA. Studies to determine the adequacy of current transmission rates and rate designs are currently being developed by BPA. Transmission rate adjustments may be necessary to cover changing FCRTS costs.

Current rates apply to four types of transmission service: (1) Firm integration of utilities' remote resources; (2) firm system exports; (3) nonfirm interconnections between systems both within and outside the Pacific Northwest region; and (4) firm transmission over specified facilities. Firm transmission is sold through contracts for periods up to 20 years. Firm transmission on BPA's network (main grid) is available on a mileage basis as well as a postage stamp rate structure.

BPA plans to accommodate the provisions of its Long-Term Intertie Access Policy (LTIAP) utilizing the Southern Intertie (IS) rate structure developed in the 1987 rate case. IS–87 is actually comprised of two rates: An "A" rate for nonfirm service and a "B" rate for Assured Delivery pursuant to contracts consistent with the LTIAP. BPA is seeking comments and recommendations on the suitability of the "B" rate for Assured Delivery. Comments are also invited on the subject of whether other rate structures would be desirable for exchanges of capacity for energy and seasonal exchange contracts.

The Market Transmission (MT) Rate was developed to apply to transactions undertaken pursuant to the experimental Western Systems Power Pool (WSPP) Agreement. The WSPP Agreement was approved by the Federal Energy Regulatory Commission on March 12, 1987, for a period of 2 years beginning May 1, 1987. BPA is one of the original 15 signatories to the WSPP Agreement. The MT–87 Rate is the same transmission rate adopted by all other WSPP participants. This rate structure is expected to be continued in this rate filing concurrently with the WSPP Agreement.

BPA's last transmission rate adjustment became effective on an interim basis on October 1, 1987. Following the hearings, BPA would announce its final proposed transmission rates and submit them by July 31, 1989, to the Federal Energy Regulatory Commission for appoval.

Issued in Portland, Oregon, on December 13, 1988.

Steven G. Hickok,

Executive Assistant Administrator.

[FR Doc. 88–29536 Filed 12–22–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Special Research Grant Program Notice 89–2; High-Resolution Underground Imaging of Geologic Media Using Elastic Waves

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Energy Research (OER) of the Department of Energy (DOE) hereby announces its interest in receiving applications for Special Research Grants in the area of high-resolution underground imaging of geologic media using elastic waves. The approach to be taken may, for example, involve propagation of seismic signals between boreholes or between boreholes and the surface. New techniques for high data-rate processing, large array synthesis and the interpretation of seismic data in terms of geologic media parameters such as permeability will also be considered. The purpose of this effect is to provide a scientific and knowledge base for remote quantification of underground structures. Information about submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures may be found in 10 CFR Part 605. (See **ADDRESS** section of this notice for obtaining copies of this document.)

DATES: Initial selections will be made in Fiscal Year 1989; for consideration for the initial selections, submission of an application prior to February 15, 1989, is required. Information on the timing of subsequent rounds of selection will be available after February 15 from the information contact given below.

ADDRESS: Completed applications referencing Program Notice 89–2 should be forwarded to: U.S. Department of Energy, Division of Acquisition and Assistance Management, Office of Energy Research, ER–64, Room G–236?, Washington, DC 20545.

FOR FURTHER INFORMATION CONTACT: Dr. George A. Kolstad, Office of Engineering and Geosciences, Office of Basic Energy Sciences, ER–15, Washington, DC 20545 (301) 353–5822.

SUPPLEMENTARY INFORMATION: The intent of this particular initiative is to support research related to better resolution of geological parameters in hydrocarbon and geothermal reservoirs, aquifers and waste storage applications. This initiative will include approaches involving elastic waves and the manipulation and interpretation of related data. Research featuring use of electromagnetic signals will be considered only if it is truly exceptional in its creativity and of likely utility for energy-related applications. The work is to be basic in nature and not directly competitive with existing efforts in commercial entities. Work funded under this initiative will involve mathematical and theoretical studies, laboratory and in-situ measurements and field testing, where appropriate. Proposals involving techniques to take advantage of modern computer capabilities in high data rate processing and large array synthesis are particularly appropriate. These computational capabilities have dramatically increased the resolution obtained by imaging in the marine and atmospheric environments and have promise to transform imaging in the solid earth geosciences.

The intent here is to support research which holds substantial promise of leading to major progress in three-dimensional underground imaging by, for example, increasing the resolution by one or two orders of magnitude compared with currently available images. Accordingly, a grant application for research which seeks incremental improvement to existing methods cannot be favorably considered for this initiative. For FY 1989, $3,500,000 has been set aside to be available for

funding work under this initiative. The amount obligated will depend on the excellence of the applications which are received. Some of the funds being set aside may be used to support research proposed by DOE laboratories. The DOE laboratory proposals will also be evaluated using normal peer review procedures. No specific limit has been established for individual awards, but current grants in the Geosciences Research activity average $108,000 per year, with the largest being $360,000 per year. The grants are typically awarded for projected periods of one, two or three years. Continuation and expansion of this initiative is planned for FY 1990.

General information about development and submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures are contained in the ER Special Research Grant Application Kit and Guide. The application kit and guide is available from the U.S. Department of Energy, Office of Energy Research, Washington, DC 20545. Telephone requests may be made by calling (301) 353–5544. The Catalog of Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC on December 2, 1988.

D.D. Mayhew,

Acting Deputy Director for Management, Office of Energy Research.

[FR Doc. 88–29538 Filed 12–22–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. QF83–230–003 et al.]

Kerr-McGee Chemical Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Kerr-McGee Chemical Corp.

[Docket No. QF83–230–003]

December 14, 1988.

On December 6, 1988, Kerr-McGee Chemical Corp. (Applicant) of Trona, California 93562 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Trona, California. The facility will consist of an extraction/condensing steam turbine generator. Steam recovered from the facility will be used for processing at the Kerr-McGee Chemical Corporation's soda products plants. The maximum electric power production capacity of the facility will be 108 MW. The primary source of energy will be bituminous coal.

The original application was filed on August 30, 1984 and was granted on December 28, 1984; 29 FERC ¶ 62,388. The recertification is requested due to change of ownership, increase in electric power production capacity and primary source of energy. The ownership interest will change from Kerr-McGee Chemical Corp. to ACE Cogeneration Company, a California limited partnership. CD ACE I, Inc., CD ACE II, Inc. and CD ACE III, Inc. all wholly-owned subsidiaries of Baltimore Gas & Electric Co., an electric utility, will have approximately 31.5 percent interest in the facility. The electric power production capacity will increase from 98 MW to 108 MW. The primary energy source will now be limited to bituminous coal. Installation of the facility is expected to be completed in 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. PacifiCorp doing business as PacificCorp Power & Light Company

[Docket No. ES89–11–000]

December 14, 1988.

Take notice that on December 9, 1988, PacifiCorp dba Pacific Power & Light Company (Pacific) filed its application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order (1) authorizing it to issue and sell, prior to December 31, 1990, its fixed or floating rate No. Par Serial Preferred Stock with an aggregate preference on involuntary liquidation of not more than $100,000,000 and (2) exempting the issuance from competitive bidding pursuant to 18 CFR 34.2(b)(2).

Comment date: December 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Power and Light Company

[Docket No. ER89–1–000]

December 15, 1988.

Take notice that on December 5, 1988, Wisconsin Power and Light Company (WP&L) tendered for filing with the Federal Energy Regulatory Commission an amendment to its September 29, 1988 filing for changes in its FERC Order No. 84 Rate Schedule for third-party purchase and resale transactions.

WP&L's Order No. 84 Rate Schedule, as revised in this amended filing provides that where WP&L voluntarily engaged in third-party purchase and resale of electric power or energy, WP&L, for each megawatt of energy transmitted in such transaction that is priced according to the purchased energy price from third-party systems, will charge the receiving party:

a. The amount WP&L pays the supplying party; plus

b. Up to 4.50 dollars per megawatt for energy transmitted (in no event shall the one day total of such hourly charges for any single transaction exceed the product of $72.00 times the highest average number of megawatts resold in any hour during the day); plus

c. Up to 2.00 dollar per megawatthour for difficult to qualify costs; plus

d. The cost of transmission losses incurred and State of Wisconsin revenue taxes that would otherwise have been incurred.

WP&L requests expedited consideration of this filing and an effective date coincident with the Commission's order accepting the rate change for filing. Accordingly, WP&L requests waiver of the Commission's notice requirement, to the extent necessary.

WP&L states that copies of this filing have been mailed to each of the parties identified on the Service List.

Comment date: December 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Green Mountain Power Corporation

[Docket No. ER89–61–000]

December 19, 1988.

Take notice that on November 9, 1988, Green Mountain Power Corporation (GMP) tendered for filing an Agreement for the Purchase of Power between GMP and Fitchburg Gas and Electric Light Company (FG&E) for the period November 1, 1988, through October 31, 1991.

Comment date: January 3, 1989, in accordance with Standard Paragraph E at the end of this document.

5. Utah Power & Light Company

[Docket No. ER89–111–000]

December 19, 1988.

Take notice that on December 13, 1988, Utah Power & Light Company (Utah) tendered for filing an Agreement for short-term replacement energy with the City of Glendale, California. The Agreement provides for replacement power during scheduled maintenance outages at I.P.P. Unit Nos. 1 and 2.

Utah requests that the notice requirement be waived as provided in 18 CFR 35.11, and that the Agreement be

made effective retroactively as of September 30, 1988, the date service first commenced.

Copies of this filing were served on the City of Glendale, California.

Comment date: January 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER89-112-000]

December 19, 1988.

Take notice that on December 13, 1988, New England Power Company (NEP) tendered for filing executed amendments to the Service Agreements of the Towns of Merrimac and Groveland, Massachusetts (Towns) who receive all-requirements power service under NEP's FERC Electric Tariff, Original Volume No. 1.

NEP states that the amendment modifies the terms under which NEP credits the Towns' billings to reflect the value of their allocations of power from the New York Power Authority (NYPA). According to NEP, the Modifications increase the credit over the currently effective credit mechanism for NYPA power. NEP states that the proposed amendments are identical to the credit mechanism provided to its other all-requirements customer who receives NYPA power. NEP requests waiver of the notice requirements so that the amendments may become effective May 1, 1987.

Comment date: January 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER89-109-000]

December 19, 1988.

Take notice that on December 9, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing supplements to Rate Schedule FERC No. 85. This Rate Schedule covers services rendered by PG&E under the agreement entitled, "Interconnection Agreement, between Pacific Gas and Electric Company and the City of Santa Clara" (Interconnection Agreement). The Interconnection Agreement was initially filed under Docket No. ER84-6-000 and was assigned Rate Schedule FERC No. 85.

The supplements are two letter agreements relating to operations under real-time scheduling, including deviation bands and billing procedures, and are dated February 14, 1985, and May 24, 1985., The parties have been operating in accordance with these letter agreements since real-time scheduling began on April 1, 1985. PG&E has requested an April 1, 1985 effective date for the supplements.

Copies of this filing were served upon the City of Santa Clara and the California Public Utilities Commission. In addition, copies of this filing are available for public inspection in a convenient form and place during normal business hours at PG&E's General Office in San Francisco.

Comment date: January 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Power Company

[Docket No. ER89-110-000]

December 19, 1988.

Take notice that Duke Power Company (Duke) on December 9, 1988, tendered for filing a revision in its wheeling rate under the Agreement between Duke Power Company and the United States of America, Department of Energy, acting by and through the Southeastern Power Administration (SEPA), dated January 13, 1986 (designated Rate Schedule FERC No. 283), as supplemented, which revision provides for a reduction in the wheeling rate from $1.44 per kilowatt month to $1.33 per kilowatt month for delivery by Duke of approximately 194,500 kilowatts from SEPA's Hatwell, Clarks Hill, and Richard B. Russell Projects to preference customers of SEPA in Duke's service are in Norther Carolina and South Carolina.

Duke has requested a waiver of the Commission's notice requirements so that the revised rate becomes effective on January 21, 1989.

Copies of this filing were served on SEPA, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: January 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Orange and Rockland Utilities, Inc.

[Docket Nos. ER87-72-004 and ER87-73-003]

December 19, 1988.

Take notice that on December 6, 1988, Orange and Rockland Utilities, Inc. tendered its filing in accordance with the Commission's Opinion No. 314-A.

Comment date: Janaury 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29479 Filed 12-22-88; 8:45am]

BILLING CODE 6717-01-M

[Project No. 3893-005 et al.]

Hydroelectric Applications; El Dorado Irrigation District et al.; Applications Filed with the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

a. Type of Filing: Surrender of License.

b. Project No.: 3893-005.

c. Date Filed: August 1, 1988.

d. Applicants: El Dorado Irrigation District.

e. Name of Project: Sly Park Project.

f. Location: On Sly Park Creek near the city of Placerville, in El Dorado County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contract: Mr. Chuck Abraham, El Dorado Irrigation District, 2890 Mosquito Road, Placerville, CA 95667 (916) 622-4534.

i. FERC Contact: Thomas Dean, (202) 376-9562.

j. Comment Date: February 6, 1989.

k. Description of Application: The proposed project would have utilized the Bureau of Reclamation's Sly Park dam and would have consisted of: (1) A 30-foot-long, 36-inch-diameter steel penstock connected to the existing outlet pipe through Sly Park dam; (2) a 35-foot-long, 36-inch-diameter steel tailrace conduit; (3) a powerhouse containing one generating unit with a rated capacity of 850 kW; (4) a short section of 21-kV transmission line connecting into the existing Pacific Gas & Electric Company distribution line; and (5) appurtenant facilities.

The applicant estimated the average annual energy generation to be 2,602 MWh.

The applicant states that the project is infeasible because of the inability to

negotiate an agreement with the local utility that would justify the necessary investments for hydropower facilities at this project.

l. Purpose of Project: Applicant intended to sell the power generated from the proposed facility.

m. This notice also consists of the following standard paragraphs: B and C.

a. Type of Filing: Surrender of License.

b. Project No.: 6614–003.

c. Date Filed: August 1, 1988.

d. Applicants: El Dorado Irrigation District.

e. Name of Project: Pleasant Oak Main Reservoir B Project.

f. Location: On Sly Park Creek near the city of Placerville, in El Dorado County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contract: Mr. Chuck Abraham, El Dorado Irrigation District, 2890 Mosquito Road, Placerville, CA 95667 (916) 622–4534.

i. FERC Contact: Thomas Dean, (202) 376–9562.

j. Comment Date: February 9, 1989.

k. Description of Application: The proposed project would have utilized the Bureau of Reclamation's Pleasant Oak Main pipeline and would have consisted of: (1) A 30-inch-diameter, 500-foot-long steel penstock; (2) a powerhouse containing one generating unit with a rated capacity of 250 kW; (3) a step-up transformer and switchgear; (4) a 40-inch-diameter tailrace conduit; (5) a 1-mile-long, 21-kV transmission line connecting to the Pacific Gas & Electric Company transmission line; and (6) appurtenant facilities.

The applicant estimated the average annual energy generation to be 1,000 MWh.

The applicant states that the project is infeasible because of the inability to negotiate an agreement with the local utility that would justify the necessary investments for hydropower facilities at this project.

l. Purpose of Project: Applicant intended to sell the power generated from the proposed facility.

m. This notice also consists of the following standard paragraphs: B and C.

3. a. *Type of Filing:* Minor license.

b. *Project No.:* 8718–003.

c. *Date Filed: March 21, 1988.*

d. *Applicant:* Dan J. Brutger.

e. *Name of Project:* Lewis Creek.

f. *Location:* On Lewis Creek in Park County, Montana Section 13, Township 6S, and Range 6E.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. George L. Smith, P.O. Box 1016, Idaho Falls, ID 83401, (208) 529–8115.

i. *FERC Contact:* Mr. William Roy-Harrison, (202) 376–9830.

j. *Comment Date:* February 9, 1989.

k. *Description of Project:* The proposed project would consist of: (1) A 5-foot-high, 19-foot-long diversion structure at elevation 6,000 feet msl; (2) an 18-inch-diameter, 2,650-foot-long penstock; (3) a powerhouse containing a generating unit with a rated capacity of 95 kW; (4) a 480-volt, 1,500 foot-long transmission line; and (5) appurtenant facilities. The applicant estimates a 350,000 kWh average annual energy production.

l. *Purpose of Project:* Power would be used on site to supply the electrical needs of the ranch.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

4. a. *Type of Filing:* Petition Alleging Commitment of Substantial Monetary Resources.

b. *Project No.:* 9656–002.

c. *Date Filed:* June 22, 1987.

d. *Applicant:* Marble Creek Hydro, Inc.

e. *Name of Project:* Marble Creek Hydroelectric Project.

f. Location: On Marble Creek, in Shoshone Country, Idaho, occupying U.S. lands within the St. Joe National Forest. (Township 45 North and Range 3 East Boise Meridian).

g. *Filed Pursuant to:* Electric Consumers Protection Act (ECPA), Pub. L. No. 99–495, section 8(b) (1986).

h. *Applicant Contact:* James R. Morris, Vice President, Marble Creek Hydro, Inc., P.O. Box 1016, Lewiston, ID 83501. (208) 799–1352.

i. *FERC Contact:* Thomas Dean, (202) 376–9562.

j. *Comment Date:* January 23, 1989.

k. *Description of Project:* The applicant seeks exemption from moratorium of the Public Utility Regulatory Policies Act benefits imposed on projects located at new dams or diversions by section 8(e) of the ECPA. The applicant states that it had expended $56,698 on the license application prior to enactment of ECPA on October 16, 1986. The applicant has filed a Petition Alleging Commitment of Substantial Monetary Resources, pursuant to § 292.209 of the Commission's regulations, for the Marble Creek Hydroelectric Project, which would consist of a new 8-foot-high diversion structure, 3,000-foot-long penstock, a powerhouse containing two generating units with a combined capacity of 3,200 kW, and a 2.2-mile-long transmission line.

l. This notice also consists of the following standard paragraphs: B and C.

5 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10628–000.

c. *Date filed:* July 20, 1988.

d. *Applicant:* Pacific Water & Power, Inc.

e. *Name of Project:* Briones Reservior/Dam Project.

f. *Location:* On the East Bay Municipal Utility District raw water system, at the Briones Dam and reservior in Contra Costa County, California, near Orinda Village. T1N, R3W.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert R. Doelle, President, Pacific Water & Power, Inc., P.O. Box 6022, Stanford, CA 94305 (408) 778–1492. Mr. William S. Breakey, 2125 Darnis Circle, Morgan Hill, CA 94037 (408) 778–5608.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely at (202) 376–1669.

j. *Comment Date:* February 10, 1989.

k. *Description of Project:* The proposed project would consist of: (1) The existing 207-foot-high Briones Dam; (2) the existing 725 acre Briones Reservoir with a storage capacity of 60,500 acre-feet at an elevation of 576 feet msl; (3) the existing 84-inch-diameater, 2,350-foot-long Orinda raw water pipeline to be modified; (4) four powerhouses each containing a single generating unit with a combined installed capacity of 8,676 kW, producing an average annual energy output of 38,299 MWh; (5) existing Briones Diversion Works Pumping Station; (6) existing Orinda Filtration Plant; (7) Lafayette Aqueduct Nos. 1 and 2; and (8) four transmission lines interconnecting to an existing Pacific Gas and Electric Company line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be between $30,000 and $40,000.

l. *Purpose of Project:* Project power would be sold to Pacific Gas and Electric Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10629–000.

c. *Date filed:* July 21, 1988.

d. *Applicant:* Pacific Water & Power, Inc.

e. *Name of Project:* San Pable Reservoir/Dam Project.

f. *Location:* On the East Bay Municipal Utility District raw water system, at the San Pablo Dam and Reservior in Contra Costa County, California, near the town of Kensington, T1N, R3W and R4W.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert R. Doelle, President, Pacific Water & Power, Inc., P.O. Box 6022, Stanford, CA 94305 (408) 778–1492. Mr. William S. Breakey, 2125 Darnis Circle, Morgan Hill, CA 94037 (408) 778–5608.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely at (202) 376–1669.

j. *Comment Date:* February 10, 1989.

k. *Description of Project:* The proposed project would consist of two developments, both utilizing the existing 866 acre San Pablo Reservoir with a storage capacity of 40,800 acre-feet at an elevation of 315 feet m.s.1.. Development No. 1 would consist of: (1) The existing intake tower; (2) the existing 171-foot-high San Pablo Dam with a chute type spillway; (3) the existing 1.5-mile-long Sorbrante horseshoe tunnel to be modified, carrying raw water to the existing Sorbrante Filtration Plant; (4) a powerhouse containing a single generating unit; (5) existing Sorbrante Filitration Plant; (6) existing Sorbrante raw water pipeline outlet; (7) a transmission line interconnecting to an existing Pacific Gas and Electric Company line. Development No. 2 would consist of: (1) An existing intake tower at the west side of the San Pablo Reservoir; (2) the existing 25-mile-long horseshoe tunnel to be modified, carrying raw water to the existing San Pablo Filtration Plant; (3) a powerhouse containing a single generating unit; (4) San Pablo Filteration Plant; (5) San Pablo pipeline outlet; (6) a transmission line interconnecting to an existing Pacific Gas and Electric Company line. The project would have a total installed capacity of 3,522 kW and would produce an estimated 25,343 MWh of energy annually.

No new access roads will be needed to conduct the studies. The applicant estimates the cost of the studies to be conducted under the preliminary permit would be between $60,000 and $80,000.

l. *Purpose of Project:* Project power would be sold to Pacific Gas and Electric Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10663–001.

c. *Date Filed:* September 30, 1988.

d. *Applicant:* Iliamna-Newhalen-Nondalton Electric Cooperative, Inc.

e. *Name of Project:* Tazimina River.

f. *Location:* On the Tazimina River in T3S, R32W, Sec 16, 17, 19, 10, 21, 22, 24, 25, 26, 27, Seward Meridian near Iliamna Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. T.M. Olsen, P. O. Box 210, Iliamna, AK 99606 (907) 571–1259.

i. *FERC Contact:* Ms. Julie Bernt, (202) 376–1936.

j. *Comment Date:* February 17, 1989.

k. *Description of Project:* The proposed run-of-river project would consist of: (1) A streambank intake at elevation 580 feet; (2) a 1,400-foot-long, 3½-foot-diameter penstock; (3) a powerhouse containing two generating units with a total rated capacity of 1,400 kW; (4) a 12-foot-long tailrace; and (5) a 6.5-mile-long transmission line. Applicant estimates the average annual energy production to be 5,700 MWh and the cost of the proposed studies to be $250,000.

l. *Purpose of Project:* The power produced would be used in the Iliamna Lake area.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

8a. *Type of Filing:* Preliminary Permit.

b. *Project No.:* 10670–000.

c. *Date Filed:* October 4, 1988.

d. *Applicant:* City of Tacoma.

e. *Name of Project:* Cispus River No. 4.

f. *Location:* River Mile 5.5 of the Cispus River in Lewis County, Washington.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. E. E. Coates, Director, City of Tacoma, Department of Public Utilities, P.O. Box 11007, Tacoma, WA 98411 (202) 383–2471.

i. *FERC Contact:* Mr. William Roy-Harrison (202) 386–9830.

j. *Comment Date:* January 23, 1989.

k. *Competing application:* Project No. 10567–000, Date filed: April 4, 1988.

l. *Description of Project:* The proposed project would consist of: (1) A 15-foot-high, 275-foot-long diversion dam at elevation 970 feet msl; (2) a 15-foot-deep, 80-foot-wide, 11,000-foot-long canal; (3) two 12-foot-diameter, 500-foot-long penstocks; (4) a powerhouse containing a generating unit with a rated capacity of 15 MW; (5) a 69-kV, 11,000-foot-long transmission line tying into a new Lewis County Public Utility District substation; and (6) appurtenant facilities. The applicant estimates a 100,000,000 kWh average annual energy production.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

9a. *Type of Filing*: Preliminary Permit.

b. *Project No.*: 10671–000.

c. *Date Filed*: October 4, 1988.

d. *Applicant*: City of Tacoma.

e. *Name of Project*: Silver Creek.

f. *Location*: On Silver Creek, partially within the Gifford Pinchot National Forest, in Lewis County, Washington, T12N, R7E, and T13N, R7E.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791(a) 825(r).

h. *Applicant Contact:* Mr. E. E. Coates, Director, City of Tacoma, Department of Public Utilities, P.O. Box 11007, Tacoma, WA 98411 (202) 383–2471.

i. FERC Contact: Mr. William Roy-Harrison, (202) 376–9830.

j. *Comment Date*: January 23, 1989.

k. Competing application: Project No. 10571–000, Date Filed: April 4, 1988.

l. *Description of Project*: The proposed project would consist of: (1) A 6-foot-high, 75-foot-long diversion dam at elevation 1,450 feet msl; (2) a 72-inch-diameter, 1,800-foot long penstock; (3) a powerhouse containing a generating unit with a rated capacity of 6 MW; (4) a 69-kV, 4,600-foot-long transmission line tying into the existing Lewis County Public Utility District system; and (5) appurtenant facilities. The applicant estimates a 40,000,000 kWh average annual energy production.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 10681–000.

c. *Date Filed*: October 27, 1988.

d. *Applicant*: Echo Bay Exploration, Inc.

e. *Name of Project*: Sheep Creek.

f. *Location*: On Sheep Creek in Sec. 32, 33, and 34, T41S, R67E, and Sec. 4, T42S, R67E Copper River Meridian near Juneau, Alaska.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. Harry A. Noah, 4404 Thane Rd., Juneau, AK 99801 (907) 586–4161.

i. *FERC Contact*: Ms. Julie Bernt, (202) 376–1936.

j. *Comment Date*: February 9, 1989.

k. *Description of Project*: The proposed project would utilize the disposal of mine tailings which with watershed run off would be retained behind a 270-foot-high dam. The project would also consist of: (1) A 3,700-foot-long penstock; (2) a powerhouse containing 3 generating units with a total rated capacity of 3.1 MW; and (3) a 2.3-mile-long transmission line. Applicant estimates the average annual energy production to be 17 GWh and the

cost of the work to be performed under the preliminary permit to be $200,000.

1. *Purpose of Project*: The power produced will be used in mining activities.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

11a. *Type of Filing:* Transfer of License.

b. *Project No:* 6780–000.

c. *Date Filed:* October 6, 1988.

d. *Applicants:* Enviro Hydro Inc. (transferor) and Nugget Hydroelectric, L.P. (transferee).

e. *Name of Project:* Deadwood Creek.

f. *Location:* On Deadwood Creek in Yuba County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(a).

h. *Applicant Contact:* Enviro Hydro, Inc., c/o Mr. H.L. Childers, President, 9200 Shanley Lane, Auburn, California 95603 (916) 823–2386. Nugget Hydroelectric, L.P. c/o Mr. Alan K. Forbes, President, Enervest Management Corporation, 6200 South Syracuse Way, Suite 125, Englewood, Colorado 80111 (303) 721–9550.

i. *FERC Contact:* William Roy-Harrison, (202) 376–9830.

j. *Comment Date:* January 27, 1989.

k. *Description of Project:* The transferor, as listed in paragraph (d) proposes to transfer the license issued on September 28, 1988, to the transferee to facilitate completion of the project. Transferee has proposed to construct, operate, and utilize the full output of the project in accordance with the license. The transferee is a limited partnership organized under the laws of the state of California.

1. This notice also consists of the following standard paragraphs: B and C.

12a. *Type of Application: Conduit Exemption.*

b. *Project No:* 10643–000.

c. *Date Filed:* August 8, 1988.

d. *Applicants:* City of Arvada, Colorado.

e. *Name of Project:* Ralston Hydroelectric Facility.

f. *Location:* On water transmission pipelines supplying the Ralston water treatment plant, in Jefferson County, Colorado.

g. *Filed Pursuant to:* Section 30 of the Federal Power Act, 16 U.S.C. 823 (a).

h. *Applicant Contact:* Mr. Jerry Zander, Civil Engineer, City of Arvada, 8101 Ralston Road, Arvada, CO 80002 (303) 431–3033.

i. *FERC Contact:* Mr. James Hunter, (202) 376–1943.

j. *Comment Date:* January 27, 1989.

k. *Description of Project:* The proposed project would consist of: (1) A 24-inch-diameter pipeline connecting to water supply pipelines immediately above pressure reducing valves; (2) a 20-foot-square, concrete block powerhouse containing a generating unit rated at 200 KW and producing an average annual output of 1,150 MWH; and (3) a pipeline returning flows to the water supply system below the pressure reducing valves.

1. *Purpose of Project:* The facility would recover energy presently dissipated by pressure reducing valves.

m. This notice also consists of the following standard paragraphs: B, C, and D3b.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular

application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal request will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments—The Commission requests that, for the purposes provided in section 408 of the Energy Security Act of 1980, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the state fish and game agency(ies) file, within 45 days from the date of issuance of this notice, appropriate terms and conditions to protect any fish and wildlife resources, or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however. specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, the Commission will presume that the agency has none. Other federal, state, and local agencies are requested to provide any comments related to their duties and responsibilities. No other formal requests for comments will be made. Agencies should confine comments to substantive issues relevant to the granting of an exemption. If any agency does not file comments within 45 days from the date of issuance of this notice, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Dated: December 20, 1988, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29530 Filed 12–22–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–364–000 et al.]

Columbia Gulf Transmission Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Columbia Gulf Transmission Company

[Docket No. CP89–364–000]

December 16, 1988.

Take notice that on December 8, 1988, Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama, Houston, Texas 77027, filed in Docket No. CP89–364–000 pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport for Sonat Marketing Company (Sonat) under the blanket certificate issued in Docket No. CP86–239–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia indicates that it proposes to transport up to 1,000 MMBtu per day, on an interruptible basis, on behalf of Sonat pursuant to a Transportation Agreement dated August 29, 1988, between Columbia Gulf and Sonat. The Transportation Agreement provides Columbia Gulf to receive gas in Louisiana and Offshore Louisiana and redeliver the gas to Chevron U.S.A.'s Gas Processing Plant in Plaquemines Parish, Louisiana.

Columbia Gulf estimates that the volume of gas to be transported on a peak day is up to 1,000 MMBtu, on an average day up to 600 MMBtu and up to 219,000 MMBtu on an annual basis. Columbia Gulf further indicates it commenced this service on October 1, 1988, as reported in Docket No. ST89–911–000.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP89–385–000]

December 16, 1988.

Take notice that on December 12, 1986, Williams Natural Gas Company (Williams), P.O. Box 3288 Tulsa, Oklahoma 74101, filed in Docket No. CP89–385–000, a request pursuant to § 157.205 (18 CFR 157.205) of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for St. Francis Hospital and Medical Center (St. Francis) in Kansas, under Williams blanket transportation certificate issued May 10, 1988, in Docket No. CP86–631–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williams states it will receive the gas from various supply sources in Kansas and Oklahoma and transport the gas to various points in Kansas on William's system for delivery to St. Francis.

Williams proposes to transport up to 200 MMBtu of natural gas per average day or approximately 500 MMBtu of gas on a peak day and 182,500 MMBtu annually. Williams states that the transportation service commenced under the 120-day automatic

authorization of § 284.223(a)(i) of the Commission's Regulations on October 20, 1988, pursuant to a transportation agreement dated October 6, 1988. Williams notified the Commission of the commencement of the transportation service in Docket No. ST89–727–000 on November 15, 1988.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–369–000]

December 16, 1988.

Take notice that on December 9, 1988, Northern Natural Gas Company, Division on Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–369–000, an application 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 Hadson Gas Systems, Inc., a marketer of natural gas under Northern's blanket certificate issued in Docket No. CP86–435–000 pursant 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.

Northern proposes to transport up to 75,000 MMBtu/day for Hadson Gas Systems, Inc. Northern states that construction of facilities would not be required to provide the proposed service.

Northern further states that the maximum day, average day, and annual transportation volumes would be approximately 75,000 MMBtu, 56,250 MMBtu and 27,375,000 MMBtu, respectively.

Northern advises that service under § 284.223(a) commenced November 1, 1988, as reported in Docket No. ST89–948–000.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Natural Gas Pipeline Company of America

[Docket No. CP89–356–000]

December 16, 1988.

Take notice that on December 8, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–356–000 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 Arkla Energy Marketing Company (AEMC), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP89–582–000 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.

Natural proposes to transport up to 100 billion Btu of natural gas per day, plus overrun volumes, on an interruptible basis for AEMC. It is indicated that receipt point would be in Oklahoma and that the delivery points would be in Texas.

Natural states that this transportation commenced October 7, 1988, pursuant to § 284.223(a)(1) of the Commission's Regulations, as reported in Docket No. ST89–1177.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–367–000]

December 16, 1988.

Take notice that on December 9, 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. CP89–367–000, an application 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 Sun Operating Limited Partnership, a producer of natural gas, under Northern's blanket certificate issued in Docket No. CP89–435–000 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.

Northern proposes to transport up to 120,000 MMBtu/day for Sun Operating Limited Partnership. Northern states that construction of facilities would not be required to provide the proposed service.

Northern further states that the maximum day, average day, and annual transportation volumes would be approximately 120,800 MMBtu, 90,600 MMBtu and 44,092,000 MMBtu, respectively.

Northern advises that service under § 284.223(a) commenced November 5, 1988, as reported in Docket No. ST89–895–000.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Tennessee Gas Pipeline Company

[Docket No. CP89–389–000]

December 16, 1988.

Take notice that on December 13, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–389–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for PSI, Inc. (PSI), under the blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set in the request on file with the Commission and open to public inspection.

Tennessee indicates that it proposes to transport up to 50,000 dt per day, on an interruptible basis, on behalf of PSI pursuant to a Transportation Agreement dated November 1, 1988 between Tennessee and PSI. The Transportation Agreement provides PSI to transport natural gas from points of receipt located offshore Louisiana and the state of Mississippi to various delivery points off Tennessee's system interconnecting with Columbia Gas Transmission located in multiple states.

Tennessee estimates that the daily and quantities would be 50,000 dt and 18,250,000 dt, respectively. Tennessee further indicates it commenced this service December 1, 1988 as reported in Docket ST89–1072–000.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Ozark Gas Transmission System

[Docket No. CP89–275–000]

December 16, 1988.

Take notice that on November 22, 1988, as supplemented on December 12, 1988, Ozark Gas Transmission System, 1700 Pacific Avenue, First City Center, Dallas, Texas 75201, (Ozark) filed in Docket No. CP89–275–000 an application pursuant to Rule 207 of the Rules of Practice and Procedure of the Commission, petitions for a declaratory order that it is authorized to abandon certain compression facilities or in the alternative for permission and approval under section 7(b) of the Natural Gas Act (NGA) to abandon such facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Ozark claims that in February 1982, it began operating two 620 horsepower 2-stage compressor units at the Hurley Compressor Station, located adjacent to its mainline in Johnson County,

Arkansas. It is asserted that this station is used to compress natural gas produced into the Hurley Lateral and after compression the gas is delivered into Ozark's 20-inch main transmission line. Ozark asserts that due to the significant decrease in production of wells connected to the Hurley Lateral as well as to the abandonment by producers of certain other wells, continued operation of both compressor units at the Hurley Compressor Station is no longer necessary or economical. It is alleged that abandonment of one of the compressor units at the Hurley Lateral would not cause a decrease in service on the Hurley Lateral and would not have an adverse effect on Ozark's shippers.

It is stated that in contrast to the situation at the Hurley Station, Ozark has a demonstrable need for additional compression on the Tobey Lateral, in Franklin County, Arkansas, where it operates one 620 horsepower compressor unit at the Tobey Compressor Station. It is alleged that due to the immediate operational requirements at the Tobey Lateral, Ozark on November 17, 1988, temporarily repositioned one of the Hurley compressor units (Unit No. 34027) to the Tobey Compressor Station, pursuant to the authority under § 157.208(a) of the Commission's regulations. It is further alleged that Ozark relocated the compressor unit to accommodate increased deliverability into the Tobey Lateral and in order to be better prepared for the 1988–1989 winter heating season. It is asserted that Ozark intends to abandon permanently one compressor unit from the Hurley Compressor Station and relocate it to the Tobey Compressor Station.

Ozark requests a declaratory order to the effect that it can abandon one of the two compressor units previously located at the Hurley Compressor Station pursuant to the automatic abandonment authority under § 157.216(a) of the Commission's regulations. Ozark submits that the standards for the automatic authority have been met because (1) gas produced from the wells connected to the Hurley Lateral qualified for incentive pricing under the NGPA and is no longer subject to the Commission's NGA abandonment authority and (2) sales from several of the wells connected the Hurley Lateral have ceased.

It is requested that if the Commission finds that Ozark is not authorized to accomplish the abandonment under its blanket abandonment authority, the Commission grant permanent abandonment authority pursuant to NGA section 7(b). It is asserted that the proposed abandonment would not affect Ozark's ability to provide service to its two firm shippers, nor would it affect the producers' ability to deliver the remaining gas ito Ozark. It is alleged that by abandoning and relocating the 620 horsepower compressor unit, Ozark would be able to operate its system more efficiently and increase its ability to provide efficient service at the Tobey Lateral.

Comment date: January 9, 1989, in accordance with Standard Paragraph F at the end of this notice.

8. Northern Border Pipeline Company

[Docket No. CP78–124–010]

December 19, 1988.

Take notice that on December 5, 1988, Northern Border Pipeline Company (Northern Border), 2223 Dodge Street, Omaha, Nebraska 68102, filed pursuant to section 7(c) of the Natural Gas Act and section 9 of the Alaska Natural Gas Transportation Act of 1976 a petition to amend the Commission's Orders dated April 28, 1980 and June 20, 1980, in Docket No. CP78–124. By such petition, Northern Border is requesting authority to increase the natural gas volumes it is authorized to transport and deliver at its Welcome, Minnesota delivery point for the account of Northern Natural Gas Company, Division of Enron Corporation (Northern Natural), all as more fully set forth in the petition to amend which is on file with the Commission and available for public inspection.

Northern Border states that pursuant to the Commission's order dated April 28, 1980, in Docket No. CP78–124, Northern Border was issued a certificate of public convenience and necessity authorizing the construction and operation of pipeline facilities for the transportation in interstate commerce, of up to 800,000 Mcf of natural gas per day for United Gas Pipe Line Company, Panhandle Eastern Pipe Line Company, and Northern Natural (collectively called the U.S. Shippers). On June 20, 1980, Northern Border states, the Commission issued its order, in this proceeding granting applications for rehearing in part which affirmed and modified said prior order. Pursuant to the Commission's order dated December 14, 1984, Northern Border states, the term of Northern Border's certificate authority to transport up to 800,000 Mcf of gas per day for the U.S. Shippers was extended to October 31, 1996. By these orders, Northern Border was authorized, among other things, to transport 200,000 Mcf per day for Northern Natural with deliveries of 100,000 Mcf per day at the Ventura, (Iowa) Meter Station; 75,000 Mcf per day at the Welcome (Minnesota) Meter Station; and 25,000 Mcf per day at the Aberdeen (South Dakota) Meter Station.

Specifically, Northern Border proposes herein to increase the volume of natural gas delivered to Northern Natural at its Welcome delivery point to 80,000 Mcf per day from the currently authorized 75,000 Mcf per day. Northern Border indicates that it is not proposing to increase the total natural gas volumes that it is obligated to transport for Northern Natural. Northern Border states that the proposed transportation service will be provided without detriment or disadvantage to any of its existing shippers.

Comment date: January 9, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

9. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–350–000]

December 16, 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. CP89–350–000, a request for authorization pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and Northern's blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, for authorization to transport natural gas on behalf of Mobil Natural Gas, Inc. (Mobil), a producer of natural gas, on an interruptible basis, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that it would transport natural gas for Phillips, through existing facilities, as follows:

200,000 MMBtu on a peak day
150,000 MMBtu on an average day
73,000,000 MMBtu on an annual basis

It is further stated that the requisite filings, under the 120 day automatic authorization provisions of § 284.223(a), have been made in Docket No. ST89–833–000 with service commencing on October 19, 1988.

Comment date: February 2, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Williams Natural Gas Company

[Docket No. CP89-402-000]

December 19, 1988.

Take notice that on December 13, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-420-000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation for Terra Resources, Inc. (Terra) under WNG's 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 which is on file with the Commission and open to public inspection.

WNG requests authorization to transport, on an interruptible basis up to a maximum of 30,000 MMBtu of natural gas per day for Terra from various receipt points in Kansas, Missouri, Oklahoma and Wyoming to various delivery points of WNG's pipeline system located in Kansas, Missouri, Texas and Wyoming. The receipt and delivery points are listed in Exhibits A and B of the November 1, 1988 transportation agreement which provides for this service, and on file with the Commission and open to public inspection. WNG states that it anticipates transporting 20,000 MMBtu on an average day and 10,950,000 MMBtu on an annual basis.

WNG states that the transportation of natural gas for Terra commenced on November 1, 1988, as reported in Docket No. ST89-960-000, for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to WNG in Docket No. CP86-631-000. WNG states that it proposes to continue this service in accordance with §§ 284.221 and 284.223 of the Commission's Regulations.

WNG further states that it has no knowledge of any agency relationship under which a local distribution company or an affiliate of Terra will receive natural gas on behalf of Terra.

Comment date: February 2, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. El Paso Natural Gas Company

[Docket No. CP89-392-000]

December 16, 1988.

Take notice that on December 13, 1988, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request for authorization in Docket No. CP89-392-000 pursuant to §157.205 of the Commission's Regulations under the Natural Gas Act to deliver gas to Gas Company of New Mexico, a Division of Public Service Company of New Mexico (Gas Company) at two existing meter stations, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso states that it received a written request dated November 17, 1988, from Gas Company for natural gas service at two existing meter stations located on its 30" O.D. Permian-San Juan Line in Valencia and McKinley Counties, New Mexico. El Paso further states that Gas Company has reported that the natural gas would be utilized to serve existing residential requirements in and around Albuquerque, Gallup and Grants, New Mexico, that are presently being served by gas from Gas Company's own contracted supplies and supplies from its affiliated gathering company. El Paso also states that Gas Company has reported that volumes proposed to be sold at these locations are within the existing certificated entitlements of Gas Company.

El Paso proposes to deliver gas at: (1) The Rio Puerco Meter Station consisting of two 8⅝" O.D. tap and valve assemblies, with appurtenances, located in Valencia County, New Mexico; and (2) the Gallup-Grants Meter Station consisting of dual 6" O.D. standard orifice-type meters, with appurtenances, located in McKinley County, New Mexico, to allow for the delivery of natural gas to Gas Company. It is indicated that such facilities were initially installed for the delivery of gas transported by El Paso for others. El Paso states it would incur no additional costs to operate these facilities. El Paso further states that Gas Company has reported that it has the necessary facilities in place for ultimate distribution of the requested volumes of natural gas.

El Paso estimates peak day and annual volumes of 60,808 Mcf and 3,177,862 Mcf, respectively, through the requested sales taps for resale to the areas of Albuquerque, Gallup and Grants, New Mexico during the third year of operation. El Paso indicates that Gas Company would pay El Paso for each Mcf purchased at the two sales taps the ABDL-NM rate reflected from time to time on Sheet No. 100 of El Paso's FERC Gas Tariff, First Revised Volume No. 1. El Paso alleges that the proposed sale and delivery of natural gas to Gas Company at the two meter stations would have a negligible effect upon El Paso's peak day and annual deliveries.

Comment date: February 2, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-359-000]

December 19, 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. CP89-359-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Amoco Production Company (Amoco), under the authorization 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 which is on file with the Commission and open to public inspection.

Northern would perform the proposed interruptible transportation service for Amoco, a producer of natural gas, pursuant to an interruptible transportation agreement IT-1 dated October 31, 1988. The term of the transportation agreement is through December 31, 1992, and month to month thereafter unless terminated upon 30 days prior written notice by one party to the other party. Northern proposes to transport on a peak day up to 50,000 MMBtu; on an average day up to 37,500 MMBtu; and on an annual basis 18,250,000 MMBtu of natural gas for Amoco. Northern proposes to receive the subject gas from receipt points in the offshore areas Texas, Mississippi, and Louisiana. Northern would then transport and redeliver such volumes for Amoco to existing points also in the offshore areas of Texas, Mississippi, and Louisiana. Northern avers that construction of facilities would not be required to provide the proposed service.

Northern states that it would perform such transportation service for Texaco pursuant to its Rate Schedule IT-1, or any effective superseding rate schedule on file with the FERC or any successor thereof. 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. Northern commenced such self-implementing service on October 31, 1988, as reported in Docket No. ST88-834-000.

Comment date: February 2, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-369-000]

December 19, 1988.

Take notice that on December 9, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), Post Office Box 1188, Houston, Texas 77252, filed in Docket No. CP89-368-000 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 Tranam Energy Inc. (Tranam), a natural gas marketer, under its blanket authorization 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 which is on file with the Commission and open to public inspection.

Northern would perform the proposed interruptible transportation service for Tranam, pursuant to an interruptible transportation service agreement dated November 1, 1988. The transportation agreement is for a primary term of two years from its date and shall continue month to month thereafter unless cancelled by thirty days prior notice by either party. Northern proposes to transport on a peak day up to 40,000 MMBtu per day; on an average day up to 30,000 MMBtu; and on an annual basis 14,600,000 MMBtu of natural gas for Tranam. Northern proposes to receive the subject gas at various points located in the states of Iowa, Kansas, Oklahoma and Texas. It is stated that the points of delivery are located in the states of Illinois, Iowa, Kansas, Texas and Wisconsin. Northern 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. Northern commenced such self-implementing service on November 1, 1988, as reported in Docket No. ST89-896-000.

Comment date: February 2, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulation 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 the 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 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, the instant request shall be treated as a application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29535 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1432-002]

CWC Fisheries, Inc.; Issuance of Annual License

December 20, 1988.

The license for the Dry Spruce Bay Project No. 1432, located on Dry Spruce Bay in Kodiak County, Alaska, was issued for a period ending October 26, 1988. In order to authorize the continued operation and maintenance of the project pending Commission action on a new license for the project, an annual license must be issued to CWC Fisheries, Inc., pursuant to section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c).[1]

Take notice that an annual license is issued to CWC Fisheries, Inc., for a period effective October 27, 1988, to October 26, 1989, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 1432, subject to the terms and conditions of the original license.

Take further notice that if issuance of a new license does not take place on or before October 26, 1989, an annual license will be issued each year thereafter, effective October 27, of each year, until such time as a new license is issued, without further notice being given by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29517 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-113-000]

Central Illinois Public Service Co.; Filing.

December 19, 1988.

Take notice that on December 13, 1988, Central Illinois Public Service Company (CIPS) tendered for filing an amendment to the existing supply contract between CIPS and the Village of Greenup (Village) which provides for an additional delivery point.

In its filing CIPS requests various waivers including waiver of the Commission's notice requirements.

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,

[1] On October 28, 1988, Wards Cove Packing Co. filed an application for a new license. According to information received from the applicant, on November 1, 1987, Wards Cove Packing Co. became the successor in interest to CWC Fisheries, Inc., by way of a statutory merger which consolidated several commonly owned corporations. However, no application for transfer was filed. Wards Cove Packing Co. is instructed to file an application for transfer of license, under Part 9 of the Commission's regulations, within thirty days of issuance of this annual license.

385.214). All such motions or protests should be filed on or before January 4, 1989. 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. 88-29473 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

December 19, 1988.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on December 12, 1988, tendered for filing Seventeenth Revised Sheet Nos. 57(i) and 57(ii), Second Revised Sheet No. 57(iii) and Fifth Revised Sheet No. 57(v) to Great Lakes Gas Transmission Company's ("Great Lakes") FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states Seventeenth Revised Sheet Nos. 57(i) and 57(ii) and Fifth Revised Sheet No. 57(v) were filed as an Out of Cycle PGA to revise the current PGA rates for the months of December 1988 and January 1989. The tariff sheets were filed in this Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited. These pricing arrangements were negotiated between each of Great Lakes resale customers and the supplier.

Great Lakes states Second Revised Sheet No. 57(iii) was filed to cancel rate for Part 284 transportation. This service is no longer authorized for use by Great Lakes.

Great Lakes requested waiver of the 30 day notice requirement for the provisions of § 154.38(d)(4)(iv)(a) of the Commission's Regulations and any other necessary waivers so as to permit the aforementioned tariff sheets to become effective in December 1, 1988.

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 27, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29474 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff, Purchased Gas Adjustment Clause Provisions

December 19, 1988.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on December 9, 1988, revised its November 21, 1988 filing in Docket No. TF89-1-51-000 which revised current PGA rates for the months of November and December, 1988 and January, 1989 to reflect the latest estimated gas costs and a change in pricing tiers for gas sales to Natural Gas Pipeline Company of America. The November 21, 1988 filing should have been made as an Out of Cycle PGA filings in Docket No. TQ89-1-51-000 instead of a Flexible Rate Adjustment in Docket No. TF89-1-51-000 as indicated in the filing. The December 9, 1988 filing corrects the docket number and transmits additional information requested by the Commission's Staff. The tariff sheets did not require refiling.

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 27, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29475 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-21-001 and RP89-21-002]

National Fuel Gas Supply Corp.; Filing

December 19, 1988.

Take notice that on December 8, 1988, National Fuel Gas Supply Corporation (National) filed Substitute First Revised Sheet No. 72-C, to be effective December 1, 1988. National States that Substitute First Revised Sheet No. 72-C corrects a footnote reference on First Revised Sheet No. 72-C. National states that this correction is a result of the new pagination adopted in its original filing in this proceeding.

On December 9, 1988, National filed Substitute First Revised Sheet No. 72-C after it came to their attention that two words were super-imposed on each other on the December 8, 1988 filing.

National states that copies of this tariff sheet have been mailed to all of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before December 27, 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. 88-29477 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-31-000]

Niagara Mohawk Power Co.; Initiation of Proceeding and Refund Effective Date

December 19, 1988.

Take notice that on December 19, 1988, the Commission issued an order in this proceeding initiating a proceeding under section 206 of the Federal Power Act, as amended by the Regulatory Fairness Act of 1988.

Refund effective date: February 21, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29518 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-1-005 and RP89-5-001]

Northwest Pipeline Corp.; Filing of Pipeline Refund Reports and Refund Plans

December 19, 1988.

Take notice that on December 12, 1988, Northwest Pipeline Corporation submitted to the Commission for filing proposed refund reports.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before December 27, 1988. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29531 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-47-014]

Northwest Pipeline Corp.; Compliance Filing

December 20, 1988.

Take notice that on December 1, 1988, Northwest Pipeline Corporation (Northwest) filed certain tariff sheets in compliance with the Commission's order dated November 1, 1988.

Northwest states that the submitted tariff sheets comply with the Commission directives set forth in the Order in that they have been revised to eliminate the effect of the July 1, 1988 contract demand (CD) conversions from sales to transportation service by customers on the D-1 rates for firm sales and transportation services. Northwest states that the D-1 rate utilized in this filing are those that were initially filed by Northwest on January 4, 1988 in its primary tariff sheets in this rate filing which were modified by the Commission to reflect changes in the full certificated transportation CD volumes for ANR Pipeline Company (43 FERC ¶ 61,263) and approved for implementation subject to refund effective July 3, 1988 (44 FERC ¶ 61,158).

Northwest states that because the D-1 rate component contained in its previously submitted and rejected tariff sheets filed in its July 18, 1988 compliance filing is lower than the D-1 rate component being submitted in the compliance tariff sheets filed December 1, 1988, Northwest submitted alternative tariff sheets which would include the lower D-1 rate for the Commission's consideration. Northwest submits that it may be more equitable to its customers to include this lower D-1 rate component in its rates.

Northwest states that with respect to other rate components, no changes have been made to the non-gas cost components of the rates included in the July 18, 1988 compliance filing.

Northwest is also submitting tariff sheets which state the rates that should be effective October 1, 1988 which reflect Northwest's current filings regarding the gas cost components of its rates. Northwest states that other non-rate aspects of its revised tariff sheets submitted in its August 12, 1988 compliance filing have been incorporated in the tariff sheets included in this compliance filing.

Northwest states that the D-2 nominations utilized in this compliance filing are those that were submitted to Northwest by customers pursuant to Northwest's request for nominations under the May 18, 1988 Commission order. Such D-2 nominations were submitted in the context of this general Section 4 rate proceeding and reflected the conversion decisions that various customers had made at that time. Northwest states that because the Commission-ordered nominations for annual firm gas service received from customers have in the aggregate decreased, the D-2 and commodity components of the rates have increased.

Northwest states that a copy of this filing is being served on all parties of record in this docket and all jurisdictional customers and affected State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before December 28, 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. 88-29532 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-93-000]

Pacific Gas and Electric

December 20, 1988

Take notice that on November 20, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing supplements to Rate Schedule FERc No. 84. This Rate Schedule covers services rendered by PG&E under the agreement entitled, "Interconnection Agreement, between Pacific Gas and Electric Company and the Northern California Power Agency, City of Alameda, City of Biggs, City of Gridley, City of Healdsburg, City of Lodi, City of Lompoc, City of Palo Alto, City of Roseville, City of Ukiah and Plumas Sierra Rural Electric Cooperative" (Interconnection Agreement). The Interconnection Agreement was originally filed under Docket No. ER83-683-000 and assigned Rate Schedule FERC No. 84.

The supplements are: (1) A letter from PG&E to NCPA dated July 2, 1984, and (2) a letter agreement between PG&E and NCPA dated May 23, 1985, and signed June 18, 1985. The supplements relate to operating procedures under real time scheduling, which are not addressed under the Interconnection Agreement, including deviation bands and billing procedures. The parties have been operating in accordance with these letter agreements since they began real-time scheduling on April 1, 1985. PG&E has requested an April 1, 1985 effective date for the supplements.

Copies of this filing have been served upon NCPA and the California Public Utilities Commission. In addition, copies of this filing are available for public inspection in a convenient form and place during normal business hours at PG&E's General Office in San Francisco.

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 January 4, 1989. 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. 88-29533 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER81-177-010]

Southern California Edison Co.; Filing

December 19, 1988.

Take notice that on December 9, 1988, Southern California Edison Company (SCE) tendered for filing its refund report in response to the Commission's order in this docket of November 2, 1988.

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 January 4, 1989. 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. 88-29476 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC89-5-000]

Southern California Edison Co., et al.; Filing

December 16, 1988

Take notice that on December 15, 1988, Southern California Edison Company and San Diego Gas & Electric Company ("Applicants"), pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b, tendered for filing a Joint Application for an order authorizing and approving a proposed merger.

Southern California Edison Company ("Edison") is the public utility subsidiary of SCEcorp, a holding company. Edison is an electric utility engaged in the business of generating, transmitting and distributing electric energy to approximately 3.8 million customers in portions of central and southern California. In addition to its properties in California, it owns, wholly or in part, generating and transmission facilities in Nevada, Arizona, and New Mexico. Edison's service territory is located in 15 counties of southern and central California. Edison also sells electricity to certain customers for resale, and provides transmission service pursuant to Part II of the Federal Power Act, 16 U.S.C. 824 et seq.

San Diego Gas & Electric Company ("SDG&E") is engaged in the business of generating and selling electric energy in a service territory consisting of San Diego county and portions of Orange County, California. It also provides natural gas and steam service in the County of San Diego, California. It serves approximately one million electric customers and 641,098 gas customers. In addition to its properties in California, SDG&E owns, wholly or in part, transmission facilities in Arizona. SDG&E has no wholesale requirements customers. From time to time, it sells electricity to certain customers for resale and provides transmission service pursuant to Part II of the Federal Power Act, 16 U.S.C. 834 et seq.

Under the merger proposal, SDG&E would dispose of its jurisdictional assets and facilities by means of an exchange of its stock with SCEcorp and the simultaneous merger of SDG&E into Edison. Edison would be surviving corporation and as such would assume the liabilities and obligations of SDG&E. After the merger, SCEcorp would continue to own all of the outstanding common stock of Edison. The Applicants anticipate that substantial efficiencies will result from integration of the currently separate operations of Edison and SDG&E. These efficiencies will result in lower rates for the customers of both companies. The Applicants submit that the proposed merger is consistent with the public interest.

Copies of the Joint Application have been served upon the state commissions of Arizona, California, New Mexico and Nevada.

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 January 19, 1989. 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. 88-29472 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-223-004]

Texas Eastern Transmission Corp; Proposed Changes in FERC Gas Tariff

December 19, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 13, 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 1, 1988

Second Substiture Original Sheet No. 483B

Proposed To Be Effective August 1, 1988

Second Substitute First Revised Sheet No. 483B

Texas Eastern states that the purpose of this filing is to file revised tariff sheets to make the revisions to Texas Eastern's tariff as required by the Commission's November 28, 1988 "Order Rejecting Compliance Filing" (November 28 Order) in Docket No. RP88-223-001.

Texas Eastern states that on August 24, 1988 the Commission issued an order in Texas Eastern's Docket No. RP88-223-000 which accepted and suspended, subject to refund and conditions, the proposal filed by Texas Eastern on July 25, 1988, to flow through the take-or-pay charges billed pursuant to the authorization granted to Southern Natural Gas Company (Southern) in Docket No. RP88-210-000. Ordering paragraph (B) of the August 24, 1988 Order required Texas Eastern to file revised tariff language to provide that a customer whose service agreement expired and who received any necessary abandonment authority after June 15, 1988 will continue to be liable for its allocated share of the Southern costs. On September 8, 1988, Texas Eastern filed tariff sheets in purported compliance with the Commission's August 24, 1988 Order in Docket No. RP88-223.

Texas Eastern states that the Commission on November 28, 1988 rejected Texas Eastern's September 8, 1988 filing in Docket No. RP88-223-001 on the grounds that it failed to fully comply with its August 24, 1988 Order in Docket No. RP88-223-000. Ordering Paragraph (A) requires Texas Eastern to file to revise Sheet No. 483B within 15

days of the date of issuance of the November 28 Order.

Texas Eastern states that in compliance with the November 28, 1988 Order, it has (1) deleted from Sheet No. 483B, the tariff language referring to the recovery of take-or-pay costs from former customers whose service agreements expired and who received any necessary abandonment authority for the subject service before June 15, 1988, the date of Texas Eastern's original filing to flowthrough Southern Natural Gas Company's take-or-pay cost in Docket No. RP88-192, and (2) added tariff language giving customers whose service has been abandoned after June 15, 1988 the option to pay in a lump sum or to continue to pay over the amortization period.

Texas Eastern states that the tariff sheets are being filed solely to comply with the Commission's November 28, 1988 Order in Docket No. RP88-223-001.

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 and to all parties of record in Docket No. RP88-223.

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 27, 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. 88-29478 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-435-000]

Transcontinental Gas Pipe Line Corp.; Request Under Blanket Authorization

December 19, 1988.

Take notice that on December 15, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-435-000 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 Coastal Gas Marketing Company (Coastal) under the blanket certificate issued in Docket No. CP88-328-000 on April 29, 1988, 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.

Transco states that pursuant to a transportation agreement dated September 30, 1988, under its Rate Schedule IT, it proposes to transport up to 25,000 dekatherms (dt) per day equivalent of natural gas for Coastal from points of receipt listed in Exhibit "A" of the agreement to a delivery point also listed in Exhibit "A". Transco states that it would receive the gas at High Island Block A-376, Offshore Texas, and that it would transport and redeliver the gas at High Island Block A-343- Offshore Texas. Transco states that existing facilities would be utilized.

Transco advises that service under § 284.223(a) commenced October 10, 1988, as reported in Docket No. ST89-1164. Transco further advises that it would transport 13,000 dt on an average day and 4,745,000 dt annually.

Any person or the Commission's staff may, within 45 days after 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 with 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. 88-29534 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL 3497-8]

Cedar Bay Cogeneration Project, Applied Energy Services, Inc. (AES); Intent to Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) in conjunction with the State of Florida Department of Environmental Regulation (FDER) to identify potential environmental impacts involving construction and operation of the proposed cogeneration plant.

PURPOSE: Pursuant to 40 CFR 1501.7 and in accordance with section 511(c) of the Clean Water Act (CWA) and section 102(2)(c) of the National Environmental Policy Act (NEPA), EPA has identified a need to prepare an EIS and therefore issues this Notice of Intent.

FOR FURTHER INFORMATION AND TO BE PLACED ON THE PROJECT MAILING LIST CONTACT: Robert B. Howard, Chief, NEPA Compliance Section, Environmental Assessment Branch, EAB-4, U.S. EPA Region IV, 345 Courtland Street NE, Atlanta, Georgia 30365. Telephone: (404) 347-7109 or FTS 257-7109.

Need for Action: AES is proposing to construct a cogeneration facility on an existing industrial site within the North District of Duval County, approximately eight miles north of Jacksonville, Florida, near the intersection of Heckscher Drive and Eastport Road. AES filed an application on December 1, 1988, for a National Discharge Elimination System (NPDES) Permit, NPDES No. FL0041173. The facility has been tentatively determined to be a new source steam electric power generating point source, subject to the requirements of 40 CFR Part 423. The plant will produce 225 megawatts (MW) of electricity for sale to Florida Power and Light (FP&L) Company. In addition, steam will be sold to the adjacent Seminole Kraft Corporation paper mill. The new power facility, valued at approximately $400 million, will consist of three new circulating fluidized bed (CFB) boilers and an associated turbine. The project also includes the construction of one new low-odor recovery boiler to be located and utilized at the Seminole Kraft Corporation facility. Coal and bark will be fired in the CFB boilers to generate steam. Coal will be delivered to the site either by rail or by a water borne vessel. Issues to be addressed in the EIS include construction and operational liquid waste effluent (NPDES Permit action), solid waste disposal, air emissions, and groundwater contamination; wetlands loss, aesthetic changes, and the method of coal transport.

Alternatives: The EIS will examine the feasible alternatives for meeting the

project goals of producing power and steam.

Scoping: Participation in the EIS process is invited from individuals, organizations, and government agencies. Preliminary project scoping is underway. The EPA will hold a public scoping meeting at 7:30 pm on January 24, 1989 at the San Mateo Elementary School, 600 Baisden Road, Jacksonville, Florida. A general description of the project and its goals will be presented. Comments and questions are encouraged and will be addressed and recorded.

Estimated Date of DEIS Release: August 11, 1989.

Responsible Official: Greer C. Tidwell, Regional Administrator.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-29552 Filed 12-22-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3497-5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed December 12, 1988 Through December 16, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880413, Final, NPS, NV, CA, Death Valley National Monument, General Management Plan, Implementation, Inyo and San Barnardino Counties, CA and Nye County, NV, Due: January 23, 1989, Contact: Ed Rothfuff (619) 786-2331.

EIS No. 880414, Draft, FHW, CA, Cloverdale Bypass Construction on US 101 from North of Hiatt Road to Preston Overhead, Funding and Possible 404 Permit, City of Cloverdale. Sonoma County, CA, Due: February 19, 1989, Contact: David L. Eyres (916) 551-1314.

EIS No. 880415, Final, AFS, OR, WA, ID, CA, Pacific Northwest Region, National Forest System Lands, Competing and Unwanted Vegetation Management Plan, Implementation, Oregon, Idaho, Washington, and California, Due: January 23, 1989, Contact: Gary L. Larsen (503) 221-2727.

EIS No. 880416, Final, FHW, GA, SC, Bobby Jones Expressway Extension, Old Savannah Road in Augusta to US 1, Funding, 404 Permit and Coast Guard Permit, Richamond County, GA and Aiken County, SC, Due: January 23, 1989, Contact: Louis Papet (404) 347-4751.

EIS No. 880417, Draft, AFS, NM, Cemetery Tract Land Exchange for Westgate Tract or Trail Canyon Tract or Both Tracts, Implementation, Santa Fe National Forest, Los Alamos and Sandoval Counties, NM, Due: February 6, 1989, Contact: Maynard T. Rost (505) 988-6940.

EIS No. 880418, Final, USA, HI, Helemano Military Reservation, Family Housing Construction Project, Implementation, City and County of Honolulu, Island of Oahu, HI, Due: January 23, 1989, Contact: David G. Sox (808) 438-5030.

EIS No. 880419, Draft, NPS, CA, Eugene O'Neill National Historic Site Development and General Management Plan, Implementation, Contra Costa County, CA, Due: March 15, 1989, Contact: Stanley Albright (415) 228-8860.

EIS No. 880420, Draft, NAS, MS, FL, LA, Advance Solid Rocket Motor Program, Design, Construction and Operation, Site Selection, John C. Stennis Space Center, Hancock Co., MS; Yellow Creek Site, Tishomingo Co., MS; John F. Kennedy Space Center, Brevard Co., FL; Michoud Assembly Facility, New Orleans Parrish, LA and Slidell Computer Center, St. Tammany Parish LA, Due: February 6, 1989, Contact: Rebecca C. McCaleb (601) 658-3155.

EIS No. 880421, Draft, FHW, HI, Hanoapiilani Highway/FAP Route 30 Improvement, Puamana to Kaanapali, Funding, Maui County, HI, Due: February 6, 1989, Contact: William R. Lake (808) 541-2700.

Amended Notices

EIS No. 880400, Draft, BLM, NM, Molycorp Guadulupe Mountain Tailings Disposal Facility, Construction, Operation and Closure, Plan of Operation Approval, Tasco County, NM, Due: February 9, 1989, Contact: Robert T. Dale (505) 761-4546.

Published FR 12-9-88—Review period extended.

Dated: December 20, 1988.

William D. Dickerson,

Deputy Director.

[FR Doc. 88-29549 Filed 12-22-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3497-7]

Neskowin, OR; Wastewater Treatment Facilities; Intent to Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) on the Neskowin Regional Sanitary Authority's Neskowin Wastewater Treatment Facilities Construction Grant.

Purpose: In accordance with section 511(c) of the Clean Water Act and section 102(2)(c) of the National Environmental Policy Act (NEPA), EPA has identified a need to prepare an EIS and therefore issues this Notice of Intent pursuant to 40 CFR 1501.7.

FOR FURTHER INFORMATION AND TO BE PLACED ON THE PROJECT MAILING LIST CONTACT: Ms. Ann Uhrich, Environmental Evaluation Branch, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, WD-136, Seattle, Washington 98101-3188, telephone: (206) 442-8516.

SUMMARY: The EIS will evaluate the impacts associates with the construction and operation of a new wastewater treatment plant and sewerage collection system for the town of Neskowin, Oregon. This two-phased project is proposed by the Neskowin Regional Sanitary Authority to meet the service needs of present and projected population growth in the area. A 130,000 gallon per day plant is currently proposed for Phase I, the first 10 years, with an increase to 320,000 gallons per day currently proposed for Phase 2, the second 10 years of the planning period.

Need for Action: Existing on-site systems in the study area consist of combinations of septic tanks, drainfields, seepage pits, and cesspools. A package plant with a design capacity of 50,000 gallons per day also serves a portion of the study area, with disposal to Neskowin Creek. It is in poor condition. Water quality sampling over the past 9 years has repeatedly found evidence of fecal bacteria contamination in area streams, and the previous operators of the package plant have been cited by the Oregon Department of Environmental Quality for National Pollutant Discharge Elimination System permit violations on at least six occasions.

Alternatives: Effluent disposal alternatives presently include:

—Forest or other land application.

—Disposal to Neskowin Creek in winter with land application in summer.

—Ocean outfall disposal.

—Subsurface disposal along Breakers Boulevard.

Scoping: EPA, Region 10, will hold a public scoping meeting on Friday, January 27, 1989, at 7:00 p.m. at the Fire Hall, Highway 101, Neskowin, Oregon. Details of the project and proposed alternatives will be presented. The public is invited to attend and identify issues that should be addressed in the EIS.

Estimated Date of DEIS Release: EPA anticipates that the Draft EIS will be

available for public review in summer 1989.

Responsible Official: Robie G. Russell, Regional Administrator, Region 10.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-29551 Filed 12-22-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3497-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 5, 1988 through December 9, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No.: D-SCS-E34029-KY, Rating LO, South Fork of Little River Watershed Multiple Purpose Floodwater Protection and Municipal and Industrial Water Supply Project, Funding and Implementation, Christian and Todd Counties, KY.

Summary: EPA has no objections to the proposed project.

Final EISs

ERP No.: F-AFS-L67015-AK, Quartz Hill Molybdenum Project Mine Development, Construction, Operation and Post-Mining Abandonment Section 10 and 404 Permits, Special Use Permit and Leases, Misty Fiords National Monument, Tongass National Forest, AK.

Summary: EPA feels this final EIS is acceptable as described.

ERP No.: F-BLM-L70010-OR, Brothers/LaPine Planning Area, Resource Management Plan, Implementation, Prineville District, Crook, Deschutes, Harney, Klamath and Lake Counties, OR.

Summary: EPA continues to have concerns about the nonpoint source degradation of water quality, as well as concerns relating to leasing stipulations, sample restrictions, and Standard Operating Procedures (SOPs) for the energy and minerals program. In addition it was suggested that the Record of Decision reflect a commitment to monitoring.

ERP No.: F-COE-G32051-TX, Galveston Bay Area Navigation Improvements, Houston Ship and Galveston Channels, Funding and Implementation, Galveston and Harris Counties, TX.

Summary: EPA finds the proposed HG50 Plan to be environmentally unsatisfactory and the final EIS inadequate. EPA has requested the Corps extend the time allowed for referral to the Council on Environmental Quality (CEQ). In response the Corps has extended the referral deadline for three weeks to allow time to resolve issues. Issue resolution meetings will include the Corps, EPA, Fish and Wildlife Service, and the National Marine Fisheries Service.

ERP No.: FS-COE-L36015-00, Lower Granite Project, Lower Granite Interim Navigation and Flood Protection Dredging, Implementation, Snake and Clearwater Rivers, Nez Perce County, ID and Asotin, Garfield and Whitman Counties, WA.

Summary: EPA finds this project to be acceptable as described.

ERP No.: F-FHW-E40703-GA, GA-371/I-85 Highway Connector Construction, GA-371 to I-85, Funding, 404 Permit and USCG Permit, Forsyth and Gwinnett Counties, GA.

Summary: EPA has concerns over the lack of a detailed wetland mitigation plan to offset unavoidable wetland losses and the lack of spill prevention and containment features/plans to prevent or minimize the effects of potential roadway spills on municipal drinking water.

ERP No.: F-OSM-J01072-MT, Peabody Big Sky Coal Mine-Area B Expanded Operations Project, Plan Approval, Lee Coulee Drainge, Rosebud County, MT.

Summary: EPA has no objection to the selection of preferred alternative 3 as long as the monitoring plan provisions are complied with.

Dated: December 20, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-29550 Filed 12-22-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00097; FRL-349-74]

Biotechnology Science Advisory Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1-day meeting of the Biotechnology Science Advisory Committee (BSAC). The meeting will be open to the public. The Committee will hear and discuss reports from various Subcommittees, including the Subcommittee on the Proposed Draft Biotechnology Rule Under TSCA, the BSAC Subcommittee on Biotechlology Health, and the FIFRA SAP Subpanel meeting of November 22, 1988, which discussed the FIFRA experimental use permit amendment. The BSAC will also receive updates on various activities, such as the transgenic plants conference, and the status of Agency product reviews.

DATE: The meeting will be held on Thursday, January 12, 1989, starting at 9 a.m. and ending at approximately 5 p.m.

ADDRESS: The meeting will be held at: The Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. The TSCA Assistance Office will provide summaries of the meeting at a later date.

Dated: December 16, 1988.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-29492 Filed 12-22-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3496-8]

Science Advisory Board, Radiation Advisory Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Science Advisory Board's Radiation Advisory Committee will be held at the U.S. Environmental Protection Agency, Administrator's Conference Room 1103, 11th Floor, Waterside Mall, 401 M Street, SW; Washington, DC on January 12-13, 1989. The meeting will begin at 9:00 a.m. on Thursday and adjourn no later than 5:00 p.m. on Friday.

This is primarily an information meeting. The Committee will be briefed on the Office of Radiation Program's plans for revising the technical basis of the revised radionuclide NESHAP, on EPA's radon programs, and on a variety of other radiation-related activities. The Committee will also hear the report of the Radon Measurement Subcommittee and discuss its plans for 1989.

The meeting is open to the public; however, seating is limited. Any member of the public wishing to attend or obtain information should contact Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A101–F) Radiation Advisory Committee, Science Advisory Board, by the close of business on January 10, 1989. The telephone number is (202) 382–2552.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 88–29498 Filed 12–22–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3497–7]

Resource Conservation and Recovery Act; Docket Information Center; Relocation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of postponement of move and of closing of RCRA Docket during the move.

SUMMARY: The relocation of the Resource Conservation and Recovery Act Docket from LG–100 to M2427 of EPA Headquarters, 401 M Street SW., Washington, DC 20460 has been postponed. The RCRA Docket will remain open December 27–30, 1988. Announcement of the rescheduling of the move of the RCRA Docket will be made in the Federal Register.

FOR FURTHER INFORMATION CONTACT: RCRA Docket Information Center (OS–305) 401 M Street SW., Washington, DC 20460, (202/475–9327).

Date: December 20, 1988.

Jeffery D. Denit,

Acting Director, Office of Solid Waste.

[FR Doc. 88–29591 Filed 12–22–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180798; FRL–3496–6]

Receipt of Application for an Emergency Exemption from Montana and Wyoming To Use Strychnine; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt.

SUMMARY: EPA has received public health exemption requests from the Montana Department of Livestock and Wyoming Department of Agriculture (hereafter referred to as "Applicants") to use strychnine alkaloid (CAS Reg. No. 57–24–0) in egg baits for control of rabid skunks. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and, time permitting, to solicit public comment before making the decision whether to grant the exemption.

DATE: Comments must be received on or before January 9, 1989.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP–180798" should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall # 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716D, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State or Federal agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicants have requested the Administrator to issue public health exemptions to allow the otherwise unregistered use of strychnine in eggs to control rabid skunks. The Applicants have requested and received emergency exemptions for the use of strychnine to control rabid skunks since 1973. Montana has been authorized this use every year since 1973 and Wyoming has received exemptions in eight of those years.

In 1972, EPA cancelled the registrations of strychnine products used for predator control, including the use of strychnine to control skunks (37 FR 5718). The decision to grant emergency exemptions for the use of strychnine to control rabid skunks prior to 1985 was based on the Agency's finding that emergency conditions existed and that the Subpart D criteria allowing for emergency waiver of a hearing, 40 CFR 164.133, had been met.

However, in reviewing the emergency exemption request in 1985, the Agency determined that it had misinterpreted the Subpart D regulations and that, prior to even considering whether or not the hearing could be waived, a determination had to be made that substantial new evidence exists which warranted a reconsideration of the prior cancellation order. The Administrator determined that substantial new evidence existed in connection with the registration requests, under section 3 of FIFRA, and 1986 emergency exemption requests, as published in the Federal Register of June 13, 1986 (51 FR 21617). Accordingly, a hearing to reconsider whether to modify the prior cancellation order to permit the use of strychnine for controlling skunks to suppress rabies in areas where rabid animals have been found was held on October 7, 1986, as announced in the Federal Register of August 8, 1986 (51 FR 28623).

As a result of the hearing, the Order suspending the registration of strychnine, sodium cyanide, and sodium monofluoroacetate ("1080") for predator uses has been modified to permit the registration of strychnine to reduce populations of skunks as a means of suppressing the spread of rabies to humans and domestic animals.

The Applicants have applied, under section 3 of FIFRA, for registration of strychnine in egg baits to control rabid skunks. The Applicants are currently generating the data necessary to support the registration of this use of strychnine.

The Applicants have requested the use of strychnine for the purpose of suppressing local populations of skunks, the main carrier of rabies in Montana and Wyoming, thereby reducing the opportunity for exposure of humans, domestic animals, and susceptible wild species to rabies. The Applicants consider the incidence of rabies to be at a level which poses an unacceptable threat to public health.

The proposed control program involves use of strychnine egg baits

which contain 0.035 gram of actual strychnine alkaloid.

The Applicants have proposed the following restrictions for the requested exemptions:

Placement of strychnine-treated eggs will be limited to land within a 5-mile radius of a site where a laboratory-confirmed rabid skunk has been found. The number of strychnine egg baits may not exceed: 1,200 eggs in any treatment area, 150 eggs per any square mile, or two eggs per site. Strychnine egg baits will be placed in such skunk habitats as follows: skunk dens, holes, garbage dumps, road culverts, junk piles, and under non-occupied buildings. All strychnine egg baits will be stamped with the word "poison" in three locations and will contain green food coloring to warn people of their toxic nature. Baits will be covered at all times and checked no less than once a week. Warning signs will be posted at all points commonly used for access to the treatment area. Strychnine egg baits will be placed only on lands where written permission has been obtained from the landowner. Placement or removal of strychnine egg baits will be under the direct supervision of certified commercial applicators of restricted use pesticides.

On April 11, 1988, the United States District Court for the District of Minnesota issued an order enjoining the Administrator of EPA from continuing the registrations of strychnine for above-ground use within the range of listed species protected by the Endangered Species Act, the Migratory Bird Treaty Act, and the Bald and Golden Eagle Protection Act until certain actions specified in the court's order have been taken by EPA. A copy of the order was published in the **Federal Register** of May 25, 1988 (53 FR 18952). The reinitiated section 7 formal consultation under the Endangered Species Act for the above-ground uses of strychnine does not address this proposed use of strychnine-treated eggs. Therefore, the Agency is in the process of initiating a separate consultation with the Department of Interior for the proposed use of strychnine-treated eggs to assess the risks to species protected by the Endangered Species Act, the Migratory Bird Treaty Act, and the Bald and Golden Eagle Protection Act.

The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application that proposes use of a pesticide if such pesticide was the subject of a notice under section 6(b) of FIFRA and was subsequently cancelled and is intended for a use that poses a risk similar to the risk posed by the pesticide which was the subject of the notice. The regulations also provide for the opportunity for public comment.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address given above.

The Agency will review and consider all comments received during the comment period in determining whether to issue these public health exemptions.

Dated: December 1, 1988.

Anne E. Lindsay,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-29497 Filed 12-22-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance); Crystal Cruises, Inc.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Crystal Cruises, Inc., 2121 Avenue of the Stars, Suite 200, Los Angeles, California 90067.

Vessel: CRYSTAL TBN

Date: December 20, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-29526 Filed 12-22-88; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty); Crystal Cruises Inc./Crystal Ship (Bahamas)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passenger or Other Persons on Voyages pursuant to the provisions of Section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Crystal Cruises, Inc./Crystal Ship, (Bahamas) Limited, 2121 Avenue of the Stars, Suite 200, Los Angeles, California 90067.

Vessel: CRYSTAL TBN

Date: December 20, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-29527 Filed 12-22-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Application to Engage de novo in Permissible Nonbanking Activities; Citicorp

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 6, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York; to amend its current application to engage through Great Western Bank and Trust,

Phoenix, Arizona, and its subsidiary, Great Western Insurance Agency, in certain insurance agency activities (*See* 53 FR 3789 (February 9, 1988)) to add engaging through Union Security Corporation, which is also a subsidiary of Great Western Bank and Trust, in insurance agency activities pursuant to section 4(c)(8)(D) of the Bank Holding Company Act and § 225.25(b)(8)(iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29459 Filed 12-22-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on December 9, 1988.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

1. Grants for Nurse Anesthetist Traineeship Programs—0915-0124—The information is needed for use by the grantee institutions to determine eligibility of nurses for the traineeship program and to maintain records of appointments. Respondents: Individuals or households, Non-profit institutions.

1st Information Collection

Title: Demonstration of Financial Need by Nurse—57.509(c) Number of Respondents: 40.

Number of Responses Per Respondent: 1.

Average Burden Per Response: 120 minutes.

2nd Information Collection

Statement of Appointment—57.510(a) Number of Respondents: 40.

Number of Responses Per Respondent: 1.

Average Burden Per Response: 4-6 minutes.

3rd Information Collection

Title: Trainee's Submissions of Information for Statement of Appointment 57.510(a) Number of Respondents: 40.

Number of Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

4th Information Collection

Notification of Tuition Refund 57,512(b) Number of Respondents: 30.

Number of Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Total Annual Burden: 100.5

OMB Desk Officer: Shannah Koss-McCallum.

Family Support Administration

(Call Reports Clearance Officer on 202-252-5605 for copies of package)

1. Information Collection Requirements contained in the Final Regulations on the Prohibition of Retroactive Modification of Child Support Arrearages—NEW—These final rules require that, as a condition of State IV-D Plan approval, States have in effect laws requiring the use of procedures to prohibit retroactive modification of child support arrearages. Respondents: State or local government.

1st Information Collection

Title: Retro. Mod. of CS Arrearages

Annual Number of Respondents: 54.

Annual Frequency: 1.

Average Burden Per Response: 43 minutes.

2nd Information Collection

Recordkeeping

Annual Number of Respondents: 54.

Annual Frequency 1.

Average Burden Per Response: 1,000 minutes.

Total Annual Burden: 938.7.

OMB Desk Officer: Justin Kopca

Health Care Financing Administration

(Call Reports Clearance Officer on 301-966-2088 for copies of package)

1. Hospice Cost Report and Data Form—0938-0392—Form is completed by freestanding hospice which are certified to participate with Medicare. It collects cost data. Respondents: State and local governments, Business or other for-profit; Non-profit institutions.

1st Information Collection

Title: Reporting

Annual Number of Respondents: 157

Annual Frequency: 1.

Average Burden Per Response: 64.

2nd Information Collection

Recordkeeping

Annual Number of Respondents: 157.

Annual Frequency: —.

Average Burden Per Response: 255.

Total Burden Hours: 50,083.

OMB Desk Officer: Allison Herron.

Social Security Administration

(Call Reports Clearance Officer on 301-965-4149 for copies of package)

1. Subpoena-Disability Hearing—0960-0428—The information collected by form SSA-1272 is used by the Social Security Administration to subpoena the production of evidence of testimony needed in connection with disability hearings. Respondents: Individuals or households; Number of Respondents: 28; Frequency of Response: 1; Average burden per Response: 30 minutes; Estimated Annual Burden: 14 hours.

2. Notification of Projected Completion Date—0960-0429—The information is needed so that disability hearing units (DHU) can be notified that a specific hearing case will not be completed and forwarded to the DHU as expected. The DHU can reschedule the hearing. Respondents: State or local governments; Number of Respondents: 24; Frequency of Response: 1; Estimated Annual Burden: 2 hours.

3. Application for Child's Benefits—0960-0100—The information is needed to determine the eligibility for child's insurance benefits. The Social Security Administration is requesting expedited review by January 3, 1989, for this form in order to accelerate its use. In keeping with the requirements for expedited reviews, we are attaching a copy of the form. Respondents: Individuals or households; Number of Respondents 1,740,000; Frequency of Response: 1; Estimated Annual Burden: 372,416 hours.

4. Request to be Selected as Payee—0960-0014—The information is used to determine the proper payee for a person who cannot receive his own benefits. The Social Security Administration is requesting expedited review by January 3, 1989, for this form in order to accelerate its use. In keeping with the requirements for expedited reviews, we are attaching a copy of the form. Respondents: Individuals or households; Number of Respondents 605,000; Frequency of Response: 1; Estimated Annual Burden: 105,875 hours.

OMB Desk Officer: Justin Kopca

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer on one of the following numbers:

PHS: (202) 245–2100
HCFA: (301) 966–2088
SSA: (301) 965–4149
OS: (202) 472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: December 19, 1988.

James E. Larson,

Acting Deputy Assistant Secretary for Information Resources Management.

BILLING CODE 4150-04-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Social Security Administration

☐ TEL

TOE 120/145/155

Form Approved
OMB No. 0960-0010

APPLICATION FOR CHILD'S INSURANCE BENEFITS

(Do not write in this space)

I apply on behalf of the child or children listed in item 3 below for all insurance benefits for which they may be eligible under title II (Federal Old-Age, Survivors and Disability Insurance) of the Social Security Act, as presently amended. (If you are applying on your own behalf, answer the questions on this form with respect to yourself.)

If you are applying for benefits based on the earnings record of a Deceased Worker, this may also be considered an application for survivors benefits under the Railroad Retirement Act and for Veterans Administration payments under Title 38, U.S.C., Veterans Benefits, Chapter 13 (which is, as such, an application for other types of death benefits under Title 38).

LIFE CLAIM ☐ DEATH CLAIM ☐

1.	(a) PRINT name of Wage Earner or Self-Employed person (herein referred to as the "Worker"). →	FIRST NAME, MIDDLE INITIAL, LAST NAME
	(b) PRINT Worker's Social Security number. →	__ __ __/__ __/__ __ __ __
2.	(a) PRINT your name (unless you are the Worker). →	FIRST NAME, MIDDLE INITIAL, LAST NAME
	(b) PRINT your Social Security number. →	__ __ __/__ __/__ __ __ __

PART I—INFORMATION ABOUT THE WORKER'S CHILDREN

3. The Worker's children (including natural children, adopted children, and stepchildren) or dependent grandchildren (including stepgrandchildren) may be eligible for benefits based on the earnings record of the Worker. For a living Worker, the information below applies to this month or to any of the past 12 months. For a deceased Worker, the information below applies to the date of death or for any period since the Worker's death. Also list any student who is between the ages of 18 and 23 if the student was both: 1) previously entitled to Social Security benefits on any Social Security record for August 1981, and 2) was also in full-time attendance at a post-secondary school for May 1982.

LIST BELOW ALL SUCH CHILDREN (IN ORDER OF BIRTH BEGINNING WITH THE OLDEST) who are now, or who were at the appropriate time (above), UNMARRIED and: • UNDER AGE 18 • AGE 18 TO 19 (OR TO AGE 23 FOR MONTHS PRIOR TO AUGUST 1982) AND ATTENDING SECONDARY SCHOOL • DISABLED OR HANDICAPPED (age 18 or over and disability began before age 22)	Check (✓) Sex of Child		Date of Birth (Mo., day, yr.)	Check (✓) if Child 17 or Older is:		Check (✓) the Column That Shows Child's Relationship to Worker					CHILD'S SOCIAL SECURITY NUMBER
	M	F		Student	Disabled	Legitimate	Adopted	Stepchild	Dependent Grandchild	Other	
FULL NAME OF CHILD											___/__/____
											___/__/____
											___/__/____
											___/__/____
											___/__/____
											___/__/____

If you do not wish to be payee for any child or dependent grandchild named above, list the child's name and address in "Remarks" on page 5. You may apply for a child even though you do not wish to be payee for the child's benefits.

4.	If any children in item 3 are stepchildren of the Worker, enter the date the Worker married the natural parent. →	MONTH, DAY, YEAR
5.	(a) Is there a legal representative (guardian, conservator, curator, etc.) for any of the children in item 3? →	☐ Yes (If "Yes," complete (b) and (c).) ☐ No (If "No," go on to item 6.)

(b) Write the following information about the legal representative(s):	NAME *(First name, middle initial, last name)*	TELEPHONE NUMBER (INCLUDE AREA CODE)
	ADDRESS	

(c) Briefly explain the circumstances which led the court to appoint a legal representative.

6. Are you the natural or adoptive parent of the person(s) for whom you are filing? ☐ Yes ☐ No

7. Have any children in item 3 ever been adopted by someone other than the Worker? (If "Yes," enter the following information): → ☐ Yes ☐ No

Name of Child	Date of Adoption	Name of Person Adopting

8. Are all the children in item 3 now living in the same household with you? (If "No," enter the following information about each child not living with you. If uncertain as to the whereabouts of any of these children, explain in "Remarks".) → ☐ Yes ☐ No

Name of Child Not Living With You	Person With Whom Child Now Lives	
	Name and Address	*Relationship to Child*

9. Has any child in item 3 ever been married? *(If "Yes," enter the information requested below.)* → ☐ Yes ☐ No

Name of Child	Date of Marriage (Month, day, year)
How Marriage Ended (If still married, write "not ended")	Date Marriage Ended (Month, day, year)

10. Has anyone ever before filed an application with the Social Security Administration for monthly benefits on behalf of any child in item 3? (If "Yes," enter below the name(s) of the child(ren) and the name(s) and Social Security number(s) of the person(s) on whose earnings record any other claim was based.) → ☐ Yes ☐ No

Name of Child	Name of Worker	Social Security Number of Worker
		__ __ __/__ __/__ __ __ __
		__ __ __/__ __/__ __ __ __
		__ __ __/__ __/__ __ __ __
		__ __ __/__ __/__ __ __ __

If you are applying ONLY for a child age 18 or over who is disabled, omit items 11 through 14. In all other cases, answer items 11 through 14.

EARNINGS INFORMATION FOR LAST YEAR (Do not complete if the Worker died this year)

11. (a) Did any child in item 3 earn more than the exempt amount last year? *(If "Yes," answer (b). If "No," go on to item 12.)* ☐ Yes ☐ No

(b) NAME OF CHILD WHO EARNED OVER THE EXEMPT AMOUNT LAST YEAR	TOTAL EARNINGS OF CHILD	LIST EACH MONTH THAT CHILD DID NOT EARN MORE THAN $ _____ IN WAGES AND DID NOT PERFORM SUBSTANTIAL SERVICES IN SELF-EMPLOYMENT
	$	
	$	
	$	

EARNINGS INFORMATION FOR THIS YEAR

12. (a) Do you expect the total earnings of any child in item 3 to be more than the exempt amount this year? (Count all earnings beginning with the first of this year and all anticipated earnings through the end of this year.) (If "Yes," answer (b). If "No," go on to item 13.) ☐ Yes ☐ No

(b) NAME OF CHILD WHO EXPECTS TO EARN OVER THE EXEMPT AMOUNT THIS YEAR	EXPECTED EARNINGS OF CHILD	LIST EACH MONTH (INCLUDING THE PRESENT MONTH) THAT CHILD DID NOT OR WILL NOT EARN MORE THAN $ _____ IN WAGES AND DID NOT OR WILL NOT PERFORM SUBSTANTIAL SERVICES IN SELF-EMPLOYMENT
	$	
	$	
	$	

Complete item 13 ONLY if any child is now in the last 4 months of the child's taxable year (Sept., Oct., Nov., and Dec., if the taxable year is a calendar year).

EARNINGS INFORMATION FOR NEXT YEAR

13. (a) Do you expect the total earnings of any child in item 3 to be more than the exempt amount next year? (If "Yes," answer (b).) If "No," go on to item 14.) ☐ Yes ☐ No

(b) NAME OF CHILD WHO EXPECTS TO EARN OVER THE EXEMPT AMOUNT NEXT YEAR	EXPECTED EARNINGS OF CHILD	LIST EACH MONTH THAT CHILD WILL NOT EARN MORE THAN $ _____ IN WAGES AND WILL NOT PERFORM SUBSTANTIAL SERVICES IN SELF-EMPLOYMENT
	$	
	$	
	$	

14. If any of the children for whom you are filing uses a fiscal year (one that does not end on December 31), print here the name of the child and the month the fiscal year ends. → NAME OF CHILD AND MONTH FISCAL YEAR ENDS

Complete items 15 and 16 ONLY if the Worker is living. Otherwise, go on to item 17.

15. If any children in item 3 are children adopted by the Worker, print below the name of each such child and the date of adoption by the Worker.

NAME OF ADOPTED CHILD	DATE OF ADOPTION

Turn to page 4)

16. Have all of the children in item 3 lived with the Worker during each of the last 13 months (counting the present month)? (If "No," enter the information requested below.) ☐ Yes ☐ No

NAME OF CHILD WHO DID NOT LIVE WITH THE WORKER IN EACH OF THE LAST 13 MONTHS	LIST EACH MONTH IN WHICH THIS CHILD DID NOT LIVE WITH THE WORKER	PERSON WITH WHOM CHILD LIVED	
		NAME AND ADDRESS	RELATIONSHIP TO CHILD

PART II—INFORMATION ABOUT THE DECEASED. Complete items 17 through 26 ONLY if the Worker is deceased. Otherwise, go on to the Signature block.

17. (a) Print date of birth of Worker — MONTH, DAY, YEAR

(b) Print Worker's name at birth if different from item 1(a)

(c) Check (✓) one for the Worker ☐ Male ☐ Female

18. (a) Print date of death — MONTH, DAY, YEAR

(b) Print place of death — CITY AND STATE

19. Print the name of the state or foreign country where the Worker had a fixed, permanent home at the time of death. — STATE OR FOREIGN COUNTRY

20. Did the Worker work in the railroad industry for 7 years or more? ☐ Yes ☐ No

21. (a) Was the Worker in the active military or naval service (including Reserve or National Guard active duty or active duty for training) after September 7, 1939 and before 1968? ☐ Yes (If "Yes," answer (b) and (c).) ☐ No (If "No," go on to item 22.)

(b) Enter dates of service — FROM (month – year) | TO (month – year)

(c) Has anyone (including the Worker) received, or does anyone expect to receive, a benefit from any other Federal agency? ☐ Yes ☐ No

22. Were all the children in item 3 living with the Worker at the time of death? (If "No," enter the following information) ☐ Yes ☐ No

NAME OF CHILD NOT LIVING WITH THE WORKER	PERSON WITH WHOM CHILD WAS LIVING	
	NAME AND ADDRESS	RELATIONSHIP TO CHILD

Answer item 23 ONLY if death occurred within the last 2 years.

23. (a) About how much did the Worker earn from employment and self-employment during the year of death? — AMOUNT $

(b) About how much did the Worker earn the year before death? — AMOUNT $

24. (a) Did the Worker ever engage in work that was covered under the social security system of a country other than the United States? ☐ Yes (If "Yes," answer (b).) ☐ No (If "No," go on to item 25.)

(b) List the country(ies).

25. (a) Did the Worker ever file an application for Social Security benefits, a period of disability under Social Security, Supplemental Security Income, or hospital or medical insurance under Medicare? ☐ Yes ☐ No ☐ Unknown (If "Yes," answer (b) and (c).) (If "No" or "Unknown," go on to item 26.)

(b) Enter name of person(s) on whose Social Security record other application was filed.

(c) Enter Social Security number of person named in (b). (If "Unknown," so indicate.) — __ __ __/__ __/__ __ __ __

Answer item 26 ONLY if the Worker died prior to age 66 and within the past 4 months.

26.	(a) Was the Worker unable to work because of a disabling condition at the time of death? →	☐ Yes ☐ No (If "Yes," answer (b).)
	(b) Enter date disability began →	MONTH, DAY, YEAR

PART III—INFORMATION ABOUT THE PAYEE APPLICANT. If you want to be selected as payee for any children in item 3, answer items 27 and 28. Otherwise go on to the Signature block.

27.	Have you ever been convicted of a felony?	☐ Yes (*If "Yes," explain in "Remarks" below.*) ☐ No
28.	Are you serving, or have your ever served, as representative payee for anyone receiving a Social Security or Supplemental Security income benefit? [ ] Yes (If yes, enter SSN(s) in Remarks below.) [ ] No	

REMARKS: (You may use this space for any explanations. If you need more space, attach a separate sheet.)

An ANNUAL REPORT of earnings must be filed with the Social Security Administration within 3 months and 15 days after the end of any taxable year in which any child earns more than the yearly limit and receives some benefits in that year.

I AGREE TO FILE AN ANNUAL REPORT OF EARNINGS. THE ANNUAL REPORT IS REQUIRED BY LAW AND FAILURE TO REPORT MAY RESULT IN A MONETARY PENALTY.

BENEFITS MAY END if any of the following events occur. However, there are certain exceptions which are explained in the informational booklet which you will receive. You must report each of these events even if you believe an exception applies. We will advise you whether additional evidence is needed and how the benefits may be affected.

I AGREE TO PROMPTLY NOTIFY the Social Security Administration if any of the following events occur and to PROMPTLY RETURN ANY BENEFIT CHECK I receive to which a child is not entitled if:

- Any child MARRIES, is DIVORCED, or has a marriage ANNULMENT.
- A student, age 18 or over, STOPS ATTENDING SCHOOL, REDUCES SCHOOL ATTENDANCE BELOW FULL-TIME, CHANGES SCHOOLS OR IS PAID BY AN EMPLOYER TO ATTEND SCHOOL.
- A disabled child, age 18 or over, GOES TO WORK or the child's DISABLING CONDITION IMPROVES.
- Any child is INCARCERATED FOR CONVICTION OF A FELONY.
- I no longer have responsibility for the care and welfare of any child for whom I am filing.
- Any child for whom I am filing or who is in my care dies, leaves my care or custody, or changes address.

I UNDERSTAND that all payments made to me on behalf of a child must be spent for the child's present needs or (if not present needed) saved for the child's future needs, and I AGREE to use the benefits that way. I will be held personally liable for repayment of benefits I receive if I misuse the payment or if I am found at fault with respect to an overpayment of such benefits.

I AGREE TO NOTIFY THE SOCIAL SECURITY ADMINISTRATION AS SOON AS I BELIEVE I WILL NO LONGER BE ABLE TO OR WISH TO ACT AS A REPRESENTATIVE PAYEE. (SUCH ADVANCE NOTIFICATION WILL ASSIST IN THE DEVELOPMENT OF AN ALTERNATE PAYEE AND WILL AVOID UNNECESSARY SUSPENSION OF PAYMENTS).

I also agree to file an accounting report of the use made of the payments when requested by the Social Security Administration.

I know that anyone who makes or causes to be made a false statement or representation of material fact in an application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal law by fine, imprisonment or both. I affirm that all information I have given in this document is true.

SIGNATURE OF APPLICANT	DATE (Month, day, year)
SIGNATURE (First name, middle initial, last name) (Write in ink) SIGN HERE ▶	TELEPHONE NUMBER(S) AT WHICH YOU MAY BE CONTACTED DURING THE DAY (INCLUDE AREA CODE) ___ ___ ___ (AREA CODE)

FOR OFFICIAL USE ONLY	Direct Deposit Payment Address *(Financial Institution)*			
	Routing Transit Number	C/S	Depositor Account Number	☐ No Account ☐ Direct Deposit Refused

Applicant's Mailing Address *(Number and street, Apt. No., P.O. Box, or Rural Route) (Enter Residence Address in "Remarks," if different.)*

City and State	ZIP Code	County *(if any)* in which you now live

Witnesses are required ONLY if this application has been signed by mark (X) above. If signed by mark (X), two witnesses to the signing who know the applicant must sign below giving their full addresses. Also, print the applicant's name in the signature block.

1. SIGNATURE OF WITNESS	2. SIGNATURE OF WITNESS
ADDRESS (Number and Street, City, State, and ZIP Code)	ADDRESS (Number and Street, City, State, and ZIP Code)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Social Security Administration ATTN: Reports Clearance Officer 1-A-21 Operations Bldg., Baltimore, MD 21235 and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0960-0010), Washington, D.C. 20503.

AN ANNUAL REPORT OF EARNINGS must be filed with the Social Security Administration within 3 months and 15 days after the end of any taxable year in which any child earns more than the yearly limit and receives some benefit payment in that year.

THE ANNUAL REPORT IS REQUIRED BY LAW AND FAILURE TO REPORT MAY RESULT IN A MONETARY PENALTY.

BENEFITS MAY END if any of the following events occur. However, there are certain exceptions which are explained in the informational booklet which you will receive. You must report each of these events even if you believe an exception applies. We will advise you whether additional evidence is needed and how the benefits may be affected.

I AGREE TO PROMPTLY NOTIFY the Social Security Administration if any of the following events occur and to PROMPTLY RETURN ANY BENEFIT CHECK I receive to which a child is not entitled if:

- Any child MARRIES, is DIVORCED, or has a marriage ANNULMENT.
- A student, age 18 or over, STOPS ATTENDING SCHOOL, REDUCES SCHOOL ATTENDANCE BELOW FULL-TIME, CHANGES SCHOOLS,OR IS PAID BY AN EMPLOYER TO ATTEND SCHOOL.
- Any child IS INCARCERATED FOR CONVICTION OF A FELONY.
- A disabled child, age 18 or over, GOES TO WORK or the child's DISABLING CONDITION IMPROVES.
- I no longer have responsibility for the care and welfare of any child for whom I am filing.
- Any child for whom I am filing or who is in my care dies, leaves my care or custody, or changes address.

I UNDERSTAND that all payments made to me on behalf of a child must be spent for the child's present needs or (if not presently needed) saved for the child's future needs, and I AGREE to use the benefits that way. I will be held personally liable for repayment of benefits I receive if they are not spent for the child or if I am found at fault with respect to an overpayment of such benefits.

Collection and Use of Information from Your Application—Privacy Act/Paperwork Act Notice

I. The Social Security Administration is authorized to collect the information on this form under sections 202(d) and 205(a) of the Social Security Act, as amended (42 U.S.C. 402(d) and 405(a)).

II. While it is not mandatory, except in the circumstances explained below, for you to furnish the information on this form to Social Security, no benefits may be paid unless an application has been received by a Social Security office. Your response is mandatory where the refusal to disclose certain information affecting your right to payment would reflect a fraudulent intent to secure benefits not authorized by the Social Security Act.

III. The information on this form is needed to enable Social Security to determine if you and your dependents are entitled to insurance coverage and/or monthly benefits, to determine if you have the necessary qualifications to serve as payee, and to administer the collection of overpayments once liability is established.

IV. Failure to provide all or part of this information could prevent an accurate and timely decision on your claim or your dependent's claim, could result in the loss of some benefits or insurance coverage, and could prevent an accurate and timely decision on your request to be selected as payee.

V. Although the information you furnish on this form is almost never used for any other purpose than stated in Part III, above, there is a possibility that in the administration of the Social Security programs or for the administration of programs requiring coordination with the Social Security Administration, information may be disclosed to another person or to another government agency as follows:

1. To enable a third party or an agency to assist Social Security in establishing rights to Social Security benefits
2. To comply with Federal laws requiring the release of information from Social Security records (e.g., to the General Accounting Office and the Veterans Administration)
3. To facilitate statistical research and audit activities necessary to assure the integrity and improvement of the Social Security programs (e.g., to the Bureau of the Census and private concerns under contract to Social Security)

RECEIPT FOR YOUR CLAIM FOR SOCIAL SECURITY CHILD'S INSURANCE BENEFITS

TELEPHONE NUMBER(S) TO CALL IF YOU HAVE A QUESTION OR SOMETHING TO REPORT	**BEFORE** YOU RECEIVE A NOTICE OF AWARD _____ (Area Code)	SSA OFFICE	DATE CLAIM RECEIVED
	AFTER YOU RECEIVE A NOTICE OF AWARD _____ (Area Code)		

Your application for Social Security benefits on behalf of the child(ren) named below has been received. You will be notified by mail as soon as a decision is made on your claim.

You should hear from us within _____ days after you have given us all the information we requested. Some claims may take longer if additional information is needed.

In the meantime, if you or any child(ren) changes address, or if there is some other change that may affect your claim, you or someone for you should report the change. The changes to be reported are listed below.

Always give us your claim number when writing or telephoning about your claim.

If you have any questions about your claim, we will be glad to help you.

CLAIMANT	SOCIAL SECURITY CLAIM NUMBER

WORKER'S NAME *(If surname differs from name of claimant(s).)*

CHANGES TO BE REPORTED AND HOW TO REPORT

FAILURE TO REPORT MAY RESULT IN OVERPAYMENTS THAT MUST BE REPAID AND IN POSSIBLE MONETARY PENALTIES

- You or any child changes mailing address for checks or residence
  To avoid delay in receipt of checks you should ALSO file a regular change of address notice with your post office.
- Any beneficiary goes outside the U.S.A. for 30 consecutive days or longer
- Any beneficiary dies or becomes unable to handle benefits
- Work Changes—On your application you told us

  _____ expected total earnings for 19 ____
  (Name of child)
  to be $ _____ .

  _____ (is) (is not) earning wages of
  (Name of child)
  more than $ _____ a month.

  _____ (is) (is not) self-employed
  (Name of child)
  rendering substantial services in a trade or business.

  (Report AT ONCE if this work pattern changes.)
- Custody Change—Report if a child for whom you are filing or who is in your care dies, leaves your care or custody, or changes address.
- Change of Marital Status—Marriage, divorce, annulment of marriage of any child
- Change in school attendance
- Any child is confined to jail, prison, penal institution, or correctional facility for conviction of a felony
- Disability Applicants
  1. The disabled adult child returns to work (as an employee or self-employed) regardless of amount of earnings
  2. The disabled adult child's condition improves
  3. The disabled adult child is incarcerated for conviction of a felony

An agency in your State that works with us in administering the Social Security disability program is responsible for making the disability decision on the child's claim. In some cases, it is necessary for them to get additional information about the child's condition or to arrange for the child to have a medical examination at Government expense.

HOW TO REPORT

You can make your reports by telephone, by mail, or in person, whichever you prefer.

WHEN A CHANGE OCCURS AFTER YOU RECEIVE A NOTICE OF AWARD, YOU SHOULD REPORT BY CALLING THE APPROPRIATE TELEPHONE NUMBER SHOWN NEAR THE TOP OF THIS PAGE.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Social Security Administration

TOE 250

Form Approved
OMB No. 0960-0014

REQUEST TO BE SELECTED AS PAYEE

FOR SSA USE ONLY							
Name or Ben. Sym.	Program	Date of Birth	Type	Gdn.	Cus.	Inst.	Nam.

FOR SSA USE ONLY

DISTRICT OFFICE DESIGNATION:

STATE AND COUNTY CODE:

PRINT name of wage earner, self-employed person, eligible SSI beneficiary, Black Lung beneficiary

ENTER SOCIAL SECURITY NUMBER

— — — / — — / — — — —

PRINT name of person or persons for whom you are applying

ENTER SOCIAL SECURITY NUMBER(S)

— — — / — — / — — — —

PRINT your name *(if different from either of the above)*

ENTER YOUR SOCIAL SECURITY NUMBER

— — — / — — / — — — —

Answer item 1 ONLY if you are the beneficiary and wish benefits paid directly to you.

1. I request that it be paid directly.

CHECK HERE ☐ and answer only item 5 before completing the signature block on page 4.

I REQUEST THAT THE SOCIAL SECURITY BENEFITS, SPECIAL AGE 72 BENEFITS, SUPPLEMENTAL SECURITY INCOME BENEFITS, OR BLACK LUNG BENEFITS FOR THE PERSON OR PERSONS NAMED ABOVE BE PAID TO ME AS REPRESENTATIVE PAYEE.

2. (a) Are you related by blood or marriage to the person(s) for whom you are filing? ☐ Yes *(If "Yes," answer (b) and go on to item 5.)* ☐ No *(If "No," go on to item 3.)*

(b) How are you related? *(For example: spouse, child, etc.)*

3. (a) Do you represent a bank, social agency, government office of institution? ☐ Yes *(If "Yes," answer (b) and (c), and then go on to item 5.)* ☐ No *(If "No," go on to item 4.)*

(b) Enter your employer identification number — — / — — — — — — — —

(c) Check (✓) below which you represent:

☐ BANK (or other financial organization) ☐ SOCIAL AGENCY ☐ PUBLIC OFFICIAL *(Representing government office other than social agency or institution)* ☐ INSTITUTION *(Check one below)*

☐ FEDERAL ☐ STATE OR LOCAL ☐ PRIVATE NON-PROFIT ☐ PRIVATE PROPRIETARY If so, is it licensed under State or local law? ☐ Yes ☐ No

4. If you answered "No" to item 2 and 3, what is your relationship to the person(s) for whom you are filing?

5. (a) Is there a legal representative *(guardian, conservator, curator, etc.)* for the person(s) for whom you are filing? ☐ Yes *(If "Yes," answer (b) and (c) below.)* ☐ No *(If "No," go on to item 6.)*

(b) Write the following information about the legal representative(s)

NAME *(First name, middle initial, last name)*	ADDRESS *(include ZIP code)*	TELEPHONE NUMBER *(include area code)*

(c) Briefly explain the circumstances which led the court to appoint a legal representative.

FORM SSA-11-BK (1-89) Destroy Prior Editions

6. (a) Is the person(s) for whom you are filing living with you or in the institution you represent? → ☐ Yes *(If "Yes," answer (b) through (f).)* ☐ No *(If "No," go on to item 7.)*

NOTE: If you are the natural or adoptive parent with custody of a minor child or childhood disability beneficiary, of the spouse with custody, or if you are already serving as the beneficiary's payee for SSA, SSI or Black Lung benefits, or if you are the conservator appointed under a voluntary conservatorship, omit the remaining items and go on to page 4.

(b) Why is he/she living with you? →

(c) Who placed him/her with you? →

(d) When was he/she placed with you? →

(e) How long will he/she be with you? →

(f) If you are not the representative of a financial organization, social agency, government office or institution, does work or other activity take you away from home? → ☐ Yes ☐ No

If "Yes," who takes care of the person for whom you are filing when you are away? → Name *(First name, middle initial, last name)*

7. (a) If the person(s) for whom you are filing is not living with you, give the following information:

NAME OF PERSON(S) NOT LIVING WITH YOU	NAME, ADDRESS AND TELEPHONE NUMBER OF PERSON OR INSTITUTION WITH WHOM HE/SHE IS NOW LIVING. *(Hereafter this person is called the custodian)*	CUSTODIAN'S RELATIONSHIP TO HIM/HER	DATE HE/SHE BEGAN LIVING WITH CUSTODIAN	
			Month	Year

(If you are an official or the representative of a financial organization or social agency, or otherwise applying in your professional capacity such as an attorney or accountant, answer (d) and go on to question 8. Otherwise, continue with (b).)

(b) Why isn't he/she living with you or in the institution you represent? →

(c) Do you visit the child(ren) or adult not living with you, send him/her clothing or other gifts, write letters, etc.? → ☐ Yes *(If "Yes," show below how often you do any of those things.)* ☐ No *(If "No," please explain under "Remarks" on page 3 how you will find out about his/her needs.)*

NAME OF PERSON	VISIT	SEND CLOTHING	MAKE OTHER GIFTS	WRITE LETTERS	OTHER *(Describe)*

(d) Do you or any other person or agency give money for his/her support? → ☐ Yes *(If "Yes," give the following information.)* ☐ No *(If "No," go on to item 8.)*

NAME OF PERSON(S)	PERSON OR AGENCY CONTRIBUTING, ADDRESS AND TELEPHONE NUMBER. SHOW "SELF" IF YOU ARE CONTRIBUTING.	HOW OFTEN CONTRIBUTIONS ARE MADE	AMOUNTS OF EACH CONTRIBUTION	DATE CONTRIBUTIONS BEGAN

Answer item 8 if you are filing on behalf of a child(ren) who is under age 18 and you are not the natural or adoptive parent.

8. (a) Does the child(ren) for whom you are filing have a living natural or adoptive parent? → ☐ Yes *(If "Yes," answer (b), (c), and (d).)* ☐ No *(If "No," go on to item 9.)*

(b) Give this parent's name, address and telephone number:

NAME OF PARENT → *(First name, middle initial, last name)*

ADDRESS OF PARENT → *(Number and street, city, State, and ZIP code)*

TELEPHONE NUMBER *(include area code)* → ( )

(c) Does this parent show interest in the child(ren)? → ☐ Yes ☐ No

EXPLAIN YOUR ANSWER →

(d) Why do you wish to have benefits paid to you instead of to the parent named above? →

Answer item 9 if you are not a relative of the person(s) for whom you are filing.

9. (a) Does the person for whom you are filing have a relative *(other than a parent named above)*? → ☐ Yes *(If "Yes" answer (b) and (c).)* ☐ No *(If "No," go to item 10.)*

(b) Give the name, address, and telephone number of this relative, and his/her relationship to the person(s) for whom you are filing.

Name of Relative → *(First name, middle initial, last name)*

Address of Relative → *(Number and street, city, State, and ZIP code)*

Telephone Number of Relative *(include area code)* → ( )

Relative's relationship to person(s) for whom you are filing. →

(c) Why do you wish to have benefits paid to you instead of to the relative named above? →

Answer item 10 ONLY if you are not applying in your professional capacity.

10. (a) Are you under age 18? → ☐ Yes *(If "Yes," show you age.)* _____ ☐ No

(b) Are you employed? → ☐ Yes ☐ No *(If "No," enter below your main source of income.)*

Main source of income →

Answer item 11 ONLY if you are a creditor (e.g., a nursing home, landlord).

11. (a) Is the person for whom you are filing indebted to you or your facility for past care or services? → ☐ Yes ☐ No *(If "Yes," answer (b) and (c).)*

(b) Amount of debt | Date(s) debt incurred | (c) Description of care or services provided in connection with this debt

12. Have you ever been convicted of a felony? ☐ Yes *(If "Yes," explain in Remarks, page 4.)* ☐ No

13. Are you serving, or have you ever served, as representative payee for anyone receiving a Social Security or Supplemental Security Income benefit?

☐ Yes *(If yes, enter SSN(s) in Remarks, page 4.)* ☐ No

REMARKS: *(This space may be used for explaining any answers to the questions. If you need more space, attach a separate sheet.)*

PLEASE READ THE FOLLOWING INFORMATION CAREFULLY BEFORE SIGNING THIS FORM

I UNDERSTAND THAT ALL PAYMENTS MADE TO ME AS REPRESENTATIVE PAYEE MUST BE SPENT FOR THE BENEFICIARY'S PRESENT NEEDS OR (IF NOT PRESENTLY NEEDED) SAVED FOR THE BENEFICIARY'S FUTURE NEEDS AND I AGREE TO USE THE PAYMENTS THAT WAY. I ALSO UNDERSTAND THAT I MAY BE HELD PERSONALLY LIABLE FOR REPAYMENT IF I MISUSE THE PAYMENTS OR IF I AM FOUND AT FAULT WITH RESPECT TO ANY OVERPAYMENT OF BENEFITS. I AGREE TO FILE AN ACCOUNTING REPORT OF THE USE MADE OF THE PAYMENTS WHEN REQUESTED BY THE SOCIAL SECURITY ADMINISTRATION.

I AGREE TO NOTIFY THE SOCIAL SECURITY ADMINISTRATION PROMPTLY WHEN ANY PERSON FOR WHOM I RECEIVE PAYMENTS DIES, LEAVES MY CUSTODY, IS LIVING ALONE OR WITH SOMEONE ELSE AND MOVES ELSEWHERE, OR WHEN I NO LONGER HAVE RESPONSIBILITY FOR SUCH PERSON'S WELFARE AND CARE. I ALSO AGREE TO COMPLY WITH THE CONDITIONS FOR REPORTING CERTAIN EVENTS (AS LISTED ON THE ATTACHED SHEET(S) WHICH I WILL MAINTAIN FOR MY RECORDS) AND FOR RETURNING CHECKS TO WHICH THERE IS NO ENTITLEMENT. WHEN AN ANNUAL REPORT OF EARNINGS IS REQUIRED, I AGREE TO FILE SUCH ANNUAL REPORT.

I ALSO AGREE TO NOTIFY THE SOCIAL SECURITY ADMINISTRATION AS SOON AS I BELIEVE I WILL NO LONGER BE ABLE TO OR WISH TO ACT AS A REPRESENTATIVE PAYEE. (SUCH ADVANCE NOTIFICATION WILL ASSIST IN THE DEVELOPMENT OF AN ALTERNATE PAYEE AND WILL AVOID UNNECESSARY SUSPENSION OF PAYMENTS.)

I know that anyone who makes or causes to be made a false statement or representation of material fact in an application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal law by fine, imprisonment or both. I affirm that all information I have given in this document is true.

SIGNATURE OF APPLICANT	Date *(Month, day, year)*
Signature *(First name, middle initial, last name) (Write in ink)* SIGN HERE ▶	Telehone Number(s) at which you may be contacted during the day __ __ __ Area Code

Mailing Address *(Number and street, Apt. No., P.O. Box, or Rural Route)*

City and State	ZIP Code	Enter Name of County *(if any)* in which you now live

Witnesses are required ONLY if this application has been signed by mark (X) above. If signed by mark (X), two witnesses to the signing who know the applicant must sign below, giving their full addresses.

1. Signature of Witness	2. Signature of Witness
Address *(Number and street, City, State, and ZIP Code)*	Address *(Number and street, City, State, and ZIP Code)*

SOCIAL SECURITY
Information for Representative Payees Who Receive Social Security Benefits

YOU MUST PROMPTLY NOTIFY THE SOCIAL SECURITY ADMINISTRATION AND PROMPTLY RETURN ANY BENEFIT CHECK YOU RECEIVE TO WHICH THE BENEFICIARY(IES) IS (ARE) NOT ENTITLED IF ANY OF THE FOLLOWING EVENTS OCCUR:

- DEATH of any beneficiary; (a Social Security beneficiary's entitlement to benefits ends with the month before the month in which the beneficiary dies).
- MARRIAGE of any person entitled to child's, widow's, mother's, father's, widower's, or parent's benefits, to wife's benefits as a divorced wife, or to special age 72 payments.
- DIVORCE or ANNULMENT of the marriage of any person entitled to wife's or husband's benefits; or to special age 72 payments;
- CHANGE IN SCHOOL ATTENDANCE of individual age 18 or over entitled to benefits as a full-time student;
- WORK by a beneficiary under age 70 for more than the annual limit (this limit changes each year and you will be kept informed of the amount) or
- WORK for more than the allowable time period by a beneficiary under age 70 living outside the United States
- Beneficiary begins to receive a GOVERNMENT PENSION or ANNUITY (from the Federal government or any State or any political subdivision thereof) or present payment changes only if the beneficiary is entitled to husband's, widower's, or divorced spouse's benefits.
- Beneficiary leaves your CUSTODY or CARE or otherwise CHANGES ADDRESS.
- A wife, husband, widow, or widower, getting benefits because caring for a son or daughter under age 16 or disabled, NO LONGER HAS A CHILD IN CARE.
- Confinement to jail, prison, penal institution, or correctional facility for conviction of a felony.

FOR A DISABILITY BENEFICIARY YOU MUST ALSO REPORT IF:

- A disabled person's MEDICAL CONDITION IMPROVES so that the beneficiary may be able to work, even if the beneficiary has not yet returned to work;
- A disabled person GOES TO WORK, whether as an employee or self-employed person;
- A disabled person (or someone on the person's behalf) applies for, or begins receiving, WORKMEN'S COMPENSATION BENEFITS, or black lung benefits paid by the U.S. Department of Labor;
- A disabled person (if now hospitalized) is DISCHARGED FROM THE HOSPITAL.
- A disabled person files an application for or begins to receive another Federal, State, or local disability benefit.

FOR A SPECIAL AGE 72 BENEFICIARY YOU MUST ALSO REPORT IF:

- A beneficiary or spouse becomes ELIGIBLE FOR PERIODIC GOVERNMENTAL PAYMENTS (pensions, annuities, retirement payments, etc.), whether from the U.S. Federal government or from the State or local government;
- A beneficiary or spouse receives SUPPLEMENTAL SECURITY INCOME or PUBLIC ASSISTANCE CASH PAYMENTS;
- A beneficiary or spouse resides outside the 50 states of the U.S., the District of Columbia, and the Northern Mariana Islands.

You must also report if YOU CHANGE YOUR MAILING ADDRESS FOR CHECKS or IF YOU CHANGE YOUR RESIDENCE.

Benefits may be affected or even end if any of the above events occur. However, there are certain exceptions which are explained in the informational booklet which you will receive. You must report each of these events, even if you believe an exception applies. We will advise you whether additional evidence is needed and how the benefits may be affected. You may make your reports by telephone, mail, or in person. It is usually quicker and easier to mail in a reporting form provided by this Social Security office.

You should also notify the Social Security Administration if you decide you will no longer be able to or wish to act as a representative payee. (Such notice will assist in better service to the beneficiary and will avoid unnecessary suspension of payments.)

A REMINDER TO PAYEE APPLICANTS

PERSON TO CONTACT ABOUT YOUR REQUEST	SSA OFFICE	DATE REQUEST RECEIVED
TELEPHONE NUMBER *(include area code)*		

RECEIPT FOR YOUR REQUEST

Your request for Social Security benefits on behalf of the individual(s) named below has been received and will be processed as quickly as possible.

You should hear from us within ____ days after you have given us all the information we requested. Some claims may take longer if additional information is needed.

In the meantime, if you change your address, or if there is some other change that may affect the benefits payable, you—or someone for you—should report the change. The changes to be reported are listed on the reverse.

Always give us the claim number of the beneficiary when writing or telephoning about the claim.

If you have any questions about this application, we will be glad to help you.

BENEFICIARY	SOCIAL SECURITY CLAIM NUMBER

Collection and Use of Information From Your Request—Privacy Act/Paperwork Act Notice

The Social Security Administration is authorized to collect the information on this form under sections (205(j), 205(a), and 1631 (a) (2) of the Social Security Act, as amended (42 U.S.C. 405(j), 405(a) and 1831 (a) (2)). While it is not mandatory, except in the circumstances explained below, for you to furnish the information on this form to Social Security, no certification of payment may be made to you until this form has been received by a Social Security office. Your response is mandatory where the refusal to disclose certain information affecting your right to payment would reflect a fraudulent intent to secure benefits not authorized by the Social Security Act. The information on this form is needed to enable Social Security to determine if you have the necessary qualifications to serve as payee. The information on this form is also needed for the administration of the Social Security program which includes the collection of overpayments once liability is established. Failure to provide all or part of this information could prevent an accurate and timely decision on your request to be selected as payee. Although the information you furnish on this form is almost never used for any other purpose than stated above, there is a possibility that in the administration of the Social Security or SSI programs, or for the administration of programs requiring coordination with the Social Security Administration, information may be disclosed to another person or to another governmental agency as follows: 1) to enable a third party or an agency to assist Social Security in establishing rights to Social Security or SSI benefits and/or coverage; 2) to comply with Federal laws requiring the release of information from Social Security records (e.g., to the General Accounting Office and the Veterans Administration); and 3) to facilitate statistical research and audit activities necessary to assure the integrity and improvement of the programs administered by SSA (e.g., to the Bureau of the Census and private concerns under contract to Social Security).

SUPPLEMENTAL SECURITY INCOME
Information for Representative Payees Who Receive Suplemental Security Income Benefits

YOU MUST NOTIFY THE SOCIAL SECURITY ADMINISTRATION PROMPTLY IF ANY OF THE FOLLOWING EVENTS OCCUR, AND RETURN PROMPTLY ANY CHECK WHICH YOU RECEIVE FOR WHICH THE BENEFICIARY(IES) IS (ARE) NOT ELIGIBLE.

- DEATH of the beneficiary or any member of the beneficiary's household; (An SSI beneficiary's elegibility to receive benefits ends with the month in which the beneficiary dies)
- CHANGE in beneficiary's household (Increase or decrease in number of people living in beneficiary's household);
- ABSENCE of any beneficiary from the U.S. *(the 50 States, the District of Columbia, and the Northern Mariana Islands)* throughout a calendar month or for at least 30 consecutive days;
- CHANGE in any beneficiary's address;
- ENTRANCE of any beneficiary into a hospital, skilled nursing facility, nursing home, intermediate care facility, or other institution;
- CHANGE in the income of the beneficiary or any member of the beneficiary's household;
- CHANGE in the resources of the beneficiary or any member of the beneficiary's household;
- MARRIAGE of the beneficiary or any member of the beneficiary's household.
- DIVORCE or ANNULMENT of the marriage of the beneficiary or any member of the beneficiary's household;
- SEPARATION of any married beneficiary;

Benefits may be affected or even end if any of the above events occur. However, there are certain exceptions which are explained in the informational booklet which you will receive. You must report each of these events even if you believe an exception applies. We will advise you whether additional evidence is needed and how the benefits may be affected.

REPORT THE FOLLOWING EVENTS FOR DISABLED OR BLIND BENEFICIARIES:

- A disabled beneficiary's MEDICAL CONDITION IMPROVES, so that the beneficiary may be able to work, even if the beneficiary has not yet returned to work;
- A disabled beneficiary GOES TO WORK, whether as an employee or self-employed person;
- A blind beneficiary's vision improves.

IF A BENEFICIARY HAS BEEN MEDICALLY DETERMINED TO BE A DRUG ADDICT OR AN ALCOHOLIC YOU MUST NOTIFY THE SOCIAL SECURITY ADMINISTRATION PROMPTLY IF THE BENEFICIARY IS NO LONGER RECEIVING TREATMENT REGULARLY AT AN APPROVED FACILITY.

Supplemental security income benefits must be used to meet the beneficiary's present needs, or if not presently needed, must be conserved for future needs. *(If benefits are conserved, you should be aware that such conserved benefits are considered resources and may affect continued eligibility for SSI benefits due to resource limitations.)*

You should also notify the Social Security Administration if you decide you will no longer be able to or wish to act as a representative payee. (Such notice will assist in better service to the beneficiary and will avoid unnecessary suspension of benefits.)

A REMINDER TO PAYEE APPLICANTS

PERSON TO CONTACT ABOUT YOUR REQUEST	SSA OFFICE	DATE REQUEST RECEIVED
TELEPHONE NUMBER *(include area code)*		

RECEIPT FOR YOUR REQUEST

Your request for Supplemental Security Income benefits on behalf of the individual(s) named below has been received and will be processed as quickly as possible.

You should hear from us within ____ days after you have given us all the information we requested. Some claims may take longer if additional information is needed.

In the meantime, if you change your address, or if there is some other change that may affect the benefits payable, you—or someone for you—should report the change. The changes to be reported are listed on the reverse.

Always give us the claim number of the beneficiary when writing or telephoning about the claim.

If you have any questions about this application, we will be glad to help you.

BENEFICIARY	SUPPLEMENTAL SECURITY INCOME CLAIM NUMBER

Collection and Use of Information From Your Request—Privacy Act/Paperwork Act Notice

The Social Security Administration is authorized to collect the information on this form under sections (205(j), 205(a), and 1631 (a) (2) of the Social Security Act, as amended (42 U.S.C. 405(j), 405(a) and 1831 (a) (2)). While it is not mandatory, except in the circumstances explained below, for you to furnish the information on this form to Social Security, no certification of payment may be made to you until this form has been received by a Social Security office. Your response is mandatory where the refusal to disclose certain information affecting your right to payment would reflect a fraudulent intent to secure benefits not authorized by the Social Security Act. The information on this form is needed to enable Social Security to determine if you have the necessary qualifications to serve as payee. The information on this form is also needed for the administration of the Social Security program which includes the collection of overpayments once liability is established. Failure to provide all or part of this information could prevent an accurate and timely decision on your request to be selected as payee. Although the information you furnish on this form is almost never used for any other purpose than stated above, there is a possibility that in the administration of the Social Security or SSI programs, or for the administration of programs requiring coordination with the Social Security Administration, information may be disclosed to another person or to another governmental agency as follows: 1) to enable a third party or an agency to assist Social Security in establishing rights to Social Security or SSI benefits and/or coverage; 2) to comply with Federal laws requiring the release of information from Social Security records (e.g., to the General Accounting Office and the Veterans Administration); and 3) to facilitate statistical research and audit activities necessary to assure the integrity and improvement of the programs administered by SSA (e.g., to the Bureau of the Census and private concerns under contract to Social Security).

BLACK LUNG BENEFITS
Information for Representative Payees Who Receive Black Lung Benefits

YOU MUST PROMPTLY NOTIFY THE SOCIAL SECURITY ADMINISTRATION AND PROMPTLY RETURN ANY BENEFIT CHECK YOU RECEIVE TO WHICH THE BENEFICIARY(IES) IS (ARE) NOT ENTITLED IF ANY OF THE FOLLOWING EVENTS OCCUR:

- DEATH of any beneficiary;
- Benefit payments are made under a STATE WORKMEN'S COMPENSATION (including occupational disease) law or plan based on the miner's disability, or any change in the amount of such benefits;
- The miner received or is receiving UNEMPLOYMENT INSURANCE;
- Any beneficiary IS WORKING OR RETURNS TO WORK, whether as an employee or self-employed person;
- A person entitled to child's, widow's, brother's or sister's benefits MARRIES OR REMARRIES, or in the case of the brother or sister, begins to RECEIVE SUPPORT PAYMENTS from his/her spouse;
- Any entitled child is legally ADOPTED;
- A disabled child, sister, or brother's MEDICAL CONDITION IMPROVES;
- A child, sister, or brother 18 TO 23, STOPS ATTENDING SCHOOL.

You must also report if YOU CHANGE YOUR MAILING ADDRESS FOR CHECKS or IF YOU CHANGE YOUR RESIDENCE.

Benefits may be affected or even end if any of the above events occur. However, there are certain exceptions which are explained in the informational booklet which you will receive. You must report each of these events, even if you believe an exception applies. We will advise you whether additional evidence is needed and how the benefits may be affected. You may make your reports by telephone, mail, or in person. It is usually quicker and easier to mail in a reporting form provided by this Social Security office.

You should also notify the Social Security Administration if you decide you will no longer be able to or wish to act as a representative payee. (Such notice will assist in better service to the beneficiary, and will avoid unnecessary suspension of payments.)

Public Reporting Burden

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Social Security Administration ATTN: Reports Clearance Officer 1-A-21 Operations Bldg., Baltimore, MD 21235 and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0960-0014), Washington, D.C. 20503.

A REMINDER TO PAYEE APPLICANTS

PERSON TO CONTACT ABOUT YOUR REQUEST	SSA OFFICE	DATE REQUEST RECEIVED
TELEPHONE NUMBER *(include area code)*		

RECEIPT FOR YOUR REQUEST

Your request for Black Lung benefits on behalf of the individual(s) named below has been received and will be processed as quickly as possible.

You should hear from us within ____ days after you have given us all the information we requested. Some claims may take longer if additional information is needed.

In the meantime, if you change your address, or if there is some other change that may affect the benefits payable, you—or someone for you—should report the change. The changes to be reported are listed on the reverse.

Always give us the claim number of the beneficiary when writing or telephoning about the claim.

If you have any questions about this application, we will be glad to help you.

BENEFICIARY	BLACK LUNG CLAIM NUMBER

Collection and Use of Information From Your Request—Privacy Act/Paperwork Act Notice

The Social Security Administration (SSA) is authorized to collect the information on this form under Section 412(a) of the Federal Mine Safety and Health Act as amended (42 USC 401 and 402). While it is not mandatory, except in the circumstances explained below, for you to furnish the information on this form to Social Security, no certification of payment may be made to you until this completed form has been received by a Social Security office. Your response is mandatory where the refusal to disclose certain information affecting your right to payment would reflect a fraudulent intent to secure benefits not authorized by the Federal Mine Safety and Health Act. The information on this form is needed to enable SSA to determine if you have the necessary qualifications to serve as payee. The information on this form is also needed for the administration of the Social Security program which includes the collection of overpayments once liability is established. Failure to provide all or part of this information could prevent an accurate and timely decision on your request to be selected as payee. Although the information you furnish on this form is almost never used for any other purpose than stated above, there is a possibility that in the administration of various programs, information may be disclosed to another person or to another government agency only with respect to Social Security and/or black lung programs, and to comply with Federal laws requiring the exchange of information between SSA and another agency.

[FR Doc. 88-29502 Filed 12-22-88; 8:45 am]
BILLING CODE 4150-04-C

National Institutes of Health

Division of Research Resources; Biomedical Research Support Subcommittee of the General Research Support Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Research Support Subcommittee (BRSS) of the General Research Support Review Committee (GRSRC), Division of Research Resources (DRR), National Institutes of Health, February 27, 1989, Building 31C, Room 2C15, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on February 27, from 9:30 a.m. to adjournment to discuss program policies, the Minority High School Student Research Apprentice Program, the Biomedical Research Support Grant Program, and the Biomedical Research Support Shared Instrumentation Grant Program. Attendance by the public will be limited to space available.

The Information Officer, Division of Research Resources, Room 5B10, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the Subcommittee members upon request.

Dr. John A. Beisler, Executive Secretary, Biomedical Research Support Subcommittee of the General Research Support Review Committee, (301) 496–6743, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalouge of Federal Domestic Assistance Program No. 13.337, Biomedical Research Support, National Institutes of Health).

Dated: December 15, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–29463 Filed 12–22–88; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given to amend the notice of the Board of Scientific Counselors, Division of Cancer Prevention and Control meeting which was published in the **Federal Register** (53 FR 48982) on December 5, 1988.

The Board originally scheduled for a two day meeting now will be held on January 26 only from 8:30 a.m. to adjournment in Building 1, Wilson Hall, 3rd Floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Dated: December 15, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–29460 Filed 12–22–88; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Arthritis and Musculoskeletal and Skin Diseases; National Arthritis Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Arthritis Advisory Board on January 30, 1989, 8:30 a.m. to approximately 5 p.m., at the Crystal Gateway Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the National effort to combat arthritis and musculoskeletal and skin diseases. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. John R. Abbott, Executive Director, National Arthritis Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–0801, will provide on request an agenda and roster of members. Summary minutes of the meeting may also be obtained by contacting his office.

Dated: December 15, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88–29461 Filed 12–22–88; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Planning Subcommittee of the Board of Regents of the National Library of Medicine; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine on January 13 and 14, 1989, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m. on January 13, and from 9:00 a.m. to adjournment on January 14. In this second one of three planning meetings, the subcommittee will continue discussions on the Outreach Programs of the National Library of Medicine—how the Library can fully inform health care professionals of its products and services, and how to establish a permanent user feedback mechanism. Attendance by the public will be limited to space available.

Ms. Susan P. Buyer Slater, Deputy Assistant Director for Planning and Evaluation of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, telephone 301–496–2311, will provide a summary of the meeting, a roster of subcommittee members, and substantive program information upon request.

Date: December 15, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–29462 Filed 12–22–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–08–4111–15; WYW104520]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW104520 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in sections 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW104520 effective June 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 88–29455 Filed 12–22–88; 8:45 am]

BILLING CODE 4310–22–M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: The O.M. Scott & Sons Company, 14111 Scottslawn Road, Marysville, OH 43041.

2. Wholly-owned subsidiary which will participate in the operations:

Hyponex Corporation, Delaware
Hyponex Corporation-Florida, Florida
Hyponex Corporation-Texas, Texas
Hyponex Corporation-California, California
Bunyon Enterprises, Inc., Georgia
The Hyponex Company, Inc., Georgia
Bunyon Trucking Company, Inc., Georgia
Hyper Humus Company, Inc., New Jersey
Hyponex Corporation-Colorado, Colorado
Hyponex Corporation-Missouri, Missouri
F.F. Smith & Co., Inc., California
Sequoia Chemical Corporation, California
Old Fort Financial Corp., Delaware

Noreta R. McGee,

Secretary

[FR Doc. 88-29504 Filed 12-22-88; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 290 (Sub No. 5) (89-1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved the first quarter 1989 rail adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter RCAF is 1.046, an increase of 0.6 over the fourth quarter RCAF of 1.040. Maximum first quarter RCAF rate levels may not exceed 100.6 percent of maximum fourth quarter 1988 RCAF rate levels.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT:

William T. Bono, (202) 275-7354
Robert C. Hasek, (202) 275-0938
TDD for hearing impaired, (202) 275-1721

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289-4357 or 4359. Assistance for the hearing impaired is available through TDD services (202) 275-1721.

This action will not significantly affect either the quality of the human environment or energy conservation. It will not have a significant impact on a substantial number of small entities.

Decided: December 15, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88-29503 Filed 12-22-88; 8:45 am]

BILLING CODE 7035-01-M

[I.C.C. Order No. P-98]

Passenger Train Operation; Burlington Northern Railroad Co. et al.

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Seattle, Washington and Chicago, Illinois. The operation of these trains requires the use of the tracks and other facilities of Soo Line Railroad Company (Soo). A portion of the Soo tracks near Wisconsin Dells, Wisconsin, are temporarily out of service because of a derailment. An alternate route is available via Burlington Northern Railroad Company (BN) and Chicago Central & Pacific Company (CC) between La Crosse, Wisconsin and Chicago, Illinois.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), Burlington Northern Railroad Company (BN) and Chicago Central & Pacific Railroad Company (CC) are directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between La Crosse, Wisconsin and Union Station, Chicago, Illinois.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 10:00 a.m., (EST), November 9, 1988.

(e) *Expiration date.* The provision of this order shall expire at 10:00 a.m., (EST), November 11, 1988, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Burlington Northern Railroad Company, Chicago Central & Pacific Railroad Company and upon the National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, November 9, 1988.

Decided by: William J. Love, Agent.

Noreta R. McGee,

Secretary.

[FR Doc. 88-29505 Filed 12-22-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31363]

Blackstone Capital Partners L.P. et al.; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts Blackstone Capital Partners L.P., Blackstone Transportation Partners L.P. (jointly Blackstone) and USX Corporation (USX) from the prior approval requirements of 49 U.S.C. 11343 and from the requirements of 49 U.S.C. 11321 to allow USX to transfer control of

eight regulated carriers (seven rail and one water) to Blackstone. The Commission further finds that the proposal will not violate 49 U.S.C. 10746.

DATES: The exemption will be effective on December 28, 1988. Petitions for reconsideration must be filed by January 12, 1989.

ADDRESSES: Send an original and 10 copies of pleadings referring to Finance Docket No. 31363 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioners' representatives: John W. Barnum, Ann D. Smith, White & Case, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired (202) 275–1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: December 19, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88–29507 Filed 12–22–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31372]

Buffalo & Pittsburgh Railroad, Inc.; Operation Exemption; Lucerne Branch in Pennsylvania

Buffalo & Pittsburgh Railroad, Inc. (B&P) has filed a notice of exemption to operate a 1.86-mile line of railroad between milepost 0.00 at Lucerne Junction, PA asnd milepost 1.86 at Lucerne Mine, PA (the Lucerne Branch). The line was previously abandoned by CSX Transportation, Inc. (CSXT).[1] B&P purchased the Lucerne Branch from CSXT by agreement dated July 18, 1988. It intends to reactivate and operate the line on the effective date of the exemption.

Any comments must be filed with the Commission and served on Charles D. Cramton, Harter, Esq., Secrest & Emery, 700 Midtown Tower, Rochester, NY 14604.[2]

This notice is filed under 49 CFR 1150.31.[3] If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.

The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 16, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–29441 Filed 12–22–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31380]

Consolidated Rail Corp.; Trackage Rights Exemption; Terminal Railroad Association of St. Louis

The Terminal Railroad Assocation of St. Louis (TRRA) has agreed to grant overhead trackage rights to Consolidated Rail Corporation (Conrail) between the connection of TRRA and Conrail trackage at Q Interlocking, at or near Missouri Avenue in East St. Louis, IL, and a point south of Q Tower, near M&O junction in East St. Louis, that connects with trackage of Chicago, Missouri and Western Railway (CM&W), a distance of 0.85 miles. The trackage rights were to have become effective on December 12, 1988.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: December 19, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–29445 Filed 12–22–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31313]

Consolidated Rail Corp.; Trackage Rights Exemption; Panther Valley Railroad and Schuylkill County Rail Transport Authority

The Panther Valley Railroad (PVAL) and Schuylkill County Rail Transport Authority (Authority) have agreed to grant overhead trackage rights to Consolidated Rail Corporation (Conrail) between the connection of Conrail's Shimer Running Track and track operated by PVAL, at York Junction, PA (milepost 148.3), and the connection of PVAL's track and Conrail's Beaver Brook Colliery Branch, a distance of approximately 1,100 feet. The track is owned by the Authority and operated by PVAL. The trackage rights were to have become effective on November 30, 1988.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: December 16, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–29442 Filed 12–22–88; 8:45 am]

BILLING CODE 7035–01–M

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[1] *See* Docket No. AB–19 (Sub-No. 110A), *Buffalo, Rochester and Pittsburgh Railway Company and the Baltimore and Ohio Railroad Company—Abandonment and Discontinuance—In Indiana County, PA* (not printed), served January 31, 1986.

[2] The Railway Labor Executives' Association (RLEA) and the United Transportation Union (UTU) filed an unsupported request for labor protection, claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. OUC replied, seeking denial of the request. Since this transaction involves an exemption from 49 U.S.C. 10901, only a showing of exceptional circumstances will justify the imposition of labor protective conditions. RLEA's and UTU's request is denied because the requisite showing has not been made. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810 (1985).

[3] Although B&P is a Class II railroad, no new Class I or II railroad would be created by this transaction. Therefore, it is properly classified under 49 CFR 1150.33(h) and subject to the procedures at 49 CFR 1150.32–1150.34 and not to the procedures of § 1150.35. *Class Exemption—Acq. & Oper. R. Lines under 49 U.S.C. 10901*, 4 I.C.C.2d 309 (1988). B&P did not certify that projected revenues for the Lucerne Branch do not exceed those that would qualify it as a Class III carrier as required by 49 CFR 1150.33(h). However, it is obvious that they do not because the line to be operated was previously abandoned and generates no revenues.

[Finance Docket No. 31368]

Florida Northern Railroad Co., Inc.; Acquisition and Operation Exemption; Certain Rail Lines of CSX Transportation, Inc.

Florida Northern Railroad Company, Inc. (FN), a non-carrier, has filed a notice of exemption to acquire and operate approximately 27 miles of railroad of CSX Transportation, Inc. (CSXT), located in Florida. The lines extend from: (a) Milepost AS–756.69, near Lowell, FL, to milepost AS–781.20, near Candler, FL (24 miles); and (b) from milepost ARC–793.68, near Ocala, FL, to milepost ARC–791.00, also near Ocala (3 miles). The agreement for transfer of the lines between FN and CSXT was to be consummated on or before November 28, 1988.

A transaction relating to the continuance in control of FN by the Pinsly Railroad Company is the subject of a notice of exemption filed concurrently in Finance Docket No. 31369, *Pinsly Railroad Company—Continuance in Control Exemption—Florida Northern Railroad Company, Inc.* Any comments must be filed with the Commission and served on Robert L. Calhoun, Sullivan & Worcester, Suite 806, 1025 Connecticut Avenue NW., Washington, DC 20036, and David W. Hemphill, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

N&W must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines, under 49 U.S.C. 10901*, 4 I.C.C.2d 305 (1988). [1]

Decided: December 16, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–29439 Filed 12–22–88; 8:45 am]

BILLING CODE 7035–01–M

[1] FN has certified that CSXT has identified such sites and structures to the Florida State Historic Preservation Officer.

[Finance Docket No. 31369]

Pinsly Railroad Co.; Continuance in Control Exemption; Florida Northern Railroad Co., Inc.

Pinsly Railroad Company (Pinsly) has filed a notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of the Florida Northern Railroad Company, Inc. (FN) upon the commencement of rail operations by FN. Pinsly controls four class III railroads: the Greenville and Northern Railway Company (G&N), the Pioneer Valley Railroad Company (PV), the Florida Central Railroad Company (FC), and the Florida Midland Railroad, Inc. (FM).

FN, a wholly-owned noncarrier subsidiary of Pinsly, has filed concurrently a notice of exemption in Finance Docket No. 31368, *Florida Northern Railroad Company, Inc.—Acquisition and Operation Exemption—Certain Rail Lines of CSX Transportation, Inc.* There, FN seeks an exemption under 49 CFR 1150.31 to purchase and operate approximately 27 miles of railroad of CSX Transportation, Inc., located near Lowell, Candler, and Ocala, FL.

Pinsly indicates that: (1) G&N, PV, FC, FM, and FN will not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. Therefore, this transaction involves the continuance in control of a nonconnecting carrier, and is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Robert L. Calhoun, Sullivan & Worcester, Suite 806, 1025 Connecticut Avenue NW., Washington, DC 20036.

Decided: December 16, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–29440 Filed 12–22–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31378; Finance Docket No. 31378 (Sub-No. 1)]

Shamokin Valley Railroad Co. et al.; Operation Exemption; Certain Lines of SEDA–COG Joint Rail Authority in Pennsylvania

The Shamokin Valley Railroad Company (Shamokin) and the Nittany and Bald Eagle Railroad Company (N&BE) have filed a joint notice of exemption: (1) To operate lines of the SEDA–COG Joint Rail Authority (SEDA–COG); (2) for overhead trackage rights; and (3) for the continuance in control of Shamokin by Richard D. Robey. Shamokin and N&BE are Pennsylvania corporations formed by Mr. Richard D. Robey to perform rail services under operating agreements with SEDA–COG. On or about December 1, 1988, SEDA–COG acquired certain abandoned lines of railroad in central Pennsylvania from the Consolidated Rail Corporation (Conrail). At that time, Shamokin and N&BE began operating over the lines acquired by SEDA–COG. Conrail agreed to grant overhead trackage rights to Shamokin and N&BE in order that these carriers can interchange freight with the Conrail system.

In Finance Docket No. 31378, Shamokin has filed for an exemption to operate rail lines previously abandoned by Conrail and acquired by SEDA–COG. These lines are located in Northumberland County, PA, and extend: (1) From a point at or near milepost 13.2 (station 697+0) of Paxinos Industrial Track to the end of ownership in the Borough of Shamokin at or near milepost 18.3 (station 967+50); (2) from Locust Gap Junction at or near milepost 24.3 (station 1281+50) to Sagon Junction at or near milepost 25.86 (station 1366+45.8); (3) from Carbon Run Junction in the Borough of Shamokin at or near milepost 0.02 (station 1+25) of the Carbon Run Industrial Track to the end of ownership at or near milepost 1.46 (station 77+50); (4) from a point at or near milepost 131.0 (station 6916+80) west of Mt. Carmel Junction to the east line of Third Street and the connection with the Buffalo line in the City of Sunbury, PA, at or near milepost 156.31 (station 8250+17).

In addition, SEDA–COG acquired from Conrail certain previously abandoned lines of railroad located in Centre, Clinton, and Blair Counties, PA (referred to as the Bald Eagle Branch). N&BE has filed for an exemption to operate the Bald Eagle Branch. The line extends from Milesburg, PA, at or near milepost 34.6 (station 1827+82) to Mill Hall, PA, at or near milepost 51.5.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab intio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

In Finance Docket No. 31378 (Sub-No. 1), Mr. Robey, an individual in control of two carriers, N&BE and the Northshore Railroad Company (Northshore),[1] has filed for an exemption under 49 CFR 1180.2(d)(2) and 1180.4(g) regarding his continuance in control of Shamokin. He indicated that: (1) The railroads will not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. Therefore, this transaction involves the continuance in control of a nonconnecting carrier and is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this continuance in control exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock. Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

This notice is filed under § 1180.2(d)(2). Petitions to revoke this continuance in control exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Also in Finance Docket No. 31378 (Sub-No. 1), Conrail has agreed to grant overhead trackage rights to Shamokin and N&BE. Trackage rights to Shamokin have been granted between milepost 131.0 through Mt. Carmel Junction to interchange with Conrail at Sunbury. Conrail has agreed to grant overhead trackage rights to N&BE between Mill Hall, PA, and Lock Haven, PA, on the Bald Eagle Branch.

As a condition to the use of this trackage rights exemption, any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 16, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-29443 Filed 12-22-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-292 (Sub-No. 2X)]

Alabama & Florida Railroad Co., Inc.; Abandonment Exemption; Covington and Geneva Counties, AL

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 1.7-mile line of railroad: (a) Between milepost 597.04 and milepost 597.85 at Opp, AL; and (b) between milepost 624.40 and milepost 625.30 at Geneva, AL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 22, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 3, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by January 12, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Kevin M. Sheys, Weiner, McCaffrey, Brodsky & Kaplan, P.C., 1350 New York Avenue NW., Suite 800, Washington, DC 20005-4797.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 28, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 16, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-29444 Filed 12-22-88; 8:45 am]

BILLING CODE 7035-01-M

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[1] The control by Mr. Robey of N&BE and Northshore was approved by the Commission in Finance Docket No. 30543, *Nittany and Bald Eagle Railroad Company and Northshore Railroad Company—Exemption from 49 U.S.C. 11343* (not printed), served August 22, 1984.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdication to do so.

[Docket No. AB-6 (Sub-No. 306X)]

Burlington Northern Railroad Co.; Abandonment Exemption Between Fort Collins and Laporte, In Larimer County, Co

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 4.0-mile line of railroad between milepost 75.00 near Fort Collins and milepost 79.00 near LaPorte, in Larimer County, Co.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 22, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 3, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by January 12, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Ethel A. Allen, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 28, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 16, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-29438 Filed 12-22-88; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Docket No. AB-6 (Sub-No. 304)]

Burlington Northern Railroad Co.; Abandonment Between Sutton And Clay Center In Clay County, NE

The Commission has issued a certificate and decision authorizing Burlington Northern Railroad Company to abandon its 11.78 miles of rail line between milepost 106.46 near Sutton and milepost 94.68 near Clay Center in Clay County, NE. The abandonment certificate will become effective January 23, 1989, unless within 15 days after publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than January 3, 1989. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: December 19, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88-29506 Filed 12-22-88; 8:45am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Consent Decree in Action to Enjoin Discharge of Water Pollutants; Clearwater, FL, et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19020, notice is hereby given that a consent decree in *United States* v. *City of Clearwater, Florida, et al.*, Civil Action No. 88-1970-CIV-T-15B , was lodged with the United States District Court for the Middle District of Florida, Tampa Division, on December 15, 1988. The consent decree establishes a compliance schedule for the City of Clearwater's three publicly owned wastewater treatment facilities, known as the Marshall Street, East and Northeast Pollution Control Facilities, to bring them into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, the applicable National Pollutant Discharge Elimination System Permits, and the applicable regulations relating to the discharge of pollutants. The consent decree also requires payment of a civil penalty of $300,000. The consent decree calls for the City of Clearwater to achieve compliance by October 1, 1990.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC 20530 and should refer to *United States* v. *City of Clearwater, Florida, et al.*, D.J. Ref. No. 90-5-1-1-3015.

The consent decree may be examined at the office of the United States Attorney, Middle District of Florida, Robert Timberlake Bldg., Rm. 410, 500 Zack Street, Tampa, Florida 33602 and at the Region IV office of the

Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. A copy may be obtained by mail by written request to the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice. In requesting a copy, please enclose a check in the amount of $2.60 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-29456 Filed 12-22-88; 8:45 am]

BILLING CODE 4410-01-M

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act Proposed Program Priorities

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of Proposed FY 1989 Research, Demonstration, and Service Program Priorities and Merit Selection Criteria under the Missing Children's Assistance Act.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing, for comment, a Notice of FY 1989 proposed program priorities for making grants and contracts under the Missing Children's Assistance Act, title IV, section 405, of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention amendments of 1988, subtitle F of title VII of Pub. L. 100-690, November 18, 1988.

DATE: Comments are due on or before February 24, 1989.

ADDRESS: Send comments to Verne L. Speirs, Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531, (202) 724-7751.

FOR FURTHER INFORMATION CONTACT: Mary Witten Neal, Director, Missing Children's Program, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531, (202) 724-7655.

SUPPLEMENTARY INFORMATION: Responsibility for establishing annual research, demonstration, and service program priorities and criteria for making grants and contracts pursuant to section 405 of the Missing Children's Assistance Act rests with the Administrator of the Office of Juvenile Justice and Delinquency Prevention. For FY 1989, the continued funding of three programs through assistance awards will constitute all proposed section 405 priority funding areas. The Administrator is hereby announcing these proposed priorities, specifying merit and performance criteria to be applied in their review and inviting public comment on them for sixty days.

The following criteria, based on merit, will be considered in assessing the three noncompeting continuation awards (a noncompeting continuation grant is a grant made in support of a new budget period within an approved and existing project period):

(1) The results of title IV funding under the recipient's current award justify further program activity;

(2) The recipient has promptly submitted all required reports;

(3) Adequate grantor agency funds are available to support the project;

(4) The recipient has shown satisfactory progress in achieving the objectives of the project and has met all material terms and conditions of the award;

(5) The recipient's management practices have provided adequate stewardship of grantor agency funds; and

(6) Any other reason that would indicate continued funding would be in the best interest of the Government.

Listed below are programs currently funded under section 405 of the Missing Children's Assistance Act that are proposed as continuing program priorities for FY 1989 under their existing project period grants.

The Child Victim as Witness Research and Development Program

This program implements and tests new strategies to be used to improve court policies and practices for handling child victim witnesses (section 405(a)(6)).

Families of Missing Children: Psychological Consequences and Promising Interventions

The purpose of this project is to increase our knowledge of, and develop effective treatment alternatives for, the psychological consequences of families with missing and exploited children (section 405(a)(4) (A) and (B)).

Reunification of Missing Children

The purpose of this development initiative is to identify promising or effective strategies to assist families in adjusting to the return of a missing child (section 405 (a)(7)).

Dated: December 20, 1988.

Verne L. Speirs,

Administrator, Office Of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88-29528 Filed 12-22-88; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer,

Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration
Trade Adjustment Assistance (TAA Financial Status/Request for Funds Report)
New; ETA 9023
On Request
State or local governments
50 respondents; 500 total hours; 2 hours per response; 1 form

The Department of Labor requires financial data for the Trade Adjustment Assistance (TAA) program administered by States which are not available from the Standard Form 269A. The required data are necessary in order to meet statutory requirements prescribed in Pub. L. 100–418, the Omnibus Trade and Competitiveness Act of 1988.

Departmental Management
Compliance Information Report/Nondiscrimination-Handicapped 29 CFR Parts 31 and 32
State and local governments

Approximately 30 respondents reviewed annually; 1,585.5 hours (recordkeeping and reporting); 53 hours per response; no forms; in addition, 5401 grantees/subgrantees maintain records annually; 119,904 hours (recordkeeping); 22 hours per entity.

The Directorate of Civil Rights has responsibility for developing, implementing and monitoring the Department of Labor's enforcement program under all equal opportunity (EO) and non-discrimination requirements applicable to the Department's programs of Federal financial assistance. Various EO regulatory provisions require these grantees to collect, maintain and report data on participants' characteristics, e.g., race, sex, age, etc. in order to ensure that services are provided equitably.

Revision

U.S. Department of Labor, Bureau of Labor Statistics, Office of Prices and Living Conditions Consumer Price Index Housing Survey 1220–0034;

Form No.	Affected public	Respondents	Frequency	Average time per response
BLS 222S	Renters, Managers, Owners (including business or other for profit; small businesses or organizations).	2,000	Once	2 minutes.
BLS 222I	Renters, Managers, Owners	500	Once	8 minutes.
BLS 222NC	Renters, Managers, Owners	300	Once	9 minutes.
BLS 222R	Renters, Managers, Landlords	40,000	Semiannual	8 minutes.
BLS 222R	Owners	20,000	Annual	6 minutes.
BLS 222 CATI I	Renters, Managers, Owners	9,000	Once	4.2 minutes.
BLS 222 CATI R	Renters, Managers, Owners	6,000	Semiannual	10 minutes.
BLS 222 CAPI	Renters, Managers, Owners	500	Semiannual	10 minutes.

16,433 total hours

These forms are for the Consumer Price Index Housing Survey which measures price change for the Rent and Owners' Equivalent Rent components of the Consumer Price Index, which account for 25 percent of its total weight.

Extension

Employment Standards Administration
Request from Claimant for Information on Earnings, Dual Benefits, Dependents, and Third Party Settlement
1215–0151; CA–1032
Annually
Individuals or households
38,000 respondents; 12,667 total hours, ⅓ hr. per response; 1 form

The CA–1032 is used to obtain information from claimants receiving compensation on the Division of Federal Employees' Compensation periodic disability roll. This information is necessary to ensure that the compensation being paid is correct.

Extension

Employment Standards Administration
Authorization for Release of Medical Information
1215–0057; CM–936
On occasion
Individuals or households
3,000 respondents; 250 total hours; 5 min. per response; 1 form.

This form is necessary to obtain miner medical information incurred outside of Department jurisdiction. The Privacy Act prevents hospitals, clinics, and physicians from releasing this information without prior consent.

Extension

Employment and Training Administration
Annual State WIN Plans
1205–0214; ETA 8480, 8484, 8485, 8479
Annually
State or local governments

Form No.	Affected public	Respondents	Frequency	Average time per response
ETA 8480	State/local govts.	25	Annually	10 hrs. ea.
ETA 8484	State/local govts.	25	Annually	10 hrs. ea.
ETA 8485	State/local govts.	25	Annually	10 hrs. ea.
ETA 8479	State/local govts.	25	Annually	10 hrs. ea.
Plan	State/local govts.	25	Annually	10 hrs. ea.

1,925 total hours

The State WIN Plan is the basic planning and management tool utilized by the national and regional offices to ensure State compliance with legislation, regulations, and national office goals. It is the vehicle for providing allocation levels to State agencies. Respondents are State staff.

Extension

Occupational Safety and Health Administration
Air Quality Record
On occasion
Busineses or other for profit; Small businesses or organizations
187,500 responses; 46,876 hour; 1 form, .25 hours per response

Underground construction employers are required to keep a record of air quality test results in order to identify decreasing oxygen levels or potentially hazardous concentrations of air contaminants in time to take corrective action prior to the attainment of hazardous conditions.

Signed at Washington, DC this 15th day of December, 1988.

Marizetta L. Scott,

Acting Departmental Clearance Officer.

[FR Doc. 88-29563 Filed 12-22-88; 8:45 am]

BILLING CODE 4510-24-M

Business Research Advisory Council; Renewal

In accordance with the provision of the Federal Advisory Committee Act, and after consultation with GSA, I have determined that the establishment of the Business Research Advisory Council is in the public interest in connection with the performance of duties imposed on the Department of Labor.

The Council will advise the Commissioner of Labor Statistics on technical economic and statistical matters, in the analysis of the Bureau's statistics, and on the broader aspects of its program from an informed business point of view; and provide a realistic and timely two-way communications structure between business users and providers of basic economic statistics and a major governmental statistics-producing unit.

Council membership is selected to assure a technically competent group of economists, statisticians and industrial relations experts who represent a cross section of American business and industry. The members serve in their individual capacities, not as representatives of their companies or their organizations.

The Council will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act by January 5, 1989.

Interested persons are invited to submit comments regarding renewal of the Business Research Advisory Council. Such comments should be addressed to: Janice D. Murphey, Liaison for BRAC, Bureau of Labor Statistics, Department of Labor, Room 2126, GAO Building, 441 G Street, NW., Washington, DC 20212, telephone: (202) 523-1347.

Signed at Washington, DC this 20th day of December 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc 88-29564 Filed 12-22-88; 8:45 am]

BILLING CODE 4510-24-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits hae been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Pennsylvania:
PA88-9 (Jan. 8, 1988) ..... pp. 922-923.
PA88-15 (Jan. 8, 1988) ..... p. 954.
PA88-17 (Jan. 8, 1988) ..... p. 960
PA88-23 (Jan. 8, 1988) ..... p. 1002.

Volume II

None.....

Volume III

None.....

General Wage Determination Publication

General Wage determinations issued under Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

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

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 88-29388 Filed 12-22-88; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-88-220-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, P.O. Box 2339, Zanesville, Ohio 43701 has filed a petition to modify the application of 30 CFR 77.216-3(a) (water, sediment, or slurry impoundments and impounding structures; inspection requirements; correction of hazards; program requirements) to its Broken Aro Mine (I.D. No. 33-00949), Sediment Pond No. 47 (I.D. No. 12110H80070-06) located in Coshocton County, Ohio.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all water, sediment, or slurry impoundments be examined by a qualified person designated by the person owning, operating or controlling the impounding structure at intervals not exceeding seven days for appearances of structural weakness and other hazardous conditions.

2. As an alternate method, petitioner proposes to examine the sediment pond No. 47, at their closed Broken Aro Mine, monthly and following major precipitation.

3. In support of this request, petitioner states that the facility has been inspected weekly since construction in 1980 and there has been no geometric change. The structure has an excellent vegetative cover, no signs of instability have appeared; there are no downstream hazards to miners or to the public; and the nearest building is a barn approximately a half-mile downstream. There are no miners employed at the mine except the dam inspector once a week, the dam is locked, access is blocked by cable, and the inspector has the only key.

4. Petitioner states that the 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.

Date: December 16, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances

[FR Doc. 88-29566 Filed 12-22-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-225-C]

Rickco Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Rickco Coal Company, HC 83, Box 664, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 2 (I.D. No. 15-16396) located in Knox 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 a methane monitor be installed on electric tractors used to load coal at the face. The monitor is required to be kept operative and properly maintained and frequently tested.

2. No methane has been detected in the mine.

3. The three-wheel tractors are permissible DC-powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is not in use, it is used as a man trip and supply vehicle.

4. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors. In further support of this request, petitioner states that:

(a) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly.

5. Petitioner states that the 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.

Date: December 15, 1988.

[FR Doc. 88-29567 Filed 12-22-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Federal Advisory Committee on International Exhibitions; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions will be held on January 9, 1989, from 10:00 a.m.-4:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will include the future role of the committee and guidelines.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: December 20, 1988.

Yvonne M. Sabine,

Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-29560 Filed 12-22-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-206]

Southern California Edison Co. et al.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 117 to Provisional Operating License No. DPR-13, issued to Southern California Edison Company and San Diego Gas and Electric Company (the licensees), which revised the license for operation of the San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The amendment was effective as of the date of issuance.

The amendment approves the installation of the upgraded Nuclear Implementation System, together, with modified limiting conditions for operation and surveillance requirements in the Technical Specifications for the upgraded system.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on May 18, 1988 (53 FR 17809). No request for a hearing or petition for leave to intervene was filed following this notice. The supplemented information provided by the licensees subsequent to the initial notice in the Federal Register concerned additional background on the plant, and did not alter the original application.

The Commission has prepared an Environmental Assessment related to this action which was published in the Federal Register on June 9, 1988 (53 FR 21742) and has concluded that an environmental impact statement need not be prepared because operation of the facility in accordance with this amendment will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated April 15, 1988, as supplemented October 18 and 21, and November 10, 19 and 23 (two letters), 1988, (2) Amendment No. 117 to License No. DPR-13, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of those items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland this 13th day of December 1988.

For The Nuclear Regulatory Commission.

Charles M. Trammell,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-29519 Filed 12-22-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26369; File No. SR-NYSE-88-42]

Self-Regulatory Organization; Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Monthly Expirations for Stock Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 15, 1988, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend for six months, through June 30, 1989 or until the Commission acts on the NYSE's request for approval of the pilot program, its pilot program allowing "monthly expirations" for stock options (the listing of series in stock options to assure that contracts covering four expiration months, including the two nearest-term expiration months, are always open for trading).

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In March 1987, the Commission approved a four-month extension of the Exchange's pilot program allowing monthly expirations in stock options retroactive from January 16, 1987. (*See* Rel. NO. 34–24193 (March 9, 1987); File No. SR–NYSE–87–1.) The Commission subsequently approved a one-year extension of the Exchange's pilot program, allowing the listing through May 21, 1988, of short-term series enabling monthly expirations in stock options. (*See* Rel. No. 34–24650 (June 26, 1987); File No. SR–NYSE–87–15). In 1987, the other options exchanges also received one-year extensions of their pilot programs to allow monthly expirations of stock options and to add February and March cycle series to their programs. Subsequently, the May 21, 1988 deadline was extended to December 16, 1988.

The proposed rule change extends the pilot program for an additional six and one half months or until the Commission act on the NYSE's request for approval of the pilot program. This further extension is designed to give the Commission time to study the effects the pilot has had on the trading public.

The statutory basis of the proposed rule change is section 6(b) of the Securities Exchange Act of 1934 (the "Act") in general and, in particular, Paragraph (5) of section 6(b), which requires that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change imposes no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NYSE has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act, so that the pilot program can continue without interruption.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder. The Commission believes that the proposed rule change will benefit public customers by continuing a pilot program tailored to meet investors' preferences for stock options with near-term expiration cycles.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof so that the pilot program can continue without interruption. In addition, the Commission previously has solicited comment on this and other near-term expiration pilot programs submitted by other options exchanges and has not received any negative comments on the operation of these pilot programs. Moreover, the current pilot program, which has been in effect for a year, has operated effectively and generally has been well received. Finally, the Commission's approval is limited until June 30, 1989 or until the Commission acts on the NYSE's request for approval of the pilot program.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, an all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 13, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 16, 1988.

[FR Doc. 88–29558 Filed 12–22–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26368; File No. SR–PSE–88–28]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change Relating to Policy Statement on Market Closings

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on December 7, 1988, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19b–4 of the Act, submits its Policy Statement on Market Closings ("Policy Statement"). The Policy Statement is set forth in full below:

POLICY STATEMENT ON MARKET CLOSINGS

October 27, 1988.

The Board of Governors of the Pacific Stock Exchange has reviewed the "circuit breaker" proposal of the President's Working Group on Financial Markets, and the responses to the proposal by the New York Stock Exchange ("NYSE") and the National Association of Securities Dealers, Inc. ("NASD"). Based upon its review of the proposals and statements, the Board of Governors has adopted this Policy Statement.

The Working Group recommends that all U.S. markets for equity and equity-related products halt for one hour if the Dow Jones Industrial Average ("DJIA") declines 250 points from its previous day's closing level and for two hours if the DJIA declines 400 points.

The NYSE has filed for, and received approval, to implement a circuit breaker system based upon the Working Group's proposal. The NASD has adopted a policy statement calling for the pursuit of other initiatives relating to the authority of the Securities and Exchange Commission, the coordination and unification of clearing and

settlement systems, and establishment of an intermarket self-regulatory coordinating policy group.

The NASD's Statement recognizes the need to consider the Working Group's proposal and acknowledges the risks imposed on any single market remaining open while all other U.S. markets have halted trading. In that regard, the NASD will, upon request from SEC, halt domestic trading in all securities quoted in the NASDAQ system and domestic trading in equity and equity-related securities in the over-the-counter market.

While the PSE is sensitive to the need for interim solutions that will help to reinstate public confidence, the Board does not believe that the best solution has been found. Accordingly, the Board has decided not to file a rule that adopts the NYSE filing using circuit breakers. The Board will, however, cooperate with a request from the SEC to halt trading in all equity and equity-related products traded at the PSE, in conjunction with halted trading at other U.S. markets.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C), below, of the most significant aspects of such statements.

(A)(Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On August 31, 1988, the New York Stock Exchange ("NYSE") filed proposed Rule 80B with the Commission regarding trading halts due to extraordinary market volatility.

The proposal was originally conditioned upon the approval of similar rule changes of the other self-regulatory organizations ("SROs"), as well as the halting of futures contracts under identical circumstances. In that regard, the Commission asked each exchange's board to approve similar rules and file them as soon as possible. The NYSE subsequently revised its proposal and removed the contingency relating to other SRO filings. The SEC approved the NYSE filing on October 19, 1988.[1] As a result, the PSE Board of Governors has reviewed the "circuit breaker" proposal recommended by the President's Working Group on Financial Markets as well as the proposals submitted by the NYSE and the National Association of Securities Dealers ("NASD"). Having reviewed these proposals, the Board of Governors has adopted this Statement of Policy.

The proposed Policy Statement is consistent with section 6(b)(4) of the Act in that, among other things, it promotes just and equitable principles of trade, and protects investors and the public interest. In addition, the proposed Policy Statement is consistent with section 6(b)(5) of the Act in that it will enable the PSE to enhance its ability to facilitate transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed Policy Statement imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The PSE did not receive comments on the Policy Statement.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested accelerated effectiveness of this proposed rule change pursuant to section 19(b)(2) of the Act based on Commission approval of proposals on market closings submitted by the NYSE, the NASD, the American Stock Exchange, and the Chicago Board Options Exchange in Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637.[2] The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the Federal Register. The PSE's proposed Policy Statement is virtually identical to a proposal submitted by the NASD that was reviewed by the Commission and that was noticed and approved on an accelerated basis in Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637. In light of the absence of any adverse comments on the NASD's filing and the Commission's view of the benefits that may accrue from the adoption of coordinated circuit breakers that respond to stock market volatility and that may increase investor confidence in the markets, the Commission believes a good cause finding is justified.

The Commission finds that the proposed Policy Statement filed by the PSE 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 6[3] and the rules and regulations thereunder. The proposal will permit the Exchange to coordinate with the other securities SROs and futures exchanges in providing a mechanism to address periods of extreme downward volatility in the stock market. The Commission notes that the PSE stated in its Policy Statement that it will halt trading in all equity and equity-related products[4] only in response to a request from the SEC. The Commission hereby requests that the PSE implement its Policy Statement by imposing a trading halt as quickly as practicable whenever the NYSE and other equity markets have suspended trading (*i.e.*, whenever the DJIA declines 250 or 400 points).[5]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 13, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change is approved.

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[1] Securities Exchange Act Release No. 26198, 53 FR 41637.

[2] Letter from Rosemary A. MacGuinness, Staff Attorney, PSE, to Howard Kramer, Assistant Director, Commission, dated December 7, 1988.

[3] 15 U.S.C. 78f (1982).

[4] Equity related products would include options on stock and stock indices.

[5] The Commission made a similar request of the NASD in approving its policy statement on market closings. *See* 53 FR 41637.

[6] 15 U.S.C. 78s(b)(2) (1982).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: December 16, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29557 Filed 12-22-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16696 (812-7156)]

Fiduciary Capital Partners, L.P., et al.; Application

December 16, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Fiduciary Capital Partners, L.P. ("Enhanced Yield Fund"), Fiduciary Capital Pension Partners, L.P. ("Enhanced Yield Pension Fund", collectively with Enhanced Yield Fund, "Partnerships") and Fiduciary Capital Management, L.P. ("Fiduciary Capital").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from provisions of sections 2(a)(19) and 2(a)(3)(D).

Summary of Application: Applicants seek an order determining that (i) the Independent General Partners (as hereinafter defined) of each Partnership are not "interested persons" of such Partnership or of Fiduciary Capital, (ii) the Independent General Partners of a Partnership will not be deemed to be "interested persons" of such Partnership by virtue of their service as Independent General Partners of the other Partnership and (iii) persons who become limited partners ("Limited Partners") of a Partnership and own less than 5% of the Units (as hereinafter defined) in such Partnership will not be deemed "affiliated persons" of the Partnership or any of its other partners solely by reason of their status as Limited Partners.

Filing Dates: The application was filed on October 21, 1988, and amended 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 this 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 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 attorneys, 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; Applicants, 375 Park Avenue, Suite 2602, New York, NY 10152, Attention: Michael G. Rafferty, Jr.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney, (202) 272-3047, or Brion Thompson, Branch Chief, (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of 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. Each Partnership is a recently formed limited partnership organized under Delaware law. Each Partnership has elected to be a business development company and, therefore, will be subject to sections 55 through 65 of the 1940 Act and to those sections of the 1940 Act made applicable to business development companies by section 59 thereof. Each Partnership will terminate no later than November 30, 1998, or ten years from the final closing of the sale of Units in such Partnership, if later, unless extended for up to two additional one-year periods.

2. The Partnerships have filed a joint registration statement on Form N-2 under the Securities Act of 1933 ("1933 Act") with respect to an aggregate offering by the Partnerships of up to 75,000 (125,000 if the increased sale right is exercised in full) of limited partnership interests in the Partnerships (collectively, the "Units"). PaineWebber Incorporated will act as selling agent for the Units on a "best efforts" basis.

3. Each Partnership Agreement will provide that there must be at least two Independent General Partners (defined to be an individual who is not an "interested person" of the Partnership within the meaning of the 1940 Act), and that a majority of the General Partners must be Independent General Partners. It is contemplated that the same individuals will serve as Independent General Partners for both the Enhanced Yield Fund and the Enhanced Yield Pension Fund. The Independent General Partners will have overall responsibility for the management of each of the Partnerships. Fiduciary Capital will serve as each Partnership's managing general partner ("Managing General Partner") and will be responsible for purchasing investments for each Partnership which have been approved by the Independent General Partners, for providing administrative services to the partnership and for the admission of additional or assignee Limited Partners to the Partnership.

4. Fiduciary Capital will also act as the investment adviser to each Partnership pursuant to a separate investment advisory agreement ("Advisory Agreement") between Fiduciary Capital and each Partnership. Under each Advisory Agreement, Fiduciary Capital will be responsible for the identification of all investments to be made by the respective Partnership and will perform other functions carried out by the investment adviser to a business development company. Fiduciary Capital has filed an application to be a registered investment adviser under the Investment Advisers Act of 1940 ("Advisers Act").

5. Each Partnership will be managed solely by the Independent General Partners thereof, except with regard to those specific activities of such Partnership for which Fiduciary Capital, in its capacity as the Managing General Partner or as the investment adviser of such Partnership, will be responsible. The Independent General Partners of a Partnership will provide overall guidance and supervision of Partnership operations and will perform the same functions as directors of an investment company organized as a corporation. The Independent General Partners will assume the responsibilities and obligations imposed by the 1940 Act and the regulations thereunder on the disinterested directors of an incorporated registered investment company. The Limited Partners of a Partnership cannot participate in its management or control. However, Limited Partners may exercise certain rights and powers under the Partnership Agreement, including voting rights and the giving of consents and approvals provided for in such Partnership Agreement. Limited Partners will be afforded all voting rights required by the 1940 Act. It is the opinion of legal counsel to each Partnership that the existence of these voting rights does not subject the Limited Partners to liability as General Partners under The Revised Uniform Limited Partnership Act of the State of Delaware. In addition, each Partnership Agreement will obligate the General Partners of such Partnership to take all such action which may be

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[7] 17 CFR 200.30-3(a)(12) (1988).

necessary or appropriate to protect the limited liability of the Limited Partners.

The Partnerships have considered the possibility of obtaining errors and omissions insurance. In light of the view of the staff of the SEC that substantial insurance coverage is appropriate in view of the special problems of using the limited partnership form for registered investment companies, the Independent General Partners of each Partnership will periodically review the question of the appropriateness of obtaining an errors and omissions insurance policy for such Partnership.

Applicants' Legal Analysis

1. Applicants request that each Partnership and the Independent General Partners of each Partnership be exempted from the provisions of section 2(a)(19) of the 1940 Act to the extent that the Independent General Partners would otherwise be deemed to be "interested persons" of a Partnership or of Fiduciary Capital as the Managing General Partner and investment adviser of a Partnership because such Indpendent General Partners are General Partners of a Partnership and co-partners of Fiduciary Capital. Each Partnership has been structured so that the Independent General Partners are the functional equivalents of the disinterested directors of an incorporated investment company. Section 2(a)(19) of the 1940 Act excludes from the definition of "interested persons" of an investment company those individuals who would be "interested persons" solely because they are directors of an investment company, but there is no equivalent exception for partners of an investment company organized as a partnership.

2. The Independent General Partners of a Partnership may be deemed to be "interested persons" of such Partnership by virtue of their service as Independent General Partners of the other Partnership. Applicants believe that service by the same individuals as Independent General Partners of both Partnerships, a relationship similar to one in which an individual services as a director of multiple investment companies in the same complex, will be beneficial to both Partnerships. Thus, Applicants request that the Independent General Partners of each Partnership be exempted from the provisions of section 2(a)(19) of the 1940 Act to the extent that they would otherwise be deemed to be "interested persons" of such Partnership solely by virtue of their service as Independent General Partners of the other Partnership.

3. Section 2(a)(3)(D) of the 1940 Act provides that an "affiliated person" of an entity includes any "partner" or "copartner" thereof, and thus, each Limited Partner might be deemed to be an affiliated person of a Partnership, as well as any other Limited Partner, the Independent General Partners and Fiduciary Capital. Accordingly, Applicants request exemption from section 2(a)(3)(D) of the 1940 Act so that any Limited Partner owning less than 5% of the Units of a Partnership will not be deemed an "affiliated person" of such Partnership, any other Limited Partner, any of the Independent General Partners or Fiduciary Capital solely because such Limited Partner is a partner of the Partnership or a partner with any such other persons in the Partnership. Applicants submit that requested relief will place investments in the Partnerships on a footing more equal with investments in business development companies organized as corporations. Applicants further submit that exempting the Independent General Partners and the Limited Partners of each Partnership from the provisions of sections 2(a)(19) and 2(a)(3)(D) of the 1940 Act, to the extent requested, is consistent with the provisions, policies and purposes of the 1940 Act.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants agree that the Partnerships will be structured so that the Independent General Partners are the functional equivalents of the disinterested directors of an incorporated investment company registered under the 1940 Act.

2. In certain limited instances, under the Partnership Agreements, in-kind distributions to Partners are authorized. However, the Partnerships each agree not to make any in-kind distributions of portfolio securities to their respective Partners until they have obtained either a "no-action" letter from the SEC staff or, alternatively, an order of exemption pursuant to Section 206A of the Advisers Act permitting such distributions.

3. Applicants will obtain an opinion of counsel satisfactory to the Independent General Partners of each Partnership that the distributions and allocations to the Managing General Partner of each Partnership can be paid in accordance with section 205 of the Advisers Act. Applicants do not request SEC review or approval of such opinion letter.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29559 Filed 12-22-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2322; Amdt. #1]

Arkansas (And Contiguous Counties in the States of Louisiana, Mississippi, and Missouri); Declaration of Disaster Loan Area

The above-mentioned Declaration (53 FR 49632) is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated December 2, 1988, to include the following counties, in the State of Arkansas, as a result of damages from tornadoes and severe storms beginning on November 15, 1988: Chicot, Clark, Columbia, Craighead, Faulkner, Garland, Greene, Independence, Izard, Logan, Nevada, Ouachita, Phillips, Poinsett, Prairie, Saline, Stone, White, and Woodruff.

In addition, applications for economic injury from small businesses located in the contiguous counties of Ashley, Baxter, Calhoun, Clay, Crittenden, Cross, Desha, Drew, Fulton, Hempstead, Jackson, Lafayette, Lawrence, Lee, Mississippi, Monroe, Pike, Randolph, St. Frances, Scott, Sebastian, Sharp, Union, and Yell, in the State of Arkansas; Bossier, Claiborne, East Carroll, Morehouse, Webster, and West Carroll Parishes in the State of Louisiana; and Dunklin County, Missouri, may be filed until the specified date at the previously designated location.

Applications for economic injury from small businesses located in the contiguous counties of Bolivar, Coahoma, Issaquena, Tunica, and Washington, in the State of Mississippi, may be filed until the specified date at: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308.

The closing dates remain the same; i.e., the termination date for filing applications for physical damage is the close of business on January 23, 1989, and for economic injury until the close of business on August 23, 1989.

The number assigned to this disaster for physical damage is 232212 and for economic injury the number is 667200 for the State of Arkansas; 667800 for the State of Louisiana; 667900 for the State

of Mississippi, and 668000 for the State of Missouri.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 7, 1988.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88-29499 Filed 12-22-88; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2325; Amdt. #1]

North Carolina (And Contiguous Counties in the State of Virginia); Declaration of Disaster Loan Area

The above-numbered Declaration (53 FR 50343) is hereby amended to assign an economic injury declaration number for the contiguous counties of Brunswick, Greensville, and Southampton, as well as the independent cities of Chesapeake and Virginia Beach, in the State of Virginia. The number assigned to this disaster for economic injury in the State of Virginia is 668100. All other information remains the same.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: December 9, 1988.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88-29500 Filed 12-22-88; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Concord, will hold a public meeting at 10:00 a.m. on Wednesday, January 11, 1989 in the James Cleveland Federal Building, Room B-16, 55 Pleasant Street, Concord, New Hampshire, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call William K. Phillips, District Director, U.S. Small Business Administration, P.O. Box 1257, 55 Pleasant Street, Concord, New Hampshire 03302-1257, (603) 225-1400.

Jeannette M. Pauli,

Acting Director, Office of Advisory Councils.

December 15, 1988.

[FR Doc. 88-29345 Filed 12-22-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 16, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 46006

Date Filed: December 12, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 9, 1989.

Description: Application of Private Jet Expeditions, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity pursuant to section 401(d)(3) of the Act, to engage in nonscheduled (charter) air transportation of persons, property and mail between a point or points in the United States and points throughout the World.

Docket No. 46007

Date Filed: December 12, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 9, 1989.

Description: Application of Ontario Express Ltd., pursuant to section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit authorizing it to engage in foreign air charter transportation in accordance with the U.S./Canada Non Scheduled Air Service Agreement.

Docket No. 46008

Date Filed: December 12, 1988.

Description: Application of Novair International Airways Limited fka Cal Air International Limited, pursuant to section 402, request reissuance in its current corporate name of the foreign air carrier permit issued to it under Order 87-3-64. The applicant's corporate name was changed to Novair International Airways Limited on December 7, 1988.

Docket No. 46010

Date Filed: December 13, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 10, 1989.

Description: Application of Air Micronesia, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests an amendment to its certificate of public convenience and necessity for Route 170 that would add a new segment between the coterminal points Saipan, Northern Mariana Islands, Palau, Eastern Caroline Islands, Guam and Brisbane/Sydney, Australia.

Docket No. 46014

Date Filed: December 14, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 11, 1989.

Description: Application of Canafrica Transportes Aereos, S.A. pursuant to section 402 of the Act and Subpart Q of the Regulations requests authority to engage in the non-scheduled air carriage of persons, property and mail between any point or points in Spain and any point or points in the United States.

Docket No. 46018

Date Filed: December 16, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 13, 1989.

Description: Application of Trans International Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity to engage in foreign air transportation of property and mail between the U.S. points of Los Angeles, Honolulu, Agana, Guam, Saipan, and Pago Pago, American Samoa on the one hand, and Sydney and Townsville, Australia and Taipei, Taiwan, on the other hand.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-29525 Filed 12-22-88; 8:45 am]

BILLING CODE 4910-62-M

Maritime Administration

[Docket S-839]

Lykes Bros. Steamship Co., Inc.; Extension of Comment Period Concerning the Application for a Dual Service Privilege on Trade Route 13/22

Lykes Bros. Steamship Co., Inc., by letter dated December 9, 1988, has requested a 45 day extension of time with respect to the consideration of its application of November 3, 1988, for a Dual Service Privilege on its Trade Route 13 and Trade Route 22 service. Therefore, the Maritime Administration

is extending the comment period for 45 days, until January 26, 1989.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies).)

By Order of the Maritime Subsidy Board.

Date: December 20, 1988.

James E. Saari,

Secretary.

[FR Doc. 88-29471 Filed 12-22-88; 8:45 am]

BILLING CODE 4910-01-M

UNITED STATES INSTITUTE OF PEACE

Solicited Grants 1989; Regional Conflict Management and Resolution

I. The United States Institute of Peace

The United States Institute of Peace is an independent, nonpartisan federal institution created and wholly funded by Congress to strengthen the nation's capacity to promote the peaceful resolution of international conflict. Established in 1984, the Institute has its origins in the tradition of American statesmanship which seeks to limit international violence and to achieve a just peace based upon freedom and human dignity. The Institute fulfills its congressional mandate to expand available knowledge about ways to achieve a more peaceful world through an array of programs including grant-making; a three-tiered fellowship program; research and studies projects; development of library resources; and a variety of citizen education activities.

II. The Grants Program

The Grants Program of the United States Institute of Peace promotes scholarship, education, training, and the dissemination of information on international peace and conflict management by providing financial support to nonprofit organizations, official public institutions, and individuals. Institute-funded research projects have addressed such topics as the role of third-party negotiators in the resolution of regional conflicts; religious and ethical questions in war and peace; the use of nonviolent sanctions in confronting political violence; global security in the nuclear age; and the relationship between domestic political systems and the aggressive use of force.

III. Solicited Grants—1988

In addition to its established practice of providing support for unsolicited grant proposals, the Institute has initiated a program of solicited grant projects which will serve to focus attention on themes and topics of special interest. Projects which were approved and funded in the first cycle of solicited grants will examine religious violence and nationalism in the Third World; analyze the implications for strategic stability, peace, and security of reductions in strategic nuclear forces of the United States and the Soviet Union; and provide forums in which policymakers and strategic theorists, policy-analysts and peace researchers, and moral philosophers, religious spokesmen and peace activists can exchange contending ideas on the paradoxes of nuclear deterrence.

IV. Solicited Grants—1989

General Theme: Mitigation or Resolution of Regional Conflict—Lessons for Negotiators and Policy-Makers

In establishing the Institute of Peace, Congress observed that "many potentially destructive conflicts among nations and peoples have been resolved constructively and with cost efficiency * * *through proper use of such techniques as negotiation, conciliation, mediation and arbitration." The Institute is interested in studies which examine in detail those techniques and such others as good offices, fact-finding, and peacekeeping, as they have been applied to conflicts in various regions of the developing world. The Institute is also concerned about the relationship of those techniques to other factors which affected the outcome of the conflicts, such as the roles of parties external to the region, either as protagonists or as mediators.

Case-Studies

The general theme of the 1989 solicited grant program is regional conflict management and resolution in the developing world. The Institute invites proposals for projects that use the case-study approach to examine specific historical incidents. It is the Institute's expectation that these studies of regional conflicts will focus on the post-World War II period. This, however, should not be interpreted as precluding analysis of earlier cases. Projects may be constructed to yield a variety of products and they may be directed to specialized as well as to more general audiences.

Most particularly, the Institute is interested in specific cases from Africa, Asia, Latin America, and the Middle East which may provide insights for the constructive reduction and resolution of contemporary or future international conflicts, as well as pitfalls to be avoided. The following are only some of the cases which might be examined for useful lessons:

Africa

- Angola and Namibia
- The Western Sahara
- The Horn of Africa (Ethiopia, Sudan, and Somalia)
- Mozambique
- South Africa
- Nigeria and Biafra
- The UN and the Congo (Zaire)
- Independence in Zimbabwe

Asia

- Afghanistan and the Soviet Union
- The West Irian Dispute
- The Tamilese/Singhalese Conflict in Sri Lanka
- The Indus Waters Dispute
- The Indo-Pak War and the Creation of Bangladesh
- Kampuchea/Viet Nam
- North Korea/South Korea—Role of Unofficial and Official Diplomacy in Moves Toward Rapprochement

Latin America

- Nicaragua, the Contadora Group, and the Arias Plan
- Argentina/Chile and the Beagle Channel Dispute
- The Falklands/Malvinas War
- The "Soccer War" Between Honduras and El Salvador

Middle East

- Yemen War (Egypt/Yemen/Saudi Arabia)
- The Iran-Iraq War
- The Abortive Israeli-Lebanese Agreement of 1983
- Selected Aspects of the Arab-Israeli Conflict:

a) Resolution of the Suez Crisis of 1956

b) The Immediate Aftermath of the 1967 War and the Adoption of UN Resolution 242

c) Kissinger's "Shuttle Diplomacy" After 1973

d) Camp David and the Egyptian-Israeli Peace Treaty

e) Egyptian-Israeli Negotiations Over Palestinian Autonomy, 1979–1982

- Cyprus
- Greek-Turkish Dispute Over the Continental Shelf in the Aegean

Factors

Suggested factors for consideration in the studies of specific cases include:

—The impact of East-West rivalry, defined in terms of: (a) Cases where both the U.S. and the U.S.S.R. were actively involved; (b) cases where only one of the superpowers was actively involved; (c) cases where

neither superpower was actively involved;
—Methods for settling disputes short of armed conflict;
—The conduct and utility of such forms of dispute responses as conciliation, mediation, negotiation, arbitration, and force (including economic sanctions);
—The role of official third parties—international or regional organizations, states, or individuals—in reducing and settling differences between belligerents;
—The roles of unofficial emissaries in "track II" diplomatic activity;
—The effect of UN or non-UN peacekeeping forces and observers;
—The utility of particular negotiating techniques, devices, or approaches;
—Structural and systemic changes which may contribute to more stable relations, including regional arms-control agreements;
—The impact of the proliferation of nuclear and chemical/biological weapons (including "second tier" armssuppliers linked neither to the Atlantic Alliance nor to the Warsaw Pact) and the availability of affordable "smart weapons";
—Intra-regional change, including shifting demographic patterns and economic stress; indigenous religious movements and the polarization of conflict; and regime responses in the face of popular demands for greater political freedom.

V. How To Apply for a Solicited Grant

The Institute encourages applications from nonprofit organizations, official public institutions, and individuals. For further information or application material, please call or write: Solicited Grant Projects, United States Institute of Peace, 1550 M Street, NW., Suite 700, Washington, DC 20005–1708, (202) 457–1700, FAX # (202) 429–6063.

VI. Deadline for Applications

The closing date for receipt of solicited grant applications in the current review cycle is April 1, 1989. Announcements of awards will be made on or about September 1, 1989.

Contact: Hrach Gregorian, Director of Grant Programs, United States Institute of Peace, 1550 M Street NW., Suite 700, Washington, DC 20005, (202) 457–1700.

Charles Duryea Smith,

General Counsel.

December 16, 1988.

[FR Doc. 88–29464 Filed 12–22–88; 8:45 am]

BILLING CODE 3155-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 247
Friday, December 23, 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).

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 9:47 a.m., Wednesday, December 21, 1988.

PLACE: 1776 G Street, NW., Washington, DC 20456, 6th Floor.

STATUS: Closed.

MATTER CONSIDERED:

1. Conservatorship.

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice.

The Board voted unanimously to close the meeting under exemption (8). The General Counsel certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,
Secretary of the Board.

[FR Doc. 88-29621 Filed 12-21-88; 4:02 pm]
BILLING CODE 7535-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 50621 December 16, 1988.

STATUS: Open Closed meeting.

PLACE: 450 Fifth Street NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, December 13, 1988.

CHANGES IN THE MEETING: Cancellation.

The following items were not considered at an open meeting scheduled for Monday, December 19, 1988, at 10:00 a.m.:

1. Consideration of an application of Delta Government Options Corp. for registration as a clearing agency under section 17A of the Securities Exchange Act of 1934. For further information, please contact Richard Konrath at (202) 272-2775.

2. Consideration of whether to issue for comment a release proposing Rule 15c2-10 under the Securities Exchange Act of 1934 to govern the operation of proprietary trading systems that are operated as facilities of national securities exchanges or associations and a conforming amendment to Rule 3a12-7 under the Securities Exchange Act of 1934. For further information, please contact Gordon K. Fuller at (202) 272-2414 or Eugene Lopez at (202) 272-2828.

3. Consideration of the recommendation with respect to the request of RMJ Securities Corporation ("RMJ Securities") and its subsidiary, RMJ Options Trading Corporation, that the staff issue a non-action letter with respect to the non-registration of RMJ Securities' option trading system as a national securities exchange under Sections 3(a)(1) and 6 of the Securities Exchange Act of 1934. For further information, please contact Gordon K. Fuller at (202) 272-2414.

Commissioner Cox, as duty officer, determined that Commission business required the above changes.

At time changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kevin Fogarty at (202) 272-2300.

Jonathan G. Katz,
Secretary.

December 19, 1988.

[FR Doc. 88-29556 Filed 12-21-88; 9:01 am]
BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 53, No. 247
Friday, December 23, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86-101]

Importation of Birds

Correction

In proposed rule document 88-28067 beginning on page 49185 in the issue of Tuesday, December 6, 1988, make the following corrections:

1. On page 49186, in the 1st column, in the 1st complete paragraph, in the 14th line, "not" should read "now".

2. On page 49188, in the 3rd column, under **Executive Order 12291 and Regulatory Flexibility Act**, in the 2nd paragraph, in the 16th line, "or" should read "to".

§ 92.11 [Corrected]

3. On page 49191, in the first column, in § 92.11(h)(4)(ix)(A), in the fourth line, "of" should read "or".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Availability of the 1988-89 National Defense and Perkins (National Direct) Student Loan Program Directory of Designated Low-Income Schools

Correction

In notice document 88-26898 appearing on page 46920 in the issue of Monday, November 21, 1988, make the following corrections:

1. In the first column, under **SUMMARY**, in the ninth line, "Department" should read "Departments".

2. In the same column, under **ADDRESSES**, in the third line, "Roland" should read "Ronald"; and in the fourth line, "Program" should read "Programs".

3. In the second column, under **SUPPLEMENTARY INFORMATION**, in the fifth line, "674.52" should read "674.53".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88F-0340]

Shell Oil Co.; Filing of Food Additive Petition

Correction

In notice document 88-24764 appearing on page 43272 in the issue of Wednesday, October 26, 1988, make the following correction:

In the 3rd column, under **SUPPLEMENTARY INFORMATION**, in the 13th and 14th lines, "6-weight-percent" should read "6 weight-percent."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87D-0315]

Oligosaccharide Antibiotic Drugs; Neomycin Sulfate for Prescription Compounding; Withdrawal of Approval of Abbreviated Antibiotic Drug Applications

Correction

In notice document 88-28027 beginning on page 49231 in the issue of Tuesday, December 6, 1988, make the following correction:

On page 49232, in the first column, in the paragraph designated 2, in the first line "AADA 61-805" should read "AADA 61-085".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88F-0322]

Nippon Gohsei (U.S.A.) Co., Ltd.; Filing of Food Additive Petition

Correction

In notice document 88-25543 beginning on page 44670 in the issue of Friday, November 4, 1988, make the following corrections:

1. On page 44671, in the first column, under **FOR FURTHER INFORMATION CONTACT**, in the second line, "(HHF-355)" should read "(HFF-335)".

2. On the same page, in the same column, under **SUPPLEMENTARY INFORMATION**, in the 14th line, "2,2-dimethyl-1-1,3-" should read "2,2-dimethyl-1, 3-".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0335]

Drugs Containing Sulfamethazine, Sulfaquinoxaline, Sulfamerazine, Sulfathiazole, Sulfapyridine, or Sulfanilamide for Oral, Injectable, Intramammary, or Intrauterine Use in Food-Producung Animals; Opportunity for Hearing

Correction

In notice document 88-26344 beginning on page 46050 in the issue of Tuesday, November 15, 1988, make the following corrections:

1. On page 46059, in the first column, in the second complete paragraph, in the sixth line, "February 13, 1989" should read "January 17, 1989".

2. On the same page, in the 3rd column, in the 14th line, make the same correction.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-09-4212-13; AZ A 23589]

Realty Action; Exchange of Public Land; Arizona

Correction

In notice document 88-27029 beginning on page 47269 in the issue of Tuesday, November 22, 1988, make the following correction:

On page 47269, in the third column, in the third complete paragraph, in the third line, "August 30, 1980" should read "August 30, 1890".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-09-4212-12; Serial No. AZA 23606]

Realty Action; Gila and Salt River Meridian; Arizona

Correction

In notice document 88-26118 beginning on page 45599 in the issue of Thursday, November 10, 1988, make the following correction:

On page 45599, in the third column, under *Gila and Salt River Meridian, Arizona*, under "T. 9 N., R. 9 W.,", in the third line, "SW¼,SE½" should read "SW¼SE¼".

BILLING CODE 1505-01-D

federal register

Friday
December 23, 1988

Part II

Environmental Protection Agency

40 CFR Part 85

Motor Vehicle Emissions Control System Performance Warranty Short Tests; Alternative Test Procedures; Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 85

[AMS FRL-3455-2]

Motor Vehicle Emissions Control System Performance Warranty Short Tests; Alternative Test Procedures

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes an alternative loaded-mode test procedure for inclusion in the Emissions Control System Performance Warranty Short Tests of 40 CFR Part 85, Subpart W. The alternative establishes test and dynamometer specifications that could be substituted for those contained in the present regulations for the loaded-mode portion of the Loaded Test. The State of Arizona plans to use the proposed test procedure in its emissions inspection and maintenance program. Final approval would bring Arizona's program into direct compliance with the emission control performance warranty provisions, allowing owners of vehicles which fail in the loaded mode to claim the intended warranty coverage. The proposed revision should be at least equal to the present Loaded Test in limiting errors of commission, or false failures, and retains reasonable correlation with the Federal Test Procedure.

DATES: No public hearing will be held on this proposal, unless specifically requested, for the reasons described in Section IV of today's notice. In the event that no hearing is requested, written comments must be submitted by January 23, 1989.

Any request for a public hearing must be received by EPA in writing at the address listed below for further information no later than January 9, 1989. If held, the hearing will be scheduled approximately 30 days after publication of this proposal. The exact date will be announced in a subsequent **Federal Register** notice. All written comments must then be submitted 30 days after the date of the public hearing.

ADDRESSES: Docket A-88-32 containing material relevant to this action is located at: Central Docket Section, South Conference Center, Room 4, U.S. EPA, 401 M Street, SW., Washington, DC 20460. Interested persons may inspect the docket between 8:00 am and 4:00 pm, on weekdays. The EPA may charge a reasonable fee for copying. All written comments should be submitted (in duplicate if possible) to: Central Docket Section, Docket A-88-32, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

Any public hearing that may be scheduled in conjunction with this proposed rulemaking will be held at: Conference Room, Motor Vehicle Emissions Laboratory, U.S. EPA, 2565 Plymouth Road, Ann Arbor, Michigan.

FOR FURTHER INFORMATION CONTACT: Richard Wilcox, Emission Control Technology Division, Office of Mobile Sources, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668-4390.

SUPPLEMENTARY INFORMATION:

I. Background

A. Performance Warranty

Section 207(b) of the Clean Air Act (the Act) establishes a mechanism to provide emission control performance warranty coverage for all motor vehicle classes. The statute requires the establishment of short test procedures to be used for determining in-use compliance of vehicles with Federal emission standards, if the Administrator determines that three conditions have been met: (1) The short test methods and procedures are "available" (i.e., that the necessary equipment may be readily obtained and the procedure is reasonably expected to serve its function); (2) the procedures are consistent with good engineering practices; and (3) the results are reasonably capable of being correlated with the Federal Test Procedure (FTP) used to certify vehicles for initial sale. If such test procedures are established, the Act then requires promulgation of regulations to implement the performance warranty for vehicles that fail an approved test if certain conditions are met.

On May 22, 1980, EPA published the necessary finding in the **Federal Register** establishing three "short test" procedures (45 FR 34802). These short tests are intended to be used by states as part of their vehicle inspection and maintenance (I/M) programs. On the same date, EPA also promulgated emission performance warranty regulations (45 FR 34829). These warranty regulations cover 1981 and newer model year light-duty vehicles and light-duty trucks whose owners may be subject to any sanction as a result of failing to meet emission standards, as determined by an approved short test. The warranty covers light-duty motor vehicles up to five years or 50,000 miles, if the vehicles were maintained and operated in accordance with the manufacturer's instructions. The test procedures and performance warranty regulations are contained in 40 CFR Part 85 Subparts V and W.

One June 12, 1984, EPA amended the warranty regulations (49 FR 24320). The amendments included a provision allowing states to request alternative short test standards or procedures.

B. Loaded Test

Among the short tests established in 1980 was the Loaded Test (§ 85.2214). The test consists of both loaded-mode and idle-mode operation. Conducting the emissions test under load is designed to detect in-use malfunctions that are not apparent during idle-neutral testing. To produce this load the vehicle is operated on a dynamometer. The current test protocol begins with a 30 mile per hour (mph) cruise at a dynamometer load of 9.0 horsepower (hp) for the loaded mode, followed by an idle-neutral mode. The loaded test procedure permits exhaust measurements to be taken from either the loaded mode, the idle mode, or both. If measurements are not taken during the 30 mph cruise, that mode is treated as a preconditioning step prior to the idle-mode measurement.

The dynamometer specifications and calibration procedures of the loaded-mode test were based largely on the variable-curve dynamometers used for certification testing. Thus, the 30-mph/9.0-hp test point was originally to be achieved by adjusting the power absorption unit, or PAU, of the variable-curve dynamometer to provide the appropriate speed/load response curve. A daily check (required by § 85.2217(c) of the existing regulation) was designed to ensure that the variable load PAU was properly adjusted, as indicated by the settings of the road load controller or road load indicator.

A few I/M programs have installed the equipment needed to conduct loaded testing. However, the dynamometers are not the variable-curve units anticipated by EPA at the time the warranty regulations were originally promulgated. Rather, economic considerations resulted in the installation of single-curve dynamometers, which were all designed and built by the Clayton Manufacturing Company. Unlike a variable-curve dynamometer, a single-curve unit uses a PAU with a fixed speed/load response curve. This relationship, which is roughly cubic for the dynamometers customarily employed in automotive applications, is determined at the time the PAU is manufactured.

The PAUs in the Clayton single-curve dynamometers were made to generate a road load of 30 hp at 50 mph. This

specification was associated with the originally proposed, but never promulgated, short tests. At the nominal speed of 30 mph called for in the current performance warranty regulations, such a dynamometer generates a corresponding road load of 7.0 hp.

The obvious difference in dynamometer specifications between the variable-curve and existing single-curve dynamometers means that I/M programs employing these latter units are in technical noncompliance with the approved Loaded Test. This is not presently a problem with regard to performance warranty coverage, primarily because the three states using loaded test procedures perform the cruise mode only as a preconditioning step prior to conducting an official idle test. That is, any measurements taken during the cruise condition are not used to pass or fail the vehicle. These programs are, therefore, in compliance with the approved Idle Test. However, this situation will change in the future as described below.

C. Loaded-Mode Testing in Arizona

The present Arizona I/M program passes or fails vehicles based on their exhaust emissions during idle operation only. On August 10, 1988, EPA approved revisions to the carbon monoxide (CO) State Implementation Plan (SIP) for that state. The SIP contains a statutory commitment requiring 1981 and newer vehicles to pass the I/M test during both idle-mode and loaded-mode operation. The loaded-mode testing is scheduled to begin January 1, 1989.

Arizona presently has the equipment necessary to perform loaded testing. In fact, it is one of the states employing loaded-mode operation in the I/M program for preconditioning some vehicles prior to the idle test. The State's equipment consists of the single-curve Clayton dynamometers manufactured to the 30 hp at 50 mph specification. The Arizona Department of Environmental Quality (ADEQ) has informed EPA of its intention to use the existing dynamometers for loaded-mode testing, so that expensive and time consuming equipment changes or modifications can be avoided. As already mentioned, this makes the program technically out of compliance with the approved Loaded Test, leaving affected consumers vulnerable to losing warranty coverage.

The Agency believes that the lack of explicit warranty coverage in this instance would be contrary to the intent of Congress as expressed in section 207(b) of the Act. Also, as discussed in more detail later, there is no technical reason why the short test criteria can not be met with more economical, single-curve dynamometers rather than variable-curve units, or with test specifications other than those now contained in the regulations. Therefore, EPA believes that programs with single-curve dynamometers, such as Arizona, should be afforded the opportunity of complying with EPA requirements without expensive modifications to the equipment and procedures. Similarly, EPA believes that any I/M programs wishing to change the test procedure from loaded preconditioning to a loaded-mode pass/fail, or wishing to add a cruise mode to a simple idle test program, should have a lower cost method of doing so. For these reasons, EPA believes that revising the loaded test requirements is desirable.

II. Contents of the Proposal

A. Test Procedure Revisions

The Agency is proposing to revise the loaded-mode portion of the Loaded Test to accommodate single-curve dynamometers in addition to the more sophisticated variable-curve units. The present loaded-mode test procedure requires the emissions measurement to be taken while the vehicle is operated on the dynamometer at 29–31 mph (§ 85.2216). This results in a nominal loading of about 8.1 to 9.9 hp during the test. Within the range of possible revisions, EPA has selected two alternatives for discussion in this proposal. The alternative procedures are based on those being considered by ADEQ for incorporation into the Arizona I/M program.

The simplest alternative is to change the dynamometer specification to require a lighter load of 7.0 ± 1.0 hp at 30 mph roll speed. Arizona has also indicated a preference for a slightly slower speed range of 28–30 mph during the test. Using these values results in a nominal loading of about 5.7 to 7.0 hp. This is a somewhat lighter load condition than the current testing requirements.

A more detailed revision involves establishing a schedule of speed/load test conditions based on a simple indicator of engine size and power rating. The speed/load schedule is identical to that currently used in the Wisconsin I/M program for preconditioning vehicles on Clayton single-curve dynamometers. The schedule is shown in the following Table 1.

TABLE 1—PROPOSED THREE-SPEED DYNAMOMETER TEST SCHEDULE

Engine size (cylinders)	Roll speed MPH	Nominal loading (hp)
4 or less	22 to 25	2.8 to 4.1.
5 to 6	29 to 32	6.4 to 8.4.
7 or more	32 to 35	8.4 to 10.8.

ADEQ has indicated a preference for the latter revision because of concerns that many of today's smaller vehicles may be tested at inappropriately high loads, thereby increasing the number of errors of commission, or false failures.

As already noted, the principal guidance for evaluating the approvability of any alternative short test are the three criteria contained in section 207(b) of the Act. Basically, the procedure must be reasonably available, follow good engineering practice, and reasonably correlate with the FTP. Regarding the first two criteria, both alternatives described above represent a relatively minor change to the test protocol and equipment required by the existing Loaded Test. Therefore, the alternatives obviously are available and continue to be consistent with good engineering practice.

Regarding the last criterion, EPA is in general agreement with ADEQ that testing at lighter loads, especially under the second alternative, could reduce the number of errors of commission for vehicles with smaller engines. Some manufacturers have previously raised this issue informally, claiming that EPA's 9.0 hp load is too high for representative testing of smaller sized and lower powered vehicles. (Too high a loading may cause vehicles to enter a rarely used operational mode in which design fuel metering and ignition timing calibrations favor high emissions.) Of the two alternatives described above, a reduction in false failures would appear more likely with the variable speed/load procedure because of its significantly lighter loading for smaller engines. Reducing errors of commission is generally consistent with increasing correlation with the FTP.

Offsetting this potential benefit is the possibility that testing at lighter loads may allow some marginally performing vehicles to pass the loaded-mode test, which would otherwise fail. This phenomenon is referred to as an error of omission, and reduces correlation with the FTP. There is no engineering reason to expect such behavior, however, for the small differences in load conditions associated with changing from a dynamometer specification of 9.0 to 7.0 hp, i.e., the first alternative. There may

be some risk of this happening at the greater differences associated with the second alternative. Nevertheless, EPA believes that the load specified for each engine size is adequate, so that the potential for errors of omission, even under the second alternative, should not be significantly different than that of the existing loaded-mode test. Further, to the extent this might occur, its effect on correlation with the FTP would tend to be neutralized by the benefit in reducing errors of commission. Therefore, on balance, both of the alternative loaded-mode revisions appear consistent with the Act's criteria for approvability.

The Agency presently believes that the greater potential for reducing errors of commission, which is associated with the three-speed procedure (the second alternative), justifies the small potential increase in the risk of inappropriately passing marginally performing vehicles. Therefore, EPA is specifically proposing to supplement the existing loaded-mode test conditions and dynamometer specifications on an optional basis with those described in the second alternative. These specifications are compatible with existing single-curve dynamometers and variable-curve units. Comments are specifically requested on the representativeness of the speed/load points for each engine size, and the effects of this procedure on errors of commission and omission relative to the existing 9.0 hp test requirement and the alternative 7.0 hp requirement. Comments are also requested on the desirability of promulgating the 7.0 hp alternative rather than the three-speed alternative.

B. Quality Control Procedure Revisions

This action also proposes a number of additions or changes to the dynamometer calibration procedures to improve quality control during loaded-mode testing. First, the Loaded Test (§ 85.2214(b)) would be amended to require a check of variable-curve dynamometers prior to each test for the proper settings on the road load indicator or automatic road-load controller. This requirement would represent a minimal time demand, while preventing false tests in programs that employ modes or test conditions in addition to those specified in the performance warranty regulations. The new check would replace the daily check of § 85.2217(c), which would be deleted. Because the power absorption unit is not adjustable in a single-curve dynamometer, no such check is necessary in programs using single-curve units.

Second, a proposed minor revision to the wording of § 85.2216(b) would tighten the accuracy of the dynamometer roll speed measurement to 1.0 mph, and apply that limit over the range of possible true roll speeds that could be encountered during actual testing.

Third, and finally, the calibrations and adjustments section (§ 85.2217) would be amended to reflect EPA's concern that the speed and load accuracy of both single- and variable-curve dynamometers be verified at regular intervals. A monthly check of the roll speed indicator is proposed to be added to § 85.2217(e). A proposed biannual check (§ 85.2217(f)) would require verification of the road load response of variable-curve dynamometers and the PAU load of single-curve dynamometers.

Comments on the above proposals, especially the proposed biannual check, are solicited. The biannual requirement presumes use of a vehicle coast-down procedure or the equivalent to verify performance of variable-curve dynamometers. Because such a procedure has minimal application to single-curve dynamometers, an assessment of PAU torque is considered sufficient for these instruments. Although not currently contained in EPA regulations, this requirement is consistent with the manufacturer's recommended procedures.

III. Environmental and Economic Effects

The proposed revision to the loaded-mode procedure should have no significant effect on the emission benefits of the Loaded Test. Testing at lighter dynamometer loadings might result in passing some marginally performing vehicles than might otherwise occur. However, to the extent this may occur, EPA believes the number of these vehicles would be very limited. Further, not all of the marginally performing vehicles that incorrectly pass when tested in the loaded mode will also pass in the idle mode, so at least some of these vehicles will fail the full I/M test. Therefore, the overall emission benefits of the Loaded Test should not be significantly affected.

The proposed revision will allow existing dynamometers to be in technical compliance with the approved short test regulations and similar economical equipment to be used by other programs desiring to implement loaded-mode testing in the future. There should be no incremental economic effect with regard to consumers seeking performance warranty coverage, except to the extent that fewer errors of commission will increase the economic efficiency of the regulation. Therefore, EPA does not anticipate any adverse economic effects to occur as a result of this proposal.

IV. Public Participation

A. Comments and the Public Docket

In all rulemakings, EPA desires full public participation in arriving at final decisions. The Agency solicits comments on all aspects of today's proposal from all interested parties. Wherever applicable, full supporting data and detailed analyses should also be submitted to allow EPA to make maximum use of the comments. Commenters are especially encouraged to provide specific suggestions for changes to any aspects of the proposal that they believe need to be modified or improved. All comments should be directed to the EPA Central Docket Section, Docket No. A–88–32 (see "ADDRESSEES").

B. Public Hearing

This proposed action consists of relatively minor technical revisions to the existing Loaded Test. The modifications do not alter the intent or scope of the original rulemaking. No adverse economic effects are anticipated and the overall environmental effect of the changes will not be significantly different than that otherwise occurring under the present requirement. For these reasons, the Agency believes that adequate public review and comment is afforded by the opportunity for written comment on this proposal, without the need for a public hearing. Therefore, EPA does not intend to schedule a public hearing in conjunction with this action unless it is specifically requested by a commenter on or before January 9, 1989. (See "DATES" for further information.)

V. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major." This proposed regulation does not constitute a major rule because its total annual cost is projected to be less than $100 million; it will not increase costs for consumers, the industry or State or local governments; and it involves no adverse effects on competition, productivity, investment, employment, or innovation. Therefore, a Draft Regulatory Impact Analysis is not required.

This rulemaking action has been sent to the Office of Management and Budget (OMB) for review pursuant to Executive Order 12291. Any written comments from OMB and any written EPA response thereto will be placed in the public docket for this rulemaking.

VI. Impact on Small Entities

Section 605 of the Regulatory Flexibility Act requires that the Administrator certify that regulations do not have a significant impact on a substantial number of small entities. This proposed action modifies an existing regulation in a manner that potentially reduces the economic effect of the requirement. Also, because the revised procedure is no more stringent than the existing emission performance warranty short test, there should be no additional effect on entities manufacturing vehicles or aftermarket parts. Accordingly, I certify that this proposed regulation will not have a significant adverse effect on a substantial number of small entities.

VII. Reporting and Recordkeeping Requirements

This proposal does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 85

Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research warranties.

Authority: 42 U.S.C. 7541 and 7601.

Dated: December 14, 1988.

Lee M. Thomas,

Administrator.

For the reasons set forth in the preamble, Part 85 of 40 CFR is proposed to be amended as follows:

PART 85—[AMENDED]

1. The authority citation for Part 85 will continue to read as follows:

Authority: Sections 202, 203, 205, 206, 207, 208, 212, and 301(a) of the Clean Air Act as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7546, and 7601(a), unless otherwise noted.

2. Section 85.2214 is amended by revising paragraphs (b)(1) and (b)(5) to read as follows:

§ 85.2214 Loaded test.

* * * * *

(b) *Test sequence.* (1) The dynamometer and analyzers shall be warmed up, in stabilized operating condition, and adjusted and/or calibrated according to the procedures of § 85.2217. Prior to each test, variable-curve dynamometers shall be checked for proper setting of the road-load indicator or road-load controller.

(2) * * *

(3) * * *

(4) * * *

(5) Exhaust HC and CO shall be measured while the vehicle is operated at the indicated roll speed specified in this paragraph. The test shall be conducted with the vehicle's gear selector in drive for automatic transmissions and in second (or third if more appropriate) for manual transmissions. The exhaust gas concentrations shall be recorded after stabilized readings are obtained or at the end of 30 seconds, whichever occurs first. This process shall be repeated as necessary for multiple exhaust pipes, unless hardware which is capable of simultaneously sampling vehicles with multiple tailpipes is used. Neither multiple readings nor simultaneous sampling hardware is necessary for exhaust systems in which the exhaust pipes originate from a common point.

(i) *Roll Speed Option A.* The vehicle shall be operated according to the following schedule:

Engine size (cylinders)	Roll speed MPH
4 or less	22–25
5 to 6	29–32
7 or more	32–35

(ii) *Roll Speed Option B.* The vehicle shall be operated at 30 ± 1.0 mph roll speed.

* * * * *

3. Section 85.2216 is revised to read as follows:

§ 85.2216 Loaded test dynamometer specification.

(a) The loaded test dynamometer shall produce one of the following optional road loads.

(1) *Road Load Option A.* A load of 7.0 ± 1.0 hp at 30 mph true roll speed.

(2) *Road Load Option B.* A load of 9.0 ± 1.0 hp at 30 mph true roll speed.

(b) Road Load Option B shall be used only in conjunction with Roll Speed Option B specified in § 85.2214(b)(5)(ii).

(c) The speed/load response curve of the loaded test dynamometer shall follow a cubic relationship in the range of 22–35 mph.

(d) Speed shall be measured from the dynamometer roll(s) with an accuracy of at least 1.0 mph over the range of 22.0 mph to 35.0 mph true roll speed.

4. Section 85.2217 is amended by revising paragraph (a), reserving paragraph (c), redesignating paragraph (e) as (g), and adding new paragraphs (e) and (f) as follows:

§ 85.2217 Calibrations, adjustments.

(a) Equipment shall be calibrated, adjusted, and maintained in accordance with the instructions in this subpart. In cases where these regulations are silent, calibrations, adjustments and maintenance shall be performed in accordance with the equipment manufacturers' instructions.

(b) * * *

(c) (Reserved)

(d) * * *

(e) *Monthly check.* Within one month of each loaded test, the accuracy of the roll speed indicator shall be verified.

(f) *Biannual check.* Within six months of each loaded test, the road-load response of the variable-curve dynamometer or the power absorption unit torque of the single-curve dynamometer shall be determined at a speed within the range specified in § 85.2216(b). The load factor shall be calculated and adjusted for operation at 30 mph true roll speed according to the response curves for the particular dynamometer, and conformance with the limits defined by § 85.2216(a) shall be verified.

[FR Doc. 88–29261 Filed 12–22–88; 8:45 am]

BILLING CODE 6560–50–M

Federal Register

Friday
December 23, 1988

Part III

Environmental Protection Agency

40 CFR Part 300

Hazard Ranking System (HRS) For Uncontrolled Hazardous Substance Releases; Appendix A of the National Oil and Hazardous Substances Contingency Plan; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3296-8]

Hazard Ranking System (HRS) for Uncontrolled Hazardous Substance Releases; Appendix A of the National Oil and Hazardous Substances Contingency Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule

SUMMARY: The Environmental Protection Agency (EPA) is proposing revisions to the Hazard Ranking System, the principal mechanism for placing sites on the National Priorities List (NPL). The NPL is a list of releases and potential releases of hazardous substances, pollutants or contaminants that are eligible for Superfund-financed remedial actions. These revisions would change the way EPA evaluates potential threats to public health and the environment from hazardous waste sites and may affect the type and number of such sites included on the NPL. These revisions are designed to make the Hazard Ranking System more accurate in assessing relative potential risk as well as to meet other statutory requirements.

DATES: Comments may be submitted on or before February 21, 1989.

ADDRESSES: Comments may be mailed or delivered to the CERCLA Docket Clerk, Attn: Docket Number, 105NCP–HRS, Mail Code OS–240, Superfund Docket Room, LG–100, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Please send 4 copies of comments. The public docket for the HRS revisions contains all relevant background material supporting these revisions. Requests for copies of these documents should be made to the CERCLA Docket Office, Waterside Mall Subbasement, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, phone 202–382–3046. The docket is available for viewing by appointment only from 9:00 am to 4:00 pm, Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Steve Caldwell or Jane Metcalfe, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response, OS–230, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, phone 202–382–3000 or 800–424–9346.

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I. Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 et seq.), commonly called the Superfund, in response to the dangers posed by uncontrolled releases of hazardous substances, pollutants, or contaminants into the environment.[1] To implement Section 105(8)(A) of CERCLA and Executive Order 12316 (46 FR 42237, August 20, 1981), the Environmental Protection Agency (EPA) revised the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), with later revisions on September 16, 1985 (50 FR 37624), and November 20, 1985 (50 FR 47912). The NCP sets forth guidelines and procedures for responding to releases or potential releases of hazardous substances, pollutants, or contaminants. Section 105(8)(A) of CERCLA (now section 105(a)(8)(A)) required EPA to establish:

> criteria for determining priorities among releases or threatened releases [of hazardous substances] throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities * * * shall be based upon relative risk or danger to public health or welfare or the environment * * * taking into account to the extent possible the population at risk, the hazard potential of hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact [and] the potential for destruction of sensitive ecosystems * * *.

To meet this requirement and help set priorities, EPA adopted the Hazard Ranking System (HRS) as part of the revised NCP. The HRS is a scoring system used to assess the relative threat associated with actual or potential releases of hazardous substances from a site. An HRS score is determined for a site by evaluating several migration routes or "pathways," such as water and air. The score for each pathway is obtained by evaluating a set of "factors" that characterize the potential of the facility to cause harm via that pathway. The factors, such as toxicity of the substances at a site, waste quantity, and population, are each assigned a numerical value according to instructions set out in Appendix A to the final NCP (47 FR 31180, July 16, 1982); this value is multiplied by a weighting factor yielding the factor score. The factor scores are then combined within "factor categories"; the total scores for the factor categories are multiplied together to develop a score for the relevant pathway. Finally, the pathway scores are combined according to a mathematical formula to produce the HRS score for the site.

The HRS was designed to be applied uniformly to each site, enabling sites to be evaluated relative to each other with respect to actual or potential hazards. As EPA explained when it adopted the HRS, "the HRS is a means for applying uniform technical judgment regarding the potential hazards presented by a facility relative to other facilities. It does not address the feasibility, desirability, or degree of cleanup required" (47 FR 31220, July 16, 1982). Although the HRS was designed to assess relative risks, it is not designed to be used as a quantitative risk assessment.

The HRS score is a crucial part of the Agency's program to address the

[1] For the purpose of this rule and preamble, the term "hazardous substances, pollutants, or contaminants" will be referred to simply as "hazardous substances."

identification and cleanup of actual and potential releases of hazardous substances because the HRS is the primary way of determining whether a site is to be included on the National Priorities List (NPL). Each State can also designate a single site to the NPL as a State top priority site regardless of its HRS score and sites may be added in response to a health advisory from the Agency for Toxic Substances and Disease Registry (see NCP, 40 CFR 300.66(b)(4)). The NPL (Appendix B to 40 CFR Part 300) includes those sites that appear to pose the most serious threats to public health and the environment and that appear to warrant remedial investigation and possible cleanup under CERCLA. Only sites on the NPL are eligible for Superfund-financed remedial actions. Emergency removal and enforcement actions can be conducted at any site whether or not it is on the NPL.

Remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release. Removal actions tend to be short-term or temporary in nature and involve cleanup or other actions deemed necessary to prevent or minimize damage to public health and the environment.

In 1986, Congress passed the Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499), which added a section 105(c)(1) to CERCLA requiring EPA to amend the HRS to assure "to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review." Section 105(c)(2) as amended also requires that the HRS appropriately assess the human health risks associated with contamination or potential contamination of surface waters, either directly or as a result of runoff of any hazardous substance. This assessment should take into account the use of these waters for recreation and the potential migration of any hazardous substance through surface water to downstream sources of drinking water.

The Amendments also add two criteria for evaluating sites under section 105(a)(8)(A):

- Evaluation of the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release of hazardous substances.
- The contamination or potential contamination of the ambient air which is associated with a release or threatened release

Section 105(c)(1) states that the revised HRS shall be applied to any site to be newly listed on the NPL after the effective date of the revised HRS. Until the effective date, sites will be scored with the current HRS. In addition, section 105(c)(3) specifies that EPA shall not be required to rescore any site evaluated with the current HRS before the effective date.

CERCLA section 118, added by SARA, requires EPA to give a high priority to facilities where the release of hazardous substances has resulted in the closing of drinking water wells or has contaminated a principal drinking water supply.

CERCLA section 125 (added by SARA) requires revisions to the HRS to address facilities that contain substantial volumes of wastes specified in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act (Resource Conservation and Recovery Act or RCRA). These wastes include fly ash wastes, bottom ash wastes, slag wastes, and flue gas emission control wastes generated primarily from the combustion of coal or other fossil fuels. Section 125 requires EPA to revise the HRS to assure the appropriate consideration of each of the following site-specific characteristics of such facilities:

1. The quantity, toxicity, and concentrations of hazardous constituents which are present in such waste and a comparison thereof with other wastes.
2. The extent of, and potential for, release of such hazardous constituents into the environment.
3. The degree of risk to human health and the environment posed by such constituents.

II. Hazard Ranking System

The current HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to cause human health or safety problems or ecological or environmental damage. The pre-remedial portion of the Superfund program—the portion prior to placing sites on the NPL—is intended to identify those sites that represent the highest priority for further investigation and possible cleanup under CERCLA. During site discovery, the first step of the pre-remedial process, possible releases of hazardous substances are listed in the CERCLA Information System (CERCLIS). A preliminary assessment is then conducted for all sites on CERCLIS; this low cost, initial evaluation is meant to give as full and complete a picture of the site as possible using existing information. EPA is currently continuing to screen the approximately 30,000 sites presently in CERCLIS.

If, based on the results of the preliminary assessment, EPA determines that a site warrants further action, the Agency initiates a site inspection as specified in the NCP (40 CFR 300.66). The site inspection may include the collection of a limited number of samples for chemical analysis. Such samples aid in ascertaining what substances are present at the site and whether they are being released. The purpose of the site inspection is to determine if there is a potential threat to public health or the environment, to determine if there is an immediate threat to people in the area, and to collect sufficient data to enable the site to be scored using the HRS.

As required by CERCLA, EPA has designed the Superfund program to focus its resources on the highest priority sites. Consequently, the initial studies—the preliminary assessment and site inspection—which are performed on a large number of sites, are relatively modest in scope and cost compared to the remedial investigations and feasibility studies subsequently performed on NPL sites. Because of the need to carry out the initial studies expeditiously, EPA has elected to place certain constraints on the complexity of the HRS. The required HRS data should be information that, for most sites, can be collected in a single site visit or that are already available. Thus, the HRS cannot rely on data that require extensive sampling or repeated sampling over a long period of time. The HRS has also been designed so that it can be applied consistently to a wide variety of sites.

The HRS provides a measure of relative rather than absolute risk. Congress, in its Conference Report on SARA, confirmed the appropriateness of this approach when it specified a substantive standard against which HRS revisions could be assessed.

This standard is to be applied within the context of the purpose for the National Priorities List; i.e., identifying for the States and the public those facilities and sites which *appear* to warrant remedial actions * * *. This standard does not, however, require the Hazard Ranking System to be equivalent to detailed risk assessments, quantitative or qualitative, such as might be performed as part of remedial actions. The standard requires the Hazard Ranking System to rank sites as accurately as the Agency believes is feasible using information from preliminary assessments and site inspections * * *. Meeting this standard does not require long-term monitoring or an accurate determination of the full nature and extent of contamination at sites or the projected levels of exposure such as might be done during remedial investigations and feasibility studies. This

provision is intended to ensure that the Hazard Ranking System performs with a *degree of accuracy appropriate to its role in expeditiously identifying candidates for response actions* (H.R. Rep. No. 962, 99th Cong., 2nd Sess. at 199–200 (1986) (emphasis added)).

EPA wants to emphasize that the HRS was designed to assess relative risk, and, thus, is not designed to be used as a quantitative risk assessment.

Of the approximately 30,000 sites in CERCLIS, approximately 27,000 have received a preliminary assessment. About 9,000 of those have had a site inspection and about 2,000 have been scored using the HRS. To date, there are 1,175 sites on or proposed for the NPL (see 48 FR 40658, September 8, 1983; 49 FR 19480, May 8, 1984; 49 FR 37070, September 21, 1984; 50 FR 6320, February 14, 1985; 50 FR 37630, September 16, 1985; 51 FR 21054, June 10, 1986; 52 FR 2492, January 22, 1987; 52 FR 27620, July 22, 1987; 53 FR 23988, June 24, 1988; and 53 FR 33811, September 1, 1988). SARA provides EPA (see CERCLA sections 116(a) (1) and (2), as amended) with goals for completing preliminary assessments and site inspections. For all sites in CERCLIS as of the date of the enactment of SARA, preliminary assessments should be completed by January 1, 1988, and site inspections, where needed, should be completed by January 1, 1989.

Although the NPL is ordered by HRS scores, EPA puts the sites into groups to emphasize that minor differences in scores do not necessarily indicate significantly different levels of risk.

The revisions being proposed today reflect the Agency's efforts to improve the accuracy of the HRS, addressing the SARA mandate. While this proposed rule, Appendix A to 40 CFR 300 ("proposed rule") would add some new elements, the HRS would still serve its intended purpose as a screening tool. EPA has been careful to balance the potential increased costs in time and resources to collect more data against the goal of improving accuracy, so the revised HRS can list sites correctly without impairing the Agency's ability to evaluate releases quickly.

Current HRS

The current HRS evaluates the relative threat of a site over five pathways—ground water, surface water, air, direct contact, and fire and explosion. The first three of these pathways reflect the risk from migration of hazardous substances from the site. The scores for ground water, surface water, and air are combined into an overall migration score that is the primary consideration in placing a site on the NPL. The last two pathways, direct contact and fire and explosion, may be used to determine if the potential risk is so acute that emergency action is required, but are not included in the overall HRS migration score.

The current HRS uses a structured value analysis approach to scoring sites. This approach assigns values to factors related to or indicative of risk. The basic elements of the current HRS are factors such as toxicity and containment. A scale of numerical rating values is provided for each factor and a value is assigned to each factor based on conditions at the site. Individual values are then weighted. The factors are grouped into three factor categories—observed release/route characteristics, waste characteristics, and targets—and are combined to obtain factor category scores. Each factor category has a maximum value, as does each of the component factors within the category.

The relevant factor category scores are multiplied together within each pathway and normalized to obtain a pathway score. Finally, the pathway scores for ground water, surface water, and air are combined to obtain the HRS migration score.

The pathway scores are combined using a root-mean-square approach to calculate the overall site score; that is, the final HRS score is the square root of the sum of the squares of the pathway scores divided by the square root of three. If all pathway scores are low, the HRS score will be low. However, the final score will be relatively high even if only one pathway score is high. EPA considers this an important requirement for the HRS scoring because some extremely dangerous sites pose threats through only one migration mode. For example, leaking drums of hazardous substances can contaminate drinking water wells, but if the drums are buried deeply enough and the hazardous substances are not very volatile, they may not release any hazardous substances to the air or to surface water.

III. Approach to HRS Revisions

EPA undertook a comprehensive review of the HRS in developing this proposed rule. Based on comments to previous rulemakings, and its own experience scoring sites, EPA prepared or sponsored a series of issue analysis reports that formed the basis for many of the options the Agency considered. These reports covered issues such as methods to evaluate human food chain exposure; methods to evaluate the potential for air release; evaluation of appropriate air and surface water target distance limits; factors to account for environmental attenuation of hazardous substances in ground water and surface water; methodologies for evaluating toxicity; methods for determining direction of ground water flow and issues related to the feasibility of using ground water flow direction measures; and the feasibility of using hazardous substance concentration data as well as evaluating waste quantity on a hazardous constituent basis. These reports and other studies form the basis of the Technical Support Document, available in the Superfund docket for public review, which explains in detail the basis for the options proposed in this revision.

To provide a broad spectrum of technical expertise in developing these revisions, EPA sought information from a number of sources. In 1986, EPA's Office of Emergency and Remedial Response established an EPA work group to guide the revision process. The work group's deliberations addressed not only the broad structure and function of the HRS, but also detailed technical issues.

A. Science Advisory Board

Several scientific questions were referred to the Agency's Science Advisory Board for its review and recommendations. The Science Advisory Board is a public advisory group providing scientific information and advice to the Administrator and other officials of EPA. The Board is structured to provide a balanced expert assessment of scientific issues related to problems facing the Agency. EPA referred three specific issues to the Board: (1) Options for revising the way toxicity of hazardous substances is evaluated and scored in the HRS; (2) the question of whether the HRS is biased against mining waste and other high volume waste sites (including issues related to the use of waste concentration data); and (3) the appropriate air pathway target distance over which population exposure is assessed. EPA developed summary technical documents on these issues and made several presentations to the Science Advisory Board, which prepared a report addressing each issue. The technical documents and Science Advisory Board recommendations are available in the docket. The documents are: (1) "Discussion of Options For Revising the Hazard Ranking System (HRS) Toxicity Factor," ICF, Inc., May 1987; (2) "Analysis of the Air Target Distance Limit in the Hazard Ranking System," EPA, 1987; (3) "The Superfund Hazard Ranking System (HRS): Applicability to Mining Waste Sites," ICF Inc., July 1987; and (4) "The

Superfund Hazard Ranking System (HRS): Feasibility of Using Concentration Data in a Revised HRS," ICF, Inc., July 1987. The Science Advisory Board's recommendations are outlined in "Science Advisory Board Hazard Ranking System Review Subcommittee: Review of the Hazard Ranking System," US EPA, 1988.

B. Review of Alternative Ranking Systems

One of the activities undertaken to develop a revised and improved HRS involved examining alternative site evaluation models chosen from a review of over 30 such systems. EPA evaluated the models to determine: accuracy in predicting potential risk; the extent to which the SARA requirements were addressed by the model; the implementability of the model; the amount of data that would have to be collected to evaluate sites using the model; and the cost and time involved in gathering these data.

In order to better understand the accuracy of these models, EPA tested three of the site evaluation models, along with a draft version of the revised HRS, on 20 sites. Through analysis of these models, EPA hoped to better understand the factors that affect the accuracy of site ranking methodologies, thereby developing insights to guide revisions to the HRS.

The three alternative systems analyzed were the New York State Human Exposure Potential Ranking System, the Air Force Hazard Assessment Rating Methodology II, and the Department of Energy Remedial Action Priority System. These systems were chosen for further testing because they considered site-specific conditions, were either fully developed and tested or in the final stages of development, examined multiple media, and were substantially different from the current HRS. None of them, however, fully met the SARA requirements without some revisions.

EPA convened a site ranking panel of senior EPA staff and managers selected to represent a cross-section of knowledge and specialties. The panel members were to evaluate and rank the 20 sites according to the relative level of risk they perceived the sites posed to human health and the environment. The purpose of this exercise was to obtain expert judgments to serve as a baseline for the comparative evaluations of the site evaluation models and to gain a better understanding of the relative weights of certain factors and exposure pathways in evaluating the threat from a site.

The 20 sites selected for the testing program were not randomly selected and are too small a sample to be statistically representative of the universe of potential Superfund sites. These sites had been investigated under the Superfund program and included NPL and non-NPL sites. The sites were selected to represent a range of different types of sites (landfills, surface impoundments, etc.) and a range of scores above and below 28.50, the cutoff on the current HRS for placing sites on the NPL. EPA also selected sites for which the necessary data were likely to be available. In addition, EPA explicitly selected some sites that contained features the current HRS migration routes could not score (such as human food chain exposures, direct contact exposures, and potential air releases). As a result, caution should be exercised in generalizing the testing results.

The panel used the most complete data available to rank the sites, more information than would normally be available at the time a site is evaluated using the HRS. Remedial investigations or Public Health Evaluations had been performed at most of the sites, providing quantitative risk estimates.

It is important to note that although the testing program provided the Agency with some useful information, this approach to assessing the site evaluation systems had some fundamental limitations. First, only 20 sites were used for the evaluation, and, as discussed above, these sites were not chosen randomly. Second, the panel had access to data that, in some cases, could not be used by (or were unavailable to) one or more of the models. Third, the panel's assessments were based on the subjective conclusions of panel members; although some objective criteria were applied, the same conclusions might not be reached by a second panel. Finally, no firm consensus was reached by the panel at the level of individual sites; rather, a fairly firm consensus on "groupings" of sites was reached, and only after negotiations and discussions among panel members. The limitations of the testing program account for some of the differences between the relative rankings of the expert panel and the rankings of the various models tested.

Despite these limitations, the results of the comparative evaluation of the models indicated that the draft revised HRS best reflected the site ranking panel's consensus ranking. This analysis is discussed in more detail in "Analysis of Alternatives to the Superfund Hazard Ranking System" (Industrial Economics, Inc., November 1988), as are each of the three alternative models tested. Further discussion of the correlations of the model rankings with the site ranking panel rankings and an analysis of the reasons for these correlations are provided in the above-referenced report which is available in the Superfund docket.

The model testing study suggested that the accuracy of the HRS could be improved by ensuring that the model considers a comprehensive set of exposure pathways and that the revised HRS employ a weighting scheme that gives sufficient emphasis to hazardous sites dominated by risks along one or several exposure pathways. In addition, the analysis suggests that the revised HRS should be flexible enough to take evidence of adverse health effects and environmental damage into account in evaluating sites. The analysis points out the sensitivity of site ranking models to the data they employ, and the importance—subject to resource constraints and the need to expeditiously evaluate sites—of providing the revised HRS with the best available data. The revised HRS attempts to implement these recommendations, as is discussed in greater detail later in this preamble.

Based on the evaluation of the HRS in the model testing study, EPA determined that the draft version of the revised HRS met all the statutory requirements, did not require more data than could reasonably be collected within the limited scope of a site inspection, and was cost-effective and implementable.

C. Cutoff Score

The first NPL contained 418 sites. States had the opportunity to designate one site as their single top priority; the remaining sites were included because they had HRS scores of 28.50 or higher. EPA chose the 28.50 cutoff score as a management tool because it yielded an initial NPL of at least 400 sites as required in CERCLA section 105(8)(B) (now CERCLA section 105(a)(8)(B)), not because of any determination that the cutoff represented a threshold of unacceptable risks presented by sites.

In the Conference Report on SARA, Congress asked EPA to address the relationship between risks at NPL sites and the cutoff score. During its revision of the HRS, EPA addressed this and other issues in a number of studies related to the cutoff score. These studies were combined into one report, which is available in the Superfund docket. ("SARA Studies on HRS Scores and Remedial Actions, HRS Scores and Potential Dangers, and the Effect of the 28.50 Cutoff Score," CH2M Hill,

September 1988.) Although the study was limited in scope and definitive conclusions are not possible, it did indicate that some sites with scores below the cutoff can also pose potential dangers to human health and the environment. However, the cutoff score was not meant to set a no-risk threshold, but rather to set a level above which a site becomes a priority.[2] Toward that end, the 28.50 cutoff has been useful in identifying high priority sites for further study and possible remedial action and has proven to be an effective management tool. In general, NPL sites with scores exceeding 28.50 present significant risks to public health and the environment, necessitating some form of response. On the other hand, three sites have been deleted from the NPL after completion of a remedial investigation/feasibility study (RI/FS). Based on the remedial investigations, EPA concluded that none of the sites presents a significant threat to public health or the environment and that no removal or remedial action is necessary at those sites (51 FR 7935, March 7, 1986; 53 FR 12680, April 18, 1988).

In the past, EPA considered the effects of both raising and lowering the cutoff score for the NPL relative to the current cutoff. Lowering the cutoff would add more sites to the NPL and would tend to include more sites with lower risks than sites currently on the NPL. EPA is concerned that lowering the threshold might substantially increase the number of NPL sites that are found to present no significant threat to health or the environment after the RI/FS has been completed. Raising the cutoff establishes a higher threshold for newly scored sites and would tend to exclude from the NPL sites that present significant risks to public health and the environment. Since EPA believes that the current cutoff score has been a useful management tool, the Agency is proposing that the cutoff score for the revised HRS be functionally equivalent to the current cutoff.

In light of the rather substantial revisions of the HRS in this proposal, EPA concluded that it is necessary to evaluate the practical effects of keeping the cutoff score at 28.50; that is, whether that score will continue to provide an appropriate set of National Priorities for management purposes. The Agency is examining several approaches for defining "equivalent to 28.50." One alternative is to score sites using both the current and revised systems; EPA would then use statistical analyses to determine what revised HRS score best corresponds to 28.50 on the current HRS. Another alternative would be designed to yield an NPL of the same size as would the current HRS and current cutoff score. That is, EPA would estimate the size of the NPL if the current approach were applied to the known inventory of sites and then identify what cutoff score for the revised HRS would result in the same number of NPL sites. A third alternative involves identifying the quantitative risk levels that on the average correspond to a current HRS score of 28.50 and then determining what revised HRS score best corresponds to that risk level.

EPA specifically requests comment on whether the cutoff score for the revised HRS should be functionally equivalent to the current HRS score of 28.50 and, if so, how to define and determine functional equivalence. The Agency intends to evaluate various cutoff score analyses based on the cost and availability of data.

Although the Agency is proposing that the cutoff be functionally equivalent to the current score of 28.50, it is premature to specify a numerical cutoff score for the revised HRS at this time. As stated previously, every factor in the current HRS has been revised, and new factors have been included. An entirely new exposure pathway, the onsite exposure pathway, has been included in the total site score. Sites with certain characteristics (i.e., human food chain or direct contact problems) may score higher on the revised HRS than under the current HRS. Alternatively, certain sites may score lower under the revised HRS because of factors that allow target populations to be distance and dilution weighted, and due to the addition of mobility factors. Thus, differences in scores are anticipated between the current HRS and the proposed revised HRS. While the Agency expects that the changes will result in increased accuracy in assessing the relative degree of risks to public health and the environment for certain sites, it makes it difficult at this time to identify an appropriate cutoff score. After performing further analyses and reviewing public comments, EPA will select a means of establishing a cutoff score for the revised HRS and will announce that score in the preamble to the final rule.

D. SARA Conference Reports

In the Conference Report on SARA, Congress called on the President to address a number of issues during the review of the HRS (H.R. Rep. No. 962, 99th Cong., 2nd Sess. at 200 (1986)). Thus, in addition to the studies and reviews that EPA performed based on its experience and on comments, the Agency prepared the following:

1. An evaluation of the Preliminary Pollutant Limit Value system used by the Department of Defense and comparison with the HRS.
2. An explanation of how the HRS was developed and the method of determining the relative hazards at different facilities under the system.
3. A study determining the relationship of HRS scores and the potential dangers to human health and the environment.
4. An examination of the effect of establishing a threshold value of 28.50 for facilities to be included on the NPL.
5. A study determining the relationship between HRS scores and the types of remedial actions that are appropriate at such facilities.

These studies are available in the Superfund docket for this proposal. (See "SARA Studies on HRS Scores and Remedial Actions, HRS Scores and Potential Dangers and the Effect of the 28.50 Cutoff Score," CH2M Hill, September 1988; "An Explanation of How the HRS was Developed and the Method of Determining the Relative Hazards at Different Facilities under the System," US EPA, September 1988; and "Comparison of the Preliminary Pollutant Limit Value (PPLV) System and the Hazard Ranking System (HRS)," Versar, September 1988.) In addition, Congress called for a determination of whether a new threshold value should be established for inclusion of facilities on the NPL; this subject is discussed in this preamble in Section III.C.

E. Advance Notice of Proposed Rulemaking

EPA published an advance notice of proposed rulemaking (ANPRM) on April 9, 1987 (52 FR 11513), soliciting comments on the revisions required by SARA as well as on the following technical issues: existing scoring factors; other models for ranking hazardous substance releases; mechanisms for including direct contact in the HRS; and a mechanism for incorporating human food chain exposures into the HRS. On May 7 and 8, 1987, EPA held a public meeting on the HRS. The comments received during the public meeting and in response to the ANPRM have been reviewed and considered in the development of this Notice of Proposed Rulemaking. EPA will respond in detail to all comments when the final rule is promulgated.

[2] It should be noted that although sites scoring below 28.50 have not generally been placed on the NPL, they may be addressed by CERCLA removal or enforcement authorities, or by State and local governments, if response measures appear to be warranted.

IV. Background Documents

The proposed revisions to the HRS are discussed in three primary documents: (1) The proposed rule, (2) this preamble, and (3) the "Technical Support Document: Revised Hazard Ranking System," ("Technical Support Document"). The proposed rule outlines the scoring system, emphasizing the mechanics of scoring sites. This preamble provides an overview of the scoring system, along with concise explanations of why the changes were made.

The Technical Support Document contains a more detailed explanation of the technical basis for the proposed revisions to the HRS, along with descriptions of the options considered. The Technical Support Document follows the same general outline as the preamble, with one section describing revisions that affect more than one pathway (e.g., toxicity), and the remaining sections describing the four pathways of the revised HRS. Each discussion in the Technical Support Document generally contains a description of the current HRS, the options considered, the revisions that are proposed for the revised HRS, and the technical justifications for the option chosen. In addition, the Technical Support Document references other background documents that provide an even greater level of detail on the proposed revisions. These documents, along with the Technical Support Document, are available to the public in the Superfund docket. To facilitate public review, EPA has prepared an index to the proposed rule, the preamble to the proposed rule, and the Technical Support Document with detailed cross referencing of issues. This index will be available in the Superfund docket. See the **ADDRESSES** section of this preamble for further information on the Superfund docket.

V. Discussion of the Proposed Rule

A. Overview

As stated above, the current HRS is incorporated in the NCP as Appendix A to 40 CFR Part 300. Appendix A, which is essentially a user's manual for the HRS, includes the forms as well as instructions for assigning values to each of the factors.

The current Appendix A provides instructions for evaluating five pathways. The surface water, ground water, and air pathways comprise the migration pathways and are used in determining the HRS site score. Direct contact and fire and explosion may be calculated to determine if removal action is warranted. EPA does not believe that the fire and explosion calculation would provide a useful basis for scoring a site for remedial action. The potential for fire and explosion is considered in another part of the Superfund program, the removal program, when determining if a removal action is necessary. Therefore, the proposed HRS would delete the fire and explosion calculations. For the reasons discussed in section V D 4, the current direct contact calculation would also be deleted and replaced by an onsite exposure pathway. This new pathway would be included in the HRS site score.

As can be seen from the diagrams preceding section V D 1 through 4, the essential structural features of the revised HRS would generally remain the same as those of the current HRS. However, every factor has been revised or is new. A few factors would be eliminated, either because they do not discriminate among sites or because they would be replaced by more accurate measures.

The remainder of this preamble discusses the proposed changes to Appendix A. After an overview of the four pathways (both in their current and revised state), section V B presents a general discussion of the major proposed revisions. Following that, section V C describes in detail issues and factor revisions that affect more than one of the pathways. Sections V D 1 through 5 discuss all other changes to each specific pathway. Finally, section V E discusses an issue that has been the subject of special attention, wastes designated as special study wastes under RCRA.

1. Ground Water

The ground water migration pathway in both the current and revised HRS evaluates the likelihood that hazardous substances at a site or facility will migrate through the ground beneath them and contaminate aquifers. If the hazardous substances reach an aquifer, the substances can potentially be transported through the aquifer and contaminate drinking water wells that draw from that aquifer.

If hazardous substances have been released to an aquifer or if the site characteristics make a release likely, the principal questions the ground water pathway evaluates are the impact of releases on the ground water resources and on the people who draw their drinking water from potentially contaminated wells. The revised HRS is designed to reflect the concept that hazardous substances in ground water tend to become increasingly diluted as distance from the site increases.

2. Surface Water

For the purposes of the HRS, surface water is defined as perennial streams, rivers, lakes, oceans, and intermittent streams and ditches in arid and semiarid regions. If contaminated runoff has reached surface water or if the site characteristics make a release to surface water likely, the HRS evaluates the potential for the release to affect people or the environment. The revised HRS would include factors for evaluating flood potential and address the effect of hazardous substances on the human food chain. In addition, the revised HRS would evaluate risks from recreational exposures.

3. Air

The current HRS air pathway is evaluated only if hazardous substances at a site have escaped into the air either as gases or as particulate matter. The revised HRS would also consider the site characteristics to assess the potential for releases to occur even if no release has been documented. Once the likelihood of release has been determined, the main questions are how many people and sensitive environments could be exposed to hazardous substances carried in the air and the inherent hazard associated with potential exposures.

4. Onsite Exposure Pathway

The onsite exposure pathway deals with the possibility that people or sensitive environments will have direct, physical contact with hazardous wastes or contaminated soil. The revised HRS would look at two populations to assess the risk. The resident population consists of those people who live or go to school or day care on land that is contaminated. The nearby population consists of those people who live within a one-mile travel distance of the site and might have access to the site.

B. Major Revisions

The following is a summary discussion of the major revisions being proposed. More detailed specifics of each proposed revision as well as discussions of legal requirements, of options EPA considered, and of the reasons for EPA's decisions are provided in sections C and D, which also give references to the rule and to supporting documents available in the docket.

1. Actual and Potential Contamination

The current HRS evaluates the potential for exposure of populations and does not give additional consideration (i.e., higher scores) to

situations where human exposures have been documented. The current HRS is also primarily oriented toward population risk rather than individual risk. EPA is proposing changes in HRS calculations so that the HRS will more accurately reflect the potential risk to individuals and to populations exposed to documented contamination.

In assessing drinking water threats in the proposed revisions, target populations in the ground water and surface water pathways would be divided into four groups: people exposed to documented contamination above health-based benchmarks; people exposed to documented contamination not exceeding health-based benchmarks, but significantly above background concentrations (two groups are defined on the fraction of the benchmark present); and people potentially exposed to contamination from a site. The health-based benchmarks would be based on the National Primary Drinking Water Standards (maximum contaminant levels (MCLs)) (40 CFR 141.11 through 141.16 and 52 FR 25690, July 8, 1987). If no drinking water standard has been developed by the Agency for a substance, the health-based benchmark would then be based on maximum contaminant level goals (MCLGs) for noncarcinogens. For carcinogens and potential carcinogens that have no MCLs, risk-specific concentrations corresponding to an individual cancer risk of 10^{-4} would be used as the benchmark instead of MCLGs. Where contamination above a health-based benchmark occurs, people exposed to this contamination would be weighted most heavily in determining the factor score. (See section V C 5.) The sensitive environments subpathway in the surface water pathway would also be evaluated on actual and potential contamination, using ambient water quality criteria as ecologically-based benchmarks.

Likewise, the human food chain subpathway in the surface water pathway assigns a higher value where a fishery has actually been closed or shows contamination over an action level set by the U.S. Food and Drug Administration (FDA) than where a fishery has not been closed and is not known to be contaminated above action levels. The recreation subpathway assigns a higher value where a recreation area has actual contamination rather than potential contamination.

The potential risk to the maximally exposed individual (MEI) would be represented by the distance to the nearest drinking water well in the ground water pathway, the streamflow at the nearest drinking water intake in the surface water pathway, and the distance to the nearest occupied building in the air pathway. When there is contamination above health-based benchmarks in any well or water intake within the target distance, the MEI factor would be assigned the maximum value in the ground water or surface water pathways to ensure that documented contamination is heavily weighted. (See section V C 9.)

2. Dilution/Distance Weighting

In the current HRS, weighting targets based on dilution/distance is explicitly included only in the air pathway, although such weighting is implicit in some factors in the ground water and surface water pathways. Because, under most circumstances, the concentration of hazardous substances declines as the substances migrate from a site, the revised HRS would apply dilution/distance weighting directly to relevant target category factors to better reflect the differential exposures and risks to targets located at varying distances from a site. The Agency believes such a revision would improve the accuracy of the HRS.

For surface water, the weighting factor would be based on dilution as reflected by the average annual flow; in air and ground water, distance would be used as a surrogate for dilution. The weighting of the population at different distances is based on the results of environmental transport models. In the ground water and surface water pathways, dilution/distance weighting of targets would be used for those populations who do not have actual contamination in their drinking water wells or drinking water intakes, but where the aquifer or surface water body is contaminated or has the potential to be contaminated. In the air pathway, all targets would be distance weighted. In the onsite pathway, the nearby population would be distance weighted, reflecting the likelihood of people visiting the site, not the potential decrease in concentration as hazardous substances migrate from a site. (See section V C 8.)

3. Toxicity

Under the current HRS, the toxicity factor scoring is based primarily on acute toxicity of hazardous substances. However, EPA recognizes that adverse health effects at hazardous waste sites may result from chronic exposures as well as from acute exposures. To include the consideration of such risks, EPA is proposing to change the basis of the toxicity factor score. The current toxicity values are based on either the Sax rating system or the rating system of the National Fire Protection Association. The revised HRS would evaluate hazardous substances and assign scores for three kinds of toxicity: acute toxicity, carcinogenicity, and chronic noncarcinogenic toxicity. The highest of the three scores for a hazardous substance would become the toxicity factor value assigned to that substance. EPA is proposing to score hazardous substances using a system based on Reference Doses for chronic noncarcinogenic toxicity; Cancer Potency Factors combined with qualitative weight-of-evidence for carcinogenicity, or, when the Cancer Potency Factor is not available, the ED_{10}; and LD_{50} or LC_{50} values for acute toxicity. In addition, EPA is proposing to include aquatic toxicity ratings to assess potential risks to aquatic ecosystems. (See section V C 2 and Section V D 2.) Toxicity values for a substance would be combined in a matrix with mobility or persistence factors to calculate the final toxicity/mobility values for the ground water and air pathways or toxicity/persistence values for the surface water pathway.

4. Mobility

The current HRS does not directly consider the properties of substances that affect their ability to be released and migrate through environmental media; therefore, the current HRS may not differentiate well between two highly toxic substances with very different mobilities. The addition of a mobility factor should better reflect the risks from a site. Thus, EPA is proposing to incorporate mobility factors that would combine with toxicity in a matrix calculation in the ground water and air pathways to create a more accurate measure of the likelihood that a particular substance will migrate to ground water or to the atmosphere and expose potential targets; the air pathway would consider the mobility of both gases and particulates. (See sections V D 1 and 3.)

Although the surface water pathway has no mobility factor per se, the persistence factor addresses this issue, as would the proposed bioaccumulation factor in the human food chain calculations and the proposed dose adjusting factor in the recreation calculations. (See section V D 2.)

5. Hazardous Waste Quantity

Hazardous waste, in addition to including some proportion of hazardous substances, almost always includes nontoxic substances. When the current HRS was developed, EPA judged that

the cost of reliably determining the amount of hazardous constituents within the hazardous wastes at a site was prohibitive and, in some cases, technically impossible. Therefore, the current HRS was designed to use the total quantity of waste instead of the quantity of hazardous substances in the waste for the calculation of the hazardous waste quantity factor.

EPA is proposing to modify the existing method of calculating the hazardous waste quantity factor to make it a more accurate reflection of relative risk. The proposed tiered approach would allow for the use of calculated amounts of hazardous substances for sites where the contaminant concentrations in a given waste have been determined based on adequate sampling and analytical methods. If these concentrations are not available, waste quantity as deposited could be used, as could source volume or source area. (See section V C 3.)

6. Sensitive Environments

The sensitive environments considered under the current HRS include wetlands and areas that are critical habitats for plants and animals on the Federal endangered species list. EPA is proposing a significant expansion of the sensitive environments eligible to be scored in order to more fully address CERCLA's original mandate to consider threats to both public health and the environment, as well as to respond to the SARA requirement to accurately assess relative risk to human health and the environment, to the maximum extent feasible. In the revised HRS, sensitive environments would include lands and waters that have been legally designated as protected areas by either the Federal government or state governments, as well as areas that have been identified by the Nature Conservancy's National Heritage Program. (See section V C 6.)

7. Onsite Exposure Pathway

The direct contact portion of the current HRS calculates the potential for direct exposure to hazardous substances in a way that essentially parallels the surface water, ground water, and air pathways; however, the calculation is not included in the score used to determine a site's eligibility for the NPL. Currently, the direct contact pathway could be used to determine whether removal action is required at a site. An analysis of decisions on remedial actions indicated that some significant risks from direct contact may not have been completely addressed by removal actions and should be of concern in determining priorities for remedial action. To ensure that the potential for such contact is factored into the HRS score, EPA is proposing to incorporate exposure to onsite wastes and contaminated soils into the HRS migration score by adding a separate pathway. The onsite exposure pathway would be included in the HRS score to better respond to CERCLA's original mandate to take into account the potential for direct human contact in setting priorities, as well as to respond to the requirement in SARA to accurately assess relative risk to the maximum extent feasible.

The proposed onsite exposure pathway would separately assess two populations, those people who live or attend school or day care on the contaminated site and those who live nearby and have access to the site. Resident children under seven would be considered the high risk population and would be weighted more heavily than adults because of their greater likelihood of ingesting onsite contaminants. (See section V D 4.)

8. Surface Water

In the current HRS, the surface water pathway is primarily concerned with the potential contamination of drinking water and with the population that could be affected by this contamination. A lesser weight is given to the impact of contaminants on sensitive environments in surface water. As required by SARA, EPA has considered other targets and is proposing to evaluate separately the potential contamination of the human food chain (based on fishery contamination) and recreational exposures to contaminated surface water. Sensitive environments would also be assessed separately. In addition, new factors to assess flood potential would be incorporated into the likelihood of release factor category. The factors used to assess route characteristics in the current HRS would be replaced by a new set of factors that better assess overland release potential. (See section V D 2.)

9. Air

The HRS currently evaluates the air pathway solely on the basis of site monitoring data; if no release of contaminants has been documented at the site, the air pathway part of the HRS is assigned a score of zero. In contrast, for the surface water and ground water pathways, the potential for a release to occur is considered where no observed release has been documented.

CERCLA section 105(a)(8)(A), as amended by SARA, specifies that EPA should consider potential releases to the ambient air in revising the HRS. Accordingly, the proposal described in Section V D 3 includes a method to assess potential air releases.

C. Revisions Affecting Multiple Pathways

This section discusses in detail those issues that affect more than one pathway. Although some of these issues were covered in the general discussion in the major revisions section, this discussion reviews these cross-cutting issues in more detail and describes the options EPA considered to resolve these issues. Because the proposed changes are similar in all the pathways affected, to prevent repetition, the specific revisions for each pathway are discussed in this section rather than in the individual pathway discussions in section V D. For most of these issues, detailed descriptions of the options reviewed and the reasons for EPA's choice can be found in the Technical Support Document, available in the Superfund docket. Other related documents and tables for determining some factor values are also available in the Superfund docket.

1. Structure

The proposed HRS would retain the general structure of the current HRS, as described in section II; that is, the structure of the revised HRS would continue to be based on evaluating the relative risk of sites through the use of factors, factor categories, and pathways to obtain a final site migration score.

This structure was retained after a careful evaluation of possible alternative structures to the existing HRS, including alternatives to the entire structure, to factor categories, and to individual factors. During this process, EPA reviewed over 30 available site evaluation systems and over 55 chemical ranking systems, including several systems developed expressly for ranking hazardous waste sites.

Evaluation of Overall Site Migration Score. During the course of this evaluation, EPA considered several methods for revising the way in which pathway scores are combined to calculate the overall HRS site score. EPA evaluated the possibility of adding the pathway scores, but found that with the proposed structure, this approach tends to discount the effects of risks involving only one pathway. The results of testing a system that sums pathway scores are consistent with these findings. Other options considered included selecting the single highest pathway score, using a root-mean-square approach for the two highest

pathways, and using the root-mean-square approach for the three highest pathways. The Agency believes, however, that using the root-mean-square approach for all pathways in the revised HRS most appropriately considers the risk through all four pathways, without discounting risks involving only one pathway. Thus, the structure for combining pathway scores into a single site score is the same in both the current HRS and the proposed revisions to the HRS.

Evaluation of Pathways. The major changes to the pathways of the existing HRS are: (1) Elimination of the direct contact route; (2) incorporation of an onsite exposure pathway in the calculation of the total HRS site score; (3) elimination of the fire and explosion route; (4) modification of the surface water pathway; and (5) addition of a potential to release calculation to the air pathway.

For the onsite exposure pathway, EPA is proposing that the maximum score for the entire pathway be equal to the maximum score that could be assigned to either the resident or nearby population (proposed rule, section 5.0). EPA concluded that exposures to either group can represent a reasonable worst case risk and that this case should be reflected in the final migration score.

Four threat categories have been incorporated in the surface water pathway: Drinking water, human food chain, recreational, and environmental. Each of these threats is evaluated, structurally, in a manner consistent with surface water threats in the existing HRS. The four threat scores are added to form a total pathway score.

Evaluation of Factor Categories. In the current HRS, the value for the targets factor category in a pathway is the sum of individual factor values. The maximum factor category value can be obtained only if every factor is assigned its maximum factor value. This means that under the current HRS, a site significantly affecting 10,000 people would not receive a maximum score for the surface water pathway unless sensitive environments are also given a maximum value. Similarly, a site would not receive a maximum score for the air pathway if no one lives within a quarter mile of the site and, for the ground water pathway, a site would not receive a maximum score if there were no intakes or wells within 2,000 feet of hazardous substances.

The proposed rule would modify the method used to add target factor values so that some sites that do not meet the criteria for the maximum value for each target factor could still receive the maximum score for the overall target category. The sum of the available points for each type of exposure would be greater than the number of points allowed for the factor category. Under this approach it is possible to allocate a significant number of points for sensitive environments without reducing the importance of human health risks. One effect of this revised scoring system would be to condense scores at the upper end of the scale and more accurately assess relative risks elsewhere.

As is the case in the current HRS, all factor categories in the revised HRS have the same relative weight. That is, the maximum value for the waste characteristics category has the same weight as the maximum value for the targets category, and each of those has the same weight in the air pathway as in the ground water pathway. This is true despite different factor category values because the values are multiplied and normalized.

Evaluation of Factors. EPA is proposing structural changes in the way some individual factors are evaluated and in the relative scoring of factors within the targets factor category. To put this in context, the relationship of factors within categories must be understood. The relative importance of factors within different factor categories cannot be compared by their maximum factor values alone. Rather, their relative importance depends on the maximum percentage of their category they can account for; e.g., a factor with a maximum value of 50 contributes more to its category if the category maximum is 100 than if it is 200. Within the same factor category in a single pathway, the relative importance of factors is comparable based on their maximum values. In other words, in the surface water pathway the relative importance of drinking water population versus surface water use can be compared based on their maximum factor values. However, the relative importance of drinking water population in surface water versus ground water cannot be compared based on their factor values; their relative importance can only be compared based on the percentage their maximum value contributes to the maximum value of their factor category.

In the current HRS, factors are weighted by assigning a factor value and then applying a specified multiplier. The revised HRS would eliminate the explicit weighting by use of a multiplier and would incorporate a measure of relative importance of the factor to the factor category through the factor values themselves. To assign relative values among factors within factor categories for this proposed revision, EPA combined the results of model testing programs, a review of site ranking experience, and the results of analytical models used to model fate and transport of hazardous substances. In evaluating these data, EPA used two primary considerations for assigning the appropriate value to a given factor: (1) The relative importance of the factor as an indicator of risk and (2) the expected accuracy with which the factor can be measured or estimated based on site inspection data.

Potential Revisions Under Consideration. The Agency is still considering a variety of revisions to the algorithm and factor scales in the revised HRS.

The EPA Science Advisory Board, in addition to its review of specific issues identified by EPA, offered ideas regarding revisions to the algorithm used to calculate the current HRS score and the factor scales. The Board suggested that the Agency assess the current HRS algorithm to determine if changes in the algorithm could provide increased accuracy without increasing data collection costs.

Specifically, the Science Advisory Board suggested that the current HRS algorithm be revised to more closely resemble a quantitative risk assessment with simplifications made to account for the difficulties of data collection. The Board also suggested that the factor category scales be revised so that the logarithm of the actual number for a factor becomes the factor value. Factor values might then be summed to develop pathway scores.

Another change in the algorithm could include moving the waste quantity factor from the waste characteristics category to the likelihood of release category. Such a move would increase the importance of toxicity and mobility/persistence factors because these would be the only factors remaining in the waste characteristics category. The change might also provide better discrimination among sites based on likelihood of release.

Another change in the structure might involve removing the maximum values from some factors (e.g., waste quantity or population) or from all factors. Scores would not be normalized to a 100 point scale under this approach and there would be no maximum possible score. In addition, EPA may change specific values for certain factors (and/or factor categories) to better reflect their relative importance.

EPA is planning to evaluate and possibly test such changes in the algorithm prior to promulgating a revised HRS. Commenters should

consider these and other possible revisions to the algorithm.

2. Toxicity

Toxicity, a factor in the waste characteristics category for all HRS pathways, is intended to represent the relative potential of a substance to cause adverse health effects. The toxicity factor does not provide an absolute assessment of toxicity; each substance is assigned a value based on its relative toxicity, and that value is used to determine the relative toxic potential of substances at sites.

The current HRS approach to scoring toxicity is based on the National Fire Protection Association (NFPA) rating scheme and the toxicity ratings developed by N.I. Sax. Using one of these ratings, both of which place primary emphasis on the acute toxicity of a substance, the HRS assigns a toxicity factor value from 0 to 3. Only the single highest scoring substance available for release in a pathway is used in assigning a value to the toxicity factor for that pathway.

Various rulemakings on the NCP and NPL, the subsequent applications of the HRS to uncontrolled hazardous waste sites, and EPA's request for comments in the ANPRM have raised a number of issues concerning the current method of assessing toxicity. In particular, commenters have questioned whether chronic toxicity and carcinogenic effects are adequately addressed.

As a first step to revising the HRS toxicity factor, EPA reviewed over 55 chemical ranking systems, as well as the toxicity components of over 30 site ranking systems. EPA then evaluated in more detail a number of methods to characterize and score toxicity, and presented several options to the Science Advisory Board, including an option based on Reportable Quantities (RQ); an option based on Reference Doses (RfDs) and Cancer Potency Factors; and an option using modified Acceptable Daily Intakes (ADI) and a modified weight-of-evidence approach. These options are discussed more fully in "Discussion of Options for Revising the Hazard Ranking System (HRS) Toxicity Factor" (ICF, Inc., May 1987), available in the Superfund docket.

EPA developed the RQ ranking system to aid in setting reportable quantities for hazardous substances as required by CERCLA; the system is described in detail in the following **Federal Register** notices and their supporting material: 50 FR 13456, April 4, 1985; 51 FR 34534, September 29, 1986; and 52 FR 8140, March 16, 1987. In the RQ ranking scheme, each CERCLA hazardous substance is assigned to one of five RQ categories. Each category corresponds to a weight, in pounds, above which releases must be reported. Under the option developed for using the RQ approach in the HRS, three toxicity types would be considered: chronic noncarcinogenic toxicity, carcinogenicity, and acute toxicity.

The RfD/Cancer Potency Factor option would use the two quantitative toxicity parameters for chronic toxicity generally used by EPA in site-specific risk assessments: The RfD for noncarcinogenic effects and the Cancer Potency Factor combined with the qualitative weight-of-evidence for carcinogenicity; acute toxicity would not be considered under this option.

The Agency defines the RfD as an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. The determination of the RfD requires scientific judgments as to the appropriate NOAEL (No Observed Adverse Effect Level), uncertainty factors, and modifying factors. Uncertainty factors are reductions in dose rate that are introduced to account for areas of scientific uncertainty such as species extrapolation and variability within the human population. General rules have evolved for determining the overall uncertainty factor to use with various data sets. However, the application of these rules in a particular instance needs to be examined on a case-by-case basis, exercising scientific judgment as to the quality and quantity of the available data. As the magnitude of the uncertainty factor increases, the estimate of the RfD becomes less precise. The RfD is viewed by most toxicologists as a "soft" estimate. While exposures higher than the RfD are associated with increased probability of adverse effects, that probability is not a certainty, since the calculation of a RfD includes consideration of sensitive subgroups. Similarly, while the RfD is seen as a level at which the probability of adverse effects is low, the absence of risk to all people cannot be assured at this level. RfDs, which undergo a formalized Agency-wide peer review and verification process, are derived from available chronic and subchronic toxicity studies.

Cancer Potency Factors, which are developed by EPA's Carcinogen Assessment Group and used to estimate potential carcinogenic risk, are derived from studies on experimental animals or from human epidemiologic data, if available. The weight-of-evidence is defined as the overall strength of the data indicating potential carcinogenicity, based on an evaluation of all relevant studies and the nature and type of responses. Methods for estimating Cancer Potency Factors and evaluating weight-of-evidence are both described in more detail in EPA's Guidelines for Carcinogenic Risk Assessment (51 FR 33992, September 24, 1986).

The modified ADI/modified weight-of-evidence option included three human toxicity types: carcinogenicity, mutagenicity, and teratogenicity (CMT) considered as a group; chronic, non-CMT toxicity; and acute toxicity. All substances would be scored for all three types of toxicity. The modified ADI method for assessing chronic noncarcinogenic toxicity is similar to the RfD method, but the ADI values derived are not subject to Agency-wide peer review and can be based on a wider range of toxicity data (e.g., acute data) than can RfDs.

The Science Advisory Board indicated that all three options that EPA presented seem much better than the Sax rating method and recommended that Sax be replaced. The three options use essentially the same data bases for toxicity, the Board stated, although the data are processed differently. The Board preferred the RfD option for assessing chronic noncancer toxicity.

Based on the Board review and input from the EPA work group, EPA is proposing a scoring method that combines elements of several of the options originally presented to the Board. This combined approach would be based on three toxicity types: carcinogenicity, chronic noncarcinogenic toxicity, and acute toxicity. To evaluate the potential carcinogenicity of substances, the revised HRS would use Cancer Potency Factors combined with the qualitative weight-of-evidence. Where Cancer Potency Factors are not available, ED_{10}s, (i.e., dose at which a 10 percent response is observed) developed to assess carcinogenicity for setting RQs, would be converted to an equivalent scale and used for scoring.

For chronic noncarcinogenic toxicity, the revised HRS would use a method based on verified RfDs because they represent EPA's best scientific data and judgment regarding the potential noncarcinogenic effects of substances. RfDs are currently the most widely used values for evaluating chronic noncarcinogenic toxicity in EPA risk assessments. Acute toxicity scoring would be based on the LD_{50} or LC_{50} of a substance, or the LD_{10} or LC_{10} if LD_{50} and LC_{50} are not available.

In scoring toxicity using the revised HRS, separate toxicity scores would be developed for each HRS pathway, based on the substances relevant to that pathway. Within a pathway, the relevant hazardous substances would be identified—those associated with an actual or potential release to ground water, surface water, or air, or, for the onsite pathway, those associated with onsite exposure potential. For each substance identified, the toxicity rating would be determined using the methodology in the proposed rule (section 2.2.1.1) or a reference table based on that methodology (an example is available in the Docket: See "Example Reference Table for Toxicity and Other Substance-Specific Values", Versar, November, 1988).

Toxicity ratings for individual substances would be integer values on a scale of 0 to 5, with 5 being the most toxic and 0 representing insufficient information to score. If adequate toxicity data are available, each substance would receive three subscores—one for acute toxicity, one for chronic noncarcinogenic toxicity, and one would be the highest subscore. The rating scales developed for the revised HRS give less weight to acute toxicity relative to chronic toxicity because remedial actions are almost always in response to concerns over exposures associated with potential carcinogenicity or chronic toxicity (proposed rule, section 2.2.1.1).

Asbestos and radionuclides are classified as human carcinogens (the highest weight-of-evidence category), but their cancer potency values are not expressed in units directly comparable to most other substances. Therefore, asbestos and radionuclides cannot be evaluated and scored using the proposed system. For purposes of HRS scoring, asbestos and radionuclides would be assigned a 5, the highest toxicity value for carcinogens.

A default value of 3 would be used for a toxicity factor value when appropriate toxicity data for scoring does not exist for all hazardous substances relevant to that pathway or threat, a situation that EPA anticipates would be very rare. EPA solicits comment on this default value, which is the midpoint of the scoring range and approximate median of the substances scored to date by EPA.

The proposed rating scales for the three toxicity types (carcinogenicity, chronic noncarcinogenic toxicity, and acute toxicity) are provided in the proposed rule. A more thorough discussion of the development of these rating scales and the overall toxicity factor is provided in the Technical Support Document, available in the Superfund docket. EPA solicits comment on these rating scales.

The proposed toxicity scoring methodology would use readily available, high quality toxicity data, rely on a data base that is large enough to provide a score for all sites, and be consistent with existing EPA procedures. For the ground water, surface water, and air pathways, the overall toxicity value for each hazardous substance would be combined with its corresponding mobility or persistence value in a matrix to assign a toxicity/mobility or toxicity/persistence value. The highest toxicity/mobility or toxicity/persistence value relevant to a pathway or threat would become the factor value.

A hazardous substance's potential ecosystem toxicity, which would be considered in the surface water pathway, would be evaluated using the following hierarchy of data: EPA chronic water quality criteria, EPA acute water quality criteria, or the lowest LC_{50} value for the substance (proposed rule, section 4.4.2.1.1). (See section V D 2.)

Past commenters have questioned the use of the single highest scoring hazardous substance in each pathway to score toxicity in the current HRS. EPA reviewed a number of options related to the number of hazardous substances scored for a site including (1) retaining the current method of using the highest scoring hazardous substance in each pathway to score toxicity; (2) basing the toxicity value on all hazardous substances known to be at the site; (3) basing the toxicity value on a fixed percentage or number of hazardous substances known to be present at the site; and (4) giving extra points to sites with a large number of hazardous substances. These options are more fully discussed in the Technical Support Document and in the paper presented to the Science Advisory Board: "Discussion of Options for Revising the Hazard Ranking System (HRS) Toxicity Factor" (ICF, Inc., May 1987). Both documents are available in the Superfund docket.

EPA is proposing to retain the current method of scoring the toxicity factor based on the single highest scoring hazardous substance applicable in each pathway or threat because the Agency believes that the single most hazardous substance present in a pathway or threat generally provides an adequate screening level evaluation of relative hazards of the pathways, particularly when coupled with mobility or persistence, as applicable. The sampling conducted during a site inspection probably would not provide sufficient information on the relative quantities or concentrations of hazardous substances at a site. EPA believes that the proposed method will ensure that any site where highly toxic substances are present will receive a high toxicity score. EPA solicits comments on the use of a single hazardous substance per pathway or threat to score toxicity and on the alternatives discussed above.

3. Hazardous Waste Quantity

In the current HRS, hazardous waste quantity is the amount of waste containing hazardous substances (as defined in CERCLA Section 101) present at a site, excluding any wastes that are contained such that they cannot migrate. Values for the hazardous waste quantity factor are combined with values for the toxicity/persistence factor (in the ground water and surface water pathways) or toxicity (in the air pathway) to produce the final waste characteristics category score. If it is not possible to make any determination of the hazardous waste quantity at a site and it is known that hazardous substances are in the waste, a default value of one for hazardous waste quantity is assigned (the range is 0 to 8). EPA has found that about 20 percent of all sites studied are assigned the default value for waste quantity, signifying the absence of data. This finding indicates that even hazardous waste quantity, which is generally easier to estimate than hazardous substance concentration, is still difficult to estimate.

In preparing revisions to the HRS, EPA considered a number of alternatives to the current HRS method of calculating hazardous waste quantity and presented two to the Science Advisory Board: one would require use of hazardous substance concentration data to estimate waste quantity at all sites and the other would be a tiered approach that would use hazardous constituent concentration data, waste quantity, volume, or surface area of the source, in that order. These options are discussed in detail in a paper prepared for review by the Science Advisory Board: "The Superfund Hazard Ranking System (HRS): Feasibility of Using Concentration Data in a Revised HRS" (ICF, Inc., July 1987), and available in the Superfund docket.

In general, having adequate hazardous substance concentration data might enable sites to be evaluated more accurately. However, the cost of obtaining these data at all sites would be substantial. If accurate records of wastes were available and if the concentration of contaminants in the wastes were known, it would be

possible to calculate the amounts of hazardous constituents. EPA's experience, however, has been that such waste disposal records are frequently not available at Superfund sites, and when they are available, they are often incomplete and insufficiently detailed to estimate constituent quantities.

The comprehensive site sampling needed to estimate hazardous substance concentrations and amounts with known accuracy would not be feasible on a routine basis, given the resources available and the statutory requirement to expeditiously evaluate sites. Wastes at hazardous waste sites are typically heterogeneous. Depending on the nature and history of the site, very great differences in waste composition may occur over just a few meters, with different sets of constituents appearing and with levels varying by orders of magnitude. Attempting to determine a single representative concentration of a constituent or to estimate the total amount of all hazardous substances would be very difficult at most sites. Temporal variability also diminishes the relevance of any estimate of concentrations. Data from a single sampling provide only a "snapshot" of current conditions. Mobile substances may have already moved into environmental media and only the least mobile may remain at significant levels at the source. Thus, substance concentration data taken only from waste source materials may result in underestimates of waste mass available for transport.

In evaluating alternatives for developing a hazardous waste quantity value, the Agency recognized that, at some sites, sufficient data may be available to determine the concentration of hazardous constituents. At most sites, however, obtaining these data would be difficult and costly. Thus, the Agency is proposing the tiered approach to scoring hazardous waste quantity in the revised HRS (proposed rule, section 2.2.2). As the Science Advisory Board stated, the tiered system "would encourage the use of concentration data, but would also provide the flexibility to use indirect estimates of a constituent's mass when direct measurements of concentration are not available."

The tiered approach involves the development of a single hazardous waste quantity value for each pathway at a site. This factor would be based, in order of preference, on three factors: (1) Hazardous constitutent quantity, (2) site wastestream quantity, (3) site disposal capacity. The hazardous constituent quantity factor represents the actual quantity of hazardous substances deposited on the site. The wastestream quantity factor represents the quantity of hazardous substances potentially deposited on the site based on available information about the nature and quantity of wastes that were deposited on the site. The site disposal capacity factor represents the quantity of hazardous substances potentially deposited on the site based on the available information about the quantity of hazardous substances the site could have received as indicated by the sizes of the sources identified on the site. These three factors are in turn evaluated based on some or all of the following waste quantity measures depending on the quality and completeness of supporting data: (1) The quantity of hazardous substances deposited, (2) the quantity of waste deposited that contain hazardous substances, (3) source volume, (4) source area. The actual approach used in evaluating the hazardous waste quantity factor in terms of the three subsidiary factors and the four waste quantity measures is complex. The approach reflects judgments as to the appropriateness of employing each measure and factor under varying site-specific conditions of data completeness and quality. The hazardous waste quantity factor evaluation is presented in section 2.2.2 of the proposed rule; the basis for the approach is presented in section 2.4 of the Technical Support Document.

EPA has concluded that this tiered approach will make the hazardous waste quantity factor more accurate by using the best available data without imposing significant new costs or demands on resources. The tiered approach would also allow the scoring of the hazardous waste quantity factor at many more sites. In addition, the flexibility of the approach would accommodate a wide variety of data gathering strategies; efforts could be varied so that more resources were devoted to complex sites or to sites suspected of presenting severe health risks.

The proposed revision to the hazardous waste quantity factor is also responsive to the SARA requirement (CERCLA section 125, added by SARA) to consider the quantity, toxicity, concentration of hazardous substances at facilities that contain substantial volumes of waste described in section 3001 (b)(3)(A)(i) of RCRA. The wastes include fly ash wastes and other wastes generated from combustion of coal or other fossil fuels. For a further discussion of these wastes, see section V E.

The hazardous waste quantity factor in the onsite pathway would be calculated differently (proposed rule, section 5.2.1.1). In the other pathways, the hazardous waste quantity factor reflects the magnitude and duration of potential releases. In the onsite pathway, the question is not the release and migration of the hazardous substances, but rather the potential for direct contact with the contaminated area. For this reason, the hazardous quantity factor for the onsite pathway would be based primarily on the total surface area of the known sources at the site. If the original source of the contamination is unknown, the waste quantity factor would be based on the area of soil contaminated at levels significantly above background.

4. Observed Release/Concentration of Hazardous Substances in the Environment

The current HRS scores an observed release if the measured concentration of the hazardous substance is significantly above the background level and if that concentration can reasonably be attributed to the site. The current HRS gives little consideration to the specific concentrations of hazardous substances in the environment nor does it consider the relationship between the concentrations and health standards.

Some commenters to previous rulemakings have stated that only concentrations exceeding health-based benchmarks should be used in determining whether an observed release has occurred. Other commenters have stated that if a substance is detected at a level above a health-based benchmark it should receive a higher score than if the benchmark is not exceeded. Incorporating an assessment of environmental concentrations into the HRS would, in the opinion of some commenters, more accurately define the nature and degree of potential risk.

EPA evaluated several approaches for directly using environmental concentration data to assess potential risk as part of the HRS. One approach would have based the observed release value on the highest measured concentrations of hazardous substances in the environment, using this level as a measure of potential exposure. The Agency, however, concluded that site inspection personnel would generally be unable to identify areas where maximum contamination could be found. The temporal and spatial variance of contaminants makes it difficult to identify the most contaminated location on a site during a limited investigation. Furthermore, the

maximum concentrations may not yet have occurred at the time of the sampling.

Another approach studied was the use of simple fate and transport models to predict concentrations at the receptor. Fate and transport models combine movement in the transport medium (e.g., water) with the fate of the substance in the medium. For example, one substance may immediately dissolve in water and persist indefinitely while another may precipitate out of water and biodegrade within hours. However, using fate and transport models in this manner would require the accurate characterization of the source of contaminants and the media through which the contaminants must travel. Given the limited scope of the site inspection, it would be difficult to characterize the source and the media adequately enough to predict concentration levels accurately.

Knowledge of the concentrations and release rates of constituents at the source is essential to predicting levels at more distant points. As discussed in the section on waste quantity, EPA has concluded that at most sites it cannot dependably characterize the constituents of a waste source during the site inspection. Therefore, the Agency is not proposing to include a factor that would be scaled according to measured concentrations in releases.

EPA is retaining the current approach to scoring observed releases, but is proposing to specify better, more precisely defined criteria for determining when a release is significantly above background (proposed rule, sections 2.1.1, 3.1.1, 4.1.1.1, and 5.0.1). The proposed criteria for significant releases are as follows:

- If no background concentration is detected, a significant release is three or more times the detection limit.
- If the background concentration is greater than or equal to the detection limit but less than two times that limit, a significant release is greater than or equal to three times the applicable background concentration or greater than or equal to four times the detection limit, whichever is less.
- If the background concentration is greater than or equal to twice the detection limit, a significant release is greater than or equal to twice the applicable background concentration.

The detection limit could be the minimum of the EPA contract-required quantitation or detection limit specified in EPA's Contract Laboratory Program, the method detection limit for a given analytical procedure or instrument (or in the case of real time field instruments, the detection limit of the instrument used in the field), or the actual detection limit achieved by the laboratory for the set of samples in question. Negative sampling results would not necessarily form the basis for refuting an observed release that is based on a separate valid sampling and analysis because releases may be episodic in nature.

As mentioned above, commenters have suggested that a release at a concentration below a known health-based benchmark should not be considered significantly above background. When the current HRS was proposed, EPA explained that finding an observed release indicates that the likelihood of a release is 100 percent. The release of some substances into the environment is a good indication that substances from the site can escape and increases the likelihood of subsequent releases. Data on frequency and quantity of actual releases would require long-term monitoring, which is not feasible at the site inspection stage. In addition, the results of limited sampling may not be representative; higher concentrations than those detected when the sampling was done may exist or may occur at other times. EPA has concluded that the proposed criteria provide a reasonable definition of an observed release.

EPA has also concluded that limited environmental concentration data cannot be used to demonstrate that concentrations will remain below health-based benchmarks. Such an approach would most likely lead to the omission of some high risk sites from the NPL.

EPA is, however, proposing to use environmental concentration data in evaluating and scoring target populations as discussed below in section V C 5. This scoring method would weight any population actually exposed to documented contamination more heavily than those potentially exposed.

5. Use of Health-Based Benchmarks in Evaluating Target Populations

In assessing target populations in the current HRS, people actually exposed to contamination do not count more than people potentially exposed, nor is the level of exposure considered. Under Section 118, added by SARA, EPA is required to give high priority to sites that have led to the closing of drinking water wells or the contamination of principal drinking water supplies. To respond to this mandate, EPA considered an option of weighting closed wells higher than operating wells. Such a factor, however, would create other problems, such as how to weight contaminated wells that should be closed, but are not, and wells that may be closed in the future. Instead of including closed wells, EPA decided to give greater weight to known exposures using two other mechanisms. First, as discussed in section V C 9, factors reflecting risks to the MEI would be added to the revised HRS. Second, populations whose wells or intakes show documented drinking water contamination would receive higher weightings than those of populations only potentially exposed.

To improve the accuracy of the scoring system by giving increased weighting to populations based on their actual exposure, the Agency is proposing to expand the evaluation of exposed populations in both the ground water and surface water pathways to include weighting factors based on health-based benchmarks.

However, even though the Agency is attempting to consider concentrations of contaminants in drinking water in the proposed revisions to the HRS, it is important to remember that these data are from limited site investigations, and are used, in the HRS, simply to make initial screening decisions. Health-based benchmarks and cancer risk numbers are not used in the HRS to identify levels of risk from drinking contaminated water, but rather to provide added weight to populations actually exposed to site contaminants in determining pathway scores.

For the ground water and surface water pathways, the health-based benchmarks that EPA is proposing to use would be the Federal primary drinking water standards (maximum contaminant levels or MCLs) proposed or promulgated under the Safe Drinking Water Act (SDWA). Where no MCL has been proposed or finalized for a substance, the health-based benchmark for noncarcinogens would be the proposed maximum contaminant level goal (MCLG) [3]; for carcinogens or potential carcinogens, where the proposed MCLG has been set at zero, a concentration corresponding to specified individual lifetime cancer risks would be used as the health-based benchmarks.

MCLGs are health-based levels at which no adverse health effects would arise with a margin of safety. They are not enforceable under the SDWA. MCLs are enforceable limits under the SDWA and are set as close to the MCLGs as possible, taking several factors into account, including the effectiveness of treatment by the best available

[3] This proposed rule discusses "proposed" MCLGs only because MCLGs and MCLs will be finalized concurrently and, for the purposes of the proposed HRS, the final MCL will supercede the final MCLG.

technologies, detectability, and practical quantitation limits. For known or probable human carcinogens, MCLGs are set at zero. MCLs for carcinogens will never be set at zero, but are expected to be set so that the risk of drinking water at the MCL falls within the range of 10^{-4} to 10^{-7} individual lifetime cancer risk. These cancer risk numbers assume that the individual is a 70 kg (150 lb) person consuming 2 liters of water a day for 70 years.

Using these health-based benchmarks in assessing drinking water threats, the target population factor in the surface water and ground water pathways would be divided into four population groups:

(1) Level 1: The population drinking from wells or intakes that are contaminated with hazardous substances at concentrations greater than:

Proposed or final MCLs;

Proposed MCLGs (for noncarcinogens with no proposed or final MCL); or

A 10^{-4} individual lifetime cancer risk (for carcinogens and potential carcinogens with no proposed or final MCL).

The population drinking water at these concentrations would be weighted 100 times as much as the population drinking water at Level 3 concentrations.

(2) Level 2: The population drinking water from wells or intakes that are contaminated with hazardous substances at concentrations significantly above background, but within the following ranges:

Greater than 1/1000 of the proposed or final MCL but less than or equal to the proposed or final MCL;

Greater than 1/1000 of the proposed MCLG but less than or equal to the proposed MCLG (for noncarcinogens with no proposed or final MCL); or

Greater than 10^{-7} but less than or equal to 10^{-4} individual lifetime cancer risk (for carcinogens or potential carcinogens with no proposed or final MCL).

The population drinking water at these concentrations would be weighted 10 times as much as the population drinking water at Level 3 concentrations. Level 2 would also include any hazardous substance that shows up in a drinking water well or intake at concentrations that are significantly above background, but has no proposed or final MCL or MCLG, or cancer risk number.

(3) Level 3: The population drinking from wells or intakes that are contaminated with hazardous substances at concentrations significantly above background, but less than or equal to:

1/1000 of the proposed or final MCL;

1/1000 of the proposed MCLG (for noncarcinogens with no proposed or final MCL); or

10^{-7} individual lifetime cancer risk (for carcinogens with no proposed or final MCL).

These populations would not be given any additional weight.

(4) Potential contamination: The population whose wells or intakes are not known to be contaminated, but the ground water or surface water is already contaminated or has the potential to be contaminated. Only populations who use drinking water from within the target distance limit would be counted as potentially exposed. This potentially exposed population would be distance-weighted in the ground water pathway and dilution-weighted in the surface water pathway.

In all groups, the population counted would be the people whose drinking water is drawn from wells or intakes within the target distance limit; the populations would not have to live or work within the target distance limit.

The weighting of these groups was chosen to give high priority to sites where exposures to contamination attributable to the site were known to be occurring. Where Level I concentrations exist, only 200 people would need to be exposed to the contamination for the population factor to be assigned the maximum score.

The specific health-based benchmarks used in determining this factor were chosen to be consistent with other Agency programs. The range of individual lifetime cancer risks of between 10^{-4} and 10^{-7} was chosen to be consistent with the approach currently taken by the Superfund program in determining cleanup levels. For noncarcinogens, a three order of magnitude range of concentrations would be used in the Level 2 concentrations group to be more consistent with the way carcinogens are treated in Level 2. EPA has chosen to count populations drinking from wells or intakes contaminated at concentrations significantly above background but at concentrations less than or equal to the MCL or MCLG (or with an individual lifetime cancer risk of less than or equal to 10^{-7}) because some contamination, albeit low, has been detected, and may be the leading edge of a contaminant plume. Moreover, the concentration found in a well or intake during a site inspection is only a one-time picture of the contamination. During a remedial investigation/feasibility study, the Agency does extensive sampling to determine the extent of the contamination at a site.

MCLs have been developed for relatively few hazardous substances. More hazardous substances have MCLGs and cancer risk numbers. However, of the hundreds of hazardous substances found at Superfund sites, most currently have no health-based benchmarks. To be protective, the Agency has decided that populations exposed to hazardous substances with no health-based benchmarks should be included in Level 2 if the substances are found in the drinking water at concentrations significantly above background and are attributable to the site. The Agency solicits comments on this approach.

If more than one substance is present in the drinking water at levels significantly above background but not above the MCL, MCLG, or 10^{-4} individual lifetime cancer risk, for each such substance, the percentage of its health-based benchmark at which it is present would be calculated. If the total sum of the percentages exceeds 100, the concentration in the drinking water would be considered Level 1 concentrations (proposed rule, sections 3.3.2.1. and 4.1.3.2.1) and the population using that contaminated water would be weighted as Level 1 concentrations. If the sum of the percentages is greater than 0.1 and less than or equal to 100, the population using that contaminated water would be weighted as Level 2 concentrations. Finally, if the sum of the percentages is less than or equal to 0.1, the population using that contaminated water would be considered as a Level 3 population.

This proposal for summing benchmark ratios would give higher scores to those sites where several hazardous substances are found in the drinking water at concentrations near their benchmarks. The Agency analyzed other methods for achieving this, including evaluating hazardous substances individually against their benchmarks and basing the determination of target population weighting levels on the single substance found in the drinking water with the highest benchmark ratio. The Agency would like comment on the appropriateness of both these approaches to scoring multiple substances detected in drinking water, as well as any alternative approaches.

The Agency solicits comment on the proposed population groups, on the weightings assigned to these groups, and on the health-based benchmarks used to define these groups. In addition, the Agency solicits comment on the risk range (10^{-4} to 10^{-7}) used to define the proposed levels. Specifically, EPA would like comment on whether a risk range should be used in the context of the HRS and, if so, whether it should be 10^{-4} to 10^{-7} (as is used in the proposed rule) or 10^{-4} to 10^{-6}.

EPA is proposing the system described above for considering health-based benchmarks in the HRS; however, the Agency has evaluated a variety of alternatives. Three are discussed in this preamble. (See the Technical Support Document, available in the Superfund docket, for further detail.)

Alternative I is a three-tiered system that would use only proposed or final MCLs as the health-based benchmarks. The populations drinking water contaminated with hazardous substances at concentrations that exceed a proposed or final MCL would be included in the first tier, which would be weighted 100 times as much as the potentially exposed population. The population in the second tier would include those people drinking water at concentrations at or below a proposed or final MCL, but significantly above background, and those people drinking water containing hazardous substances for which proposed or final MCLs do not exist; this population would be weighted 10 times as much as the potentially exposed population. The third tier would include those people potentially exposed to contamination; this population would be distance- or dilution-weighted.

Alternative I would be considerably simpler than the one proposed and would be based solely on proposed or final MCLs, health-based benchmarks developed by the Agency for use in evaluating drinking water contamination, rather than MCLGs or cancer risk numbers. However, since MCLs have been developed for only a handful of chemicals, the Agency believes this approach may not accurately assess the relative degree of hazard and therefore does not discriminate among sites as well as the proposed approach.

Alternative 2 would weight target populations using benchmarks similar to those used in the proposed option—MCLs, MCLGs, and cancer risk numbers. However, Alternative 2 contains three tiers instead of four, and uses a single cancer risk number of 10^{-6} rather than a risk range to delineate the different tiers. The target population would be divided into the following three tiers:

(1) Level 1: The population exposed to concentrations greater than the proposed or final MCLs, the proposed MCLGs (for noncarcinogens with no MCLs), or a 10^{-6} individual lifetime cancer risk (for carcinogens with no MCLs) would be weighted 100 times as much as the people potentially exposed.

(2) Level 2: The population exposed to concentrations less than or equal to the proposed or final MCLs, the proposed MCLGs (for noncarcinogens with no proposed or final MCL), or a 10^{-6} individual lifetime cancer risk (for carcinogens with no MCLs), but significantly above background, would be weighted 10 times as much as the people potentially exposed.

(3) Potential Contamination: The population whose wells or intakes are not known to be contaminated, but the ground water or surface water from which these wells draw is already contaminated or has the potential to be contaminated. This potentially exposed population would be distance-weighted in the ground water pathway and dilution-weighted in the surface water pathway.

In all groups, the people counted would be those whose drinking water is drawn from wells or intakes within the target distance limit; the people would not have to live or work within the target distance limit.

The evaluation of multiple substances under this alternative would be similar to the proposed approach, in that, for each substance the percent of its health-based benchmark at which it is present would be calculated. As in the proposed option, if the total sum of the percentages is greater than 100, the concentration would be considered to be above the benchmark and the populations exposed to the contaminated water would be weighted as Level 1 contamination. If the concentration is significantly above background but not above the health-based benchmarks, the people exposed to the contaminated water would be weighted as Level 2 contamination.

The weighting of the three groups was considered so that sites where exposures to contamination above health-based benchmarks were known to be occurring would be given high priority. This approach is simpler than the proposed approach, and may be appropriate given the limited data available at the site inspection stage, and the purpose of the HRS as a screening tool (rather than a risk assessment).

The third alternative would be identical to Alternative 2, except a 10^{-4} individual lifetime cancer risk level, instead of a 10^{-6} risk level, would be used to differentiate between Level 1 and Level 2 contamination.

The Agency requests comment on these alternative approaches to assessing actual drinking water exposures in the HRS.

EPA is not proposing at this time to incorporate health-based benchmarks for the air and onsite pathways due to a number of unresolved technical issues. These include selection of the point at which samples would be taken to demonstrate exposure, the length of the monitoring period, and interpretation of data in light of the extreme temporal and spatial variability of air releases. EPA is considering ways to evaluate observed human exposure in the air pathway and solicits comments on how these technical issues could be addressed. It should be noted that the onsite pathway would be evaluated only if there is documented contamination at the site. In addition, the varying exposure to the non-resident population would depend more on the frequency of contact than on the level of contamination. For this reason, the nearby population would be distance-weighted.

The surface water pathway would apply ecologically-based benchmarks to the sensitive environment targets factor as well (proposed rule, sections 4.4.3.1.1, 4.4.3.1.2, and 4.4.3.1.3). This would be similar to the health-based benchmark system in terms of the relative weights or groups, except that there would be three levels instead of four. The ecological benchmarks are based on ambient water quality criteria. In the human food chain subpathway and the recreation subpathway, actual observed contamination would also be weighted more heavily than potential contamination.

6. Consideration of Hazards to the Environment

CERCLA section 105 required EPA to create an NPL of at least 400 sites. At the time of enactment, EPA realized that thousands of sites posed potential public health and environmental threats. The Agency believed that, given the need to set priorities for the expenditure of limited monies, the HRS should place greater weight on sites that posed threats to public health rather than those that posed risks to the environment.

CERCLA section 105 mandated that EPA consider both threats to public health and to the environment when it developed the NPL. Although SARA did not specifically require EPA to take any particular action regarding threats to the environment, consideration of the impact that waste sites have on sensitive environments is emphasized in SARA's addition of section 105(c)(1), which requires the HRS "to the maximum extent feasible to accurately assess the relative risk to human health and the environment." EPA's experience with many potential Superfund sites suggests that a number of sites posing a serious threat to the environment are not scoring high enough to be placed on the NPL and addressed under CERCLA. Therefore, the Agency has determined that overall accuracy would be improved, in certain cases, by placing on the NPL sites that have significant impact on the environment, even when the sites pose less of a threat to human health.

Although the proposed HRS was designed to give greater weight to environmental impacts than the current

HRS, the scores related to the relative risks to human health would still be weighted more heavily than sensitive environments. If sensitive environments, but no people, are affected by a site, the score would not reach the maximum for the targets category. EPA does, however, intend to assign a sufficiently high value to sensitive environments so that the most serious environmental impacts in the absence of any public health risks would have scores above the NPL cutoff. EPA would like comments on the relative weightings of the two types of impacts.

EPA is proposing to modify several features of the current sensitive environment factors. In the current HRS, if more than one sensitive ecosystem exists within the target distance, only the one with the highest score is included. The proposed HRS would base the sensitive environment factor in the surface water and air pathways on the sum of the values for all appropriate ecosystems within the target distance, with each ecosystem generally weighted for distance or dilution (proposed rule, sections 2.3.4 and 4.4.3). This proposed change is intended to provide a more accurate assessment of the potential risk to sensitive environments.

The primary ecosystems considered in the current HRS are wetlands of greater than five acres and habitats of Federally designated endangered species. The land use factor in the air pathway also evaluates other ecosystems, such as wildlife reserves. The revised HRS expands significantly the list of sensitive environments to include those environments that are protected under Federal or State designations. The full list of the proposed sensitive environments is Table 2–18 of the proposed rule. These environments include marine sanctuaries, National Parks, designated Wilderness Areas, National Monuments, National Seashore Recreational Areas, and National or State Wildlife Refuges. The final item on the list covers particular areas, often relatively small in size, that are important to the maintenance of unique biotic communities. EPA wants to specify the particular communities in the final rule and requests comments on which such communities should be listed.

In revising the sensitive environments factor, the Agency evaluated several ecological ranking models that were either in use or were in the latter stages of development. From this work, and from comments received in response to the ANPRM, the Nature Conservancy's National Heritage Program was identified as having the potential to supplement the sensitive environments list in the revised HRS. When the National Heritage Program is used in conjunction with the expanded list, EPA will be able to identify not only sensitive environments that have been formally designated by State or Federal agencies, but also those environments that score high on the National Heritage Program's database, which ranks a site according to its rarity and vulnerability.

The proposed sensitive environments factors could be assigned values based on their inclusion on the list of protected areas or on their rating under the National Heritage Program (see Table 2–19 of the proposed rule). If the values assigned for the type of area and for its National Heritage Program ranking differ, the higher of the values would be used.

Sensitive environments considered in the air pathway would be distance-weighted so that those closest to the site would have higher values than those at increasing distances up to the target distance limit. In the surface water pathway, sensitive environments that have been subject to actual contamination would receive a score based on whether the contamination was above or not exceeding ecological benchmarks. Where no actual contamination has been documented, the scores assigned would be dilution-weighted. In the onsite pathway, only terrestrial sensitive environments with observed contamination would be considered since the exposure is presumed to be from direct contact with the hazardous substances, not from the migration of hazardous substances.

7. Consideration of Effects on the Human Food Chain

SARA (see CERCLA section 105(a)(8)(A), as amended) requires EPA to consider, in revising the HRS, the effects of hazardous waste sites on the human food chain. When EPA developed the current HRS, the Agency decided that it could not apportion human food chain effects according to population risks, but it did deal with the effects qualitatively in the land and water use factors. In addition, the risks to the human food chain from using potentially contaminated water for irrigation are reflected in the current procedure for estimating the target population; an additional 1.5 people per acre are added to the population total for each acre of irrigated food or forage crops.

In revising the HRS, EPA has determined that the most significant, measurable human food chain risks are those associated with the aquatic food chain. Therefore, in the HRS surface water pathway, EPA is proposing to evaluate the potential risk to the human food chain based on potential or observed contamination of aquatic food chain organisms. Details of the proposed method the Agency would use to incorporate human food chain effects in the scoring of surface water are discussed in the section on the surface water pathway (section V D 2).

The potential exists for some sites to adversely affect the human food chain via other pathways. These pathways would primarily affect the terrestrial food chain (deposited air pollutants migrating to the edible portion of plants, ground water or surface water used to water animals or irrigate crops). EPA considered ways to account for terrestrial food chain effects in the revised HRS. However, the Agency decided that because the terrestrial food chain was more complex and not as well understood as the aquatic food chain, it was impractical to include a detailed assessment in the HRS. Rather, points are assigned to the ground water and surface water use factors if the water is used for irrigation of commercial food or forage crops, for commercial livestock watering, or for commercial food preparation. In the ANPRM, EPA asked for comments on methods of incorporating human food chain effects into the HRS and is continuing to seek comments on whether food chain contamination by hazardous substances in air and soil should be included in scoring either the air or ground water pathway and if so, the basis for estimating human health risks from such food chain exposure.

8. Dilution/Distance Weighting of Targets

The current HRS directly weights the population factor by dilution/distance only in the air pathway. The ground water pathway combines the total population using water drawn from the area within the target distance limit in a matrix with distance to the nearest drinking water well. The surface water pathway uses a matrix to combine the distance to an intake and the population using that intake. The greater the distance, the lower the HRS value for any population category.

In reviewing ways to account for the greater risks to populations close to sites, EPA considered using analytical models that would require data such as wind speed and temperature in the air pathway to calculate the rate of dispersion for a particular substance at a specific site and data such as ground water flow direction and gradients and dispersion to calculate dilution for the

ground water pathway. EPA decided, however, that the reliability of the results, given the limited data available from site inspections, was not great enough to consider using such models and equations for each site.

The revised HRS would use distance- and dilution-weighting factors in calculating the scores for certain populations and environments that are potentially exposed to contamination from sites. The weighting factors would reflect the diminishing risk as substances disperse or dilute and were generally developed using analytical models. For each prescribed distance (e.g., a quarter to a half mile from the site) or for the appropriate flow characteristics of the surface water, the potentially affected population in the area would be multiplied by a weighting factor. The target population would be the sum (subject to the maximum) of the distance or dilution weighted groups plus any populations exposed to documented contamination.

Although EPA did not design the revised HRS to be an analytical model, the Agency did use models to help develop the scales of values and weights for distance weighting. These models are more fully explained in the Technical Support Document, available in the Superfund docket. EPA concluded that this distance and dilution weighting approach uses the best elements of analytical models without requiring site-specific data and thus represents a significant increase in accuracy without a major increase in data collection costs. In reviewing the effects of air emissions on populations surrounding Superfund sites, the Science Advisory Board supported the weighting of population according to distance from a site.

The proposed distance weighting factors for ground water (proposed rule, sections 3.3.1 and 3.3.2) are derived from a three-dimensional fate and transport model that determines relative concentrations as a function of distance from a site. Those relative concentrations provide the basis for the weighting factors. An exception to the distance weighting would occur when the aquifer is a karst aquifer. (See section V D 1 and proposed rule, section 3.3.2 for a discussion of karst aquifers.)

The air pathway distance weighting factors are based on the effects of atmospheric diffusion and were calculated using a simple Gaussian plume model (proposed rule, sections 2.3.1 and 2.3.2). The surface water pathway would not use distance weighting, but would instead employ dilution weighting. The extent of the dilution would be considered a function of the flow characteristics of the water available for dilution (proposed rule, sections 4.1.3.1 and 4.1.3.2).

For the onsite pathway, EPA is proposing a distance weighting factor for the nearby population that lives within one mile travel distance of the area of contamination (proposed rule, section 5.2.3), but does not live where contamination is present. This factor would be set based on the relative frequency with which an individual could travel to the site, which, in turn, is assumed to be based on the distance between the person's residence and the site. EPA has not identified any studies that provide estimates of incursion rates into contaminated land areas or the relationships between frequency of incursions and distance from a site. EPA is proposing a factor based on distance and solicits comments on how frequency of incursion might be taken into account in the onsite pathway.

9. Population Risks and Risk to the Maximally Exposed Individual

Maximally exposed individuals (MEIs) are those individuals in the exposed population that are expected to be exposed to the highest ambient concentration (and thus receive the highest dose) of the hazardous substance in question. Population risk would be the effect on the exposed population over an extended period of time, usually assumed to be 70 years.

The current HRS incorporates both concepts in developing target population scores. For example, the total population is evaluated at distances around a site, and the population scores are either distance weighted (air) or combined in a matrix with distance to the nearest well (ground water) or distance to the intake (surface water).

Although the HRS was not designed to be a risk assessment, the Agency believed that an explicit factor based on potential MEI risks should be added to improve the overall assessment of potential risks to human health within the HRS and to make the revised HRS more consistent with general Agency risk assessment approaches. Usually, EPA evaluates both MEI risks and exposed populations as part of its risk assessments to provide a better overall indication of potential threats. Consequently, several proposed changes related to MEI and population risks are included in the revised HRS. Population scores would be weighted based on known or potential exposure to contaminants (see health-based benchmarks in section V C 5). Factors reflecting the risks to the MEI via the ground water, surface water, and air pathway would be included in the revised HRS.

For ground water, the MEI risk would be assessed through a factor based on the distance to the nearest well (proposed rule, section 3.3.1). This measure was chosen because it is likely that, all other things being equal, the well closest to the site would have the highest level of contamination. Since contamination usually decreases with distance, the farther the nearest well is from the site, the lower the assigned value would be, with three exceptions. First, if any well has documented contamination above health-based benchmarks attributable to the site, the MEI factor would be assigned the maximum value. Second, if the site overlies a karst aquifer, the MEI factor would be assigned the maximum value if any well draws drinking water from the karst aquifer within the target distance limit. This reflects the potentially shorter travel time within such aquifers. Third, different distance weighting factors would be applied to wells in karst and wells not in karst to reflect differences in dilution.

For the surface water pathway, the risk to the MEI from drinking water would be represented by a value based on the flow characteristics of the body of water at the nearest intake (proposed rule, section 4.1.3.1). This method was selected because the flow characteristics of surface water are a major factor in determining the concentration of contaminants;, i.e., the greater the volume of water, the greater the dilution, and therefore the lower the potential risk. The assigned value for the MEI factor would be a multiple of the dilution weighting factors for the different flow characteristics of surface water. If any drinking water intake has documented contamination above health-based benchmarks attributable to the site, the factor would be assigned the maximum value. The human food chain, recreation and environmental subpathways do not contain an MEI factor.

For the air pathway, the risk to the MEI would be based on the distance from the emission sources on the site to the nearest individual, using the distance to the closest residence or regularly occupied building or area (proposed rule, section 2.3.1). Values would be assigned for distances of up to two miles from the site. Values beyond two miles would be zero due to the distance weights beyond two miles.

Because the onsite pathway is not a migration pathway and because of the nature of the exposure, the onsite pathway does not lend itself to an MEI

factor. EPA is seeking comments on whether such a factor should be incorporated and if so, how to do so.

10. Scoring on the Basis of Current Conditions

Under the current HRS, EPA generally scores the air, ground water, and surface water pathways based on the present condition of the site excluding any response action that has been taken ("initial conditions"), rather than on the present condition of the site, taking into account response action ("current conditions"). The Agency has used this approach for a number of technical and programmatic reasons explained at 47 FR 31187 (July 16, 1982), and discussed below. In conjunction with revising the HRS, the Agency decided to review this policy. The Agency believes it may, in some situations, be appropriate to evaluate the site based on current conditions and to consider prior responses in calculating a HRS score. The Agency intends to determine under what conditions prior response actions should or should not be considered, to ensure that this results in a more feasible and accurate assessment of potential risk to human health and environment. EPA is, therefore, requesting comment on the following issues and approaches under consideration by the Agency.

CERCLA section 105(c), as added by SARA, requires EPA to amend the HRS, and states that, "Such amendments shall 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 Agency believes that, to the extent that risks at a site are reduced due to response actions, it may be appropriate to base the HRS score on that reduced risk. In addition, EPA believes that if properly devised, such a policy may encourage a bias toward action that protects human health and environment without distorting the HRS' ability to assess the relative risk of sites. Furthermore, the Agency believes that the current, rather than initial, conditions generally may represent a more accurate basis of scoring. Nonetheless, EPA recognizes that certain situations exist where implementing this policy may not be practical or technically feasible.

The existing policy of evaluating sites based on initial conditions was based on three principal concerns associated with considering current conditions. The first concern was that including consideration of current conditions would create undesirable incentives at hazardous waste sites that may be eligible for the NPL. For instance, some private parties may only take action sufficient to lower the score so the site would not be listed on the NPL, but the site could still pose a potential threat to public health or the environment. Those types of score changes could be accomplished by such actions as removing wells from service to lower target scores, or by removing wastes from a site to lower waste quantity scores; however, in both cases contaminated ground water would still exist at the site.

Another undesirable incentive may be to cause public agencies to be reluctant to perform removals if such actions could lower the score and thereby prevent the site from being included on the NPL. Only sites listed on the NPL are eligible for remedial action using Superfund monies. These early response actions are important to address immediate problems posed by the site. The Agency is concerned that if prior removal actions were considered in the calculation of the HRS score, public agencies may delay responding to threats to public health and the environment in order to ensure listing on the NPL, and the resulting availability of long term remedial response funding under Superfund.

The second issue of concern was that the ability of the HRS to approximate risk at a given site is based on a number of presumed relationships between various factors considered in calculating the HRS score. When partial response actions are taken into account in site scoring, the validity of these relationships for the purpose of approximating risk posed by the site might be affected. For example, the hazardous waste quantity factor, in combination with toxicity and likelihood of release, helps predict the relative risk of a given release. For a site that has been in existence for some time, hazardous substances may have migrated to the ground water or surface water. If the hazardous materials on the surface are removed and the site is scored according to conditions existing after the removal ("current conditions"), the site could be assigned a low value for waste quantity, even though an unknown quantity of the hazardous material may be in the soil on the site and remain a potential threat to public health or the environment via the ground water, surface water, or air pathways. Thus, EPA was concerned that if a site were scored to reflect conditions after a response, the expected reduction in the HRS score based on current conditions might not reflect a commensurate reduction in the level of risk presented by the site, because the Agency may not be able to determine, at the time of site inspection, the extent of contamination that has occurred.

Finally, the Agency considered the programmatic issue of how to define "current conditions" when conditions may be changing between the time of initial data collection and final listing. Response actions often are ongoing at sites during the evaluation process, and it would be unduly burdensome to continually recalculate scores to reflect such actions.

The Agency is considering two approaches to incorporate current site conditions in the HRS score while minimizing the concerns discussed above. Under either approach, EPA would only consider removals prior to a site inspection, as EPA cannot continuously update the score of a site to reflect ongoing cleanup activity. The first approach involves consideration of removal actions for certain pathways or specific factors where appropriate. The second approach is to consider current conditions routinely, but to identify and exempt situations where current conditions will not lead to a more accurate assessment of risks.

Under the first approach, EPA would identify for each pathway (i.e., ground water, surface water, air and onsite) and for non-target factors (e.g., likelihood of release and waste characteristics) and target factors (e.g., population and distance to nearest well) whether scoring based on current conditions is appropriate. In scoring sites using the current HRS, the migration pathways have generally been scored on the basis of initial conditions for non-target factors and current site conditions for target factors. However, there are some exceptions. For example, targets have not been scored on current conditions where a site has contaminated soils of a residential area such that it is advisable for people to relocate.

Under this first approach, the Agency would score all factors for the onsite pathway based on current conditions at the time of the site inspection or equivalent because potential exposure in that pathway is based on direct contact with contaminated materials (proposed rule, section 5.0.1). The Agency believes that this is a better approach for measuring relative risk under those circumstances, and generally it is more feasible to determine whether a threat to health in the onsite pathway has been addressed than in the other pathways. For example, if the contaminated soils have been removed and permanently disposed, the risks through direct

contact are probably no longer significant.

The Agency believes there may also be certain non-target factors for which scoring on the basis of current conditions could give a more accurate indication of risks at the site e.g., flood potential and potential air releases. The flood potential factor in the surface water pathway is evaluated based on the site's location in a flood plain and on the source's containment. If the site has not been flooded since the disposal and if all wastes have been removed by an interim action, the Agency believes this factor could be evaluated based on current site conditions. In the potential air release factor, for example, if a site had a surface impoundment with volatile toxic substances, releases to air may occur. If, however, prior to the site inspection, the impoundment is drained and any remaining sludge is adequately capped, the threat of a release of volatiles is mitigated by the response action, and the Agency believes this factor could also be evaluated on current site conditions.

Unlike the situation in the air pathway, it may be much more difficult to determine whether response actions have mitigated the potential for a site to release to ground water or surface water. For example, removal of a waste pile or draining a surface impoundment stops adding to the source of contamination, but does not ensure that other potential sources of contamination (e.g., contaminated soils) or impacts (e.g., contaminated ground water) have been addressed.

Generally, target factors (e.g., population and distance to receptors), have been scored on initial conditions. For example, when a temporary drinking water supply has been provided, the initial target conditions may better represent the adverse impacts caused by the site. The same would be true when people have been relocated due to contamination, in which case scoring on the basis of initial conditions may better reflect the seriousness of the problem.

The Agency believes that the approach of taking response actions into account for more HRS pathways and factors than in the current HRS would provide a more accurate assessment of the risks at sites. Such an approach would also provide incentives for both public and private parties to perform responsible response actions. For both target and non-target factors, the Agency requests comment on additional factors that may be appropriately scored on the basis of current conditions.

The second approach the Agency is considering is to score all factors based on current conditions at the time of the site inspection, except for situations where this is not appropriate or feasible. For example, as just discussed, if a temporary drinking water supply has been provided or residents relocated, initial site conditions will be more appropriate. Also, under this approach, removals performed by non-Federal public agencies should not be considered, as their actions are a recognition of the site's threat to public health or the environment, and the public agency should not be discouraged from taking early action when appropriate.

In consideration of the concern about accurately assessing hazardous waste quantity when the vast majority has been removed, EPA has identified two alternatives under this approach. One method for making such determinations would be to require additional soil and ground water samples if a removal has occurred. This could add significantly to the cost of a site inspection, as sampling and analysis tend to be the highest cost components of performing the site inspection. Alternatively, EPA could develop a factor to modify hazardous waste quantity based on quantity removed and storage time at the site. This would be less accurate, but because it would be an objective model, it could be more simply and consistently applied, and would cost significantly less and be significantly faster than site specific sampling. The Agency specifically requests comment on these two approaches to assessing hazardous waste quantity after a removal has occurred.

The Agency believes that this second approach to incorporating current conditions in the HRS score could be more successful in assessing risk at the site than the first approach, if the hazardous waste quantity issue is satisfactorily resolved. This approach also maintains incentives for public and private sector removals to the same extent as the first alternative.

EPA specifically seeks comment on the two approaches to scoring sites, and on specific factors and situations that should be evaluated on initial conditions. The Agency is also interested in recommendations on other ways to consider removal actions that would allow recognition of the site's current conditions without encouraging incomplete solutions that reduce the HRS score below the cutoff and possibly leave significant health threats unaddressed, or significantly affect the cost of performing a site inspection. Finally, the Agency requests comment on how to evaluate the effectiveness of a response action to account for wastes that may have migrated to the soil, ground water, or surface water and may be posing a potential threat to public health and the environment.

11. Low Density Populations

In the current HRS, the population close to a site must be quite large (1,000 to 10,000 people generally within one to two miles) before the score for the targets category will approach the maximum. Commenters on previous NPL rulemakings have pointed out that this requirement for large populations prevents some dangerous sites from being listed and disproportionately affects certain groups. They have stated that hazardous waste sites on or near Indian tribal lands or in isolated, rural areas usually do not obtain high scores because the population density is low.

EPA is proposing to establish high values in the revised HRS for MEIs and for populations actually exposed to contamination, especially where health-based benchmarks are exceeded in drinking water. EPA believes that this will place greater weight on dangerous sites in isolated or rural areas, and allow such sites to be listed. EPA is seeking comments on this issue and suggestions for other ways to consider it in the HRS.

12. Standby Wells and Surface Water Intakes

In the current HRS, EPA generally does not differentiate between wells or intakes used as primary water sources and those which are used as standby water sources. Such an approach tends to emphasize the value of the drinking water resources, based on the rationale that standby water resources are often indispensable during periods of peak demand or drought. However, treating standby intakes and wells the same as primary water sources does not recognize the significant difference in the use of standby and primary intakes and wells, and the difference in potential risk based on this difference in exposure. To improve the ability of the HRS to distinguish between sites, EPA is proposing to differentiate between primary and standby water sources. EPA is considering three alternative approaches. One alternative involves assigning values to a standby water source based on the percentage of the system it supplies or the percentage of the year the source is used. Such an approach could more accurately assess the relative risks to public health from chronic exposure by better evaluating the relative degree of exposure through drinking water. A second alternative would involve considering as targets, only wells or intakes that are regularly

maintained and are used more than some specified annual amount. Such an approach would be simpler than the above option, but it would not be as accurate. A third alternative approach is to give standby wells and intakes a fraction of the value of a primary water source. This alternative would not reflect exposure from a site, but would distinguish between primary and standby sources and be easier to implement. Aspects of the second and third alternative are incorporated in the proposed rule in the MEI, population, and drinking water use factors. EPA specifically requests comment on how standby wells and intakes should be evaluated under the targets category, and would like specific comments on the three alternatives and what the particular cutoff levels or fraction should be.

D. Individual Pathway Revisions

Sections V D 1 through 4 detail the specific proposed revisions to the ground water, surface water, air, and onsite exposure pathways. A diagram that compares the current and the proposed structure precedes each section, except for the onsite exposure pathway where there is no current pathway for comparison. Each of the pathway discussions is organized in the same way: after a brief summary of the most significant proposed revisions and a discussion of any general considerations such as the distance over which risk is evaluated, the specific proposed revisions are grouped within the three factor categories—likelihood of release (likelihood of exposure for onsite exposure), waste characteristics, and targets. Where the revisions have already been specified in section V C, those discussions are referenced. Section 5 discusses the fire and explosion pathway. As with the issues covered in section V C, a more detailed discussion of the options EPA considered and the reasons for the proposed revisions can be found in the Technical Support Document, available in the Superfund docket.

1. Ground Water Pathway

As can be seen in Figure 1, the revised ground water migration pathway would retain the same structure as in the current HRS. In both versions, the likelihood of ground water contamination is evaluated by assessing the actual or potential release of hazardous substances to aquifers. The likelihood of release is then combined with the characteristics of the hazardous wastes and with the targets to obtain a pathway score. EPA is proposing revisions to every factor of the ground water pathway, the most significant of which are in the targets category. As already discussed, population would be assessed by how far drinking water wells subject to potential contamination are from a site (distance weighted) and by whether people are drinking from a well with contaminants above or below health-based standards. In addition, the proposed revisions would change the distance (target distance limit) within which drinking water wells are considered. In the waste characteristics category, EPA is proposing to combine toxicity with mobility rather than with persistence as is done in the current HRS. A new factor, sorptive capacity, would be added to the potential to release calculations.

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Figure 1

Ground Water Migration Pathway

Current HRS

Release	X	Waste Characteristics	X	Targets
Observed Release or Route Characteristics ❑ Depth to Aquifer of Concern ❑ Net Precipitation ❑ *Permeability of Unsaturated Zone* ❑ *Physical State* ❑ Containment		❑ Hazardous Waste Quantity ❑ Toxicity/*Persistence*		❑ Ground Water Use ❑ *Distance to Nearest Well*/Population Served

Revised HRS

Likelihood of Release	X	Waste Characteristics	X	Targets
Observed Release or Potential to Release ❑ Depth to Aquifer/ HYDRAULIC CONDUCTIVITY ❑ Net Precipitation ❑ SORPTIVE CAPACITY ❑ Containment		❑ Hazardous Waste Quantity* ❑ Toxicity/MOBILITY		❑ Ground Water Use* ❑ Population* ❑ MAXIMALLY EXPOSED INDIVIDUAL ❑ WELL HEAD PROTECTION AREA

Items in italic under Current HRS have been dropped or replaced. Items in caps under Revised HRS are new. Most items not in caps have been revised significantly.

****Factor based on several sub-factors.***

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General Considerations. Target Distance. EPA is proposing to extend the target distance limit within which the target factors are evaluated from three to four miles; where there is documented contamination attributable to the site beyond the four-mile target distance limit, wells with such contamination would be considered to be within the target distance for the evaluation of all target factors. In deciding on the change from three to four miles, the Agency used a combination of empirical data and modeling estimates. The empirical data consist of documented plume distances of greater than three miles in length. The modeling studies provided estimates of contaminant travel times for a variety of hydrogeological conditions. The Technical Support Document, available in the Superfund docket, contains further information on these studies.

In addition to increasing the target distance limit, the proposed HRS would change the locations from which the target distance would be measured (proposed rule, section 3.0.1.1) and would distance weight the population drinking from wells within the target distance except where there is documented contamination in these wells. In the revised HRS, the locations from which the distance is measured would be the sources of contamination at the site, not the extent of contamination as is done in the current HRS. The Agency would also incorporate a distance weighting factor for evaluating the potentially exposed population. (See section V C 8.) Thus, the population drawing from wells located between three and four miles from a site would be counted least heavily unless the wells they are drinking from show documented contamination. Extending this target distance limit to four miles is not expected to result in overestimating the target population because the distance weighting factors will be used to adjust the weights of populations as a function of distance from the site, unless those populations use drinking water from wells with documented contamination.

Aquifers Considered. The current HRS designates a single aquifer as the aquifer of concern; this aquifer is the aquifer that produces the highest ground water pathway score. The targets counted are only those that use that aquifer. In the revised HRS, if more than one aquifer is present, a migration score would be calculated for each of the aquifers and the aquifer with the highest score would be used to evaluate the site. In calculating the targets value for an aquifer, both the population using water from that aquifer and the population using water from all overlying aquifers must be considered, except when the hazardous substances were placed directly in the aquifer (proposed rule, section 3.0). The inclusion of targets from overlying aquifers is based on the assumption that contaminants must migrate through the shallower aquifers before reaching a deeper aquifer.

Aquifer Interconnections. In the current HRS, multiple aquifers can be considered a single aquifer if they function as a single hydrological unit within a three-mile radius of the site. Because specific determination of the degree of aquifer interconnection may require professional judgment to evaluate the site, EPA has developed guidance for applying such judgments in determining that multiple aquifers constitute a single hydrologic unit (proposed rule, sections 3.0.1.2 and 3.0.1.2.1).

At present, both the target distance limit and the distance over which the aquifer interconnections are determined extend for a three-mile radius from the extent of known contamination, except where a lateral discontinuity exists. EPA would reduce both the distance over which geologic conditions are evaluated for the potential to release and the distance over which aquifer interconnections are evaluated from three miles to two miles, except where contamination attributable to the site extends beyond two miles; areas underlying this contamination are included in the evaluation. This reflects EPA's belief that the geologic conditions near the site will, in most cases, be of primary importance in affecting the release of contaminants to an aquifer and from upper aquifers to lower aquifers. EPA requests comments on the two-mile radius.

Aquifer Discontinuities. Aquifer discontinuities (proposed rule, section 3.0.1.2.2) result when a geologic, topographic, or other structure or feature completely transects an aquifer, significantly disrupting water from flowing out of or into the aquifer. If the discontinuity exists within the target area, any part of an aquifer beyond the discontinuity is not counted in the aquifer unless the discontinuity does not entirely transect the target area. If multiple aquifers are considered as a single unit, any discontinuity must entirely transect the boundaries of the single unit before the area beyond the discontinuity is discounted. EPA is proposing to extend the distance for considering aquifer discontinuity from the current three-mile radius to a four-mile radius to keep it consistent with the distance over which population factors are evaluated.

Karst Aquifers. Karst aquifers are those associated with karst terrain, which refers to a type of topography formed in limestone, dolomite, or gypsum by dissolution by rain and ground water. Karst aquifers often have very high ground water flow velocities. Currently, sites in karst terrain are not given any special consideration in the HRS. (See proposed rule, section 3.0.1.3 for a further definition of karst.) In the several factors in the proposed revisions, karst aquifers would be scored differently than other types of aquifers (proposed rule, sections 3.1.2 and 3.3.1). The proposed revisions would reflect the high potential for contaminants to migrate through karst aquifers with little reduction in the concentration of the hazardous substance through dispersion, dilution, or attenuation. Karst aquifers would be treated differently than other aquifers in the depth to the aquifer/ hydraulic conductivity factor, the sorptive capacity factor, the maximally exposed individual factor, and the population potential contamination factor. For more detail, see the Technical Support Document, available in the Superfund docket. EPA also considered scoring other types of aquifers, such as fractured bedrock, differently for similar reasons. The Agency solicits comments on how the HRS could reflect the special characteristics of those types of aquifers.

Ground Water Flow Direction. The current HRS does not consider the direction of ground water flow in determining which populations or environments may be affected by the migration of hazardous substances at the site. The target factors give equal weight to the entire population within a three-mile radius from the site. In adopting the current HRS, EPA decided that the time and level of effort required to obtain sufficient geohydrologic information to determine ground water direction accurately over the entire three-mile radius would be inconsistent with the goal of expeditiously scoring sites. A reasonably accurate determination of the flow direction requires extensive geohydrological investigation because the direction of flow may be altered by seasonal variations, long-term historical changes, and the effects of pumping wells. In addition, when considering the migration of hazardous substances in ground water, other problems arise; for example, immiscible liquids may migrate in a direction other than the primary direction of the ground water

flow, making ground water flow direction an inaccurate surrogate for the direction of contaminant flow.

In the ANPRM, EPA sought comments on the question of using ground water flow direction measures. Most of the commenters supported using ground water flow direction, at least under certain conditions. EPA investigated several options for considering ground water or contaminant flow direction, including the following.

- Estimating the direction of ground water flow from piezometric measurements and dividing the target population into upgradient and downgradient categories. The two population categories would be evaluated differently.
- Determining population categories based on the direction(s) of observed contaminant migration rather than on direction(s) of ground water flow. The direction of ground water flow is a surrogate measure for evaluating the most probable direction of contaminant migration and is a less direct means of identifying the population at risk. As in the above option, the population would be divided based on location with respect to the direction of contaminant migration. Various alternatives were considered for how the two population categories might be evaluated.
- Retaining the current system that does not consider either the direction of ground water flow or contaminant migration flow in determining the target population.

To evaluate these options, EPA considered both the technical feasibility and the cost of obtaining reliable information. See the Technical Support Document (available in the Superfund docket) for a more detailed discussion of the options considered.

EPA is proposing to retain the current system, which does not directly consider ground water flow direction, in evaluating the population potentially exposed to contaminants. However, where there is known contamination in wells, the populations normally using those wells would be weighted higher than those only potentially exposed. Based on its review of technical feasibility, EPA determined that even if the general direction of the flow around the site could be defined, the localized direction of the flow may not be consistent with the general flow. Accurately determining the local flow within the target distance would require extensive geohydrologic investigations. EPA concluded that the considerable expenditure of time and public funds that would be required for geohydrological investigations is justified only at the nation's highest priority sites, i.e., those on the NPL. The revised HRS would indirectly take substance migration direction into account by using the MEI factor and by assigning weights to people drinking contaminated water either above or below health-based benchmarks.

Likelihood of Release. The proposed revisions provide the same general structure as the current HRS for assessing the likelihood of contaminants to migrate from a site to an aquifer—observed release and potential for release (formerly route characteristics/containment) (proposed rule, section 3.1).

Observed Release. As discussed in Section V C 4, the proposed HRS would include general criteria to define when a release can be considered significantly above background levels (proposed rule, section 3.1.1).

Potential to Release. The proposed potential to release factor category (proposed rule, section 3.1.2) is comparable in intent to the route characteristics/containment portion of the current HRS. The name would be changed to clarify that the factor represents the potential of the site to release contaminants to an aquifer rather than the potential for the contaminants to migrate once they enter the aquifer.

EPA is proposing a number of changes in how potential releases are scored. The current HRS has four route characteristics factors—depth to the aquifer, net precipitation, permeability, and physical state. The values for these factors are added together, then multiplied by the containment factor value. The proposed HRS would use four factors—depth to aquifer/hydraulic conductivity, net precipitation, sorptive capacity, and containment. The release potential would be calculated as the sum of the values of the first three factors multiplied by the value for containment (proposed rule, section 3.1.2.5).

In the proposed HRS, the depth to aquifer would be combined in a matrix with hydraulic conductivity (proposed rule, section 3.1.2.3). Considered together, the two factors provide an indication of the relative travel time required for hazardous substances to reach the underlying aquifer. In the current HRS depth of aquifer factor, aquifers deeper than 150 feet are assigned a value of zero. The depth to aquifer factor would be modified in the revised HRS to include aquifers with depths up to and exceeding 800 feet. Values would be assigned using a matrix that combines depth with hydraulic conductivity. This change in the depth reflects both the fact that aquifers are known to be used at depths exceeding 800 feet and that documented contamination has been found in deeper aquifers. See the Technical Support Document for further detail.

For HRS scoring purposes, the hydraulic conductivity factor would be calculated by deriving a thickness-weighted average hydraulic conductivity, a measure that combines the hydraulic conductivity of each layer of geologic material between the contaminant source and the aquifer with the thickness of that layer (proposed rule, section 3.1.2.3.2). The one exception is when the layer consists of karst; karst aquifers would always be assigned a thickness of zero feet regardless of their actual thickness. The hydraulic conductivity factor is a renaming of the permeability factor; the proposed addition of the thickness component would make the new hydraulic conductivity factor a more accurate measure of travel time and, therefore, a more accurate reflection of the potential for migration. As with aquifer interconnections, hydraulic conductivity would be examined within a two-mile radius of the site, except as noted in the proposed rule (section 3.1.2.3). EPA requests comments on this distance.

The net precipitation factor, which indicates the amount of water potentially available for infiltration to ground water, would be revised. Under the proposed HRS, the net precipitation factor value (proposed rule, section 3.1.2.2) would be based on a new method of estimating annual net precipitation rather than seasonal or annual net precipitation as determined in the current HRS. In addition, the factor value would be based on the sum of the months in which there is a positive net precipitation. This will better reflect the potential of hazardous substances to migrate to aquifers. A map providing net precipitation values for specific areas will be included in the final rule.

When the HRS was adopted, some commenters objected because it did not consider geochemical removal mechanisms. At the time, EPA did not believe that the data regarding these mechanisms were sufficiently broad to warrant inclusion in the HRS. In response to these comments, and to similar comments on the ANPRM, EPA is proposing to add a new factor to the ground water potential to release category, sorptive capacity. Sorptive capacity measures the potential of geologic materials to sorb contaminants and thereby retard their migration to aquifers (proposed rule, section 3.1.2.4). The sorptive capacity factor is intended to reflect relative differences in the ability of various types of geologic materials to inhibit the migration of

contaminants. A table of sorptive capacity values is provided in the proposed rule. Sorptive capacity would be evaluated based on the clay and organic carbon content of the geologic materials that occur between the hazardous substances and the aquifer within a two-mile radius of the site (except as noted in the proposed rule), consistent with the way other geologic factors are evaluated. EPA requests comments on the sorptive capacity factor and the distance over which it is evaluated.

The containment factor (proposed rule, section 3.1.2.1) is a measure of the means taken to minimize or prevent the release of hazardous substances from a site to ground water. The containment factor would be revised in the proposed HRS to provide a greater range of assigned values and more detailed descriptions of each type of containment. These changes would make the determination of conditions and of the adequacy of containment more objective.

Certain ground water containment elements (e.g., liners, cover thickness, and permeability) cannot be examined visually during a site inspection. In the past, the Agency has relied principally on the records of site owners and operators to determine the adequacy of such containment measures. In the absence of such records, EPA has assumed that no such containment measures were undertaken. EPA proposes to retain this same approach when determining containment.

The physical state affects the potential of the waste to migrate from a site or, alternatively, for it to be contained at a site. Physical state can, therefore, be used as a component of either waste containment or waste migration potential. Physical state is used in the current HRS as a measure of waste migration potential in the ground water and surface water pathways. EPA is proposing to eliminate the physical state factor used in the current HRS because experience has shown that it seldom provides meaningful discrimination among sites. Most sites scored with the current HRS contained at least some liquids, therefore receiving the maximum value for physical state. In the proposed revisions, physical state has been integrated into the containment factor to better reflect the interrelationship of the two in the release of hazardous substances from a source area. EPA seeks comment on eliminating the physical state as a separate factor.

Waste Characteristics. The current waste characteristics factor category (proposed rule, section 3.2) includes hazardous waste quantity and toxicity/persistence factors. EPA is proposing a number of changes in the calculation of waste characteristics for all pathways. The toxicity factor and hazardous waste quantity factor would be revised as discussed in sections V C 2 and 3. In addition, for the ground water pathway, the toxicity factor would be combined in a matrix with mobility rather than with persistence as is done in the current HRS (proposed rule, section 3.2.1). EPA decided to eliminate the persistence factor because the method currently used to evaluate persistence is based on biodegradability and is generally not applicable to ground water.

The Science Advisory Board, as part of its review of the applicability of the HRS to mining waste sites, supported the incorporation of a mobility factor in the HRS. The Board indicated that mobility would more accurately reflect the potential for a substance to migrate through the ground water to a target population than does persistence.

The Board suggested that speciation of metals was an important consideration in evaluating mobility. However, to accurately assess the mobility of a specific metal, the various metal species present must be determined, both in the waste and in the subsurface environment. This, in turn, requires knowledge of the concentrations of anions, cations and dissolved organic materials; pH; redox potential; and adsorption characteristics of the geologic material. In evaluating options for mobility, EPA believed that it was not feasible to obtain reliable measures of these parameters given the temporal and spatial variations and the difficulty in sampling. Furthermore, the Agency concluded that the mobility factors added to the proposed HRS will increase the accuracy of the waste characteristics assessment.

The proposed mobility factor (proposed rule, section 3.2.1.2) would be a measure of the tendency of a hazardous substance to become mobile in the aqueous phase. Mobility would be evaluated for all hazardous substances that are available to migrate to ground water. Any substance documented in an observed release at a facility would be assigned the maximum value because its presence is an indication that it is sufficiently mobile at that facility to pose a hazard. For other substances, a mobility tendency value would be assigned to specific organic and inorganic contaminants based on water solubility, and to inorganic cations and anions based on each ion's coefficient of aqueous migration value. The coefficient of aqueous migration reflects the mobility of uncombined or free inorganic substances under geochemical conditions that maximize their mobility. For a more detailed discussion see the Technical Support Document in the Superfund docket.

The purpose of this new mobility measure is to increase the accuracy of the waste characteristics factor category by taking into account the differing abilities of substances to migrate and, therefore, increasing the accuracy of the scoring system. Mobility would be considered in a matrix with toxicity and thus would play a role in the selection of the substance used to assign the toxicity/mobility value (proposed rule, section 3.2.1.3). Combining mobility and toxicity would lead to selecting the contaminant that poses the most significant threat, thus increasing the accuracy of the HRS.

The toxicity/mobility factor value would be added to the hazardous waste quantity value to obtain a waste characteristics score.

Ground Water Targets. The ground water targets factor category (proposed rule, section 3.3) reflects the human population and resources potentially at risk from an actual or potential release of hazardous substances from the site to an aquifer. Currently, the ground water targets factor category includes two factors—a use factor and a factor derived from a matrix that combines distance to the nearest well with the population served by ground water. These factors are evaluated for drinking water and irrigation wells drawing from the aquifer of concern within the target distance of the site.

Four factors would be added together to derive a value for the targets category under the proposed rule: Ground water use, the presence of high priority ground water areas, the MEI, and population.

Ground Water Use. Currently, the ground water use factor takes into account four possible conditions and uses of the ground water drawn from the aquifer within the three-mile radius: drinking water with no unthreatened alternative source; drinking water with alternative sources or commercial, industrial or irrigation uses without alternatives; commercial, industrial or irrigation uses with alternatives, or not used but usable water; and unusable water. Only the ground water use with the highest value is used to assign a value to the factor. The proposed revisions (proposed rule, section 3.3.3) to the HRS would divide this factor into two subfactors—drinking water use and other water use. The drinking water use factor reflects the use and value of the

ground water and would consider whether the drinking water wells are private, public, or standby, parameters the current HRS does not consider (proposed rule, section 3.3.3.1). (Private wells are defined as wells that have less than 15 connections and serve less than 25 people.) The other water use factor would assign values if the wells are used for specified agricultural, commercial, or industrial purposes (proposed rule, section 3.3.3.2). The ground water use factor value would be the sum of the highest value assigned for drinking water use and for other water use, subject to a maximum (proposed rule, section 3.3.3.3). Expanding the ground water use factor to consider these additional uses would provide increased discrimination.

The ANPRM specifically asked for comments on modifying the ground water use factor to account for future use. The Agency received comments for and against this concept. Those favoring the addition of future use stated that unused aquifers should be considered resources to be protected. These commenters suggested mechanisms to predict future use, such as town planning documents. Those opposed to considering future use stated that the factor would be subjective and conjectural and that communities would develop unrealistic plans so their sites would receive higher HRS scores.

The proposed HRS would continue to place a high priority on current use. EPA has increased the relative weight of the revised ground water use factor among the factors in the target category. EPA concluded that the size of the target distance area, the consideration of alternative water supplies, and the high value placed on the resources give appropriate consideration to future use because it is likely that resources being heavily used at present will continue to be heavily used. In addition, the drinking water use factor assigns points for aquifers that are not used, but usable. However, the Agency recognizes that this approach may not account for a drastic increase in future use. The Agency has not identified a method for accurately and uniformly predicting such future changes in land and water resource use. Therefore, the Agency requests comment on two issues: (1) Can local population changes, land use changes, or changes in ground water use patterns be reliably predicted within the context of the HRS? and (2) how should the Agency weight sites where ground water resources have been degraded, regardless of whether these resources are presently used?

Population. The population factor (proposed rule, section 3.3.2) is an indicator of the number of people actually or potentially at risk from exposure to hazardous substances in drinking water as well as a measure of the value of the potentially affected resources. In the current HRS, all the people who drink water drawn from wells within three miles of the site are counted equally. The total population is then combined in a matrix with distance to the nearest well to assign a single factor value. In the proposed HRS, these factors would be separated to more clearly reflect MEI risks and resource value/population risk.

As discussed in sections V C 5 and 8, the population served by ground water factor would be divided into four possible groups with the first three groups based on how the concentration in the drinking water well compares to the health-based benchmarks (MCLs, MCLGs, or unit cancer risk numbers). The last group represents the population whose wells may not be contaminated, but the aquifer itself is contaminated, or has the potential to be contaminated. This last group would be distance-weighted. The population factor value would be the sum of the four population factor values, subject to a maximum (proposed rule, section 3.3.2.4).

Several other changes would affect the population factor. EPA would clarify its definition of which wells may be considered in determining target populations. In evaluating each aquifer, EPA would consider the population drawing drinking water from the aquifer being evaluated and those drawing from overlying aquifers except when the hazardous substances have been introduced directly into that aquifer (proposed rule, section 3.3). EPA would also consider populations drawing from a well beyond four miles if that well has contamination attributable to the site. In addition, EPA would use county census data when there is no actual population count available rather than using a conversion factor of 3.8 people per residence as in the current HRS (proposed rule, section 3.3.2). As explained in section V C 7, EPA has not been able to identify a reliable way of consistently evaluating terrestrial contamination effects on the human food chain. Therefore, the revised HRS would delete the conversion of agricultural acreage to equivalent population in the current HRS.

Maximally Exposed Individual. The current distance to the nearest well factor would be treated as a separate factor in the proposed revisions and would be used to indicate the risk to the MEI, as discussed in section V C 9. If the concentration of a substance (or substances) at any drinking water well exceeds health-based benchmarks and that contamination is attributable to the site under evaluation, then the MEI factor would be assigned the maximum factor value (proposed rule, section 3.3.1). In addition, any well drawing drinking water from a karst aquifer that underlies the site would also be assigned the maximum value. This factor addresses the concerns of section 118 of SARA, which requires EPA to give high priority to wells closed because of contamination.

High Priority Ground Water Areas. CERCLA section 118(a), as amended by SARA, requires the Agency to give a high priority to sites that have contaminated a principal drinking water supply. The use of health.based benchmarks in weighting target populations (see section V C 5) is one way the revised HRS gives greater weight to sites where actual contamination has occurred in a drinking water well. For example, a site responsible for contaminating wells or a water supply has the population factor increased, depending on how the level of contamination compares with health-based benchmarks. The use of the health-based benchmarks ensures that sites where actual contamination has occurred are given greater weight.

The Agency proposes adding a new factor to the target score to take into account the presence of a Wellhead Protection Area (WHPA) designated under section 1428 of the Safe Drinking Water Act (SDWA). This factor would address CERCLA section 118(a), as amended by SARA. This factor, which receives a maximum value if the source or hazardous substance released from the source is located within a WHPA or zero if the source and its hazardous substances are not located within a WHPA, would increase the target score when a hazardous waste site could endanger a WHPA. The Agency specifically requests comment on the weighting that should be given to a source located in a WHPA.

Section 1428 of the SDWA, which sets out the requirements for the WHPAs, requires each State to develop and submit for EPA approval, a program to protect wellhead areas supplying public water systems from contaminants that may have an adverse effect on human health. WHPAs are further defined as "the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and

reach such water well or wellfield." It is estimated that less than six percent of the land area of the U.S. will likely be included within such areas. Therefore, the WHPA designation would likely discriminate among sites where a principal drinking water supply is threatened. One disadvantage to the approach of using WHPAs is that currently no States have established WHPA programs. Section 1428(a) of the amendments requires each State to adopt and submit to EPA by June 19, 1989, a program designed to protect wellhead areas. Section 1428(g) requires each State to make every reasonable effort to implement the State wellhead protection program within two years of submitting the program to EPA.

The Agency considered using the presence of a sole source aquifer (SSA) rather than a WHPA to fulfill section 118(a). An SSA is established pursuant to section 1424(e) of the SDWA. The Agency decided against using the SSA designation because the criteria for SSA designation are not very selective, i.e., the primary test is whether 50 percent or more of the current population are served by ground water. Although there are currently relatively few designated sole source aquifers in the country, the criteria could potentially allow much more of the land area of the U.S. to be designated as SSAs than would the WHPA designations. If this were the case, assigning a maximum value to the target score if an SSA exists within the target distance limit would result in little discrimination among sites.

EPA's Office of Ground Water Protection has available the following guidance documents dealing with wellhead protection and sole source aquifers:

(1) Sole Source Aquifer Designation Petitioner Guidance, US EPA, February 1987.
(2) Guidelines for Delineation of Wellhead Protection Areas, US EPA, June 1987.
(3) Guidance for Applicants for State Wellhead Protection Program Assistance Funds Under the Safe Drinking Water Act, US EPA, June 1987.

Comment is requested on whether the Agency should use the WHPA designation in meeting the requirements of SARA Section 118. Comment is also requested on the desirability and mechanisms for incorporating other high priority areas in a State, such as those formally recognized within a State ground water classification system.

Ground Water Migration Score. The ground water migration score is the product of the likelihood of release value, the waste characteristics value, and the targets value, divided by a normalizing factor. A ground water migration score would be calculated for each aquifer underlying a site (proposed rule, section 3.4). The highest ground water score for an aquifer would be used as the ground water pathway score (proposed rule, section 3.5).

2. Surface Water Pathway

As can be seen in Figure 2, EPA is proposing major changes in the surface water pathway. As required by CERCLA Section 105 (as amended), EPA has assessed several potential effects of surface water contamination and is proposing to revise the surface water pathway to better consider the threats to human health through drinking water, the human food chain, and recreational water use. EPA is also proposing to revise the environmental component of the surface water pathway. Each of these threats would be evaluated separately for likelihood of release, waste characteristics, and targets. The pathway score would be the sum of the scores of the threats or subpathways. This revised structure provides a relatively simple way to account for the different substances and targets that may be important for the different types of potential exposure in the surface water pathway. The structure allows the HRS to take into account aquatic toxicity for sensitive environments, mammalian toxicity in drinking water, mammalian toxicity and bioaccumulation in the food chain, and mammalian toxicity, dermal permeability, and mass flux dilution for recreation.

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Figure 2

Surface Water Migration Pathway

Current HRS

Release	X	Waste Characteristics	X	Targets
Observed Release or Route Characteristics ❑ *Facility Slope/ Intervening Terrain* ❑ *One Year, 24 Hour Rainfall* ❑ *Physical State* ❑ Distance to Nearest Surface Water ❑ Containment		❑ Hazardous Waste Quantity ❑ Toxicity/Persistence		❑ Surface Water Use ❑ Population Served/ *Distance to Nearest Intake Downstream* ❑ Distance to a Sensitive Environment

Revised HRS

Drinking Water Threat

Likelihood of Release	X	Waste Characteristics	X	Targets
Observed Release or Potential to Release OVERLAND FLOW ❑ Containment ❑ RUNOFF* ❑ Distance to Surface Water POTENTIAL TO RELEASE BY FLOOD ❑ CONTAINMENT (FLOOD) ❑ FLOOD FREQUENCY		❑ Hazardous Waste Quantity* ❑ Toxicity/Persistence		❑ Surface Water Use* ❑ Population* ❑ MAXIMALLY EXPOSED INDIVIDUAL

Human Food Chain Threat

Likelihood of Release	X	Waste Characteristics	X	Targets
(same as above)		❑ Hazardous Waste Quantity* ❑ Toxicity/Persistence/ BIOACCUMULATION		❑ FISHERY USE ❑ POPULATION*

Recreational Threat

Likelihood of Release	X	Waste Characteristics	X	Targets
(same as above)		❑ Hazardous Waste Quantity* ❑ Toxicity/Persistence/DOSE ADJUSTING FACTOR		❑ POPULATION*

Environmental Threat

Likelihood of Release	X	Waste Characteristics	X	Targets
(same as above)		❑ Hazardous Waste Quantity* ❑ ECOSYSTEM TOXICITY/Persistence		❑ Sensitive Environments

Items in italic under Current HRS have been dropped or replaced. Items in caps under Revised HRS are new. Most items not in caps have been revised significantly.

**Factor based on several sub-factors.*

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If hazardous substances could migrate from the site to surface water in more than one watershed, each of the threats would be evaluated over each watershed and the final pathway score would be the sum of the scores of the watersheds (proposed rule, section 4.0.1). In evaluating a threat to a watershed, only the information (waste quantity, observed release, etc.) appropriate for that watershed would be used. The same wastes, for example, would not be used to score more than one watershed except where it is not feasible to determine the locations of those wastes relative to the watershed boundaries.

Target Distance. In the current HRS, the target distance is measured from the probable point where the contaminated water enters the surface water to a point three miles downstream of the farthest observed contamination (one mile in static water such as a lake). EPA is proposing to extend the target distance limit to 15-stream-miles from the probable point of entry (a 15-mile arc for lakes and oceans). If an observed release is based on sediment samples, as opposed to water or benthic samples, the target distance would extend 15 miles beyond the farthest sediment sample showing contamination attributable to the site. This distinction is made because contaminated sediments may serve as a continuing source of contamination as particles become resuspended. In addition, if there is observed release based on water or benthic samples beyond the 15-mile limit, drinking water intakes, fisheries, or sensitive environments up to the point of observed contamination would be used to evaluate targets (proposed rule, section 4.0.2).

To derive the 15-mile limit, EPA analyzed how far contaminants could travel before being attenuated to the point where they were no longer considered important in characterizing risk. More information concerning this analysis is provided in the Technical Support Document, available in the Superfund docket. Based on this analysis, the Agency concluded that 15 miles provides a reasonable balance between ensuring that all potential receptors are evaluated and limiting the data collection effort to a reasonable level. The current and proposed target distance limits should not be directly compared. The current HRS indirectly includes distance and dilution weighting factors by assigning a value based on the distance between the probable point of entry of the contaminants into the surface water and the intake or sensitive environment. The proposed revisions explicitly include dilution weighting factors that are dependent upon the volume of flow. In the ANPRM, EPA requested comments on the target distance limit for surface water. The Agency would like comments on this proposed revision to the target distance.

Likelihood of Release. The current HRS evaluates the likelihood of release as an observed release or as a potential to release. This basic structure has been retained in the revised HRS. Because the likelihood of release factor category value would be calculated once and used in evaluating each of the applicable threats (drinking water, human food chain, recreation, and sensitive environments) at a site, it is discussed here without reference to the threat calculations.

Observed Release. An observed release would be scored when it can be demonstrated that a site has released hazardous substances to surface water. Either aquatic, benthic, or sediment sampling or direct observation of the release could be used to demonstrate that an observed release to surface water has occurred (proposed rule, section 4.1.1.1). (See section V C 4 for a discussion of the observed release criteria.)

Potential to Release. The current HRS calculates the potential to release factor category by multiplying the route characteristics by the containment. Route characteristic factors are the facility slope and the slope of intervening terrain; the one-year, 24-hour rainfall; the distance to the nearest surface water; and the physical state of the waste. These factors are added together.

The proposed HRS would replace the potential to release factors with two new groups of factors, overland flow and potential to release by flood, which would be added together to obtain the potential to release category score (proposed rule, section 4.1.1.2). The proposed overland flow factors are comparable to the route characteristics times containment portion of the current HRS. The name has been changed to reflect that the factors represent the potential of the site to release hazardous substances to surface water rather than the potential for hazardous substances to migrate once they enter the surface water body. Although both the current and revised factors measure the potential for a site to release hazardous substances, the revised factors would emphasize total releases rather than just peak releases.

In the current HRS, if the distance to the surface water is more than two miles, the distance to surface water factor is assigned a value of zero but the rest of the potential to release factors are evaluated and scored. Under the revised HRS, if the distance to surface water is greater than two miles, overland flow would be assigned a value of zero. In addition, if no overland segment can be defined (e.g., the site is in a topographic depression) the overland flow is assigned a value of zero. Flood potential would still be evaluated, however, as would the rest of the factors in the pathway.

Overland Flow. Overland flow is the sum of the runoff and the distance to surface water factors, multiplied by the overland containment factor (proposed rule, section 4.1.1.2.1.4). As stated above, the maximum distance from the site to the surface water would remain at two miles, but the scale of assigned rating values for interim distances would be modified to include more distance ranges, thus expanding the scale of possible values to better reflect the threat posed by the overland flow pathway (proposed rule, section 4.1.1.2.1.3).

The runoff factor, the measure of runoff available for carrying hazardous materials from a site to surface water, would include three components: (1) Rainfall, (2) runoff curve number, and (3) drainage area. The rainfall factor considers the potential for storms to cause surface water contamination as a result of runoff—as reflected by the two-year, 24-hour rainfall. The runoff curve number reflects the ability of the soil types present and of the predominant land surface to facilitate or impede runoff. The runoff curve number would be obtained from a matrix of hydrologic soil groups and the predominant land use (e.g., cultivated land, forests, streets) within the drainage area. The drainage area of interest is a new factor that considers the size of the drainage area and provides an additional measure of the amount of runoff available for hazardous substance migration. The area of interest refers only to the area contributing runoff from the site into the overland migration pathway. It includes the site and any area upgradient of the site that sends water through the site.

EPA chose this method of calculating runoff because it more accurately assesses runoff from the site. The precipitation value would be based on two-year, 24-hour rainfall data rather than the current one-year, 24-hour rainfall because of data availability. For more detail, see the Technical Support Document, available in the Superfund docket.

The sum of the runoff factor value and distance to surface water factor value

would be multiplied by the overland containment factor value. The containment factor is a measure of the means taken to minimize or prevent the release of hazardous substances from a site to surface water. The containment factor would be revised in the proposed HRS to provide a greater range of assigned values and more detailed descriptions of each type of containment (proposed rule, section 4.1.1.2.1.1). These changes would make the determination of conditions and of the adequacy of containment more objective.

EPA proposes to eliminate the current physical state and facility slope and intervening terrain factors. Most sites scored with the current HRS contained at least some liquids, thus scoring the maximum for physical state. Consequently, the physical state of the waste does not provide meaningful discrimination among sites. In the proposed revisions, physical state has been integrated into the containment factor to better reflect the interrelationship of the two in the release of hazardous substances from a source area. EPA seeks comment on eliminating the physical state as a separate factor.

Facility slope and slope of intervening terrain would be eliminated in part because of the difficulty in estimating these factors with sites commonly having irregular slopes or, in the case of a lagoon, having no slope but still posing a threat of release from a dike failure, from leakage, or from overtopping due to an inadequate freeboard.

Potential to Release by Flood. The current HRS accounts for flooding at hazardous waste sites only by assigning an observed release if a site has been inundated by a flood. The Agency is concerned that certain sites, such as those near the banks of a river, could release hazardous substances during a flood and that the threat of such a release is not adequately accounted for in the current HRS. The proposed potential to release by flood factor would better reflect the potential for a site to release hazardous substances if a site is flooded.

In determining the value for potential to release by flood, each source on a site is evaluated separately for the flood plain in which it lies, and the highest value calculated for any source would be the value for the factor. For each source, a value would be calculated by multiplying the flood frequency value for each flood plain in which the source lies by the containment (flood) value for that source for each specific flood plain (e.g., 10-year, 100-year) (proposed rule, section 4.1.1.2.2.3).

Flood frequency (proposed rule, section 4.1.1.2.2.2) would be based on available flood plain information. A value greater than zero would be assigned to a source for each flood plain in which the source is located; that is, if a source is in a 10-year and 100-year flood plain, a value would be assigned to the source for each. Flood containment for the source (proposed rule, section 4.1.1.2.2.1) would be scored on an all or nothing basis for each flood plain in which the source is located. If a source is in a flood plain (e.g., a 10-year flood plain) and a professional engineer certifies that the containment will prevent a release of hazardous substances from that source under such a flood, the containment factor for that flood plain would be assigned a value of zero for that source. If the containment would not prevent a release, the containment flood factor would be assigned the maximum value. Containment would be evaluated for each flood plain in which a source is located. EPA requests comments on the inclusion of flood potential and criteria to be used for determining flood containment.

In addition to the overland and flood mechanisms, EPA considered adding a mechanism to evaluate a site's potential to contaminate surface water through ground water discharges. EPA was not able to develop a system for reliably predicting such releases based on site inspection data. The Agency is concerned that discharges of contaminated ground water can be significant sources of hazardous substances in surface waters and would consider including a mechanism for evaluating such potential releases if reasonable. EPA solicits comments on how such a potential could be evaluated within the context of the HRS. Releases of contaminated ground water to surface water are addressed as observed releases where they can be documented.

Drinking Water Threat. Waste Characteristics. The current HRS evaluates the characteristics of the hazardous substances actually or potentially released to the surface water pathway by adding a value from a matrix of toxicity and persistence to a value based on hazardous waste quantity. These factors are retained in the proposed revisions, but evaluated differently. Scoring of toxicity and hazardous waste quantity would be revised as discussed in sections V C 2 and 3.

The persistence factor in the current HRS is based on biodegradation. To better account for actual, substance-specific attenuation processes, the persistence factor would be revised to include five decay processes: biodegradation, hydrolysis, photolysis, volatilization, and free-radical oxidation. In evaluating how the HRS handles the mobility of hazardous substances, the Science Advisory Board supported using attenuation measures for surface water because they most closely approximate what actually happens in the environment. In the proposed rule, four levels of persistence would be defined by a measure of the half-life of the substance, that is, the time it takes the concentration of the substance to be reduced by half (proposed rule, section 4.1.2.1.2). The persistence value would then be assigned based on the half-life of the hazardous substances and the type of the surface water, which together represent the time the hazardous substance will take to travel through the water. Of substances studied by the Agency for purposes of revising this factor, about 90 percent receive the maximum value for persistence in rivers, oceans, and the Great Lakes.

In cases where persistence data do not exist, the revised HRS would assign default values specific to the types of hazardous substances and to the types of surface water affected by a release. For example, hazardous substances that are metals would be assigned a default value of three for all surface water bodies; all other hazardous substances released to a river or stream would be assigned a default value of two, while a default value of one would be assigned for releases to lakes based on the longer travel time. A more detailed discussion of the persistence factor can be found in the Technical Support Document.

For each substance actually or potentially releasable from the site, persistence would be combined with toxicity in a matrix. The substance with the highest toxicity/persistence value would be used in calculating the drinking water waste characteristics factor category value (proposed rule, sections 4.1.2.1.3 and 4.1.2.3).

The value for toxicity/persistence would be added to the value for hazardous waste quantity to derive a waste characteristics score.

Targets. The drinking water target category reflects the humans and resources potentially at risk from exposure to hazardous substances in drinking water obtained from surface water sources (intakes). In the current HRS, two factors are used to evaluate the population potentially affected: surface water use and population served by drinking water intakes that are within the target distance from the

probable point of entry of releases from the site to the surface water. Currently, the population factor is combined in a matrix with distance to an intake to produce a single assigned value. The drinking water targets category in the revised HRS retains the surface water use and population factors, but substantially modifies them. The distance to an intake would be replaced with an MEI factor that would be evaluated separately. These three factors (surface water use, population, and MEI) would be added together to obtain a value for the drinking water targets.

The surface water use factor takes into account the value of the resource and the use of the water taken from surface water intakes within the target distance limit. In the current HRS, the use is evaluated based on whether the water is used for drinking; for irrigation, commercial food preparation, or recreation; for commercial/industrial purposes or is not used. Only the surface water use with the highest value is used to assign a value to the factor. The proposed revisions (proposed rule, section 4.1.3.3) to the HRS would divide this factor into two subfactors—drinking water use and other water use. The drinking water use factor would take into account whether the drinking water is a public or private water supply, whether reasonable alternative supplies exist, whether available alternatives are unthreatened by the site, whether the water is a standby source, whether the water has been designated for water use but is not used, and whether it is not used or is not usable for some reason unconnected with the site (proposed rule, section 4.1.3.3.1). These new considerations would provide a better method for evaluating the threat posed by the site to the surface water resource. As in the current HRS, other surface water uses (such as commercial food preparation, commercial livestock watering, or commercial crop irrigation) would also be assigned values (proposed rule, section 4.1.3.3.2). The surface water use value would be the sum of the highest values assigned for drinking water use and for other water use, subject to a maximum (proposed rule, section 4.1.3.3.3), allowing both types of use to be reflected in the score.

The population factor is an indicator of the number of people actually or potentially at risk from exposure to hazardous substances in drinking water. In the current HRS, population is combined in a matrix with distance downstream to the surface water intake to obtain a single factor value. No distinction is made between actual and potential contamination. As explained in section V C 5, EPA has decided that those people actually exposed to contaminated drinking water should be weighted more heavily than those potentially exposed. For this reason, in the revised HRS, the population factor would be determined using four population groups. The first three groups are based on how the concentrations at the drinking water intakes compare with health-based benchmarks (MCLs, MCLGs, or unit cancer risk numbers). The last of these four population groups would represent the population whose intakes are not known to be contaminated, but have the potential to be contaminated. This last group would be dilution-weighted. Where actual population counts are not available, population figures would be derived from county census data instead of being based on an assumption of 3.8 people per residence as in the current HRS (proposed rule, section 4.1.3.2). The emphasis on the risk to individuals exposed to actual as opposed to potential contamination is consistent with the ground water approach.

EPA is also proposing to use the dilution weighting factor at the nearest drinking water intake in assigning a value to the maximally exposed individual factor, as discussed in section V C 9. The dilution weighting factor would be assigned based on the average flow at the intake, and would be multiplied by 50 to obtain the value for the MEI factor, subject to a maximum of 50. If the concentration at any drinking water intake within the target distance limit exceeds a health-based benchmark and the hazardous substances can be attributed to the site, then the maximum value would be assigned to the MEI factor (proposed rule, section 4.1.3.1). Because mixing of hazardous substances depends on the characteristics of the body of water, EPA is proposing a three-mile zone of mixing for quiet flowing rivers with an average annual flow of greater than 50 cubic feet per second. Any intake within the mixing zone would be assigned a higher value than intakes on a similar size river that are not in the mixing zone.

Human Food Chain Threat. CERCLA section 105 (as amended by SARA), required EPA to consider the possible effects of hazardous substance releases on the human food chain in revising the HRS. In the ANPRM, EPA specifically sought comments on the addition of human food chain factors; most commenters supported the inclusion of factors in the HRS to assess the impact on the human food chain.

To develop the human food chain threat, EPA evaluated other ranking systems that considered human food chain effects. All the systems essentially used the same factors for determining exposure through the human food chain: a bioconcentration-type factor coupled with an estimate of the amount of food ingested. EPA has included these factors in the proposed human food chain threat.

The likelihood of release would be calculated as explained earlier. In evaluating exposure via the human food chain, a single hazardous substance would be selected on the basis of its bioaccumulation potential and its toxicity and persistence. The same hazardous substance would be used to evaluate all the waste characteristics and target factors for the human food chain exposure calculations, but would not necessarily be the same hazardous substances used in evaluating drinking water or recreational uses or sensitive environments. All hazardous substances known to be at the site and not contained in such a way as to prevent migration to the surface water would be eligible to be assessed for bioaccumulation. Each eligible hazardous substance would be assigned a bioaccumulation potential value and the hazardous substance with the highest value would be used in assessing human food chain exposure; if more than one hazardous substance has the highest value, the one with the highest toxicity/persistence value would be chosen (proposed rule, section 4.2.2.1.4). EPA specifically requests comments on the use of a single hazardous substance to score the human food chain threat.

The data that would be used to determine bioaccumulation potential are, in order of preference, bioconcentration, the logarithm of the octanol-water partition coefficient, and water solubility. Because, for the purpose of the HRS, EPA considers that bioconcentration provides the best measure of bioaccumulation (see the Technical Support Document for further detail), bioconcentration values are proposed as the principal means of evaluating the potential for hazardous substances to increase in concentration in an organism (proposed rule, section 4.2.2.1.1). Bioconcentration values would be assigned based on either EPA Water Quality Criteria Documents or on peer-reviewed literature.

If bioconcentration data are not available, the logarithm of the octanol-water partition coefficient data could be used as a surrogate. The logarithm of the octanol-water partition coefficient has

been found to have a statistically significant linear correlation with the logarithm of the bioconcentration factor of organic chemical compounds. If bioconcentration and log octanol-water partition coefficient data are not available or if the log octanol-water partition coefficient exceeds 6.0, water solubility data could be used because they also have a statistically significant correlation with the bioconcentration factor for organic compounds.

If a hazardous substance biomagnifies—that is, if the tissue concentration of the bioaccumulated hazardous substance increases at each step in the human food chain—the assigned value would increase by one in all cases, subject to a maximum. The bioaccumulation value would be employed to select the hazardous substance used in evaluating the toxicity/persistence factor, except as mentioned above when two substances have the highest bioaccumulation value. In addition, the bioaccumulation value would be used to evaluate targets. Therefore, the same hazardous substance has to be used for both calculations.

Waste Characteristics. Hazardous waste quantity and the toxicity/persistence factors would be calculated in the same way as in the drinking water waste characteristics factor, except that the predominant water category used to assign the persistence factor would be based on the type of water (e.g., lake, river) between the probable point of entry and the nearest fishery (proposed rule, section 4.2.2.1.3) as opposed to the predominant water category between the probable point of entry and the nearest water intake. The waste characteristics score is the sum of the hazardous waste quantity factor and the toxicity/persistence factor values (proposed rule, section 4.2.2.3).

Targets. This category would reflect the threat to people from consumption of aquatic food chain organisms taken from the surface water migration path. Human food chain organisms are not limited to finfish, but could include other species used as human food. The human population exposed to hazardous substances through the aquatic food chain may be distinctly different from the local population, particularly if contaminated fish are caught for nonlocal commercial distribution. The potentially wide distribution of contaminated fish makes direct counting of the people who consume the fish infeasible. Furthermore, the direct counting or estimation of the population involved in local recreational or subsistence fishing is also not feasible. Thus, EPA is proposing a surrogate approach: the target population would be estimated based on the amount of food chain products harvested from the contaminated surface water body and the bioaccumulation of the hazardous substance. Two factors would be summed to obtain the human food chain targets value: population and fishery use.

The population factor value would be the sum of two factors: potential human food chain contamination and actual human food chain contamination (proposed rule, section 4.2.3.1.3). Actual contamination would be used to score a fishery only if, within the limits of the observed release, there is a closed fishery (or a portion of a closed fishery) and the hazardous substance(s) that caused the closing have been documented in an observed release from the site; or, a tissue sample from a fishery exceeds an FDA action level and the hazardous substance(s) that exceeds the action level has been documented in an observed release from the site. If either of these conditions apply, the actual human food chain contamination (population) score for the fishery would be based on the human food chain population value, which is derived from a matrix of the bioaccumulation potential value and the human food chain production values (proposed rule, sections 4.2.3.1 and 4.2.3.1.2).

The human food chain production is the annual production (in pounds) of human food chain organisms from within the fishery under evaluation. Human food chain production would be estimated from actual data on yield, where available. If actual data are not available, actual data on productivity should be used, and, if these are not available, default values for the standing crop of the water body should be used. If the standing crop data are used, they would be converted to pounds and then multiplied by 0.2 to convert the standing crop data to human food chain production yield. This conversion factor represents an assumed ratio between the amount of aquatic organisms caught and the amount of aquatic organisms within the surface water body.

The value for the actual human food chain contamination would be the sum of the human food chain population values for each fishery, subject to a maximum. EPA is soliciting comments on the use of 0.2 to convert standing crop data to catch in estimating human food chain production.

If the conditions for actual human food chain contamination are not met, scoring of the fishery would be based on potential contamination (proposed rule, section 4.2.3.1.1). The potential human food chain contamination (population) score would be calculated in the same manner as actual human food chain population, except that for each fishery, it would be multiplied by a dilution weighting factor based on the flow, and would be divided by 100, similar to the approach taken to evaluate potential contamination for the drinking water threat.

The fishery use factor would reflect the nature and utility of the fishery area. The surface water in question would be assigned values according to whether it is used for commercial fishing for human consumption, subsistence fishing, or recreation or sport fishing (proposed rule, section 4.2.3.2). This factor would be a means of putting a high value on the resource and therefore protecting both the resource and the human users.

Either the drinking water use factor or the fishery use factor would be assigned a value of zero so as to assign only the highest overall use value to the surface water and prevent double counting of surface water use. The method used to determine which factor would be assigned the nonzero value is specified in the proposed rule, section 4.2.3.2.

Recreation Threat. The current HRS does not consider the significance of possible recreational exposures to hazardous substances occurring at or near Superfund sites except as a subfactor of surface water use. No mechanism is included to estimate relative risks from recreational exposure to hazardous substances. In response to the SARA requirement (see CERCLA section 105(c)(2), as amended) that risks from recreation in contaminated surface water be appropriately assessed, the Agency performed an analysis to estimate potential risks to swimmers and fishermen (exclusive of any food chain risks) who might use surface water near selected current NPL sites. EPA concluded that health risks from recreational surface water exposures may be potentially significant at some sites. In addition, EPA has confirmed that some surface waters near NPL sites are used for recreation. Consequently, EPA is proposing a method of evaluating such risks as part of the surface water pathway.

EPA's efforts have focused on methods of evaluating waste characteristics and target category factors; the likelihood of release category would be the same as in the drinking water threat.

Waste Characteristics. In the waste characteristics factor category, two factors would be included: toxicity/

persistence and hazardous waste quantity. In evaluating toxicity/persistence, a dose adjusting factor would be assigned. The dose adjusting factor represents the ratio of the dose to an individual that would be obtained via recreation to that dose that would be obtained via consumption of the same water (proposed rule, section 4.3.2.1.1). The dose adjusting factor makes use of a dermal permeability constant that accounts for dermal exposures and a mass flux dilution factor that accounts for inhalation exposures, and is explained in more detail in the Technical Support Document.

From the set of hazardous substances with the highest dose adjusting factor, the substance with the highest toxicity/persistence value would be selected. The toxicity and persistence values would be determined by the same procedures used in the drinking water subpathway, as would hazardous waste quantity (proposed rule, sections 4.3.2.1.4 and 4.3.2.2.). The toxicity/persistence value would be added to the hazardous waste quantity factor value to obtain the recreation threat waste characteristics value.

Targets. The targets factor category reflects the population potentially at risk from an actual or potential release of hazardous substances from the site to surface waters used for recreation (swimming or fishing). The targets category has one factor, population, which would be evaluated for each recreation area within the target distance limit based on whether the recreation area is subject to actual contamination or potential contamination.

Only those people who use recreational areas within the limits of an observed release would be considered in the actual contamination factor. The recreation population value would be determined for each recreation area using appropriate distance categories and distance multipliers, an accessibility/attractiveness factor, and a recreational dose adjusting factor. Actual counts of the number of people who live within set distances (0–5 miles, 5–10 miles, etc.) from the recreational area would be multiplied by the distance category multipliers for each distance. Where actual population counts are not available, census data would be used. The values for the accessibility/attractiveness factor would be assigned based on the presence of specific improvements such as waterfront parks, boat ramps, designed swimming beaches, etc. (proposed rule, section 4.3.3.1.1.1). The dose adjusting factor value for the substance used to assign the toxicity/persistence value would be used to express the recreational population exposure in terms of an equivalent drinking water population exposure (proposed rule, section 4.3.3.1.1.2). The actual recreation population value for a recreation area would be divided by 10, and the highest value for any recreation area would be used as the value for this factor.

The potential contamination factor would be evaluated for recreational areas within the target distance limit that do not have documented contamination attributable to the site. A human recreation population value would be determined for each recreation area using the same method as for the actual contamination factor. The potential contamination value for a recreation area would be obtained by multiplying the recreation population value for that recreation area by the appropriate dilution weighting factor used for drinking water populations and dividing by 100. The potential contamination factor value would be the highest of the potential contamination values assigned to individual recreation areas within the target distance limit, subject to a maximum (proposed rules, section 4.3.3.1.2).

More detailed discussion of the recreation subpathway can be found in the Technical Support Document, along with other options EPA considered. EPA invites comments on refining these approaches.

The higher of the values for actual contamination and potential contamination would be assigned as the population factor value for the watershed (proposed rule, sections 4.3.3.1.3 and 4.3.4).

Environmental Threat. Sensitive environments are included in the current HRS surface water pathway as a factor in the targets category. The factor is assigned a value based on the distance to the particular type of sensitive environment involved. The revised HRS would place more emphasis on environmental damage and expand the types of environments considered, as discussed in section V C 6.

The likelihood of release would be determined in the same manner as it is in the drinking water subpathway.

Waste Characteristics. The hazardous waste quantity factor would be revised as discussed in section V C 3. Ecosystem toxicity would be combined in a matrix with persistence and would be evaluated for all hazardous substances at the site that are available to migrate to surface water. The final ecosystem toxicity/persistence score would be determined by the substance with the highest assigned value. The Agency requests comments on the appropriateness of using a single substance to evaluate toxicity in sensitive environments.

Because exposure of sensitive environments is more likely to be chronic than acute, the ecosystem toxicity value would be determined by using EPA chronic water quality criteria for the protection of aquatic life, if available. If these data are not available, EPA acute water quality criteria would be used and divided by 100. If EPA acute water quality criteria are not available, the lowest LC_{50} value (median lethal dose value from animal studies) for the hazardous substance would be used and again divided by 100 (proposed rule, section 4.4.2.1.1). The divisors are safety factors used to account for uncertainty.

Ecosystem persistence would be evaluated as described for drinking water, except that the predominant water category between the probable point of entry and the nearest sensitive environment would be used (proposed rule, section 4.4.2.1.2). The final ecosystem toxicity/persistence value would be derived from a matrix to reflect the relationship of these two factors in determining the relative threat posed by hazardous substances (proposed rule, section 4.4.2.1.3).

Hazardous waste quantity would be added to the toxicity/persistence value to obtain a score for the waste characteristics factor category.

Targets. This category reflects the sensitive environments potentially at risk from an actual or potential release of hazardous substances into surface water. The targets category consists of one factor, sensitive environments. Each sensitive environment would be given a value based on an expanded list of sensitive environments or the Natural Heritage Program information (see section V C 6). Each sensitive environment would be placed into three groups: (1) Those with contamination above ecologically-based benchmarks (Level I concentrations); (2) those with contamination not above ecologically-based benchmarks but significantly above background levels (Level II concentrations); and (3) those that could potentially be contaminated (proposed rule, section 4.4.3.1). Weighting factors would be applied to give the greatest weight to those sensitive environments with levels of contamination above the ecologically-based benchmarks; potentially exposed sensitive environments would be dilution weighted. (See discussion of weighting

factors and benchmarks in sections V C 5, 6, and 8.)

The values assigned to the sensitive environments within each of these three groups would be added together to determine the environmental threat target factor score (proposed rule, section 4.4.3.1.4).

Surface Water Migration Pathway Score. The score for each threat (drinking water, human food chain, recreational, and environmental) would be the product of the likelihood of release value, the waste characteristics value, and the targets value (proposed rule, sections 4.1.4, 4.2.4, 4.3.4, and 4.4.4). The surface water migration score would be the sum of the scores for the four types of threats, subject to a maximum and normalized. As stated in the introduction to this section, a surface water migration score would be calculated for each watershed at a site (proposed rule, section 4.5). The surface water migration pathway score would be the sum of the watershed scores, subject to a maximum (proposed rule, section 4.6).

3. Air Pathway

As Figure 3 indicates, the proposed air pathway has the same general structure based on the three factor categories as in the current HRS air pathway. However, as stated before, EPA is proposing to revise every factor. The current HRS scores the air pathway using only observed releases; if no release can be documented, the pathway score is zero. The revised HRS would have a factor category to evaluate a site's potential to release substances to the air. In the waste characteristics category, a new mobility factor would be added. The targets category would have a new factor to assess the risk to the MEI.

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Figure 3

Air Migration Pathway

Current HRS

Release X	Waste Characteristics X	Targets
Observed Release	❑ Hazardous Waste Quantity ❑ Toxicity ❑ *Reactivity and Incompatibility*	❑ Land Use ❑ Population Within 4-Mile Radius ❑ Distance to Sensitive Environment

Revised HRS

Likelihood of Release X	Waste Characteristics X	Targets
Observed Release or POTENTIAL TO RELEASE ❑ SOURCE TYPE ❑ SOURCE MOBILITY* ❑ SOURCE CONTAINMENT	❑ Hazardous Waste Quantity* ❑ Toxicity/MOBILITY*	❑ Land Use ❑ Population ❑ MAXIMALLY EXPOSED INDIVIDUAL ❑ Sensitive Environments

Items in italic under Current HRS have been dropped or replaced. Items in caps under Revised HRS are new. Most items not in caps have been revised significantly.

****Factor based on several sub-factors.***

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Likelihood of Release. Observed Release. EPA studied different approaches to monitoring observed releases to the air. As the Science Advisory Board stated in its review of the air pathway: "Because air emissions are often episodic or narrowly focused along a particular wind direction, they are difficult to observe." If weather conditions are unfavorable when sampling occurs (e.g., if there is a high wind), the sampling may result in a false negative. Improving the accuracy of air release observations would have required either substantially more monitoring or monitoring during specific meteorological conditions. Because, for most site inspections, sampling must be conducted during a single visit, which cannot always be scheduled at the optimum time, EPA has decided to retain the current system for scoring observed releases (proposed rule, section 2.1.1). To make the scoring of this factor more consistent, the Agency is proposing more specific criteria discussed in section V C 4.

Potential to Release. SARA (see CERCLA section 105(a)(8)(A) as amended), required EPA to consider potential releases of hazardous substances to the air. Because of the problems in sampling for the air pathway, air releases are often difficult to detect. Furthermore, sites that are not emitting hazardous substances into the atmosphere at the time of sampling may begin to do so at some later date. For these reasons, the Science Advisory Board encouraged the development of a potential to release factor for air. EPA is proposing to modify the HRS to include the potential for release when no observed release can be documented.

The proposed potential to release measure is intended to provide a reliable method for evaluating, in the absence of an observed release, the likelihood that a site will release a potentially significant amount of hazardous substances to the atmosphere (proposed rule, section 2.1.2). The potential for a site to release contaminants to the air is dependent on the physical characteristics of the site, the physical and chemical characteristics of the hazardous substances located at the site, and the ways in which the hazardous substances are contained. In the proposed revisions, three factors that correspond to these characteristics would be used to evaluate a site's potential to release hazardous substances—source type, source mobility, and source containment. Further information on air releases from Superfund sites and the options EPA evaluated in developing the potential to release calculation are provided in the Technical Support Document and in "HRS Issue Analysis: Options for Revising the Air Pathway," (Mitre, 1987) available in the Superfund docket.

A source type value would be assigned to each source at the site that meets a minimum size requirement as specified in the proposed rule, section 2.1.2.2; only sources that contain hazardous substances could be used to calculate size. The six types of sources that would be assigned values are: containers (including tanks); contaminated soil (including land treatment); fire sites; landfills; surface impoundments; and waste piles. The source type values reflect the likelihood that an uncontained source of that type would release a potentially significant amount of relatively immobile hazardous substances to the air.

Source mobility (proposed rule, section 2.1.2.3) reflects the relative propensity of hazardous substances contained in a source to migrate from a source as a gas or as particulates. For a gaseous hazardous substance, the mobility factor would be based on three physical-chemical characteristics of the hazardous substance: its vapor pressure, Henry's constant, and dry relative soil volatility. Gas mobility would be scored as specified in the proposed rule, section 2.1.2.3.1.

Particulate mobility represents the ability of particles contaminated with hazardous substances to escape into the air. Since the moisture content of the soil is a relative measure of particulate mobility, EPA is proposing to use the Thornthwaite Precipitation-Effectiveness (PE) index, a surrogate measure of the relative moisture content of the soil, as the basis for this factor (proposed rule, section, 2.1.2.3.2). The gas mobility factor and the particulate mobility factors would be combined in a matrix to obtain the mobility value for the source (proposed rule, section 2.1.2.3.3). A more detailed discussion of mobility is included in the Technical Support Document, available in the Superfund docket.

The third factor that would be considered to calculate the potential for release to air is the ability of the containment of hazardous substances to inhibit their escape. Containment includes natural and constructed barriers to escape. EPA would assign factor values for both gas containment and particulate containment; the higher of the two values would be used for the source (proposed rule, section 2.1.2.1).

Each source would be assigned a value calculated by adding its source type value and its source mobility value, and multiplying the sum by the containment value (proposed rule, section 2.1.2.4). The release potential value would be the highest of the values assigned to the sources at the site.

This factor approach to assessing potential for release was chosen because the principal alternative approaches, based on emission equations developed for sites regulated under RCRA, were only applicable to certain types of Superfund sites and would have required a substantial expansion of the site inspections. As described above, EPA believes the proposed scoring system will reflect the likelihood that the overall site will release contaminants to the air. EPA is seeking comments on whether these are the most appropriate factors to assess potential to release.

Waste Characteristics. In the waste characteristics category of the current HRS air pathway, the reactivity, incompatibility, and toxicity of the hazardous substances are evaluated, as is the hazardous waste quantity. The proposed HRS includes several revisions to the evaluation of the waste characteristics factor. The changes to toxicity and hazardous waste quantity are discussed in sections V C 2 and 3. The reactivity and incompatibility factors would be deleted because these factors primarily predict the likelihood of sudden releases. While these releases could be important in rare cases, they may not be applicable to the vast majority of Superfund sites. These events are more appropriately assessed when determining the need for removal actions that respond to imminent danger. The waste characteristics score in the proposed HRS would be the sum of the toxicity/mobility factor value and the hazardous waste quantity factor value.

EPA is proposing to add mobility to the waste characteristics category for air (proposed rule, section 2.2.1.2). The mobility factor would measure the tendency of a hazardous substance to migrate as a gas or as particulates. All hazardous substances available to migrate to the air would be evaluated for gas mobility. In addition, if the substance can migrate as a particulate, the site would be evaluated for particulate mobility. If a hazardous substance is present in a documented release, the assigned mobility value for that substance would be the maximum. The mobility of substances not found in observed releases would be calculated in the same way gas and particulate mobility are calculated under potential for release, with the higher of the two

scores being used if a substance could migrate as either a gas or particulate.

The purpose of the mobility factor is to increase the accuracy of the waste characteristics factor category by taking into account the differing abilities of substances to migrate and, therefore, the relative threats posed by their release. The mobility and toxicity values for each substance would be combined in a matrix to reflect the importance of both in assessing risk; the substance with the highest toxicity/mobility value would be used to assign the factor value (proposed rule, section 2.2.1.3). Combining toxicity and mobility to select the substance would lead to selecting the substance that poses the most significant threat, thus increasing the accuracy of the HRS.

Targets. The current HRS evaluates three target factors: population within a four-mile radius, distance to a sensitive environment, and land use. The proposed HRS would revise these three factors and add a factor to reflect the risk to the MEI.

Several of the proposed changes to this factor category are discussed in sections V C 6, 8, and 9—the extension of the sensitive areas definition, the distance weighting factors, and the measurement of risk to the maximally exposed individual. In addition, EPA is proposing changes specific to the air pathway target factor category. While the Agency proposes to retain the four-mile target distance limit for humans, the target distance limit for sensitive environments would be extended from one and two miles to four.

Public comments have suggested that the four-mile target distance limit for the air pathway is too large. An EPA study presented to the Science Advisory Board, however, suggested that for sites with large emission rates of potential carcinogens, individual risks may remain of concern even at distances greater than four miles. In this study, EPA used a range of plausible contaminant emission rates from Superfund sites and a range of cancer potency values as input to a Gaussian air dispersion model. The results provided information on the range of risks due to air emissions found at varying distances from Superfund sites. The study—"Analysis of the Air Target Distance Limit in the Hazard Ranking System" (1987)—is available in the Superfund docket.

The Science Advisory Board reviewed the analysis and recommended a dilution weighting scheme that would capture the differences in concentrations at different distances from the site. EPA is proposing to retain the current four-mile target distance limit and would add weighting factors as discussed in section V C 8.

EPA is also proposing to revise the land use factor. The current HRS air pathway considers five categories of land use and assigns values to them depending on their distance from the site. The highest assigned value for any of the relevant land uses becomes the value used for the land use factor. The proposed rule (section 2.3.3) would change this method of determining the land use value in three ways. First, residential land use, now a single category, would be divided into single-family residences and multi-family residences, with the latter being assigned a higher value. Second, the assigned value for land use would be multiplied by the distance weighting factor. Third, the final land use factor would be the sum of all the land uses within the target distance. The inclusion of all land uses would provide better discrimination; the greater range of assigned values and the distance weighting would provide a more accurate assessment of the potential risk.

The sensitive environment factor would be distance weighted and all sensitive environments within four miles would be evaluated and summed (proposed rule, section 2.3.4). EPA would like comments on whether the evaluation of sensitive environments in the air pathway should be limited to terrestrial sensitive environments.

The final score for the targets category would be the sum of the four factors (population, sensitive environments, land use, and MEI) (proposed rule, section 2.3.5).

Air Migration Pathway Score. The air migration pathway score would be the product of the likelihood of release value, the waste characteristics value, and the target value, normalized (Proposed Rule, Section 2.4).

4. Onsite Exposure Pathway

Figure 4 shows the structure of the proposed onsite exposure pathway. There is no current onsite exposure pathway. To parallel the proposed rule, this section discusses the three factor categories for the resident population, then for the nearby population.

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Figure 4

ONSITE EXPOSURE PATHWAY

REVISED HRS*

RESIDENT POPULATION THREAT

LIKELIHOOD OF EXPOSURE	X	WASTE CHARACTERISTICS	X	TARGETS
❑ OBSERVED CONTAMINATION		❑ TOXICITY		❑ HIGH RISK POPULATION ❑ TOTAL RESIDENT POPULATION ❑ TERRESTRIAL SENSITIVE ENVIRONMENTS

NEARBY POPULATION THREAT

LIKELIHOOD OF EXPOSURE	X	WASTE CHARACTERISTICS	X	TARGETS
❑ ACCESSIBILITY/ FREQUENCY OF USE ❑ HAZARDOUS WASTE QUANTITY		❑ TOXICITY		❑ POPULATION WITHIN 1 MILE

The current HRS includes a direct contact pathway, but that pathway is not used in calculating the overall HRS migration score.

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CERCLA (section 105(8)(A)) required EPA to take into account the potential for direct human contact in setting priorities for the NPL. When the HRS was promulgated in 1982, EPA explained that hazards from direct contact with hazardous substances would be addressed and controlled by a CERCLA emergency response action prior to remedial action and therefore the direct contact pathway did not need to be included in the HRS migration score. The direct contact portion of the current HRS calculates the potential for direct exposure to hazardous substances in a way that essentially parallels the migration pathways, but is not included in the score used to determine if a site should be on the NPL.

In developing the proposed revisions, EPA analyzed the Records of Decisions (RODs) produced during the first four years of the Superfund program. (A ROD is the documentation of the decision process associated with the selection of a remedy for a site.) This analysis showed that in over 50 percent of the NPL sites, direct contact was listed as one of the considerations in selecting the remedial action. This analysis indicated that some significant risks from direct contact may not have been completely addressed by removal actions and should be of concern in determining priorities for remedial action. The analysis is available in the Superfund docket.

Based on its review and its experience, and in order to better respond to the mandate in CERCLA section 105(8)(A) (now CERCLA 105 (a)(8)(A)), EPA is proposing to add a separate onsite exposure pathway, similar to the direct contact pathway, that would be included in the calculation of the total HRS site score (proposed rule, section 5.0). EPA considered incorporating direct contact exposures in the other migration pathways. However, soil ingestion at sites probably constitutes the most significant direct contact threat. The likelihood of soil ingestion represents a distinctly different mode of exposure than found in the other pathways. Therefore, EPA decided that a separate onsite exposure pathway would more directly and more accurately reflect the potential threat.

The proposed onsite exposure pathway score would consist of two population groups evaluated for the three factor categories (likelihood of exposure, waste characteristics, and targets), and is constructed in a way similar to the surface water threats. The first group is the resident population, including people living on a property where contamination is (or can be inferred to be) significantly above background levels, people attending schools or day care on such property, or sensitive environments that have become contaminated (proposed rule, section 5.1). The second group consists of the nearby population, composed of people who have access to a contaminated area (proposed rule, section 5.2). EPA asks for public comments on this breakdown.

Resident Population Threat. Likelihood of Exposure. The revised HRS would evaluate the resident population likelihood of exposure (proposed rule, section 5.1.1) based on the presence of contamination and not on release potential, as in the other pathways, because no migration of contaminants off-site is necessary for exposure to occur; people live on or attend school or day care on the site, or the contamination is in a terrestrial sensitive environment.

The proposed HRS would require documented, analytic evidence of contamination above background levels in order to assign a score for the pathway. The criteria for contamination would be the same as for the other pathways (see section V C 4); samples would be taken within a specified depth below the surface.

As set forth in the revised HRS, it would be possible to infer that properties are contaminated, even though no soil samples demonstrate contamination on these properties, if surrounding properties show contamination. This approach would also require that the likely mechanisms of transport (overland flow, air, etc.,) be considered along with topography and other factors to determine whether such interpolation of sampling results is reasonable. The Agency considered the alternative approach of only counting targets living on properties where sampling had demonstrated contamination; however, that approach would most likely result in either much higher costs for site inspections due to the increase in soil sampling or in less accuracy, if insufficient samples were taken. While the Agency has proposed the approach of interpolating from soil sampling and other information to demonstrate contamination, comments are solicited both on the approach selected and on guidance for implementing it. The guidance will need to address such issues as methods for establishing background levels of hazardous substances and interpretation of negative sample results within the boundaries of the contaminated area. In addition, the Agency recognizes that the approach of using property boundaries to define contaminated residential land may be problematic in certain situations, such as Federal installations or Indian lands, where residential areas could be within the contaminated "property" and be at considerable distance from the hazardous substances. The Agency is seeking comment on how such situations could be addressed in the revised HRS.

Waste Characteristics. Toxicity would be the only factor in this factor category and would be calculated as discussed in section V C 2.

Targets. The three target subgroups considered in the resident population factor would be children under seven, the total resident population, and sensitive environments (proposed rule, section 5.1.3). These values for these three factors would be added together to obtain the targets category score. Children under seven are considered a high risk subgroup because they have much higher soil ingestion rates than other people. The children counted in the high risk group would include those attending school or day care on contaminated property plus those who live on the contaminated property. Individual children could be counted only once in this factor category. These high risk individuals would be assigned scores five times that of individuals in the rest of the resident population (proposed rule, section 5.1.3.1).

The total resident population would include everyone who lives or goes to school on the property except those individuals already counted under the high risk population (proposed rule, section 5.1.3.2).

A high-risk population of 10 or a total resident population of 50 would be required to assign the maximum target score if there are no affected sensitive environment targets. EPA decided that onsite exposures to a very small number of people warrant assigning a high priority to the site because individual risks can be very high. Also, onsite exposures can lead to an extremely high level of public concern.

The Agency requests comments on the division of the population and on the relative weights. It also requests suggestions on how the high risk population can best be determined.

Any contaminated terrestrial sensitive environments would also be assigned a value (proposed rule, section 5.1.3.3). For this pathway, sensitive environments include only terrestrial environments; aquatic ecosystems would be addressed in the surface water pathway.

The resident population threat score would be calculated by multiplying the

likelihood of exposure, waste characteristics, and targets categories (proposed rule, section 5.1.4).

Nearby Population Threat. Likelihood of Exposure. The likelihood of exposure factor category in the revised HRS would evaluate the relative risks a site poses to the nearby population by considering the quantity of hazardous waste on the site and the site's accessibility/frequency of use. The hazardous waste quantity would be evaluated based on the total areal extent of the contamination (proposed rule, section 5.2.1.1). Contaminated area would be used in the onsite exposure pathway for the hazardous waste quantity factor because, for the onsite pathway, this factor evaluates the probability that wastes will be encountered, not the severity of exposures.

The accessibility/frequency of use factor would also evaluate the likelihood that wastes will be encountered. Accessibility refers to natural barriers or measures taken to limit access. Frequency of use is assigned a value based on estimates of use. Documented contamination of school property, parks, etc., would be assigned the maximum value because, by their very nature, the public is attracted to them. Schools onsite are included in this factor because other members of the community besides students use them. The value assigned to other contaminated properties would decline as the numbers of barriers increase, with the lowest value assigned to areas protected by a combination of natural and artificial barriers that completely surround the site and by guards who control entry at all times (proposed rule, section 5.2.1.2). No site would receive a score of zero for this factor because EPA considers that no system can provide a completely effective barrier.

Accessibility/frequency of use and waste quantity would be combined in a matrix to assign a value for the likelihood of exposure factor category (proposed rule, section 5.2.1.3).

EPA specifically requests comments on the appropriateness of basing the estimate of likelihood of exposure for the nearby population on site area and accessibility/frequency of use, the criteria used to assign accessibility/frequency of use, and the scales assigned to site areas.

Waste Characteristics. Toxicity would be the only factor in this category and would be assigned the same value for the nearby population as it would be for the resident population.

Targets. Individuals would be counted in the nearby population if they live or go to school or day care within a one mile travel distance of the contaminated site. As described in section V C 8, the nearby population would be distance weighted. The potential for exposure of nearby populations to contaminated soils and wastes is expected to be significantly less than resident population exposures. The Agency proposes to weight nearby populations at least 20 times lower than resident populations to reflect a reasonable estimate of the relative exposure levels. Individuals farther from the site would be weighted even lower to reflect the assumption that frequency and probability of access decrease with increasing distance from the site (proposed rule, section 5.2.3).

The nearby population targets section does not include a factor for sensitive environments. EPA concluded that relative to the harm measured by the terrestrial sensitive environments factors in the resident populations section and in other pathways, the threats to sensitive environments located near areas of contamination are much less, and therefore inclusion of a sensitive environment factor is not warranted. In addition, sensitive environments would be evaluated in the other pathways.

The nearby population threat score is calculated by multiplying the values for likelihood of exposure, waste characteristics, and targets (proposed rule, section 5.2.4).

Onsite Exposure Pathway Score. The final pathway score would be calculated by adding the resident population score and the nearby population score, subject to a maximum (proposed rule, section 5.3). As discussed above, the maximum for the pathway is also the maximum for either the resident population score or the nearby population score.

5. Fire and Explosion

Although the current HRS evaluates the risk of fire and explosion at sites to determine if removal actions may be required, the score for the fire and explosion pathway is not included in the final HRS migration score. EPA's experience indicates that the fire and explosion pathway would not provide a useful basis for scoring a site for remedial action. The potential for fire and explosion is evaluated in another part of the Superfund program, the removal program, to determine if a removal action is necessary. Therefore, the proposed HRS would not include a fire and explosion pathway.

E. CERCLA Section 125

Section 125, added by SARA, requires EPA, in revising the HRS, to address facilities that contain substantial volumes of waste specified in section 3001(b)(3)(A)(i) of RCRA. These wastes include fly ash wastes, bottom ash wastes, slag wastes and flue gas emission wastes generated from combustion of coal and other fossil fuels. Section 125 requires EPA to revise the HRS in a manner which assures the appropriate consideration of the quantity, toxicity, and concentrations of the hazardous constituents present in such wastes in comparison with other wastes; the extent of, and potential for release of such hazardous constituents; and the degree of risk these hazardous constituents pose to human health and the environment.

The Agency believes that the proposed revisions to the HRS address the requirements of section 125 in a number of different areas. First, the toxicity factor has been revised to include chronic and carcinogenic risks. The revised toxicity factor will provide for a better indication of the comparative toxicity of substances and will provide greater discrimination among sites. Thus, the toxicity of fly ash wastes will be more accurately reflected in HRS scores.

Second, to more fully consider the quantity and concentration of hazardous constituents at fly ash waste sites, the revised HRS will incorporate a tiered approach for calculating the hazardous waste quantity factor. Such a tiered approach would use the best data available at a site to calculate waste quantity, including constituent concentration data, if adequate. The revised HRS would consider the concentration of a hazardous substance in three ways: (1) By assigning a higher score to populations drinking water with contamination that exceeds a health-based benchmark; (2) by outlining specific criteria for determining the significance of an observed release, thus improving the way the HRS evaluates risk; and (3) by distance/dilution weighting targets subject to potential contamination.

Third, the revised HRS will consider the extent of, and potential for, release of hazardous constituents from fly ash waste sites into the environment by the observed release criteria, the revised method for calculating hazardous waste quantity, and the addition of factors that would improve the way the HRS evaluates the potential for hazardous substances to be released. In the ground water pathway, such factors include the revised depth to aquifer/hydraulic conductivity factor, the sorptive capacity factor, and the mobility factor. To improve the potential to release

evaluation in the surface water pathway, the revised HRS would replace the current potential to release factors with two new groups of factors, overland flow and potential to release by flood. In addition, the revisions to the persistence factor in the surface water pathway to include mechanisms for attenuation other than biodegradation would provide a more accurate assessment of the potential for hazardous substances to migrate. In the air pathway, the potential for a hazardous substance to be released would be considered by the addition of a potential to release mechanism, which would take into account source type, source size, and the mobility of hazardous substances at the site.

Fourth, the degree of risk to human health and the environment posed by such constituents would be appropriately considered in the revised HRS by:

- Revising the toxicity factor to include chronic toxicity;
- Improving the calculation of hazardous waste quantity by enabling the HRS to use more complete data, if available;
- Adding a mobility factor to the ground water and air pathways that would better assess the potential for contaminants to migrate;
- Revising the evaluation of potential to release in the ground water and surface water pathways;
- Adding a potential to release category in the air pathway;
- Specifying criteria for determining when an observed release is significantly above background;
- Using health-based and ecological benchmarks for weighting the targets actually exposed to contamination; and
- Adding distance and dilution weighting for targets potentially exposed to contamination.

Mining Wastes. Although SARA did not require EPA to revise the HRS with specific reference to mining wastes, the Agency received a number of comments on mining waste issues in response to the previous NPL rulemakings and to the ANPRM. The primary concern of the commenters was that the HRS may be biased against high volume, low concentration wastes because it does not adequately consider quantity, toxicity, and concentration of hazardous constituents.

In considering these issues, EPA evaluated studies conducted by commenters and conducted additional studies to determine whether HRS scores for mining sites versus non-mining sites were too high relative to the potential hazard they posed.

One study was a comprehensive analysis of the HRS scoring patterns of 406 sites on the NPL (mining and non-mining) plus 297 sites considered but not on the NPL at that time. The basic finding was that mining and non-mining NPL sites do not differ significantly in their scoring patterns for observed releases, population/distance scoring, or toxicity/persistence scoring. Mining sites generally do score higher on the hazardous waste quantity factor. However, hazardous waste quantity is a relatively less important determinant of HRS scores than several other factors. In addition, the maximum hazardous waste quantity score in the current HRS (2,500 tons and higher) covers a wide range of quantities reported at sites (e.g., 5,000,000+tons). This large upper category of the scoring range diminishes the relative impact of very large quantities of waste.

A second study provided relevant information on waste and constituent quantities at six high-volume waste sites. For three of the sites, the quantity of hazardous substances present was estimated using site-specific information on constituent concentrations and amounts. For the other three sites, constituent quantities were estimated based on the quantity of hazardous waste reported on HRS scoring sheets for the site and generic constituent concentration ranges for the appropriate mining industry segment/district. The estimated quantity of hazardous constituents present at each site exceeded 2,500 tons, which is the cutoff value for the maximum hazardous waste quantity score. Therefore, these six sites would have received the maximum hazardous waste quantity score even if only the quantity of hazardous constituents present had been evaluated rather than the quantity of waste. In fact, at the six sites, the estimated amount of hazardous constituents exceeded the total amount of hazardous wastes at more than 60 percent of other NPL sites.

A third study compared HRS scores with the results of an analysis of potential dangers for six actual mining waste sites. The sites were chosen primarily on the basis of data availability. Site information relating to potential risks to human health and the environment was compiled for all four migration pathways. Although the six sites were not randomly selected and cannot be construed as representative of all mining waste sites, some conclusions can be drawn. All six sites were associated with a high potential risk rating in at least one exposure route. In addition, they demonstrate that any or all HRS pathways may be associated with significant potential risk at mining waste sites.

Within the six sites, higher HRS scores generally were associated with higher potential danger ratings and also with sites having a large number of potentially dangerous exposure routes. This result gives limited evidence that HRS scores may correlate with potential risk at mining waste sites. While all three studies covered a limited number of sites, they do suggest that the HRS score does not unfairly treat mining waste sites.

EPA requested the assistance of the Science Advisory Board regarding the applicability of the HRS in scoring mining waste sites. The studies discussed above are summarized in a report prepared for the Science Advisory Board deliberations entitled "The Superfund Hazard Ranking System (HRS): Applicability to Mining Wastes Sites" (ICF, Inc., July 1987). The report and the studies are available in the Superfund docket. The Board examined the scientific issues pertinent to waste and site characteristics and past HRS experience scoring mining waste sites. The Board concluded that, based on past experience, there is no evidence to demonstrate that the HRS is biased against these sites. However, the Board cautioned that the current HRS has the potential for bias when calculating a score based on potential to release. The Board suggested ways to improve the HRS in regard to large volume waste sites, including modifying the toxicity factor to reflect characteristics of metals, incorporating concentration and mobility factors, and adding transformation parameters. The new mobility factors in air and ground water, the revised persistence factor in surface water, and the new sorptive capacity factor in ground water will improve the accuracy of the revised HRS in evaluating the potential risk posed by mining waste sites.

The Agency also requested the Science Advisory Board's assistance on a related subject—the feasibility of using concentration data in determining the hazardous waste quantity factor. The report presented to the Science Advisory Board—"The Superfund Hazard Ranking System (HRS): Feasibility of Using Concentration Data in a Revised HRS" (ICF, Inc., July 22, 1987)—is available in the Superfund docket.

In response to the issue of using concentration data in calculating the hazardous waste quantity factor, the Board analyzed two options besides the current method (see section V C 3). The proposed tiered approach is based on the Board's recommendation. From comments it has received, EPA expects

that sufficient data may be available at certain types of sites, which could allow these sites to be scored using the highest tier in calculating the waste quantity factor.

The Board's conclusions and recommendations are available in the Superfund docket.

VI. Required Analyses

A. Executive Order No. 12291

Under Executive Order No. 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement of a Regulatory Impact Analysis. The notice published today is not major because the rule will not result in an effect on the economy of $100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic or export markets.

An initial economic analysis entitled "Economic Impact Analysis in Support of the Proposed Revisions to the Hazard Ranking System" (U.S. EPA, January, 1988) was prepared to estimate the incremental costs associated with alternatives to the current HRS. This analysis compared the estimated cost of the revised HRS with the current HRS and with two alternative ranking systems—the Department of Energy's Remedial Action Priority System, the model that, with the revised HRS, did well in the site ranking panel review, and the revised HRS with a direction of ground water flow factor included. The analysis indicates that the revised HRS will cost more than the current HRS, but would be less costly than either of the other alternatives. The results of evaluating sites using the current HRS or any other alternative model are those costs incurred to collect the data and score a site. The best estimate of the average cost of the current HRS is $58,200 per site. The best estimates for the average cost per site for the alternatives are $147,600 for the proposed revised HRS, $217,000 for the revised HRS plus ground water flow direction, and $261,700 for the Remedial Action Priority System. The economic impact analysis is available for inspection in the Superfund docket.

Based on the results of the economic analysis, EPA has concluded that the proposed HRS is not a major rule under Executive Order No. 12291. The proposed HRS is expected to impose total costs of $56.0 million and expected to impose costs on society of $9.0 million over current HRS expenditures, well below the $100 million annual effect on the economy that defines a major rule. At this point, it is impossible to predict whether the revised HRS would result in more or fewer sites being included on the NPL.

This proposed rule has been submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, Federal agencies must evaluate the effects of a rule on small entities and examine alternatives that may reduce these effects. EPA certifies that the proposed HRS will not have a significant impact on a substantial number of small entities.

Small businesses generally do not pay for HRS activities and therefore, most firms will not be affected by the proposed changes. In some cases, a responsible party may be required to pay HRS costs. EPA prepared an analysis of the potential impact the revised HRS would have on firms required to pay for HRS activities. The results of the financial analysis demonstrate that four out of five sample small firms had the assets or income to enable them to finance HRS action. (See Appendix A of the economic report.)

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1488) and a copy may be obtained from Carl M. Koch, Information Policy Branch, EPA, 401 M St., SW. (PM-223), Washington, DC 20460 or by calling (202) 382-2739.

The public reporting burden for this collection of information is estimated to vary from 1280 to 1500 hours, with an average of 1390 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate 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, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 300

Air pollution controls, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Date: November 15, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the Preamble, Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCE POLLUTION CONTINGENCY PLAN

1. The authority citation for Part 300 is revised to read as follows:

Authority: 42 U.S.C. 9605, 9618, 9625(a); 33 U.S.C. 1321(c)(2); E.O. No. 11735, 38 FR 21243; E.O. No. 12580, 52 FR 2923.

2. Part 300, Appendix A is revised to read as follows:

Appendix A to Part 300—The Hazard Ranking System

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1.0 Introduction

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (Pub. L. 96–510) required the President to identify at least 400 facilities in the nation which appear to warrant remedial investigation and possible cleanup under CERCLA. In order to set the priorities, CERCLA required that criteria be established based on relative risk or danger to public health, welfare or the environment, taking into account the population at risk; the hazard potential of the substances at a facility; the potential for contamination of drinking water supplies, for direct human contact, and for destruction of sensitive ecosystems; and other appropriate factors. To meet these requirements, EPA developed the Hazard Ranking System (HRS).

The HRS is a means of applying uniform technical judgment regarding the relative potential of releases of hazardous substances to threaten human health and the environment. The evaluation of sites for inclusion on the National Priorities List (NPL) is based primarily on HRS scores. The HRS does not, however, address the feasibility, desirability, or degree of cleanup required. Neither does it deal with the readiness or ability of a State to carry out such remedial action as may be indicated, or to meet other conditions prescribed in CERCLA.

The Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499) requires the President to revise the HRS to "assure, to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review" (CERCLA section 105(c)(1), as amended). The revisions must ensure that human health risks associated with the contamination or potential contamination of surface waters are appropriately assessed where such waters can be used for recreation or drinking water. The revisions must also provide for consideration of damage to natural resources which may affect the human food chain, and releases or threats of releases which may affect the ambient air. CERCLA section 118, added by SARA, also requires that a high priority be given "to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a principal drinking water supply." Finally, CERCLA section 125, added by SARA, requires the revisions to the HRS to consider the following characteristics for facilities (not included or proposed for inclusion on the NPL on the date of enactment of SARA) which contain substantial volumes of wastes described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act: (1) The quantity, toxicity, and concentrations of hazardous constituents which are present in such wastes and comparison thereof with other wastes, (2) the extent of, and the potential for, release of such hazardous constituents into the environment, (3) the degree of risk to human health and the environment posed by such constituents.

This Appendix describes the HRS, as revised pursuant to SARA. Under this rule, an HRS score is determined for a site by evaluating four pathways:

- Air migration.
- Ground water migration.
- Surface water migration.
- Onsite exposure.

The score for each pathway is obtained by first evaluating a set of factors (e.g., observed release, waste quantity, and maximally exposed individual) that characterize the potential for the site to cause harm via that pathway. Each factor is assigned a numerical value according to the instructions in sections 2 through 5 of this document. All factor values assigned must be rounded to the nearest integer, except where otherwise noted.

The factor values are then combined within factor categories (e.g., likelihood of release, waste characteristics, and targets). The values for the factor categories within a pathway are combined and the resultant value divided by the maximum possible score for that pathway. This ratio is multiplied by 100 to obtain the pathway score, subject to a maximum score of 100.

The HRS site score (S) is a composite of the four possible pathway scores:

$$S = \sqrt{\frac{S_a^2 + S_{gw}^2 + S_{sw}^2 + S_{os}^2}{4}}$$

where:

S_a = Air migration pathway score.
S_{gw} = Ground water migration pathway score.
S_{sw} = Surface water migration pathway score.
S_{os} = Onsite exposure pathway score.

The effect of this means of combining the pathway scores is to emphasize the primary (highest scoring) pathway in aggregating pathway scores while giving some additional consideration to the other pathways.

The HRS score does not quantify the probability of harm from a facility nor the magnitude of the harm that could result, although the factors have been selected in order to approximate both those elements of risk. The HRS is a procedure for ranking facilities relative to each other in terms of the potential threat they pose.

The following definitions apply to the HRS:

- The term "hazardous substance" refers to CERCLA hazardous substances, pollutants and contaminants as defined in CERCLA Sections 101(14) and 101(33), as amended.
- A "source" is any area where a hazardous substance has been deposited, stored, disposed, or placed. If there is a release of hazardous substances (e.g., a ground water plume), but no known source of the release, the source is defined for HRS purposes by the known extent of the release.
- A "site" is one or more sources that have been aggregated for the purpose of applying the HRS.
- HRS "factors" represent the primary rating elements internal to the HRS.
- An HRS "factor category" consists of a set of HRS factors.
- An "HRS pathway" consists of a set of factor categories.
- The "HRS site score" is a composite of the four pathway scores.

2.0 Air migration pathway.

The air migration pathway addresses the relative risks, to the people, resources, and the environment surrounding a site, that are associated with actual or threatened releases of hazardous substances from the sources on the site to the atmosphere. Three factor categories are included in the air migration pathway:

- Likelihood of Release (LR).
- Waste Characteristics (WC).
- Targets (T).

Figure 2–1 indicates the factors included within each of these factor categories. The evaluation of the factors and factor categories is discussed in the following sections.

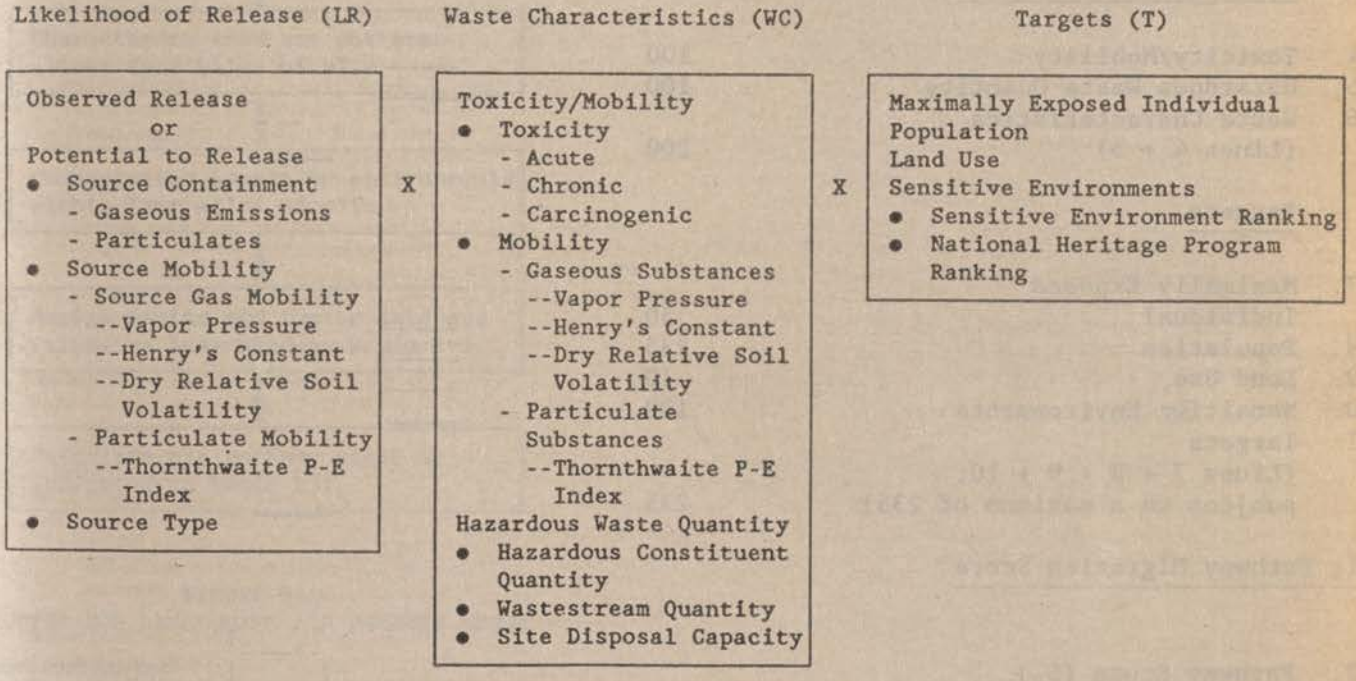

FIGURE 2-1
OVERVIEW OF THE AIR MIGRATION PATHWAY

The air migration pathway score is calculated in terms of the factor category values as follows:

$$S_a = \frac{LR \times WC \times T}{SF}$$

where S_a is the air migration pathway score and SF is a scaling factor used to normalize the score to a scale of 0 to 100. This calculation procedure is outlined in Table 2–1.

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TABLE 2-1
AIR MIGRATION PATHWAY SCORESHEET

Factor Categories and Factors	Maximum Value	Value Assigned
Likelihood of Release		
1. Observed Release	450	____
2. Potential to Release (Highest value assigned to any source evaluated)	390	____
3. Likelihood of Release (Higher of Lines 1 or 2)	450	____
Waste Characteristics		
4. Toxicity/Mobility	100	____
5. Hazardous Waste Quantity	100	____
6. Waste Characteristics (Lines 4 + 5)	200	____
Targets		
7. Maximally Exposed Individual	50	____
8. Population	235	____
9. Land Use	10	____
10. Sensitive Environments	100	____
11. Targets (Lines 7 + 8 + 9 + 10, subject to a maximum of 235)	235	____
Air Pathway Migration Score		
12. Pathway Score (S_a) [(Lines 3 x 6 x 11)/2.115 x 10^5]	100	____[1]

[1] S_a is not to be rounded to the nearest integer.

Figure 2-2 illustrates the process for developing an air migration pathway score.

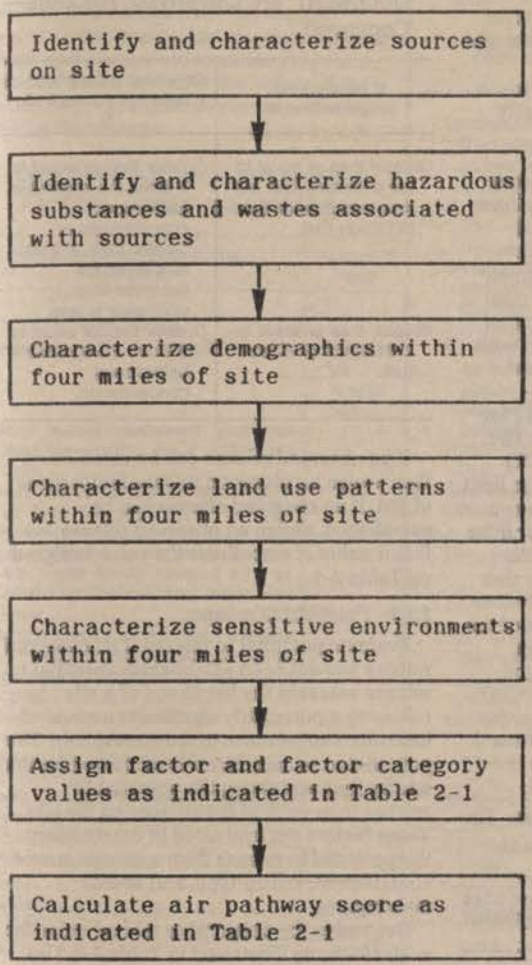

FIGURE 2-2
PROCESS FOR DEVELOPING AIR PATHWAY SCORE

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2.1 Likelihood of release.

The likelihood of release refers to the likelihood that the site has released, is releasing, or will release a potentially significant quantity of hazardous substances to the ambient air. The factor category value is determined in terms of an observed release factor and a potential to release factor.

2.1.1 Observed release.

An observed release to the atmosphere is established whenever it can be demonstrated that a site has released a hazardous substance to the atmosphere. This demonstration can be based on either direct observation of the release or indirect observation (i.e., the analysis of air samples).

In the case of direct observation, material (e.g., particulates) from the site must be seen entering the atmosphere directly. Further, available information must indicate that the material observed entering the atmosphere contained one or more hazardous substances. Such information should include an analysis of the hazardous substances contained in samples of the material or other similar documentation of the content of the material.

In the case of indirect observation, the samples must indicate that a significant increase in ambient hazardous substance concentration has occurred relative to the background concentration for the site (as described below). Further, the available information must support the attribution of some portion of the increase to the site. Attribution can be based on sampling information such as the location of the samplers or other source apportionment techniques.

A significant increase is determined by comparing atmospheric samples, one of which must be a background sample. The background sample should be chosen to reflect, as completely as possible, the concentration of the hazardous substance in the atmosphere exclusive of the contribution of any possible releases from the site. Further, the samples must be taken under the same atmospheric conditions (i.e., wind speed, wind direction, temperature, relative humidity, and any other conditions that might significantly affect sampling results).

The ambient concentration of a hazardous substance is considered to be significantly above background levels under the conditions presented in Table 2–2. The detection limit referred to in Table 2–2 may be the minimum of the actual detection limit achieved by the laboratory for the set of samples in question, the method detection limit achieved by the laboratory for a given analytical procedure (or, in the case of real-time field instruments, the detection limit of the instruments as used in the field), or, with one exception, the EPA contract-required quantitation limit (CRQL) or the EPA contract-required detection limit (CRDL) for the EPA Contract Laboratory Program. The exception is that the CRQL (or the CRDL) must not be used if the method detection limit or actual detection limit achieved is known and exceeds the CRQL (or the CRDL) or if the analysis is not performed under the EPA Contract Laboratory Program. The selection of the detection limit to be used may be done hierarchically, starting with the highest of the applicable detection limits. For example, when the CDRL is higher than the method detection limit achieved and use of the CRDL does not yield an observed release, then the method detection limit achieved can be used to evaluate an observed release.

TABLE 2–2—CONDITIONS NECESSARY TO DOCUMENT AN OBSERVED RELEASE

If background concentration is:	Observed release occurs if detected concentration is:
Not detected	Greater than or equal to 3 times the detection limit.
Greater than or equal to the detection limit, but less than 2 times the detection limit.	Greater than or equal to 3 times the applicable background concentration or greater than or equal to 4 times the detection limit, whichever is less.
Greater than or equal to 2 times the detection limit.	Greater than or equal to 2 times the applicable background concentration.

If an observed release can be established, then assign an observed release factor value of 450. If no observed release can be established, assign an observed release factor value of zero. Enter the value assigned on Table 2–1.

2.1.2 Potential to release.

Evaluate potential to release if an observed release has not been established. Potential to release assesses the likelihood of a site releasing a potentially significant amount of hazardous substances to the atmosphere. The potential to release factor is evaluated for the site by first evaluating the potential to release from each of the sources on the site. Three factors are evaluated in determining the potential to release from a source: source containment, source type, and source mobility.

Determine the potential to release value for each source as illustrated in Table 2–3. Use the highest of the source potential to release values as the value for the site potential to release factor.

TABLE 2–3—AIR PATHWAY POTENTIAL TO RELEASE EVALUATION

Source	Source type [1]	Source containment factor value [2]	Source type factor value [3]	Source mobility factor value [4]	Sum	Emission source value
		A	B	C	(B+C)	Ax(B+C)
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
Potential to release factor value (Select highest emission source value)						

[1] Source Type from Table 2–6.
[2] Source Containment Factor Value from Section 2.1.2.1.
[3] Source Type Factor Value from Table 2–6.
[4] Source Mobility Factor Value from Table 2–10.

2.1.2.1 Source containment. Containment refers to the physical characteristics of a source that act to restrict emissions of hazardous substances from the source. Assign, to each source, factor values for both gaseous and particulate containment, using Tables 2–4 and 2–5. Select the higher of the gaseous and particulate containment factor value for that source.

TABLE 2–4—SOURCE CONTAINMENT FACTOR—GASEOUS EMISSIONS

Source type/gas containment descriptions	Assigned value
Container (including tanks)	
Below ground/buried containers	Evaluate as a landfill, etc.
Intact, sealed containers protected from the weather by a maintained cover	0
Intact, sealed containers not protected from the weather by a maintained cover	1
Open, unsealed, or nonintact containers: waste totally covered with an essentially impermeable, maintained cover	0
Open, unsealed, or nonintact containers: waste partially covered with an essentially impermeable, maintained cover	1
Open, unsealed, or nonintact containers: waste totally covered with an essentially impermeable, unmaintained cover	2
Open, unsealed, or nonintact containers: waste otherwise covered or uncovered	3
Other	1
Fire Site	
Former fire site	Evaluate as a landfill, etc.
Active above-ground fire site	3
Active below-ground fire site: uncontaminated [1] soil cover in excess of two feet	1
Active below-ground fire site: uncontaminated [1] soil cover less than two feet, soil resistant to gas migration. [2]	2
Active below-ground fire site: uncontaminated [1] soil cover less than two feet, soil not resistant to gas migration. [2]	3
Other	1
Landfill, Contaminated Soil (including Land Treatment), or Waste Pile.	
Functioning gas collection system	0
Existing, nonfunctioning gas collection system	3
Intact synthetic cover plus uncontaminated soil cover over 0.5 inches in depth [1]	1
Totally covered with an intact synthetic cover: surface soil contaminated. [1]	3
Totally covered with a nonintact synthetic cover: surface soil contaminated. [1]	3
Uncontaminated soil cover [1] in excess of six inches	0
Uncontaminated soil cover [1] greater than one inch and less than six inches: cover soil resistant to gas migration. [2]	1
Uncontaminated soil cover [1] less than six inches: cover soil type unknown	1
Uncontaminated soil cover [1] greater than one inch and less than six inches: cover soil not resistant to gas migration [2]	2
Uncontaminated soil cover [1] less than one inch: cover soil resistant to gas migration. [2]	2
Uncontaminated soil cover [1] less than one inch: cover soil not resistant to gas migration [2]	3
Covering soil contaminated [3] with waste constituents at surface and no synthetic cover between surface and bulk of waste materials	3
Totally enclosed in a structurally intact building	1
Totally enclosed in a nonintact building	2
Waste uncovered or exposed	3
Other	1
Surface Impoundment	
Dry surface impoundment	Evaluate as a landfill, etc.
Wet enclosed [3] impoundment: impoundment totally covered with a maintained, essentially impermeable cover	0
Wet enclosed impoundment: impoundment totally covered with an unmaintained, essentially impermeable cover	1
Wet enclosed impoundment: impoundment partially covered with a maintained, essentially impermeable cover	1
Wet enclosed impoundment: impoundment partially covered with an unmaintained, essentially impermeable cover	2
Wet enclosed impoundment: uncovered, surface completely open to atmosphere	3
Wet nonenclosed impoundment: impoundment totally covered with a maintained, essentially impermeable cover	0
Wet nonenclosed impoundment: impoundment totally covered with an unmaintained, essentially impermeable cover	1
Wet nonenclosed impoundment: impoundment partially covered with a maintained, essentially impermeable cover	2
Wet nonenclosed impoundment: impoundment partially covered with an unmaintained, essentially impermeable cover	3
Wet nonenclosed impoundment: uncovered, surface completely open to atmosphere	3
Other	1
Other	0

[1] Lacking contrary evidence, covering soils are assumed to be uncontaminated.

[2] USGS soil types GC, ML, CL and CH are considered resistant to gas migration. Source: Adapted from Lutton, R. J., "Evaluating Cover Systems for Solid and Hazardous Wastes," (EPA–530/SW–867c), United States Environmental Protection Agency, Washington, D.C., September 1980.

[3] An enclosed impoundment is one with a freeboard exceeding two feet in height or one that is substantially surrounded by a wall, fence, trees or other adequate windbreak.

TABLE 2–5—SOURCE CONTAINMENT FACTOR—PARTICULATES

Source type/particulate containment descriptions	Assigned value
Container (including tanks):	
Below ground/buried containers	Evaluate as a landfill, etc.
Intact, sealed containers protected from the weather by a maintained cover	0
Intact, sealed containers not protected from the weather by a maintained cover	1
Open, unsealed, or nonintact containers: waste totally covered with a maintained cover	0
Open, unsealed, or nonintact containers: waste partially covered with a maintained cover	1
Open, unsealed, or nonintact containers: waste totally covered with an unrnaintained cover	2
Open, unsealed, or nonintact containers: waste otherwise covered or uncovered	3
Other	1
Landfill, contaminated soil (including land treatment), fire site, or waste pile:	
Site covered with an essentially impermeable and maintained cover or heavily vegetated with no exposed soil or waste-bearing liquids (e.g., paved-over)	0
Site substantially vegetated or totally covered with a maintained nonwater-based dust suppressing fluid. Little exposed soil or waste-bearing liquids	1
Site lightly vegetated or partially covered with a maintained nonwater-based dust suppressing fluid. Much exposed soil or waste-bearing liquids	2
Site substantially devoid of vegetation with a large percentage of exposed soil or waste-bearing liquids. No other cover	3
Totally enclosed in a structurally intact building	1
Partially enclosed in a structurally intact building	2
Totally enclosed in an nonintact building	2
Partially enclosed in an nonintact building	3
Substantially surrounded with windbreak (e.g., mesh or other fence, trees, etc.)	2
Active fire site	3
Other	1
Surface impoundment:	
Enclosed [1] impoundment: impoundment totally covered with a maintained cover	0
Enclosed impoundment: impoundment totally covered with an unmaintained cover	1
Enclosed impoundment: impoundment partially covered with a maintained cover	1
Enclosed impoundment: impoundment partially covered with an unmaintained cover	2
Enclosed impoundment: uncovered, surface completely open to atmosphere	3

TABLE 2-5—SOURCE CONTAINMENT FACTOR—PARTICULATES—Continued

Source type/particulate containment descriptions	Assigned value
Nonenclosed impoundment: impoundment totally covered with a maintained cover	1
Nonenclosed impoundment: impoundment totally covered with an unmaintained cover	2
Nonenclosed impoundment: impoundment partially covered with a maintained cover	2
Nonenclosed impoundment: impoundment partially covered with an unmaintained cover	3
Nonenclosed impoundment: uncovered, surface completely open to atmosphere	3
Other	1
Other	1

[1] An enclosed impoundment is one with a freeboard exceeding two feet in height or one that is substantially surrounded by a wall, fence, trees or other adequate windbreak.

2.1.2.2 Source type. For purposes of defining and evaluating sources, consider emission sources with all of the following characteristics as a single source:

- Sources of the same type.
- Sources containing the same hazardous substances.
- Sources with the same containment characteristics.

Assign to each emission source on the site that meets a minimum size requirement a source type factor value, using Table 2-6. The minimum size requirement is based on the source disposal capacity factor value defined in section 2.2.2. A source is considered to meet the minimum size requirements if, in evaluating that source, the source would receive a source disposal capacity factor value of one or more (using the rounding criteria in section 1.0). If no source meets the minimum size requirement, use only the descriptor "other" in Table 2-6 and assign a factor value of zero.

TABLE 2-6—SOURCE TYPE EVALUATION TABLE

Type of source [1]	Assigned value
Container (including tanks)	40
Contaminated Soil (including land treatment)	70
Fire Site	50
Landfill	60
Surface Impoundment	80
Waste Pile	30
Other	0

[1] Source must meet minimum size requirements as specified in section 2.1.2.2 in order to be used in the evaluation of the potential to release.

2.1.2.3 Source mobility. Source mobility refers to the propensity of the hazardous substances to migrate to the surface of the source area and escape into the atmosphere, based on their physical-chemical characteristics. The source mobility factor is evaluated using two mobility factors, one addressing gaseous hazardous substances, the other addressing particulate hazardous substances.

2.1.2.3.1 Source gas mobility. The source gas mobility factor reflects the potential of hazardous substances in a source to migrate to the surface/air interface and escape as a gas. The value assigned to gas mobility for a specific hazardous substance is based on three physical-chemical characteristics of the hazardous substance: vapor pressure, Henry's constant, and dry relative soil volatility.

For a specific hazardous substance, assign values for vapor pressure, Henry's constant and dry relative soil volatility using Table 2-7. Sum these three values, and assign a gas mobility value for the hazardous substance, based on this sum, as indicated in Table 2-8.

TABLE 2-7—GAS MOBILITY COMPONENT VALUES

	Assigned value
Vapor pressure:	
Above 10 torr [1]	3
Above 10-3 to 10 torr	2
10-5 to 10-3 torr	1
Less than 10-5 torr	0
Henry's constant: [2]	
Above 10-3	3
Above 10-5 to 10-3	2
10-7 to 10-5	1
Less than 10-7	0
Dry relative soil volatility: [3]	
Above 1	3
Above 10-3 to 1	2
10-6 to 10-3	1
Less than 10-6	0

[1] Torr is a unit of pressure equal to 1/760 of an atmosphere (i.e., 1 mm Hg).

[2] Henry's constant in terms of atm-m³/mol.

[3] Dry relative soil volatility is a measure of the propensity of a gas to move through the air spaces in dry soil, as defined in U.S. Environmental Protection Agency, "Properties and Categorization of RCRA Wastes According to Volatility," EPA-450/3-85-007, U.S. Environmental Protection Agency, Office of Air Quality, Planning and Standards, Research Triangle Park, North Carolina, 1985. (Report prepared by Versar Inc., Springfield, VA, under EPA Contract 68-03-3041; report available through National Technical Information Service, Springfield, VA, as PB85-204527.) Dry relative soil volatility is determined by experimentation or, alternately if no such data exists, as $P_{vp}/MW^{1/4}$ where P_{vp} equals the vapor pressure of the substance at 25 °C and MW equals the molecular weight of the substance.

TABLE 2-8—SUBSTANCE GAS MOBILITY FACTOR VALUE

Sum of gas mobility component values	Assigned value
0 to 2	0
3 to 4	1
5 to 6	2
7 to 9	3

Calculate the source gas mobility factor value as the average of the substance gas mobility factor values (from Table 2-8) for three hazardous substances associated with the source. If fewer than three hazardous substances can be associated with a source, then use all of the hazardous substances that can be associated with the source. If more than three hazardous substances can be associated with a source, then use the three with the highest substance gas mobility values. Hazardous substances whose location on a site cannot be determined may be used to evaluate the source gas mobility for any source on the site into which the hazardous substances could have been deposited. However, a hazardous substance that can be associated with a source must be used in preference to a hazardous substance whose location is unknown in assessing the gas mobility of that source.

2.1.2.3.2 Particulate mobility. The particulate mobility factor reflects the potential for particles on the surface of a source to be entrained in the atmosphere, thereby escaping from the site. The moisture content of the surface material is a measure of the relative mobility of particulates. The Thornthwaite precipitation effectiveness (P-E) index [1] is a surrogate measure of the relative moisture content of the surface material and is used to assign a value to particulate mobility.

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[1] Thornthwaite, C. Warren, "The Climates of North America According to a New Classification," Geographical Review, Vol. 21, 1931, pp. 633-655.

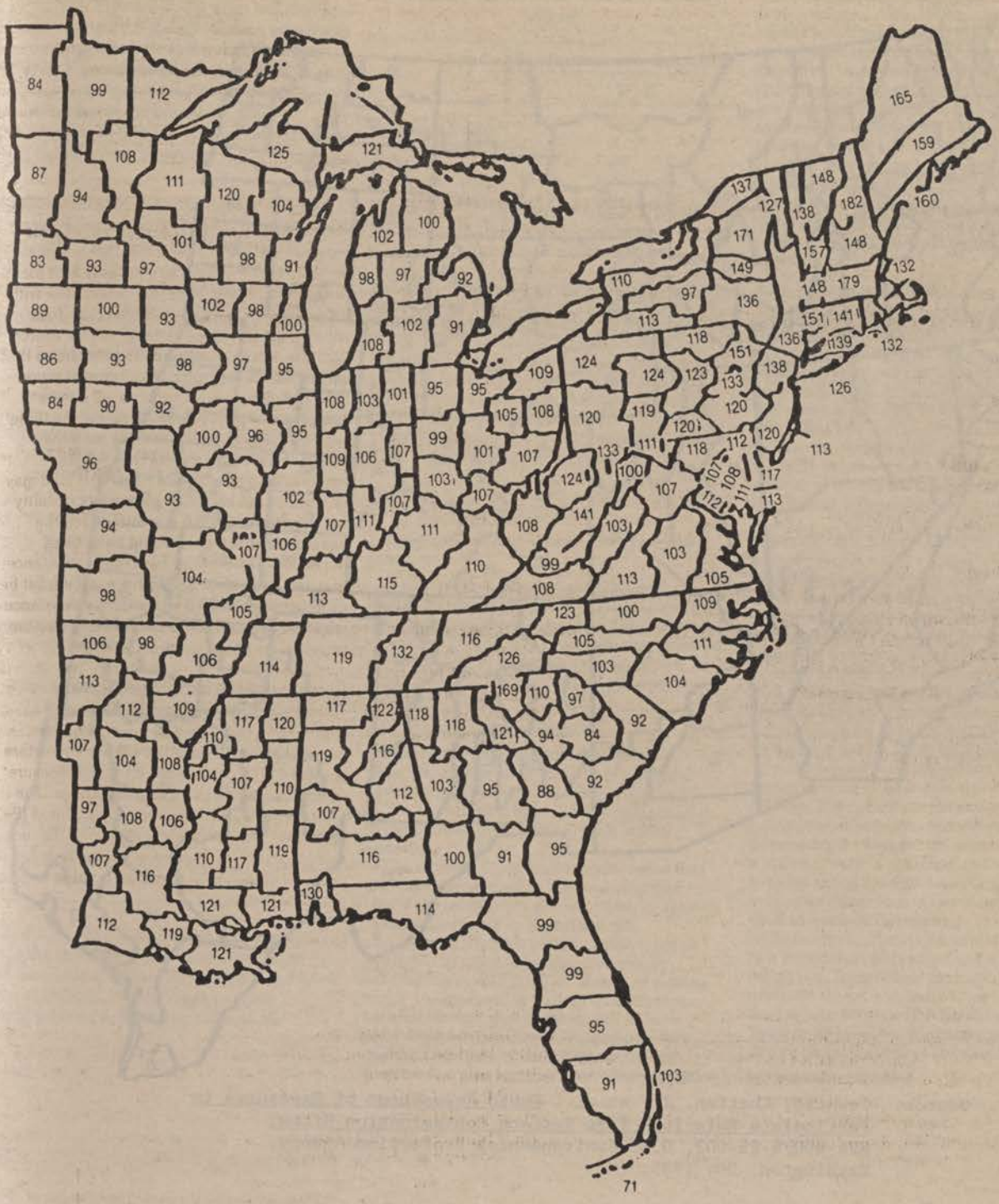
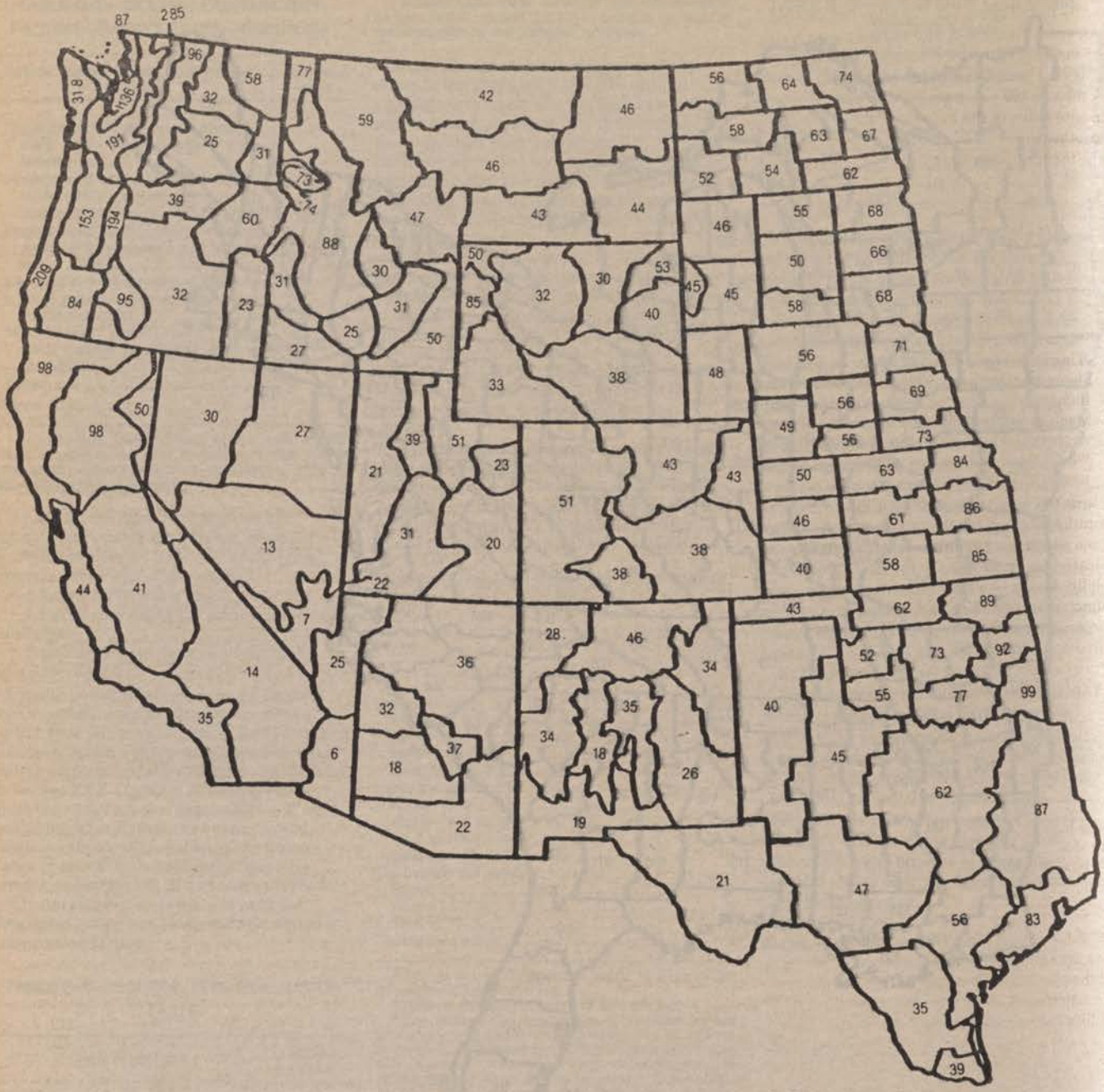


FIGURE 2-3
MAP OF P-E INDEX FOR STATE CLIMATIC DIVISIONS



Source: Cowherd, Chatten, Jr. et al., Rapid Assessment of Exposures to Particulate Emissions from Surface Contamination Sites, EPA-600/8-85-002, U.S. Environmental Protection Agency, Washington, DC, 1985.

FIGURE 2-3 (Concluded)

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The Thornthwaite P–E index can be read directly from Figure 2–3. For sites not located in areas on Figure 2–3, and for sites which are near the Thornthwaite P–E index boundary points on Figure 2–3 and for which the assigned factor value would differ on opposite sides of the boundary, the Thornthwaite P–E index may be calculated using the following equation:

$$PE = \sum_{i=1}^{12} 115 \times [P_i/(T_i - 10)]^{10/9}$$

where:

PE = Thornthwaite P–E index.

P_i = Mean monthly precipitation for month i in inches.

T_i = Mean monthly temperature for month i in degrees Fahrenheit; for any month in which the mean monthly temperature is less than 28.4 °F, use 28.4 °F.

Using the applicable value for the Thornthwaite P–E index, determine the source particulate mobility factor value as indicated on Table 2–9. As the particulate mobility factor value does not depend on distinct characteristics of the different sources, the same factor value applies to each source on the site.

TABLE 2–9.—PARTICULATE MOBILITY FACTOR EVALUATION TABLE

Thornthwaite PE index	Particulate mobility value
Greater than 150	0
85 to 150	1
50 to less than 85	2
Less than 50	3

2.1.2.3.3 Source mobility factor value. Once the source gas mobility factor value and the particulate mobility factor value have been calculated, determine the source mobility factor value using Table 2–10.

TABLE 2–10.—SOURCE MOBILITY FACTOR VALUE

	Source gas mobility factor value			
	0	1	2	3
Source particulate mobility factor value:				
0	0	10	20	30
1	10	20	30	40
2	20	30	40	50
3	30	40	50	50

2.1.2.4 Calculation of potential to release factor value. Determine the potential to release value for each source as illustrated on Table 2–3. Specifically, for each source, sum the source type factor value and the source mobility factor value and multiply this sum by the source containment factor value. The resulting value is the potential to release value for the source. Select the highest source potential to release value assigned to a source on the site. Assign that value as the potential to release factor value for the site. Enter this value on Table 2–1.

2.1.3 Calculation of likelihood of release category value.

If an observed release is established, assign the observed release factor value as the likelihood of release value. Otherwise, assign the potential to release factor value as the likelihood of release value. Enter the value assigned to likelihood of release on Table 2–1.

2.2 Waste characteristics.

This factor category reflects the rate, duration, and relative toxicity of potential hazardous substances releases from the site to the atmosphere. Two factors are included: toxicity/mobility and hazardous waste quantity.

The hazardous substances at the site that are to be considered in the evaluation of waste characteristics are restricted to those that are available to migrate to the atmosphere. Those hazardous substances available to migrate include hazardous substances establishing an observed release to the atmosphere as well as all hazardous substances found or documented to have been deposited at the site in a source that could be assigned a source containment factor value greater than zero. (See section 2.1.2.1 for descriptions of source containment factor values.) Also, hazardous substances whose locations on a site cannot be determined but that could have been deposited in any source whose source containment factor value is greater than zero are considered available to migrate to the atmosphere. Hazardous substances whose location on the site cannot be determined shall be assumed to have been placed in all sources on the site, except those sources for which there is definitive information that indicates that the hazardous substances were not or cannot have been deposited in the source.

2.2.1 Toxicity/mobility.

In determining the toxicity/mobility value for the air migration pathway at a site, evaluate all hazardous substances that are available to migrate to the atmosphere. For each such hazardous substance, a toxicity value and a mobility value is assigned as described below. The procedure for combining these values into a single toxicity/mobility value for each hazardous substance and for selecting the toxicity/mobility value for the site is described in section 2.2.1.3.

2.2.1.1 Toxicity. Hazardous substances are rated on a 5-point scale for each of three toxicity types: acute toxicity, chronic noncarcinogenic toxicity, and carcinogenicity. If comprehensive toxicity data are available, a hazardous substance is assigned three values, one for each toxicity type. The overall toxicity factor value for a hazardous substance is equal to the highest of the assigned values for the three toxicity types. If available information for a substance is inadequate for developing a value for a particular toxicity type, a value of zero is assigned and the substance's overall toxicity rating is based on the other types of toxicity. If available information for a hazardous substance is inadequate for developing a value for all three toxicity types, a value of zero is assigned as the overall toxicity rating for that hazardous substance, and other hazardous substances must be used to evaluate a pathway. In the event that all hazardous substances available to migrate to a particulate pathway have a zero toxicity rating (i.e., insufficient toxicity data to evaluate them), a default value of 3 is used as the toxicity factor value for the pathway. Table 2–11 provides the rating scales used to derive the values for each toxicity type.

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TABLE 2-11
TOXICITY FACTOR EVALUATION TABLES

Acute Toxicity Factor Values

Oral LD_{50} (mg/kg)	Dermal LD_{50} (mg/kg)	LC_{50} Dust or Mist (mg/l)	LC_{50} Gas or Vapor (ppm)	Assigned Value
---	---	---	---	5
$LD_{50} < 5$	$LD_{50} < 2$	$LC_{50} < 0.2$	$LC_{50} < 20$	4
$5 \leq LD_{50} < 50$	$2 \leq LD_{50} < 20$	$0.2 \leq LC_{50} < 2$	$20 \leq LC_{50} < 200$	3
$50 \leq LD_{50} < 500$	$20 \leq LD_{50} < 200$	$2 \leq LC_{50} < 20$	$200 \leq LC_{50} < 2000$	2
$500 \leq LD_{50}$	$200 \leq LD_{50}$	$20 \leq LC_{50}$	$2000 \leq LC_{50}$	1
Information not available	Information not available	Information not available	Information not available	0

Chronic Toxicity Factor Values

RfD (mg/kg-day)	Assigned Value
$RfD < 0.0005$	5
$0.0005 \leq RfD < 0.005$	4
$0.005 \leq RfD < 0.05$	3
$0.05 \leq RfD < 0.5$	2
$0.5 \leq RfD$	1
Information not available	0

TABLE 2-11 (Concluded)

Carcinogenicity Factor Values

Weight-of-Evidence[a]/q_1^* (mg/kg-day)$^{-1}$			Assigned Value
A	B	C	
$0.5 \leq q_1^*$	$5 \leq q_1^*$	$50 \leq q_1^*$	5
$0.05 \leq q_1^* < 0.5$	$0.5 \leq q_1^* < 5$	$5 \leq q_1^* < 50$	4
$q_1^* < 0.05$	$0.05 \leq q_1^* < 0.5$	$0.5 \leq q_1^* < 5$	3
---	$q_1^* < 0.05$	$q_1^* < 0.5$	2
---	---	---	1
Information not available	Information not available	Information not available	0

[a]A, B, and C refer to EPA weight-of-evidence categories (see text). Substances with a weight-of-evidence of D (inadequate evidence of carcinogenicity) or E (evidence of lack of carcinogenicity) are assigned a carcinogenicity factor value of 0.

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The value for acute toxicity is based on the median lethal dose value from animal studies (LC_{50} or LD_{50}). Acute toxicity is scored using separate scales for oral, dermal and inhalation routes of exposure. Sources for LC_{50} or LD_{50} data for hazardous substances include the Technical Background Document for the Reportable Quantity rule (or later versions as available):

- Environmental Monitoring and Services, Inc., 1985. "Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 1." Prepared for Releases Control Branch, Office of Research and Development; and Emergency Response Division, Office of Solid Waste and Emergency Response; U.S. Environmental Protection Agency. Under Contract 68–03–3182.
- Environmental Monitoring and Services, Inc., 1986. "Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 2." Prepared for Releases Control Branch, Office of Research and Development and Emergency Response Division, Office of Solid Waste and Emergency Response; U.S. Environmental Protection Agency. Under Contract 68–03–3182.
- C–E Environmental, Inc., 1987. "Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3." Prepared for Releases Control Branch, Office of Research and Development; and Emergency Response Division, Office of Solid Waste and Emergency Response; U.S. Environmental Protection Agency. Under Contract 68–03–3452.

If no LC_{50} or LD_{50} data are available for a hazardous substance, but an LD_{10} or LC_{10} value is available, these latter values should be used in Table 2–11 in place of the LD_{50} or LC_{50} value in assigning a rating value. These values are similar to LC_{50} or LD_{50} values except they represent a concentration or dose that is fatal to only a low percentage of the population (e.g., 10 percent) instead of 50 percent. The LD_{50} and LD_{10} are not identical but have been treated the same here because of uncertainty in how to convert from one to the other. This approach is the same as that used in setting Superfund Reportable Quantities for hazardous substances.

For hazardous substances having usable toxicity data for multiple exposure routes (e.g., inhalation, ingestion), use the highest route-specific rating value in assigning the acute toxicity value.

To determine a value for chronic noncarcinogenic toxicity, the Reference Dose (RfD) for a hazardous substance is used. An RfD is the amount of a substance to which an individual can be exposed on a daily basis over an extended period of time (usually a lifetime) without appreciable risk of deleterious noncancer effects. RfDs are derived from available chronic and subchronic toxicity studies and undergo a formalized EPA-wide peer review and verification process. RfDs for a number of CERCLA hazardous substances can be found in the U.S. EPA Integrated Risk Information System (IRIS) or in the appendices to the "Superfund Public Health Evaluation Manual," U.S. Environmental Protection Agency, October 1986, EPA 540/1–86/060 (or later as available).

The carcinogenicity value for a hazardous substance is based on one of two measures, its Cancer Potency Factor (q_1^*) or ED_{10}, combined with its qualitative weight-of-evidence rating. Cancer Potency Factors are used preferentially to ED_{10} values; for substances that do not have a Cancer Potency Factor, the ED_{10} is used. Cancer Potency Factors are developed by EPA's Carcinogen Assessment Group and are derived from studies in experimental animals or from human epidemiologic data, if available. Cancer Potency Factors and weight-of-evidence classifications for a number of hazardous substances can be found in IRIS and in the appendices to the "Superfund Public Health Evaluation Manual." ED_{10}s for a number of hazardous substances can be found in the appendices to the "Superfund Public Health Evaluation Manual."

The ED_{10} method for assessing carcinogenicity was developed by the Carcinogen Assessment Group as a means of setting Reportable Quantities for potentially carcinogenic hazardous substances, as required by CERCLA sections 102 and 103. ED_{10}s are calculated based on dose-response data derived from the primary literature. The ED_{10} is the estimated dose associated with a lifetime increased cancer risk of 10 percent. The ED_{10} method for assessing carcinogenicity is described more fully in the March 16, 1987 Federal Register (52 FR 8140). Empirical analysis of potential carcinogens shows that $1/ED_{10}$ is closely related to q_1^*, and is on average 6 times the q_1^*. Use this relationship between ED_{10} and q_1^* to estimate a q_1^* value from an ED_{10} value in the case when q_1^* data are not available.

The weight-of-evidence is defined as the overall strength of the data indicating potential carcinogenicity based on an evaluation of all relevant studies and the nature and type of responses. EPA has adopted a system for classifying weight-of-evidence for carcinogenicity into five major categories. The weight-of-evidence is used to increase or decrease a carcinogenicity value. Only those hazardous substances with weight-of-evidence classifications of A, B, or C shall be evaluated as carcinogens in the HRS. Those hazardous substances in categories D and E (not classified or with no evidence of carcinogenicity) shall not be evaluated as carcinogens. The Cancer Potency Factor and the weight-of-evidence classification are more fully described in EPA's Guidelines for Carcinogen Risk Assessment (51 FR 33992–34003, September 24, 1986).

Asbestos and radionuclides are classified as Group A human carcinogens (the highest weight-of-evidence category), but their cancer potency values are not expressed in units comparable to most other substances. Therefore, asbestos and radionuclides cannot be evaluated and assigned values using Table 2–11. For purposes of HRS scoring, assign a toxicity value of 5 for carcinogenicity to asbestos and to radionuclides.

Determine an acute toxicity value, a chronic toxicity value and a carcinogenicity value for each hazardous substance using Table 2–11. For each hazardous substance, select the highest of the three values and assign it as the overall toxicity factor value for that hazardous substance. For example, if a hazardous substance has a value of 2 for acute toxicity, 3 for chronic noncarcinogenic toxicity and no data for carcinogenicity, its overall toxicity value for HRS scoring purposes would be 3. If a pathway, aquifer (see section 3), or watershed (see section 4) has only hazardous substances without adequate toxicity data for developing a rating, assign a toxicity value of 3 as a default for each hazardous substance available to migrate to that pathway, aquifer, or watershed.

2.2.1.2 Mobility. In determining the mobility value, evaluate all hazardous substances that are available to migrate to the atmosphere. For any hazardous substance that establishes an observed release to the atmosphere, assign that hazardous substance the maximum mobility factor value of 3. For each gaseous hazardous substance not establishing an observed release, assign the hazardous substance a mobility factor value using the evaluation procedure described in section 2.1.2.3.1 (Tables 2–7 and 2–8). For particulate hazardous substances not establishing an observed release, assign the hazardous substance the particulate mobility factor value assigned in section 2.1.2.3.2 (Figure 2–3 and Table 2–9). (All such particulate hazardous substances are assigned this same value.) For a hazardous substance potentially present in both gaseous and particulate forms, select the higher of the factor values for substance gas mobility and particulate mobility for that hazardous substance and assign that value as the mobility factor value for the hazardous substance.

2.2.1.3 Calculation of toxicity/mobility value. Based on the overall toxicity value and the mobility value, assign a toxicity/mobility value to each hazardous substance available to migrate to the atmosphere using Table 2–12. Use the value for the hazardous substance with the highest toxicity/mobility value as the value for this factor for the air migration pathway. Enter this value on Table 2–1.

TABLE 2–12.—TOXICITY/MOBILITY FACTOR VALUE

	Mobility factor value			
	0	1	2	3
Toxicity factor value:				
0	0	0	0	0
1	10	27	43	60
2	20	37	53	70
3	30	47	63	80
4	40	57	73	90
5	50	67	83	100

2.2.2 Hazardous waste quantity.

The hazardous waste quantity factor reflects the quantity and duration of potential hazardous substances releases from the site by this pathway. The hazardous waste quantity factor is evaluated considering three factors: hazardous constituent quantity, site wastestream quantity, and site disposal capacity.

The method used to evaluate each of these factors and to derive the hazardous waste quantity factor value from them is presented in Table 2–13 and is summarized below. The method varies depending on the completeness of the data available for the following measures: the quantity of hazardous substances deposited on the site, the quantity of wastes deposited on the site that contain hazardous substances, source volumes, and source areas.

TABLE 2–13.—HAZARDOUS WASTE QUANTITY FACTOR EVALUATION METHODOLOGY AND WORKSHEET

Part A—Hazardous Constituent Quantity Factor

1. Hazardous Substances Quantity:
   1a. Quantity of hazardous substances (in pounds) deposited on the site (HSQ)
   1b. Assigned value from Table 2–14 for HSQ [1]
2. Is information on HSQ complete for the site? (Enter "yes" or "no")
   2a. If "yes", go to line 17 and enter value from line 1b on line 17. (Do not evaluate Parts B and C.)
   2b. If "no" and the value on line 1b is the maximum factor value of 100, go to line 17 and enter "100" on line 17. (Do not evaluate Parts B and C.)
   2c. If "no" and value on line 1b is less than 100, go to Part B

Part B—Site Wastestream Quantity Factor

Complete lines 3 through 7 for each wastestream (use additional sheets as necessary).

3. Wastestream identification:
4. Wastestream Hazardous Substances Quantity:
   4a. Quantity of hazardous substances (in pounds) present in this wastestream (WHSQ)
   4b. Is information on WHSQ complete for this wastestream? (Enter "yes" or "no")
   4c. Assigned value from Table 2–14 for this WHSQ [1]
5. Wastestream Quantity as Deposited:
   5a. Quantity of materials in this wastestream (in pounds) that contain hazardous substances (WQD)
   5b. Is information on WQD complete for this wastestream? (Enter "yes" or "no")
   5c. Assigned value from Table 2–14 for this WQD [1]
6. Wastestream Quantity Factor Value:
   6a. If line 4b is "yes", go to line 6c and enter value from line 4c on line 6c
   6b. If line 4b is "no", select the higher of the values from lines 4c and 5c and enter that value on line 6c
   6c. Watestream Quantity Factor Value
7. Site Wastestream Quantity Factor Value: Sum the wastestream quantity factor value (from line 6) for each wastestream evaluated and enter this sum on this line [2]
8. Is information on wastestream quantity as deposited complete for the site? (Enter "yes" or "no")

[2] Wastestreams are those portions of a waste which can be separately evaluated based on available information. (The following is an example of what is meant by wastestreams. For example, assume that 50 drums have been deposited together on a site. For 5 of these drums, complete hazardous substance quantity data are available. For 10 of these drums, hazardous substance quantity data are not available, but data are available on the amount of hazardous waste [e.g., 30 gallons] present in each drum when deposited. For the other 35, the only data available are that the 35 drums were deposited on the site and contained hazardous substances. The set of 5 drums, the set of 10 drums, and the set of 35 drums may each be considered a different wastestream for purposes of evaluating this factor.)

TABLE 2–13.—HAZARDOUS WASTE QUANTITY FACTOR EVALUATION METHODOLOGY AND WORKSHEET—Continued

   8a. If "yes", enter "10" or the value from line 7, whichever is higher, on this line; go to line 17 enter the value from line 8a on line 17. (Do not evaluate Part C.)
   8b. If "no" and the value on line 7 is the maximum factor value of 100, enter "100" on this line; go to line 17 and enter "100" on line 17. (Do not evaluate Part C.)
   8c. If "no" and value on line 7 is less than 100, go to Part C

Part C—Site Disposal Capacity Factor

Complete lines 9 through 14g for each source (use additional sheets as necessary).

9. Source type and identification (e.g., landfill #1):
10. Source Hazardous Substances Quantity:
   10a. Quantity of hazardous substances (in pounds) deposited in this source (SHSQ)
   10b. Is information on SHSQ complete for this source? (Enter "yes" or "no")
   10c. Assigned value from Table 2–14 for this SHSQ [1]
11. Source Waste Quantity as Deposited: [3]
   11a. Quantity of wastes deposited in this source (in pounds) that contain hazardous substances (SWQD)
   11b. Is information on SWQD complete for this source? (Enter "yes" or "no")
   11c. Assigned value from Table 2–14 for this SWQD [1]
12. Source Volume: [3]
   12a. Volume of this source (in cubic yards); if volume is not available, enter "not available"
   12b. Assigned value from Table 2–14 for this volume for this type of source [1]
13. Source Area: [3]
   13a. Area of this source (in square feet); if area is not available, enter "not available"
   b. Assigned value from Table 2–14 for this area for this type of source. [1]
14. Source Disposal Capacity Factor Value:
   14a. If line 10b is "yes", go to line 14g and enter value from line 10c on line 14g. (Do not evaluate lines 14b through 14f.)
   14b. If line 10b is "no", select the higher of the values from lines 10c and 11c and enter the value on this line. (Continue to line 14c.)
   14c. If line 11b is "yes", go to line 14g and enter the value from line 14b on line 14g. (Do not evaluate lines 14d through 14f.)
   14d. If line 11b is "no" and line 12a has a volume entered, select the higher of the values from lines 14b and 12b and enter the value of this line. Go to line 14g and enter this higher value on line 14g. (Do not evaluate lines 14e and 14f.)
   14e. If line 11b is "no" and line 13a has an area entered, select the higher of the values from lines 14b and 13b and enter the value on this line. Go to line 14g and enter this higher value on line 14g. (Do not evaluate line 14f.)
   14f. If line 11b is "no" and lines 12a and 13a indicate "not available", enter the value from line 14b on line 14g.
   14g. Source Disposal Capacity Factor Value
15. Site Disposal Capacity Factor Value: Sum the source disposal capacity factor value (from line 14g) for each source evaluated. [2] Go to Part D

Part D—Hazardous Waste Quantity Factor Value

16. If a value is entered on both lines 7 and 15, enter "10" or the value from line 7 or 15, whichever is highest, on this line; go to line 17 and enter the value from line 16 on line 17
17. The Hazardous Waste Quantity Factor Value is the value that has been entered on this line. This factor value is subject to a maximum value of 100. Enter this value on Table 2–1

[1] All values assigned from Table 2–14 are subject to a maximum value of 100.
[2] This sum is subject to a maximum value of 100.
[3] If this information is not needed to obtain the source disposal capacity factor value (see lines 14a through 14g), this section (11, 12, or 13) does not need to be completed for this source.

Throughout the evaluation, consider only those sources that can be assigned a containment factor value greater than zero for the pathway and only those wastes, wastestreams,[2] and hazardous substances that can be associated (either directly or indirectly) with such a source. The source containment value to be associated with wastes, wastestreams, or hazardous substances is that of the source into which each was deposited, or, if the source is unknown, those of the sources into which each could have been placed.

The hazardous constituent quantity factor is evaluated as described in Part A of Table 2–13, using the available data on the following measure: the quantity of hazardous substances that have been deposited on the site. A value is assigned to the quantity of hazardous substances deposited using Table 2–14. If the available data on the quantity of hazardous substances deposited on the site are complete (i.e., the total amount of hazardous substances deposited on the site has been fully quantified) or if the hazardous constituent quantity factor is assigned the maximum value of 100, then the other two factors are not evaluated. In this case the hazardous waste quantity factor value is based solely on the hazardous constitutent quantity factor value.

TABLE 2–14.—HAZARDOUS WASTE QUANTITY FACTOR EVALUATION EQUATIONS

Measure (X)	*Units*	*Equation for assigning value* [1]
Hazardous Constituent Quantity Factor:		
Hazardous substances quantity (HSQ)	lbs	HSQ/10
Wastestream Quantity Factor: [2]		
Wastestream hazardous substances quantity (WHSQ)	lbs	WHSQ/10
Wastestream quantity as deposited (WQD)	lbs	WQD/50,000
Source Disposal Capacity: [2]		
Source hazardous substances quantity (SHSQ)	lbs	SHSQ/10
Source waste quantity as deposited (SWQD)	lbs	SWQD/50,000
Source Volume (SV):		
Landfill	yd^3	SV/25,000
Surface Impoundment	yd^3	SV/25
Drums [3]	gallons	SV/5,000
Nondrum Containers	yd^3	SV/25
Contaminated Soil	yd^3	SV/25,000
Pile	yd^3	SV/25
Other	yd^3	SV/25
Source Area (SA):		
Landfill	ft^2	SA/25,700
Surface Impoundment	ft^2	SA/112.5
Land Treatment	ft^2	SA/8,100
Pile [4]	ft^2	SA/25.7
Contaminated Soil	ft^2	SA/337.500

[1] Maximum value to be assigned is 100.
[2] Use the following volume to mass conversions when necessary: 1 ton = 2,000 lbs = 1 cubic yard = 4 drums = 200 gallons.
[3] If the actual volume of the drum is unavailable, assume a conversion value of 1 drum = 50 gallons.
[4] Use the land surface area under the pile, not the surface area of the pile.

If the data for evaluating the hazardous constituent quantity factor are not complete and the maximum factor value of 100 is not assigned, the site wastestream quantity factor is evaluated as described in Part B of Table 2–13. It is evaluated by first assigning a wastestream quantity factor value to each wastestream deposited on the site and then summing the wastestream quantity factor value assigned to each wastestream. The wastestream quantity factor is evaluated for each wastestream using the available data on the following measures: the quantity of hazardous substances present in the wastestream and the quantity of materials present in the wastestream that contain hazardous substances (i.e., the wastestream quantity as deposited). If the available data on the wastestream quantity as deposited is complete for the site (i.e., the total amount of wastes deposited on the site that contain hazardous substances has been fully quantified) or if the site wastestream quantity factor is assigned the maximum value of 100, then the site disposal capacity is not evaluated. In this case the hazardous waste quantity factor value is based solely on the site wastestream quantity factor value.

If the data for evaluating both the hazardous constituent quantity factor and the site wastestream quantity factor are not complete and the maximum factor value of 100 has not been assigned, the site disposal capacity factor is evaluated as described in Part C of Table 2–13. It is evaluated by first assigning a source disposal capacity factor value to each source on the site and then summing the source disposal capacity factor value assigned to each source. The source disposal capacity factor is evaluated for each source using the available data on the following measures: the quantity of hazardous substances deposited in the source (i.e., the source hazardous substances quantity), the quantity of wastes deposited in the source that contain hazardous substances (i.e., the source waste quantity as deposited), the source volume, and the source area.

The hazardous waste quantity factor is then assigned a value as described in Part D of Table 2–13. If complete data are available for the hazardous constituent quantity factor or if the maximum factor value is assigned, then the hazardous waste quantity factor is evaluated based solely on that factor. In this case the hazardous waste quantity factor value is subject to a maximum value of 100 and a minimum value of zero. If complete data are not available for the hazardous constituent quantity factor, but if complete data are available for the site wastestream quantity factor or if the maximum factor value is assigned, then the hazardous waste quantity factor is evaluated based solely on the site wastestream quantity factor. In this case the hazardous waste quantity factor value is subject to a maximum value of 100 and a minimum value of 10. If complete data are not available for either of these two factors and the maximum factor value has not been assigned, then the hazardous waste quantity factor is determined by considering both the site wastestream quantity factor and the site disposal capacity factor. In this case, the hazardous waste quantity factor value is also subject to a maximum value of 100 and a minimum value of 10.

2.2.3 Calculation of waste characteristics value.

Sum the toxicity/mobility factor value and the hazardous waste quantity factor value. Assign this sum as the waste characteristics value. Enter this value on Table 2–1.

2.3 Targets.

The targets factor category reflects the human populations, resources, and environments potentially at risk from an actual or threatened release of hazardous substances from the site to the atmosphere. This factor category includes two factors primarily related to human health (maximally exposed individual (MEI) and population), one factor primarily related to resources (land use), and one factor primarily related to the environment (sensitive environments).

2.3.1 Maximally exposed individual.

The maximally exposed individual factor is evaluated based on the distance from any on-site emission source to the nearest individual (either on-site or off-site, as applicable). This distance to the nearest individual is determined as the shortest distance to the closest residence or regularly occupied building or area, as measured from any on-site emission source. Based on this shortest distance, assign the MEI factor a value using Table 2–15. Enter this value on Table 2–1.

TABLE 2–15—MEI FACTOR VALUES

Distance to nearest individual (miles)	Assigned value
0 to ⅛	50
Greater than ⅛ to ¼	13
Greater than ¼ to ½	4
Greater than ½ to 2	1
Greater than 2	0

2.3.2 Population.

The population factor value reflects the population actually or potentially exposed to air emissions from the site. Calculate the population factor value as follows, subject to a maximum value of 235.

For each of the distance categories defined on Table 2–16, determine the number of people within that distance category. The distance for an individual is measured as the shortest distance from any on-site emission source to the place at which the individual is

located (e.g., place of residence or work). The population count should include persons residing within the distance categories specified as well as others who would regularly be present, such as students and workers. Exclude transient populations such as customers and travelers passing through the area in autos, buses, or trains.

TABLE 2–16—Distance Weighting Factors

Distance category	Distance (miles)	Distance weight [1]
1	On-site	5.265
2	Greater than 0 to ¼	1.0
3	Greater than ¼ to ½	0.1751
4	Greater than ½ to 1	0.0517
5	Greater than 1 to 2	0.0171
6	Greater than 2 to 3	0.0083
7	Greater than 3 to 4	0.0054
8	Greater than 4	0

[1] These distance weights are not be rounded to the nearest integer.

In counting population, use exact population counts where possible. If actual residential population figures are not available, the population for a distance category should be estimated by determining the number of residences located within the distance category and multiplying each residence by the most recent U.S. Census factor for number of persons per residence for the county in which the residence is located.

Based on the information described above, assign a population factor value (PI) using the following equation, subject to a maximum value of 235:

$$PI = \frac{1}{100} \sum_{i=1}^{8} D_i P_i$$

where:

P_i = Number of people within distance category i.

D_i = Distance weighting factor associated with distance category i.

Enter this calculated value on Table 2–1.

2.3.3 Land use.

The land use factor value is determined based on the shortest distance between an on-site emission source and each of the types of land use listed on Table 2–17.

TABLE 2–17—Land Use Factor Values

Type	Definition	Assigned value
1	Commercial/Industrial/ Institutional.	5
2	Single Family Residential [1]	8
3	Multi-Family Residential [2]	10
4	Parks	5
5	Prime Agricultural	7
6	Nonprime Agricultural	5

[1] An area is considered to be "single family residential" whenever the residences are solely single family residences.

[2] An area is considered to be "multi-family residential" whenever it contains multi-family residences such as apartment buildings.

Using the applicable distance category for each land use, assign the appropriate distance weighting factor for Table 2–16 to each of the land uses. Assign a value to each type of land use from Table 2–17. Calculate the land use factor value (L) using the following equation, subject to a maximum value of 10:

$$L = \sum_{i=1}^{6} D_i V_i$$

where:

V_i = Value of land use type i.

D_i = Distance weighting factor associated with land use i.

Enter this calculated value on Table 2–1.

2.3.4 Sensitive environments.

The sensitive environment factor value is determined based on the shortest distance from any on-site emission source to each of the applicable sensitive environments located wholly or partially within four miles of the source. Using the applicable distance category for each sensitive environment, assign a distance weighting factor from Table 2–16 to each sensitive environment. Assign value(s) to each sensitive environment using either Table 2–18 or 2–19. If a sensitive environment can be assigned values from both tables, use the table that assigns the higher value to the sensitive environment. Calculate the sensitive environments factor value (ES) as follows, subject to a maximum value of 100:

$$ES = (1/10) \sum_{i=1}^{n} D_i S_i$$

where:

n = The number of sensitive environments identified.

S_i = Value(s) assigned to sensitive environment i.

D_i = Distance weighting factor associated with sensitive environment i.

Enter this calculated value on Table 2–1.

TABLE 2–18.—Sensitive Environments Factor Values

Sensitive environment	Assigned value
Critical habitat for Federal designated endangered or threatened species	100
Marine Sanctuary	
National Park	
Designated Federal Wilderness Area	
Areas identified under the Coastal Zone Management Act [1]	
Sensitive areas identified under the National Estuary Program or Near Coastal Waters Program [2]	
Critical areas identified under the Clean Lakes Program [3]	

TABLE 2–18.—Sensitive Environments Factor Values—Continued

Sensitive environment	Assigned value
Water segments designated by State as not attaining toxic water quality standards [4]	
National Monument [5]	
National Seashore Recreational Area	
National Lakeshore Recreational Area	
Habitat known to be used by Federal designated or proposed endangered or threatened species	75
Wetlands (freshwater, estuarine or coastal—five acre minimum) [6]	
National Preserve	
National or State Wildlife Refuge	
Unit of the Coastal Barrier Resources System	
Coastal Barrier (undeveloped)	
Federal land designated for protection of natural ecosystems	
Administratively Proposed Federal Wilderness Area	
Spawning areas critical for the maintenance of a fish species within a river system, coastal embayment, or estuary (e.g., anadromous salmon, alewives, shad)	
Migratory pathways critical for the maintenance of a fish species within a river system, coastal embayment, or estuary	
Feeding areas critical for the maintenance of a fish species within a river system, coastal embayment, or estuary	
National river reach designated as recreational	
Habitat known to be used by State designated endangered or threatened species	50
Habitat known to be used by a species under river as to its Federal endangered or threatened status	
State designated areas for the protection or maintenance of aquatic life (coastal, estuarine, or freshwater area) [7]	
Coastal Barrier (partially developed)	
Federal designated Scenic or Wild River	
State land designated for wildlife or game management	25
State designated Scenic or Wild River	
State designated Natural Areas	
Particular areas, relatively small in size, important to the maintenance of unique biotic communities (e.g., prairie pot holes, buffalo wallows, alligator holes, desert springs)	

[1] Areas identified in State Coastal Zone Management plans as requiring protection because of their ecological value.

[2] National Estuary Program study areas (subareas within estuaries) that are identified in Comprehensive Conservation and Management Plans as requiring protection because they support critical life stages of key estuarine species (section 320 of the Clean Water Act as amended by Pub. L. 100–4). Near Coastal Waters (NCW) sensitive areas are those identified in plans developed under NCW special projects as requiring protection because they support key estuarine or marine coastal, living resources (Sections 104(b)(3), 304(1), 319 and 320 of the Clean Water Act as amended by Pub. L. 100–4).

[3] Clean Lakes Program critical areas (subareas within lakes, or in some cases entire small lakes) that are identified by State Clean Lake Plans as critical habitat (section 314 of the Clean Water Act as amended by Pub. L. 100–4).

[4] Segments of navigable waters not attaining a state of water quality that will assure protection and propagation of a balanced population of shellfish, fish, and wildlife, due to toxic pollutants (section 304(1) of the Clean Water Act as amended by Pub. L. 100-4). This sensitive environment may be considered in evaluating a site only if a substance for which the water quality standard is not attained is deposited on the site.

[5] Use only for air pathway.

[6] Wetlands as defined in 40 CFR Section 230.3.

[7] Table I-1 of Attachment I to this Appendix A presents the State designations for ecological use (Section 305(a), Clean Water Act).

TABLE 2-19.—ALTERNATIVE SENSITIVE ENVIRONMENT RATING FACTORS

Elements of Natural Heritage Program[1]	Assigned value
Element with a national ranking of N1[2]	100
Element with a national ranking of N2	75
Element with a state ranking of S1	75
Element with a national ranking of N3	50
Element with a state ranking of S2	50
Element with a state ranking of S3	25

[1] Information for ranking each element (species, natural community, or another entity of conservation interest) and on the presence of each element along the pathway may be obtained from a Natural Heritage Data Center (The Nature Conservancy, 1987, "Natural Heritage Program Operations Manual," The Nature Conservancy, Arlington, VA; The Nature Conservancy, 1987, "Natural Heritage Data Centers, 1987 Directory," The Nature Conservancy, Arlington, VA).

[2] The rankings are those determined under the Natural Heritage Program. Under that Program, the meaning of these rankings is as follows:

National Element Ranks:

N1=Critically imperiled nationally because of extreme rarity (5 or fewer occurrences nationally or very few remaining individuals or acres) or because of some factor(s) making it especially vulnerable to extirpation from the nation.

N2=Imperiled nationally because of rarity (6 to 20 occurrences nationally or few remaining individuals or acres) or because of some factor(s) making it very vulnerable to extirpation throughout the nation.

N3=Rare or uncommon nationally (on the order of 21 to 100 occurrences nationally).

State Element Ranks:

S1=Critically imperiled in state because of extreme rarity (5 or fewer occurrences in state or very few remaining individuals or acres) or because of some factor(s) making it especially vulnerable to extirpation from the state.

S2=Imperiled in state because of rarity (6 to 20 occurrences in state or few remaining individuals or acres) or because of some factor(s) making it very vulnerable to extirpation from the state.

S3=Rare or uncommon in state (on the order of 21 to 100 occurrences).

2.3.5 Calculation of targets category value.

Sum the MEI, population, land use, and sensitive environments factor values. Assign this sum as the targets value, subject to a maximum value of 235. Enter this value on Table 2-1.

2.4 Air migration pathway score calculation.

Multiply the values for the likelihood of release, waste characteristics, and targets and divide by 211,500. The resulting score is the air migration pathway score (S_a). Enter this score on Table 2-1.

3.0 Ground water migration pathway.

The ground water migration pathway addresses the relative risks, to the people and resources surrounding a site, that are associated with actual or threatened releases of hazardous substances from the sources on the site to an aquifer. Three factor categories are included in the ground water migration pathway:

- Likelihood of release (LR).
- Waste characteristics (WC).
- Targets (T).

Figure 3-1 indicates the factors included within each of these factor categories. The evaluation of the factors and factor categories is discussed in the following sections.

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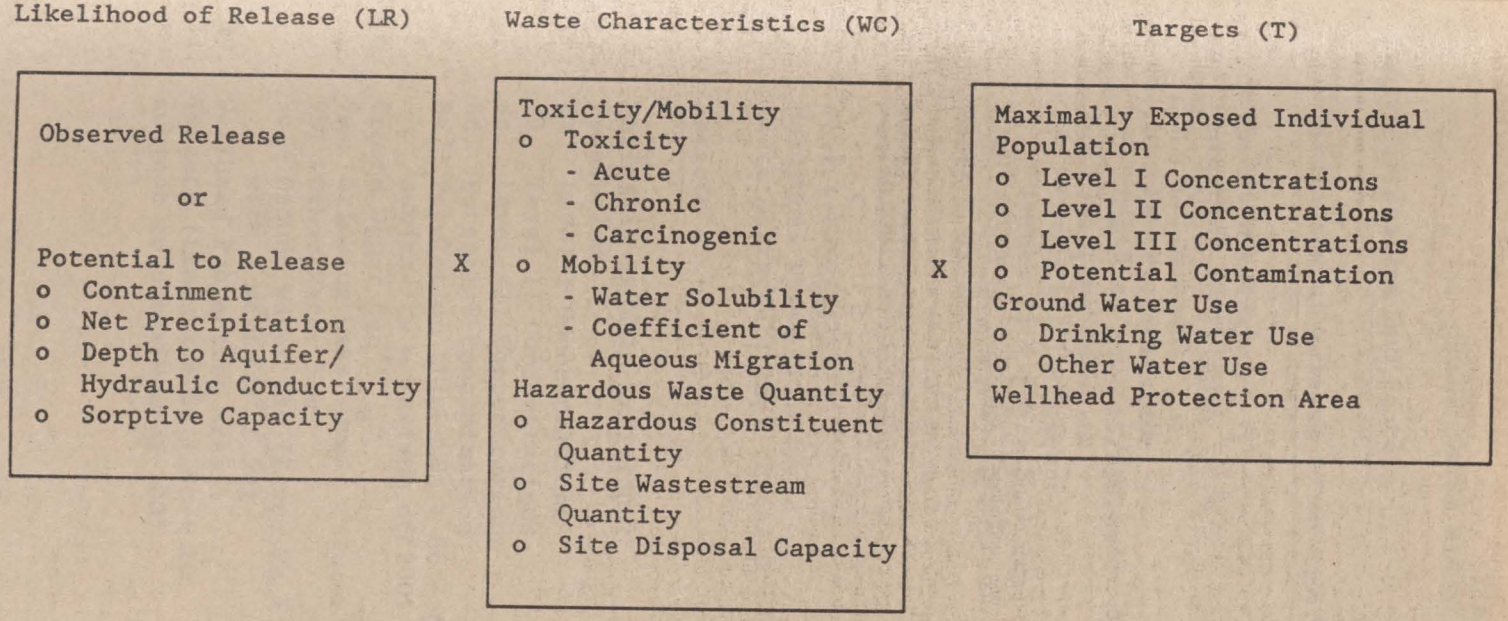

FIGURE 3-1
OVERVIEW OF GROUND WATER MIGRATION PATHWAY

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The ground water migration pathway score is calculated in terms of the factor category values as follows:

$$S_{gw} = \frac{LR \times WC \times T}{SF}$$

where S_{gw} is the ground water migration pathway score and SF is a scaling factor used to normalize the score to a scale of 0 to 100. This calculation procedure is outlined in Table 3–1.

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TABLE 3-1
GROUND WATER MIGRATION PATHWAY SCORESHEET

Factor Categories and Factors	Maximum Value	Value Assigned	
Likelihood of Release to an Aquifer			
1. Observed Release	500	____	
2. Potential to Release			
2a. Containment	10	____	
2b. Net Precipitation	10	____	
2c. Depth to Aquifer/Hydraulic Conductivity	35	____	
2d. Sorptive Capacity	5	____	
2e. Potential to Release (Lines 2a x (2b + 2c + 2d))	500	____	
3. Likelihood of Release (Higher of Lines 1 or 2e)	500		____
Waste Characteristics			
4. Toxicity/Mobility	100	____	
5. Hazardous Waste Quantity	100	____	
6. Waste Characteristics (Lines 4 + 5)	200		____
Targets			
7. Maximally Exposed Individual	50	____	
8. Population			
8a. Level I Concentrations	200	____	
8b. Level II Concentrations	200	____	
8c. Level III Concentrations	200	____	
8d. Potential Contamination	200	____	
8e. Population (Lines 8a + 8b + 8c + 8d, subject to a maximum of 200)	200	____	
9. Ground Water Use			
9a. Drinking Water Use	50	____	
9b. Other Water Use	20	____	
9c. Ground Water Use (Lines 9a + 9b, with a maximum of 50)	50	____	
10. Wellhead Protection Area	50	____	
11. Targets (Lines 7 + 8e + 9c + 10, subject to a maximum of 200)	200		____

TABLE 3-1
GROUND WATER MIGRATION PATHWAY SCORESHEET (CONCLUDED)

	Maximum Value	Value Assigned
Ground Water Migration Score for an Aquifer		
12. Aquifer Score [(Lines 3 x 6 x 11)/2 x 10^5][1]	100	
Ground Water Migration Pathway Score		
13. Pathway Score (S_{gw}), (Highest value from Line 12 for all aquifers evaluated)[1]	100	

[1]These scores are not to be rounded to the nearest integer.

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A ground water migration pathway score is calculated for each aquifer. The score for an aquifer is calculated as the product of the factor category values for likelihood of release to the aquifer, waste characteristics, and targets for that aquifer. In calculating the targets factor category value for an aquifer, both the targets using water from that aquifer and the targets using water from all overlying aquifers must be used, except as noted below. The highest ground water migration pathway score that results for any aquifer is assigned as the ground water migration pathway score for the site. Figures 3–2 and 3–3 illustrate this procedure.

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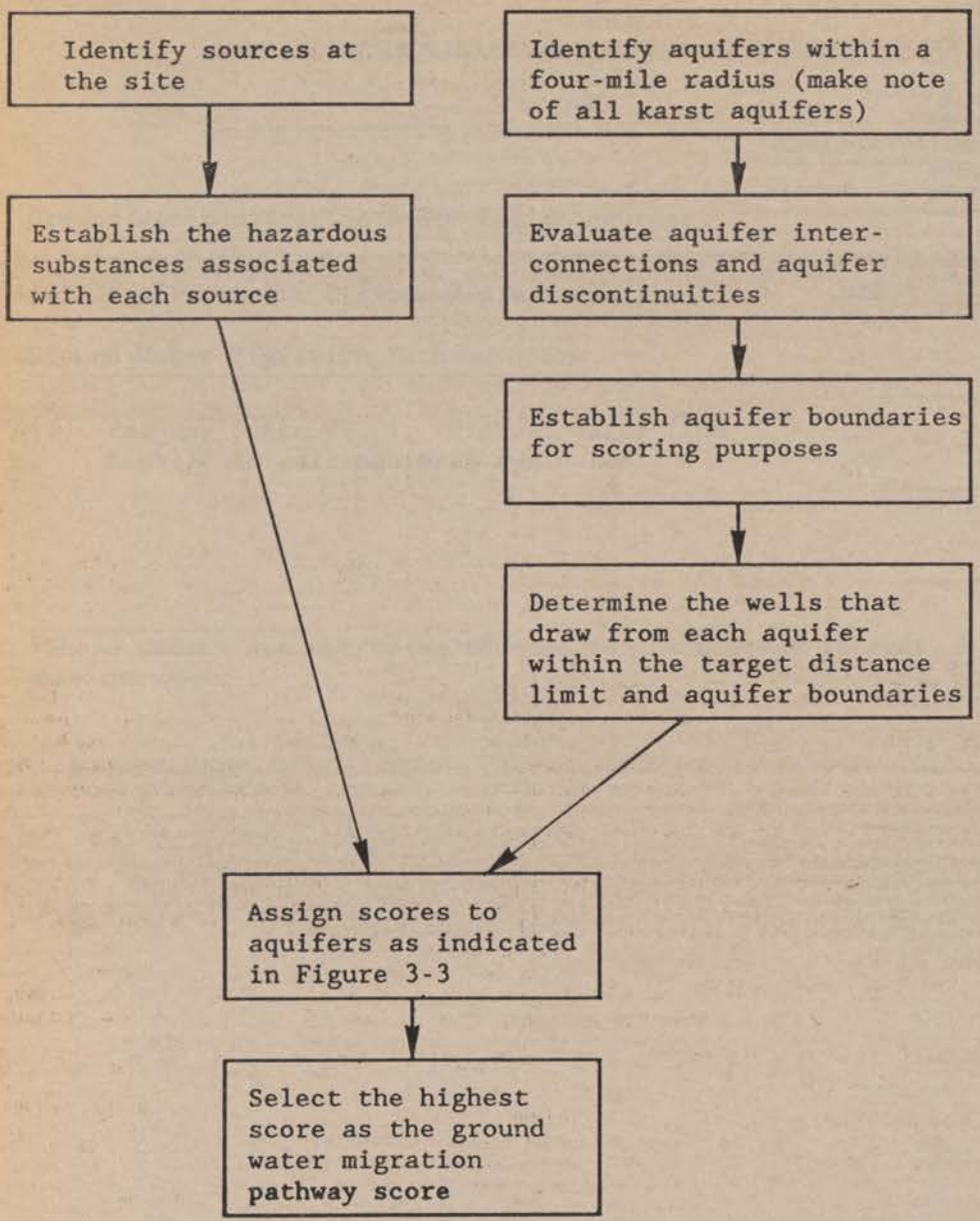
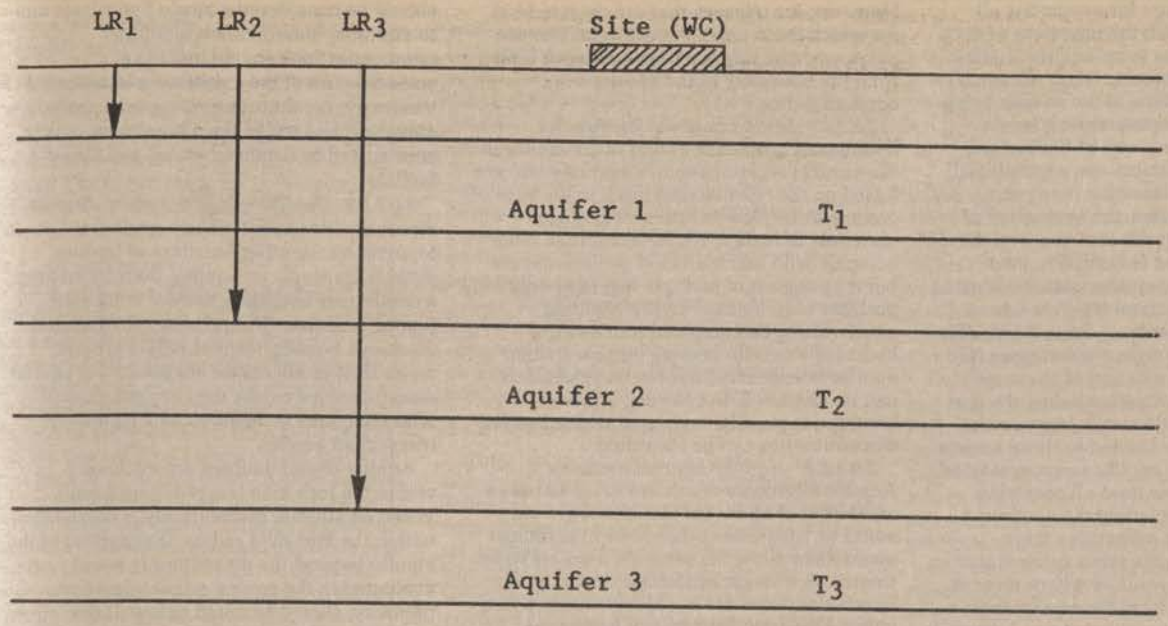


FIGURE 3-2
PROCEDURE FOR EVALUATING GROUND WATER MIGRATION PATHWAY



Aquifer 1 Score = $LR_1 \times WC \times T_1$

Aquifer 2 Score = $LR_2 \times WC \times (T_1$ and $T_2)$

Aquifer 3 Score = $LR_3 \times WC \times (T_1, T_2$, and $T_3)$

where

LR_i = Likelihood of Release Value for aquifers 1, 2, 3 . . . N

WC = Waste Characteristics Value

T_i = Targets for aquifers 1, 2, 3 . . . N

FIGURE 3-3
CALCULATION OF GROUND WATER MIGRATION SCORE FOR AN AQUIFER

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The above procedure for evaluating all targets associated with the migration of hazardous substances to an aquifer implies that harardous substances, when released, migrate from the surface to the aquifer being evaluated, through all intervening layers. Where there are no sources at the surface and hazardous substances were introduced directly into an aquifer without migrating through overlying layers, the evaluation of the targets for the aquifer that received the hazardous substances is limited to those using water from the aquifer, plus those using water from any additional aquifers where there is an observed release from the aquifer that received the hazardous substances (see section 3.1.1). The evaluation of the targets for each of the other aquifers below the one into which the hazardous substances were directly introduced is limited to those targets using water from the aquifer being evaluated, plus those using water from all overlying aquifers up to and including the one into which the hazardous substances were directly introduced, plus those using water from any additional aquifers where there is an observed release from the aquifer that received the hazardous substances. A ground water pathway migration score is not calculated for any aquifer above the one into which the hazardous substances were directly introduced unless there is an observed release in the aquifer.

Where there are sources at the surface and hazardous substances were also introduced directly into an aquifer, ground water migration scores are calculated as indicated in Figure 3–3 with the following differences. For an aquifer above the one into which the hazardous substances were directly introduced, the hazardous substances that were directly introduced in the lower aquifer must not be considered in calculating the ground water migration score for the upper aquifer unless there is an observed release of these substances from the lower aquifer to the upper aquifer. If there is such an observed release, then these hazardous substances must be considered in calculating the ground water migration score for the aquifers. For the aquifer into which the hazardous substances were introduced and for any aquifers below that aquifer, all hazardous substances (i.e., those in the sources at the surface and those directly introduced) must be considered in calculating the ground water migration score.

3.0.1 Definitions.

3.0.1.1 Ground water target distance limit. The target distance limit defines the maximum distance from a site over which targets are to be considered when evaluating the site. For calculating the ground water migration pathway score, use a target distance limit of our miles, except when aquifer discontinuities apply as noted in section 3.0.1.2.2. Furthermore, any well for which there is an observed release from the site (see section 3.1.1) is considered to lie within the target distance limit of the site, regardless of the well's distance from the site.

Measure the target distance limit from the areas of hazardous waste deposition at a site. These areas do not include the extent of hazardous substance migration at the site. However, for releases that are detected but for which the sources of contamination are unknown, measure the target distance limit from the boundary of the known contamination.

3.0.1.2 Aquifer boundaries. Aquifer boundaries define the extent of an aquifer in the vertical and horizontal directions and are based on the relative difference in the ease of ground water flow in adjacent geologic materials or layers. These boundaries often coincide with boundaries of geologic layers, but may consist of multiple layers or only portions of individual layers. Multiple aquifers may be combined into a single hydrologic unit for scoring purposes when aquifer interconnections for these aquifers can be identified. In contrast, aquifer boundaries must be restricted where aquifer discontinuities can be identified.

3.0.1.2.1 Aquifer interconnections. Aquifer interconnections are areas between aquifers that allow the transfer of ground water or hazardous substances in sufficient amounts to allow the separate aquifers to be treated as a single hydrologic unit. Aquifer interconnections are evaluated within a two-mile radius from the areas of hazardous waste deposition. Where aquifer interconnections can be identified within the two-mile radius, the aquifers with the interconnections may be combined for scoring purposes. If ground water contamination attributable to the site is observed to extend beyond two miles, then any locations within the observed limits of this contamination may also be used to evaluate aquifer interconnections. Where there are insufficient data to identify aquifer interconnections, the aquifers must be evaluated as separate aquifers. Aquifer interconnections can be identified as follows:

- Literature or well logs indicate that no lower relative hydraulic conductivity layer or confining layer separates the aquifers (i.e., a layer with a hydraulic conductivity that is lower by two or more orders of magnitude).
- Literature or well logs indicate that a lower relative hydraulic conductivity layer or a confining layer that separates the aquifers is not continuous throughout the two-mile radius (i.e., hydrogeologic interconnections between the aquifers are identified).
- Withdrawals of water from one aquifer (e.g., pumping tests, aquifer tests, well tests, etc.) affect water levels in another aquifer.
- Migration of constituents from one aquifer to another aquifer has been observed within the two-mile radius. (The mechanism of vertical migration does not have to be defined, and the constituents do not have to be attributed to the site being evaluated.)

In general, two or more layers may be considered a single hydrologic unit when any one of the above conditions are met. However, in conjunction with the above conditions, if conflicting information exists for a geologic setting, the most appropriate information should be used to establish aquifer boundaries. When evaluating a geologic setting, consider that all geologic materials transmit water to a certain degree; therefore, evidence of the leakage of water (not hazardous substances) through a layer of lower relative hydraulic conductivity does not, in itself, indicate that two aquifers should be considered a single hydrologic unit. In addition, identification of aquifer interconnections should include a consideration of the existence and extent of man-made conduits (e.g., composite wells, gravel-packed wells, open boreholes, poorly constructed or damaged wells) and major faults.

3.0.1.2.2 Aquifer discontinuities. Aquifer discontinuities result when a geologic, topographic, or other structure or feature entirely transects an aquifer, thereby creating a continuous boundary to flow within the four-mile radius. Ground water divides and discharge boundaries that reflect ground water flow gradients do not constitute aquifer discontinuities unless they are associated with structures or features which entirely transect an aquifer.

Aquifer discontinuities are evaluated within the four-mile target distance limit. When an aquifier discontinuity is established within the four-mile radius, that portion of the aquifer beyond the discontinuity is not evaluated in the ground water migration pathway, except as noted below. If the migration of hazardous substances across a discontinuity is observed within the four-mile radius, the presence of the discontinuity is not considered for scoring purposes. Where more than one aquifer can be combined into a single hydrologic unit for scoring purposes, an aquifer discontinuity must entirely transect the boundaries of the single hydrologic unit. In general, where an aquifer discontinuity can be present, that portion of the aquifer beyond the apparent discontinuity should be included in the ground water migration pathway evaluation unless definitive information indicates that the discontinuity does actually exist.

3.0.1.3 Karst aquifer. Karst aquifers are aquifers where the predominant water movement occurs through openings in the rock created by dissolution of the rock material. Karst aquifers are given special consideration in the evaluation of two of the potential to release factors (i.e., depth to aquifer/hydraulic conductivity and sorptive capacity) and two of the targets factor (i.e., maximally exposed individual and potential contamination). See sections 3.1.2 and 3.3.

The presence of karst aquifers is often indicated by the occurrence of karst terrains. The following description should be used to identify karst terrains:

Karst is a "terrain with distinctive characteristics of relief and drainage arising from a higher degree of rock solubility in natural waters." [3] The majority of karst occurs in limestones, but karst may also form in dolomite, gypsum, and salt deposits. Dissolution of the rock may occur along joints, bedding planes, or other openings. Continued dissolution results in the formation of conduits that allow for the rapid movement of ground water. Features associated with karst terrains include irregular topography, sinkholes, vertical shafts, abrupt ridges,

[3] Bloom, Arthur L., 1978. "Geomorphology—A Systematic Analysis of Cenozoic Landforms." Prentice-Hall, Inc.

caverns, an abundance of springs, and disappearing streams.[4]

3.1 Likelihood of release.

For an aquifer, the likelihood of release factor category reflects the likelihood of the site releasing hazardous substances to that aquifer. The factor category is evaluated in terms of an observed release factor and a potential to release factor.

3.1.1 Observed release.

An observed release to an aquifer is established whenever it can be demonstrated that a site has released a hazardous substance to the aquifer. This demonstration can be based on either direct observation of the release or indirect observation (i.e., the analysis of samples taken from the aquifer).

In the case of direct observation, material from the site must be known to have entered the aquifer through direct deposition or be seen entering the aquifer through migration. Further, available information must indicate that the material deposited in or observed entering the aquifer contained one or more hazardous substances. Such information should include an analysis of the hazardous substances contained in samples of the material or other similar documentation of the content of the material. Finally, in the case of migration, the available information must indicate that hazardous substances in the material have reached the aquifer. For the hazardous substances to be considered to have reached the aquifer, the samples of the migrating material must be taken near the observed point of entry of the material into the aquifer or the source of the released material must be near the observed point of entry.

In the case of indirect observation, the samples must indicate that a significant increase in ambient hazardous substance concentration has occurred relative to the background concentration for the site (as described below). Further, the available information must support the attribution of some portion of the increase to the site. Attribution can be based on sampling information such as the location of the sampling points or other source apportionment techniques.

A significant increase is determined by comparing aquifer samples, one of which must be a background sample. The background sample should be chosen to reflect, as completely as possible, the concentration of the hazardous substance in the aquifer exclusive of the contribution of any possible releases from the site. The concentration of a hazardous substance is considered to be significantly above background levels under the conditions presented in Table 2–2 of Section 2. See section 2.1.1 for the detection limits to be used in the evaluation.

If an observed release can be established for the aquifer, then assign the aquifer an observed release factor value of 500. If no observed release can be established, assign an observed release factor value of zero.

3.1.2 Potential to release.

Potential to release is evaluated if an observed release has not been established. Potential to release assesses the likelihood of hazardous substances migrating from a site to an aquifer. Four factors are evaluated under potential to release: containment, net precipitation, depth to aquifer/hydraulic conductivity, and sorptive capacity. For a site overlying karst terrain, any karst aquifer within the target distance limit is given special consideration in evaluating depth to aquifer/hydraulic conductivity and sorptive capacity, as discussed below.

3.1.2.1 Containment. Containment refers to the methods (either natural or engineered) that have been used either to restrict the release of hazardous substances from a source (e.g., landfill) to the subsurface or to prevent released substances from entering ground water. Table I–2 of Attachment I to this Appendix A presents the criteria for use in rating the containment of inactive sources for the ground water pathway.

For such containment systems as diking, berms, and run-on control and runoff management systems to be considered present for rating purposes, they must completely surround the source area unless they connect with other natural or engineered barriers that together completely surround the source area. For liners to be considered present for rating purposes, they must be continuous and must cover all earth surrounding the source likely to be in contact with the hazardous substances or leachate containing the hazardous substances.

Assign a containment value to each source at the site using Table I–2 of Attachment I to this Appendix A. The containment factor value for the site is the highest containment value assigned to any of the sources. Enter this value in Table 3–1.

3.1.2.2 Net precipitation. Net precipitation indicates the amount of water that is potentially available, on an annual basis, for infiltration to ground water. This, in turn, is a measure of the amount of water which is potentially available for infiltration to the aquifers underlying the site and for transporting hazardous substances from the site to ground water.

Determine annual net precipitation by summing the monthly net precipitation. Calculate the monthly net precipitation as the difference between monthly precipitation and monthly evapotranspiration. For months where evapotranspiration exceeds precipitation, assign the monthly net precipitation a value of zero.

Calculate net precipitation using local measured averages for precipitation and evapotranspiration. If local data are not available, use data from the nearest National Oceanographic and Atmospheric Administration weather station that is in a similar geographic setting. Data from the same time period must be used for both precipitation and evapotranspiration and must be of a sufficiently long period (20 years) to calculate a meaningful average. Where measured monthly evapotranspiration is not available, calculate monthly potential evapotranspiration as follows:[5]

$$e = 0.6\,F\,(10t/I)^{a}$$

where:

e = Monthly potential evapotranspiration (inches),

F = latitude adjusting factor for the month (adapted from Criddle [6]).

t = Mean monthly temperature (°C),

$a = 6.75\times10^{-7}I^{3} - 7.71\times10^{-5}I^{2} + 1.79\times10^{-2}I + .49239$, and

I = Sum of the twelve monthly heat indexes (i) where i (monthly heat index) $= (t/5)^{1.514}$

The latitude adjusting factor (F) for each month is assigned using Table 3–2. For latitudes lower than 50° North or 20° South that are not listed in the table, determine the latitude correction factor by interpolation.

TABLE 3–2.—LATITUDE ADJUSTING FACTOR FOR EACH MONTH FOR USE IN CALCULATING MONTHLY POTENTIAL EVAPOTRANSPIRATION [1]

	Month											
	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Northern Hemisphere:												
Latitude [2] (deg):												
>50	0.74	0.78	1.02	1.15	1.33	1.36	1.37	1.25	1.06	0.92	0.76	0.70
45	.80	.81	1.02	1.13	1.28	1.29	1.31	1.21	1.04	.94	.79	.75
40	.84	.83	1.03	1.11	1.24	1.25	1.27	1.18	1.04	.96	.83	.81
35	.87	.85	1.03	1.09	1.21	1.21	1.23	1.16	1.03	.97	.86	.85
30	.90	.87	1.03	1.08	1.18	1.17	1.20	1.14	1.03	.98	.89	.88

[4] United States Geological Survey, 1986. "Hydrologic Hazards in Karst Terrain," Open-file Report 85–677, United States Geological Survey, Reston, VA.

[5] Thornthwaite, C.W., 1948. "An Approach Toward a Rational Classification of Climate," Geographical Review 38:55–94. Equation has been modified to convert "e" from centimeters to inches.

[6] Criddle, W.D., 1958. "Methods of Computing Consumptive Use of Water," Proceedings of the American Society of Civil Engineers, Journal of the Division of Irrigation and Drainage, Vol. 84., No. IR1, pp. 1–27.

TABLE 3-2.—LATITUDE ADJUSTING FACTOR FOR EACH MONTH FOR USE IN CALCULATING MONTHLY POTENTIAL EVAPOTRANSPIRATION [1]—Continued

	Month											
	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
20	.95	.90	1.03	1.05	1.13	1.11	1.14	1.11	1.02	1.00	.93	.94
10	1.00	.91	1.03	1.03	1.08	1.06	1.08	1.07	1.02	1.02	.98	.99
0	1.04	.94	1.04	1.01	1.04	1.01	1.04	1.04	1.01	1.04	1.01	1.04
Southern Hemisphere:												
Latitude [3] (deg):												
0	1.04	.94	1.04	1.01	1.04	1.01	1.04	1.04	1.01	1.04	1.01	1.04
10	1.08	.97	1.05	.99	1.00	.96	1.00	1.02	1.00	1.06	1.05	1.09
20	1.14	.99	1.05	.97	.96	.91	.95	.99	1.00	1.08	1.09	1.15

[1] The latitude adjusting factor is not to be rounded to the nearest integer. The latitude adjusting factor for the Northern hemisphere is adapted from Criddle, W.D., 1958, "Methods of Computing Consumptive Use of Water," Proceedings of the American Society of Civil Engineers, Journal of the Division of Irrigation and Drainage, Vol. 84, No. IR1, pp. 1-27. The latitude adjusting factor for the Southern hemisphere is based on mean monthly daylight hours from "The Astronomical Almanac for the Year 1988," Nautical Almanac Office, U.S. Naval Observatory, 1987.
[2] For latitudes lower than 50° North that are not listed below, determine the latitude adjusting factor by interpolation.
[3] For latitudes lower than 20° South that are not listed below, determine the latitude adjusting factor by interpolation.

Once the annual net precipitation has been calculated, assign a factor value for net precipitation using Table 3-3. Enter this value in Table 3-1.

TABLE 3-3—NET PRECIPITATION FACTOR VALUES

Net Precipitation	Assigned value
0	0
Greater than 0 to 5 inches	1
Greater than 5 to 15 inches	3
Greater than 15 to 30 inches	6
Greater than 30 inches	10

Table I-3 of attachment I of this appendix illustrates the range of the net precipitation for each state as calculated using the above methodology.

3.1.2.3 Depth to aquifer/hydraulic conductivity. Depth to aquifer represents the distance that hazardous substances must travel to an aquifer while hydraulic conductivity represents the potential rate at which geologic materials can transmit ground water. Considered together, these two factors are an indicator of the relative travel time required for hazardous substances to reach an aquifer.

The depth to aquifer/hydraulic conductivity factor is evaluated by determining the depth to an aquifer and by calculating a thickness-weighted average hydraulic conductivity for that depth. In evaluating this factor at a location in karst terrain, the karst aquifer itself, but not other layers or aquifers, is assigned a thickness of zero feet. Depth to aquifer/hydraulic conductivity must be determined at locations within two miles of the areas of hazardous substance deposition, except when ground water contamination attributable to the site is observed to extend beyond two miles; then any locations within the observed limits of this contamination may also be used to evaluate depth to aquifer/hydraulic conductivity for those aquifers not determined to have an observed release. The rating values for depth to aquifer/hydraulic conductivity are given in Table 3-4.

TABLE 3-4—DEPTH TO AQUIFER/HYDRAULIC CONDUCTIVITY FACTOR VALUES

Thickness-weighted hydraulic conductivity (cm/sec)	Depth to aquifer (feet)							
	Greater than 0 to 12	Greater than 12 to 25	Greater than 25 to 50	Greater than 50 to 100	Greater than 100 to 200	Greater than 200 to 400	Greater than 400 to 800	Greater than 800
Greater than or equal to 10^{-3}	35	35	35	35	35	35	35	33
Less than 10^{-3} to 10^{-5}	35	32	30	29	27	26	24	22
Less than 10^{-5} to 10^{-7}	35	21	20	18	17	15	13	12
Less than 10^{-7}	35	10	9	7	6	4	3	1

3.1.2.3.1 Depth to aquifer. Depth to aquifer is measured from the lowest known point of hazardous substances at a site to the top of the aquifer being evaluated.

The distance from the surface to the lowest known point of hazardous substances at a site must be determined at a location where these substances are available to migrate to ground water (i.e., value for ground water containment value is greater than zero). This distance is to be determined from depth of hazardous substance disposal or from depth of hazardous substance migration (subject to the limitation noted in Section 3.0), whichever yields the least depth to the aquifer. For hazardous substances that have been buried, but for which the depth of burial is unknown, assume a deposition distance of six feet below the surface for evaluating only this factor. If any hazardous substances detected in a well is present at a concentration that establishes an observed release, then in evaluating aquifers not determined to have an observed release, the depth of migration below the surface is considered to be the uppermost point at which ground water is capable of entering that well (e.g., top of the well screen).

The distance from the surface to the top of an aquifer is measured to the highest seasonal level of the saturated zone of that aquifer. If this distance from the surface varies throughout an area, use the distance that most closely approximates conditions beneath the site.

Calculate the depth to an aquifer as the distance from the surface to the top of the aquifer minus the distance from the surface to the lowest known point of hazardous substances eligible to be evaluated for that aquifer.

3.1.2.3.2 Hydraulic conductivity. Hydraulic conductivity measures the ability of geologic materials to transmit water.

Evaluate hydraulic conductivity for the geologic materials that occur in the interval between the hazardous substances and the top of the aquifer being evaluated. Evaluate hydraulic conductivity as the thickness-weighted average hydraulic conductivity for all the geological materials that occur within this interval. Determine the thickness-weighted hydraulic conductivity only at those locations where the necessary geologic information (e.g., well logs, borings, stratigraphic columns) is available. Determine the thickness-weighted hydraulic conductivity as follows:

$$\text{Thickness-Weighted Hydraulic Conductivity} = \frac{\sum_{i=1}^{N} T_i}{\sum_{i=1}^{N} \frac{T_i}{HC_i}}$$

where:

T_i = Thickness for layers i = 1, 2, . . . N. (For any layer that is karst, its thickness is considered to be zero feet.)

HC_i = Hydraulic conductivity for layers i = 1, 2, . . . N.

N = Number of layers evaluated.

If, for the interval being evaluated, all layers are karst (and thus the sum of the layer thicknesses is zero), assign the depth to aquifer/hydraulic conductivity factor a value of 35 (the maximum value for this factor). Where the necessary subsurface geologic information is available at multiple locations, determine the thickness-weighted average at each location, and assign a value to each location using Table 3–4. Select the location that yields the highest value for depth to aquifer/hydraulic conductivity. Assign the value for this location as the depth to aquifer/hydraulic conductivity factor value for the aquifer. Enter this value in Table 3–1.

Hydraulic conductivities for individual layers may be determined by in-situ and laboratory tests or may be taken from Table 3–5. However, measured hydraulic conductivity values must be used for any layer where such measured values are available. When multiple measures of hydraulic conductivity are available from a single boring or location for a single layer, the average of the measured hydraulic conductivities should be used.

TABLE 3–5.—HYDRAULIC CONDUCTIVITY OF GEOLOGIC MATERIALS

Type of material	Assigned hydraulic conductivity
Clay; low permeability till (compact, unfractured till); shale; unfractured metamorphic and igneous rocks.	10^{-6} cm/sec.
Silt; loesses; silty clays; sediments that are predominantly silts; moderately permeable till (fine-grained, unconsolidated till, or compact till with some fractures); low permeability limestones and dolomites (no karst); low permeability sandstone; low permeability fractured igneous and metamorphic rocks.	10^{-5} cm/sec.
Sands; sandy silts; sediments that are predominately sand; highly permeable till (coarse-grained, unconsolidated or compact and highly fractured); peat; moderately permeable limestones and dolomites (no karst); moderately permeable sandstone; moderately permeable fractured igneous and metamorphic rocks.	10^{-4} cm/sec.
Gravel; clean sand; highly permeable fractured igneous and metamorphic rocks; permeable basalt; karst limestones and dolomites.	10^{-3} cm/sec.

In most cases, information from throughout the two-mile area (or the observed limits of contamination if greater) may be used to calculate the thickness-weighted hydraulic conductivity. However, if the aquifer being evaluated is not continuous throughout this area the thickness-weighted hydraulic conductivity may be determined only at those locations overlying and within the aquifer boundaries (see section 3.0.1.2). In addition, there may be instances where a low hydraulic conductivity layer is not continuous throughout this area but still completely separates the hazardous substances from the aquifer being evaluated (see Figure 3–4). In this instance, migration of hazardous substances from the site to the aquifer must occur through the low hydraulic conductivity layer even though it is not continuous throughout this area. When migration of hazardous substances from the site to an aquifer must occur across a low hydraulic conductivity layer, regardless of its extent, then the location used to determine the thickness-weighted hydraulic conductivity must include this layer.

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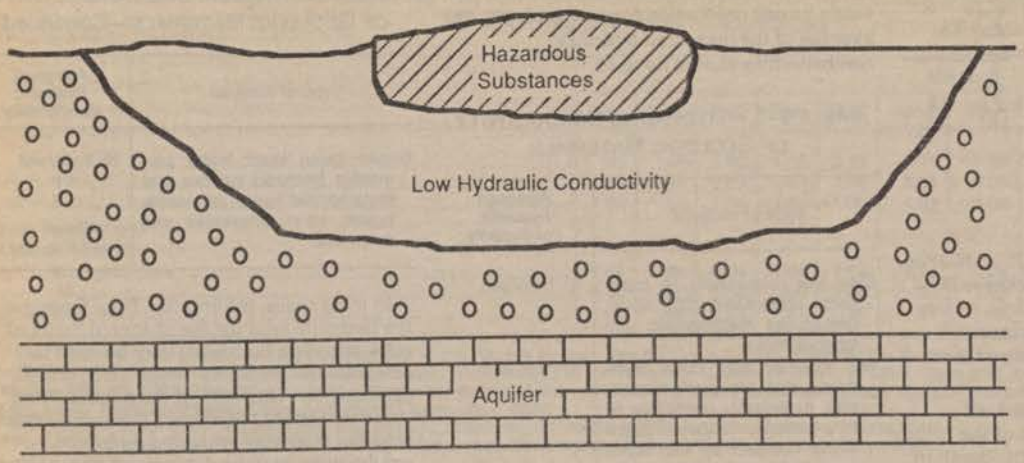

FIGURE 3-4
NONCONTINUOUS LOW HYDRAULIC CONDUCTIVITY
LAYER THAT COMPLETELY SURROUNDS SOURCE

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3.1.2.4 Sorptive capacity. Sorptive capacity reflects the potential for geologic materials to chemically sorb hazardous substances and thereby retard hazardous substance migration.

Sorptive capacity is evaluated for the geologic materials in the interval between the hazardous substances and the top of the aquifer being evaluated. (The depth of this interval is determined as discussed in Section 3.1.2.3.1.) Sorptive capacity is assessed based on the sorbent content of the geologic materials in this interval. Sorbent content is evaluated as the clay and organic carbon content of these geologic materials.

Evaluate sorbent content only at those locations where the necessary geologic information (e.g., well logs, borings, stratigraphic columns) is available. Evaluate sorbent content as follows:

$$\text{Sorbent Content} = \sum_{i=1}^{N} SC_i \cdot T_i / 100$$

where SC_i = Average sorbent content (percent clays plus percent organic carbon) for layers $i = 1, 2, \ldots N$.

T_i = Thickness for layers $i = 1, 2, \ldots N$. (For any layer that is karst, its thickness is considered to be zero feet.)

N = Number of layers evaluated.

The average sorbent content (average percent clays plus organic carbon) for individual layers may be measured or taken from Table 3–6. However, measured sorbent contents must be used for any layer where such measured data are available. Use Table 3–7 to assign a value to the sorptive capacity factor based on the calculated sorbent content of the entire interval evaluated. Where the necessary geologic information is available at multiple locations, calculate the sorbent content at each location, and use the location that yields the lowest sorbent content to assign a sorptive capacity factor value for the aquifer. Enter the value assigned in Table 3–1.

TABLE 3–6.—SORBENT CONTENT OF GEOLOGIC MATERIALS

Type of material	Average sorbent content (percent clays plus percent organic carbon)
Coal seams, peat, or organic-rich sediments[1]	77
Clays; silts; till; loesses; tar sands; sediments[1] that are predominantly clay or silt; claystones, mudstones, shales (including oil shales), or siltstones	64
Sands, sediments[1] that are predominantly sands, sandstones, or argillaceous limestones and dolomites	15
Limestones and dolomites, limey sediments[1] or, gravels	6
Clean sands, clean gravels, quartzite sandstones, or metamorphic and igneous rocks	3

[1] Sediments include unconsolidated materials such as soil.

TABLE 3–7.—SORPTIVE CAPACITY FACTOR VALUES

Sorbent Content	Assigned Value
Greater than 100	1
Greater than 10 to 100	3
0 to 10	5

Sorptive capacity must be evaluated at locations within two miles of the areas of hazardous substance deposition, except when ground water contamination attributable to the site is observed to extend beyond two miles; then any locations within the observed limits of the ground water contamination may also be used to evaluate sorptive capacity for those aquifers not determined to have an observed release. However, if the aquifer being evaluated is not continuous throughout this two-mile (or extended) area, sorptive capacity must be evaluated only at locations overlying and within the aquifer boundaries. Furthermore, if migration of hazardous substances from the site to an aquifer must occur across a highly sorptive layer that completely surrounds the site, but is not continuous throughout this area (see hydraulic conductivity example illustrated in Figure 3–4), the interval and location used to calculate sorbent content must include this layer. In addition, if the depth to an aquifer varies throughout an area, use a depth that most closely approximates conditions beneath the site.

3.1.2.5 Calculation of potential to release factor value. Sum the factor values for net preciptation, depth to aquifer/hydraulic conductivity, and sorptive capacity and multiply this sum by the factor value for containment. The resulting value is the value for the potential to release factor for the aquifer. Enter this value in Table 3–1.

3.1.3 Calculation of likelihood of release value.

If an observed release is established for an aquifer, assign the observed release factor value as the likelihood of release value for that aquifer. Otherwise, assign the potential to release factor value for that aquifer as the likelihood of release value. Enter the value assigned in Table 3–1.

3.2 Waste characteristics.

This factor category assesses waste characteristics that reflect the rate, duration, and relative toxicity of potential releases of hazardous substances from the site. Two factors are included: toxicity/mobility and waste quantity.

The hazardous substances at the site that are to be considered in the evaluation of waste characteristics are restricted to those that are available to migrate to ground water. Those hazardous substances available to migrate include hazardous substances establishing an observed release to ground water (subject to the limitation noted in section 3.0) as well as all hazardous substances found or documented to have been deposited at the site in a source that could be assigned a ground water containment factor value greater than zero. (See section 3.1.2.1 for descriptions of ground water containment factor values.) Also, hazardous substances whose location on a site cannot be determined but that could have been deposited in any source with a ground water containment factor value greater than zero are considered available to migrate to ground water. Hazardous substances whose location on the site cannot be determined shall be assumed to have been placed in all sources on the site, except those specific sources for which there is definitive information that indicates that the hazardous substances were not or cannot have been placed in the source.

3.2.1 Toxicity/mobility.

In determining the toxicity/mobility value, evaluate all hazardous substances that are available to migrate to ground water. For each such hazardous substance, assign a toxicity value and a mobility value as described below. The procedure for combining these values into a single toxicity/mobility value for each hazardous substance and for selecting the toxicity/mobility value for the ground water migration pathway is described in section 3.2.1.3.

3.2.1.1 Toxicity. Assign a toxicity value in the same manner as is discussed in Section 2.2.1.1 for each hazardous substance deposited at the site that is considered to be available to migrate to ground water.

3.2.1.2 Mobility. Mobility, a measure of the tendency of a hazardous substance to become mobile in the aqueous phase and to migrate to ground water, is evaluated for all hazardous substances at a site that are available to migrate to ground water.

For any hazardous substance that establishes an observed release to any of the aquifers underlying the site, regardless of the aquifer being evaluated, assign that hazardous substance the maximum mobility factor value of 3. For hazardous substances not establishing an observed release, assign the hazardous substance a mobility value according to Table 3–8 or 3–9, as described below.

Evaluate the mobility of hazardous substances based on water solubility except as noted below. Assign a mobility value to the hazardous substance using Table 3–8. (Water solubility is determined using the method specified in Lyman, Warren J., "Solubility in Water" in the "Handbook of Chemical Property Estimation Methods," Lyman, Warren J., William F. Reehl, and David H. Rosenblatt (authors) McGraw Hill Book Company, New York, New York, 1982.)

TABLE 3-8.—MOBILITY VALUES FOR ORGANIC SUBSTANCES AND FOR INORGANIC SUBSTANCES (OTHER THAN THOSE IN TABLE 3-9)

Water solubility range (mg/l)	Assigned mobility value
Less than or equal to 10	0
Greater than 10 to 100	1
Greater than 100 to 1,000	2
Greater than 1,000	3

For any cation or anion listed in Table 3-9, if the specific compound present at the site has not been identified for that cation or anion, evaluate its mobility based on the coefficient of aqueous migration. Assign a mobility value to such a cation or anion using Table 3-9. (Coefficient of aqueous migration is determined using the method specified in Perel'man, Aleksandr I., "Classification of the Epigenetic Processes Operating in the Supergene Zone," Chapter 9 in "Geochemistry of Epigenesis," Plenum Press, New York, NY, 1967.)

TABLE 3-9.—MOBILITY VALUES FOR CATIONS AND ANIONS

Cations and anions	Coefficient of aqueous migration (K)	Assigned mobility value
Aluminum, Chromium, Thallium, Thorium, Tin	Less than 0.1	1
Barium, Beryllium, Cobalt, Copper, Lead, Manganese, Nickel, Phosphorous	0.1 to 1.0	2
Antimony, Arsenic, Boron, Bromine, Cadmium, Fluorine, Iodine, Magnesium, Mercury, Molybdenum, Radium, Radon, Selenium, Silver, Uranium, Vanadium, Zinc	Greater than 1.0	3

3.2.1.3 Calculation of toxicity/mobility value. Based on the overall toxicity value and the mobility value, assign a toxicity/mobility value for each hazardous substance available to migrate to ground water using Table 3-10. Use the value for the hazardous substance with the highest toxicity/mobility value as the value for this factor for the ground water migration pathway. Enter this value in Table 3-1.

TABLE 3-10.—TOXICITY/MOBILITY VALUE

	Mobility value			
	0	1	2	3
Toxicity value:				
0	0	0	0	0
1	10	27	43	60
2	20	37	53	70
3	30	47	63	80
4	40	57	73	90
5	50	67	83	100

3.2.2 Hazardous waste quantity.

Assign a hazardous waste quantity factor value in the same manner as is discussed in section 2.2.2 for those wastes deposited at the site that are considered to be available to migrate to ground water. Enter this value in Table 3-1.

3.2.3 Calculation of waste characteristics value.

Sum the toxicity/mobility and hazardous waste quantity factor values. Assign this sum as the waste characteristics value. Enter this value in Table 3-1.

3.3 Targets.

The ground water targets factor category reflects the human population and resources potentially at risk from an actual or potential release of hazardous substances from the site to an aquifer. Four factors are evaluated for an aquifer: maximally exposed individual, population, ground water use, and wellhead protection area. These four factors are evaluated within the target distance limit defined in section 3.0.1.1 and the aquifer boundaries established according to section 3.0.1.2.

The targets to be considered in evaluating these four factors for an aquifer must include both those targets using water from the aquifer being evaluated and those using water from any overlying aquifers, with the following exceptions. Where there are no sources at the surface and hazardous substances were introduced directly into an aquifer without migrating through overlying layers, the only targets that are to be considered for the aquifer that received the hazardous substances are limited to those using water from that aquifer, plus those using water from any additional aquifers for which an observed release from the aquifer that received the hazardous substances can be established. In this case, when evaluating an aquifer below the one into which hazardous substances were directly introduced, the targets that are considered in evaluating the lower aquifer must include those using water from the aquifer being evaluated, plus those using water from all overlying aquifers up to and including the one into which the hazardous substances were directly introduced, plus those using water from any additional aquifers where there is an observed release from the aquifer into which the wastes were directly introduced.

3.3.1 Maximally exposed individual.

This factor reflects the risk to the maximally exposed individual (MEI). The factor is evaluated by measuring the distance from the areas of hazardous waste deposition at a site to the nearest drinking water well within the target distance limit. In determining the nearest well, consider both the wells used for drinking water that draw water from the aquifer being evaluated and the wells that draw water from overlying aquifers, except as noted in section 3.3. Do not consider standby wells in evaluating this factor unless the standby wells are used for supply at least once every year (i.e., annually). Select the nearest well. Assign the appropriate value from Table 3-11 to this nearest drinking water well. This is the value for the maximally exposed individual factor, except as noted below.

TABLE 3-11.—MEI FACTOR EVALUATION

Distance from areas of hazardous waste deposition (miles)	Assigned value
0 to ¼	50
Greater than ¼ to ½	44
Greater than ½ to1	22
Greater than 1 to 2	12
Greater than 2 to 3	7
Greater than 3 to 4	6
Greater than 4	0

If the concentrations of hazardous substances present in a sample (or comparable samples) from any drinking water well considered above (not just the nearest) are at levels that both establish an observed release and, either individually or collectively, exceed a health-based benchmark, then the maximally exposed individual factor is assigned a value of 50. Table 3-12 lists the criteria for determining the health-based benchmarks to be considered. The concentration of a single hazardous substance in a well is considered to be above a benchmark if its concentration detected in at least one sample establishes an observed release and exceeds the benchmark for that hazardous substance. In addition, if more than one hazardous substance is present in a sample (or comparable samples) taken from a well at concentrations that establish an observed release, but all such concentrations are at or below health-based benchmarks, then calculate for each such hazardous substance that establishes an observed release the percentage of its health-based benchmark at which it is present in the sample. (Do not round the calculated percentage to the nearest integer.) If any hazardous substance is present in more than one comparable sample, then use the highest concentration of that hazardous substance in the comparable samples in determining its percentage of the health-based benchmark at which it is present. If the sum of these percentages (without round-off) for these hazardous substances exceeds 100 percent, then the contamination is considered to be above the health-based benchmark for that well. Treat sets of samples that are not comparable separately, calculating sums for each such set. If at least one of these sums exceeds 100 percent, then the contamination is considered to be above the health-based benchmark for that well.

TABLE 3-12.—HEALTH-BASED BENCHMARKS FOR HAZARDOUS SUBSTANCES IN DRINKING WATER

Health-based benchmarks to be used in order of preference: [1]
Carcinogens [2]
• National Primary Drinking Water Regulations [maximum contaminant levels (MCLs)].
• Risk specific concentration corresponding to a 10-4 individual cancer risk.
Other Hazardous Substances [3]
• National Primary Drinking Water Regulations [maximum contaminant levels (MCLs)].
• Maximum contaminant level goals (MCLGs).

[1] If more than one of these benchmarks are specified for a hazardous substance, use the top one in the hierarchy in assigning a value to the factor. If none of these benchmarks are specified for a hazardous substance, that hazardous substance is not used in the comparison of concentrations to the benchmarks.

[2] Includes any hazardous substance with a carcinogen weight-of-evidence classification of A, B, or C (See section 2.2.1.1).

[3] Includes any hazardous substance that does not have a carcinogen weight-of-evidence classification of A, B, or C (See section 2.2.1.1).

Furthermore, if a karst aquifer is one of the aquifers being evaluated and the karst aquifer underlies any portion of the site, assign the MEI factor a value of 50 if there is any well drawing drinking water from the karst aquifer within the target distance limit. If the karst aquifer does not underlie any portion of the site, but there is a well drawing drinking water from the karst aquifer within the target distance limit, then determine the distance from the areas of hazardous waste deposition to the nearest point of the karst aquifer. Use that distance to assign an MEI value from Table 3-11.

Select the highest value assigned above. Use that value as the value for the MEI factor. Enter the value in Table 3-1.

3.3.2 Population.

This factor is an indicator of both the number of people at risk from exposure to hazardous substances in drinking water and the value of the ground water supply. The population count should include persons served by drinking water wells within the target distance limit defined in section 3.0.1.1. (Any wells with observed releases from the site are considered to be within the target distance limit regardless of their distance from the site, as indicated in section 3.0.1.1). For the aquifer being evaluated, include in the population count persons served by wells in the aquifer being evaluated and persons served by wells in overlying aquifers, except as noted in section 3.3. Include residents as well as others who would regularly use the water, such as students and workers. Exclude transient populations such as customers and travelers passing through the area in autos, buses, or trains. In determining the population served by a well, if the water from the well is blended with other water (e.g., water from other wells or surface water intakes), count the population regularly served by the entire blended system as the population served by the well. When a standby well is maintained on a regular basis so that ground water supplies can be withdrawn, treat the standby well as an active well and count the population served by the standby well.

Use exact population counts where possible. If actual residential population figures are not available, the population should be estimated by determining the number of residences and multiplying each residence by the most recent U.S. Census factor for the number of persons per residence for the county in which the residence is located.

The population factor is evaluated as described below from four additional factors: level I concentrations, level II concentrations, level III concentrations, and potential contamination. If there are no samples that establish an observed release for a point of withdrawal, evaluate the point of withdrawal using the potential contamination factor (see section 3.3.2.4). If there are one or more samples that establish an observed release for a point of withdrawal, evaluate that point of withdrawal using the level I, level II, or level III concentrations factor, as appropriate. The determination of which factor applies is made based on a comparison of the concentrations of those hazardous substances that establish an observed release with their health-based benchmarks. Table 3-12 lists the criteria for determining the health-based benchmarks to be considered. The concentrations are to be measured at the point of withdrawal and may be the concentration found in untreated water or the concentrations found in treated water where treatment has not contributed to the levels of the hazardous substances detected. Table 3-13 summarizes the criteria for determining which factor is applicable. The procedure for making the determination is presented below.

TABLE 3-13.—CRITERIA FOR DETERMINING LEVEL OF CONCENTRATION

Sum of percentages [1]	Level
Greater than 100	I
Less than or equal to 100 and greater than 0.1.	II
Less than or equal to 0.1	III
No applicable benchmarks	I or II

[1] This sum is the sum of the ratios of the concentrations to the health-based benchmarks, expressed as percentages, without rounding-off.

Consider only those samples and only those hazardous substances in a sample that establish an observed release. With the exceptions noted below, if one or more such hazardous substances are present in a sample (or comparable samples) taken from a point of withdrawal, then calculate for each such hazardous substance the percentage of its health-based benchmark at which it is present. If any hazardous substance is present in more than one comparable sample, then use the highest concentration of that hazardous substance in the comparable samples in determining the percentage of its health-based benchmark at which it is present. Sum these percentages, without rounding-off. Treat sets of samples that are not comparable separately, calculating separate sums for each such set. Use the highest calculated sum to determine which factor is applicable as follows.

If the highest sum exceeds 100 percent, then the contamination at the point of withdrawal is considered to meet the criteria for level I concentrations. Evaluate such points of withdrawal as described in section 3.3.2.1. If the highest sum is less than or equal to 100 but greater than 0.1, then the contamination at the point of withdrawal is considered to meet the criteria for level II concentrations. Evaluate such points of withdrawal as described in section 3.3.2.2. If the highest sum is less than or equal to 0.1, then the contamination at the point of withdrawal is considered to meet the criteria for level III concentrations. Evaluate such points of withdrawal as described in section 3.3.2.3.

The exception to the above procedure is that if one or more hazardous substances are present in a sample from the point of withdrawal at concentrations that establish an observed release and for which no benchmarks are available, then the contamination at the point of withdrawal is considered to meet the criteria for level II concentrations unless it can be demonstrated that the level I criteria are also met. If the level I criteria are met, they apply.

3.3.2.1 Level I concentrations. This factor represents the total number of people who are exposed to hazardous substances in drinking water at concentrations that both establish an observed release and, either individually or collectively, meet the level I criteria in Table 3-13.

Sum the number of people served by water from points of withdrawal meeting the level I criteria. This sum is the value to be assigned to this factor, subject to a maximum value of 200. Enter this value in Table 3-1.

3.3.2.2 Level II concentrations. This factor represents the total number of people who are exposed to hazardous substances in drinking water which are at concentrations, either individually or collectively, that establish an observed release and that do not meet the level I criteria, but that do meet the level II criteria. Populations counted under the level I concentrations factor are not included in this factor.

Sum the number of people served by water from points of withdrawal meeting the above criteria. This sum divided by 10 is the value for this factor, subject to a maximum value of 200. Enter this value in Table 3-1.

3.3.2.3 Level III concentrations. This factor represents the total number of people who are exposed to hazardous substances in drinking water that are at concentrations which establish an observed release, but that individually or collectively do not meet the level I or II criteria. Populations counted under the level I or level II concentrations factors are not included in this factor.

Sum the number of people served by water from points of withdrawal meeting the above criteria. This sum divided by 100 is the value for this factor, subject to a maximum value of 200. Enter this value in Table 3-1.

3.3.2.4 Potential contamination. This factor represents the population within the target distance limit that is potentially exposed to hazardous substances in ground

water. Thus, populations counted in the previous three population factors are not included.

Calculate the value for the potential contamination factor (PC) using the following equation, with a maximum value of 200:

$$PC = \frac{1}{100} \sum_{i=1}^{n} P_i D_i$$

where:

P_i = Population served by ground water from points of withdrawal within evaluation distance i.

D_i = Dilution weighting factor for evaluation distance i.

n = Number of evaluation distances.

The dilution weighting factors to be used are those presented in Table 3–14. The evaluation distances are the distance intervals in Table 3–14. Evaluate populations based on the locations of their water supply wells, not on the location of residences, work places, etc. Enter the value calculated in Table 3–1.

TABLE 3–14.—DILUTION WEIGHTING FACTORS FOR POTENTIALLY EXPOSED POPULATION

Distance from areas of hazardous waste deposition (miles)	Dilution Weighting Factor [3]	
	Karst Aquifer [1]	All Other Aquifers [2]
0 to ¼	1.00	1.00
Greater than ¼ to ½	0.62	0.62
Greater than ½ to 1	0.50	0.32
Greater than 1 to 2	0.50	0.18
Greater than 2 to 3	0.50	0.13
Greater than 3 to 4	0.50	0.08
Greater than 4	0	0

[1] Use this dilution weighting factor for populations drawing drinking water from a karst aquifer that underlies any portion of the site. If the karst aquifer does not underlie any portion of the site, assign the dilution weighting factor for populations drawing drinking water from the karst aquifer in the following manner. Determine the distance from the areas of hazardous waste deposition to the nearest point of the karst aquifer. Call that distance X. Determine the dilution weighting factor applicable to that distance from the "All Other Aquifers" portion of the above table. Call that dilution weighting factor D_x. The dilution weighting factors for the populations drawing drinking water from the karst aquifer are as follows:

Distance from areas of hazardous waste deposition (miles)	Dilution weighting factor [b]
X to X+¼ [a]	1.00 D_x
Greater than X+¼ to X+½ [a]	0.62 D_x
Greater than X+½ to target distance limit	0.5 D_x
Greater than target distance limit	0

[a] If the distance X+¼ or X+½ exceeds the target distance limit, assign a dilution weighting factor only within the target distance limit.

[b] If the dilution weighting factor calculated in this manner is lower than the dilution weighting factor that would be assigned at that distance for an aquifer that underlies the site and that is not a karst aquifer, then use the dilution weighting factor for "All Other Aquifers" instead of the calculated dilution weighting factor.

[2] Use this dilution weighting factor for populations drawing drinking water from "All Other Aquifers" (i.e., other than karst) that underlie any portion of the site. If the site is underlain by a karst aquifer that forms a single hydrologic unit with an aquifer that is not a karst aquifer and does not underlie any portion of the site, assign that latter aquifer a dilution weighting factor in the following manner. Determine the distance from the areas of hazardous waste deposition to the nearest point of the aquifer that is not a karst aquifer. Call that distance Y. Determine the dilution weighting factor applicable to that distance from the "Karst Aquifers" portion of the top table. Call that dilution weighting factor D_y. The dilution weighting factors for the populations drawing drinking water from the aquifer not in karst are as follows:

Distance from areas of hazardous waste deposition (miles)	Dilution weighting factor [d]
Y to Y+¼ [c]	1.00 D_y
Greater than Y+¼ to Y+½ [c]	0.62 D_y
Greater than Y+½ to Y+1 [c]	0.32 D_y
Greater than Y+1 to Y+2 [c]	0.18 D_y
Greater than Y+2 to Y+3 [c]	0.13 D_y
Greater than Y+3 to target distance limit	0.08 D_y
Greater than target distance limit	0

[c] If this distance exceeds the target distance limit, assign a dilution weighting factor only within the target distance limit.

[d] If the dilution weighting factor calculated in this manner is lower than the dilution weighting factor that would be applied at that distance for an aquifer that underlies the site and is not a karst aquifer, then use the dilution weighting factor for "All Other Aquifers" instead of the calculated dilution weighting factor.

[3] The dilution weighting factor is not to be rounded to the nearest integer.

3.3.2.5 Calculation of population factor value. Sum the factor values for level I concentrations, level II concentrations, level III concentrations, and potential contamination. Assign this sum as the population factor value for the aquifer, subject to a maximum value of 200. Enter this value in Table 3–1.

3.3.3 Ground water use.

Ground water use indicates the use and value of ground water supplies for the aquifer being evaluated and for overlying aquifers, except as noted in section 3.3. Two categories of ground water use are evaluated: drinking water use and other water use.

3.3.3.1 Drinking water use. Drinking water use is a measure of the use of ground water for direct human ingestion. Assess this use based on all wells within the target distance limit that draw from the aquifer being evaluated or from any overlying aquifers (except as noted in section 3.3). The drinking water use value for a well is the highest value that can be assigned to any drinking water use of that well. Assign a drinking water use value to the well from Table 3–15. If there are no drinking water wells within the target distance limit, assign a value from Table 3–15 to the target aquifer(s) based on their resource value for drinking water use.

TABLE 3–15.—DRINKING WATER USE—GROUND WATER

Type of use [1]	Assigned value
Public supply, no water from alternate unthreatened sources presently available	50
Private supply, no water from alternate un- threatened sources presently available	40
Public supply, water from alternate unthreatened sources presently available and meets minimum hookup requirements	30
Private supply, water from alternate unthreatened sources presently available and meets minimum hookup requirements	25
Standby well—used less than annually, but within past 10 years	20
Standby well—maintained but not used within past 10 years	10
Not used, but usable	10
Unusable (e.g., extremely saline aquifer as defined in the Safe Drinking Water Act)	0

[1] A well is defined as a public water supply if it is part of a system having at least 15 service connections or regularly serving at least 25 individuals. A well is defined as a private water supply, for HRS purposes, if it is part of a system that does not meet the definition of a public water supply. A standby well, if used for supply at least once every year (i.e., annually), is treated as if it is a public or private water supply and not as a standby well.

Alternate supplies must be capable of meeting current supply demands for extended periods of time and must not require extensive or unconventional treatment. For the aquifer being evaluated, an alternate supply is considered threatened if, within the ground water target distance limit, the alternate supply withdraws water from the aquifer being evaluated or from overlying aquifers (except as noted in section 3.3). An alternate supply is also considered threatened if water from the alternate supply is withdrawn from surface water within the target distance limit of the site under evaluation (see section 4.0.3), providing that a hazardous substance migration path (see section 4.0.1) can be defined for the watershed containing that surface water.

3.3.3.2 Other water use. Other water use is a measure of the use of ground water for agricultural, commercial and industrial purposes. Assess this use based on all wells drawing from the aquifer being evaluated and all wells drawing from any overlying aquifers (except as noted in section 3.3) that are within the target distance limit. The other water use value for a well is the highest value that can be assigned to any other water use for that well. Assign an other water use value to the well from Table 3–16.

TABLE 3–16.—OTHER WATER USE—GROUND WATER

Type of use	Assigned value
Used for irrigation (5 acre minimum) of commercial food crops or forage commercial crops	20

TABLE 3-16.—OTHER WATER USE—GROUND WATER—Continued

Type of use	Assigned value
Used for commercial livestock watering	20
Used for commercial food preparation	15
Commercial/industrial purposes other than drinking water	10
Not used for any of the above	0

3.3.3.3 Calculation of ground water use factor value. For all of the wells evaluated (or for the resource use), select the highest value assigned from section 3.3.3.1 and assign the drinking water use factor that value. Enter this value in Table 3–1. Similarly, for all of the wells evaluated (except the one used to assign the drinking water use factor value), select the highest value assigned from section 3.3.3.2 and assign the other water use factor that value.[7] Enter this value in Table 3–1. Sum the drinking water use factor value and the other water use factor value. Assign this sum as the value for the ground water use factor for the aquifer, subject to a maximum value of 50. Enter this value in Table 3–1.

3.3.4 Wellhead protection area.

Determine if either of the following criteria apply for the site:

- There is a source with a ground water containment factor value greater than zero that, either partially or fully, lies within or above a wellhead protection area designated according to Section 1428 of the Safe Drinking Water Act as amended.
- There is a ground water observed release from the site that, either partially or fully, lies within a wellhead protection area designated according to Section 1428 of the Safe Drinking Water Act as amended.

If neither criteria is met for the site, assign this factor a value of 0 for the aquifer being evaluated.

If either criteria is met, assign this factor a value as described below for the aquifer being evaluated. In assigning the factor value, consider the aquifer being evaluated and all overlying aquifers, except as noted in section 3.3. If, within the target distance limit, any of these aquifers are part of the wellhead protection area, assign this factor a value of 50 for the aquifer being evaluated. If, within the target distance limit, none of these aquifers are part of the wellhead protection area, assign this factor a value of 0 for the aquifer being evaluated. Enter the assigned value in Table 3–1.

3.3.5 Calculation of targets factor value.

Sum the MEI, population, ground water use, and wellhead protection area factor values. Assign this sum as the targets value for the aquifer, subject to a maximum value of 200. Enter this value in Table 3–1.

3.4 Ground water migration score for an aquifer.

For the aquifer being evaluated, multiply the values for the likelihood of release, waste characteristics, and targets and divide by 2×10^5. The resulting score is the ground water migration score for the aquifer. Enter this score in Table 3–1.

3.5 Ground water migration pathway score.

A ground water migration score for an aquifer should be calculated for each aquifer underlying a site, as appropriate. Select the highest ground water migration score for an aquifer and assign that score as the ground water migration pathway score (S_{gw}) for the site. Enter this score in Table 3–1.

4.0 Surface water migration pathway.

The surface water migration pathway addresses the relative risks, to the people, resources, and environment surrounding the site, that are associated with releases or threatened releases of hazardous substances from sources on a site to surface water. Four types of threats are evaluated: drinking water threat, human food chain threat, recreational threat, and environmental threat. Each of these threats is evaluated based on three factor categories: likelihood of release, waste characteristics, and targets.

Section 4.0 defines the surface water hazardous substance migration path, the surface water target distance limit, the HRS surface water categories, and the general procedure for calculating the surface water migration pathway score. Sections 4.1 through 4.4 describe the procedures for evaluating the four types of surface water threats.

4.0.1 Definition of the hazardous substance migration path for surface water.

The hazardous substance migration path includes both the overland segment and the in-water segment that hazardous substances would take as they migrate away from the site (Figure 4–1). The overland segment begins at a source and proceeds downgradient to the probable point of entry to surface water. The in-water segment of the hazardous substance migration path begins at this probable point of entry. For streams and rivers, it continues in the direction of the stream flow (including any tidal flows) for the distance established by the target distance limit (section 4.0.2). For lakes or the ocean, no flow direction is presumed and the target distance limit (section 4.0.2) is applied as an arc. If the in-water segment includes both rivers and lakes (or the ocean), the target distance limit then applies to both of their in-water segments combined (see Figure 4–2 for an example.)

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[7] Note that this procedure may be performed in the opposite order (i.e., assign the other water use factor value first) if it results in a higher value being assigned to the ground water use factor.

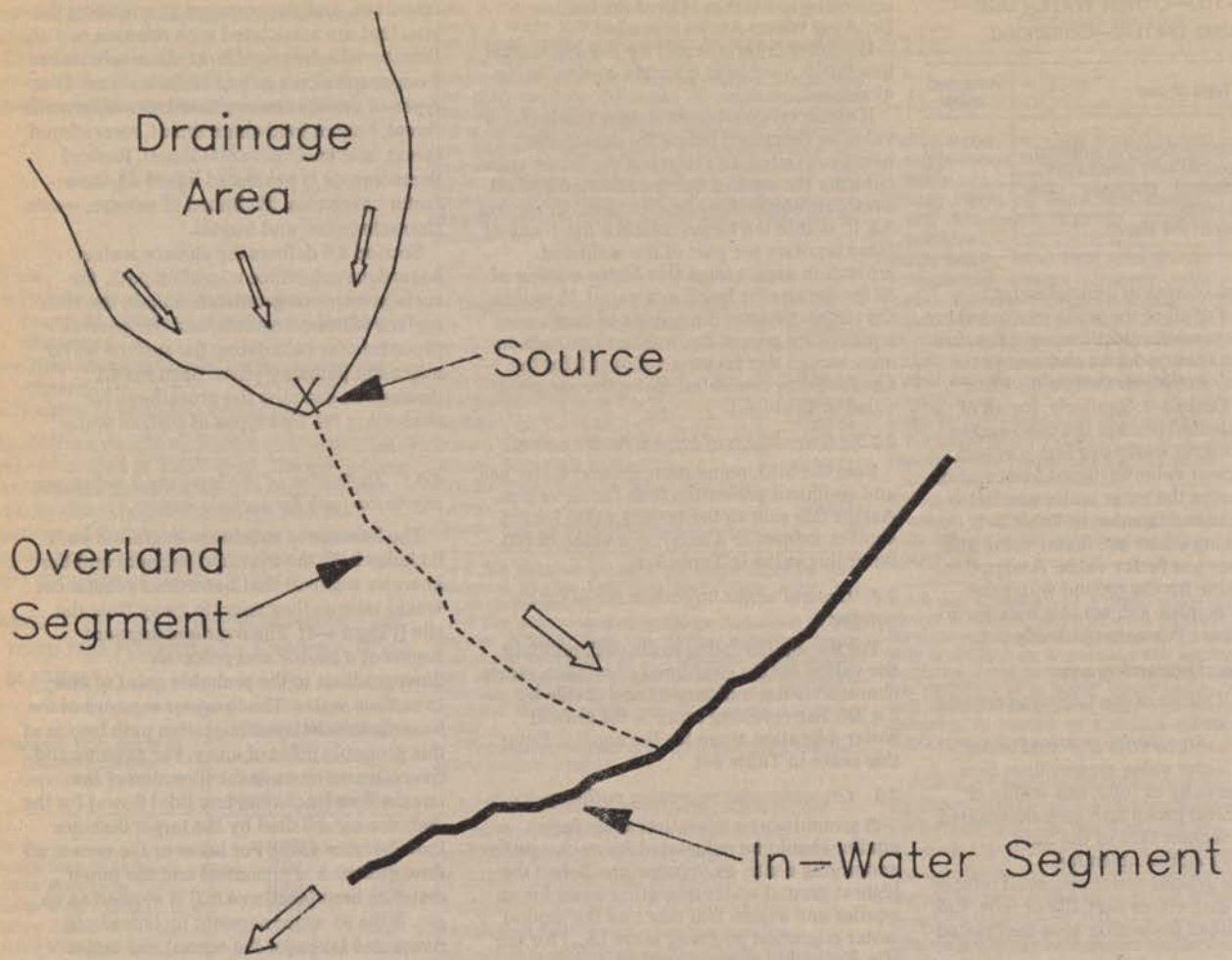

FIGURE 4-1
SURFACE WATER HAZARDOUS SUBSTANCE MIGRATION PATH

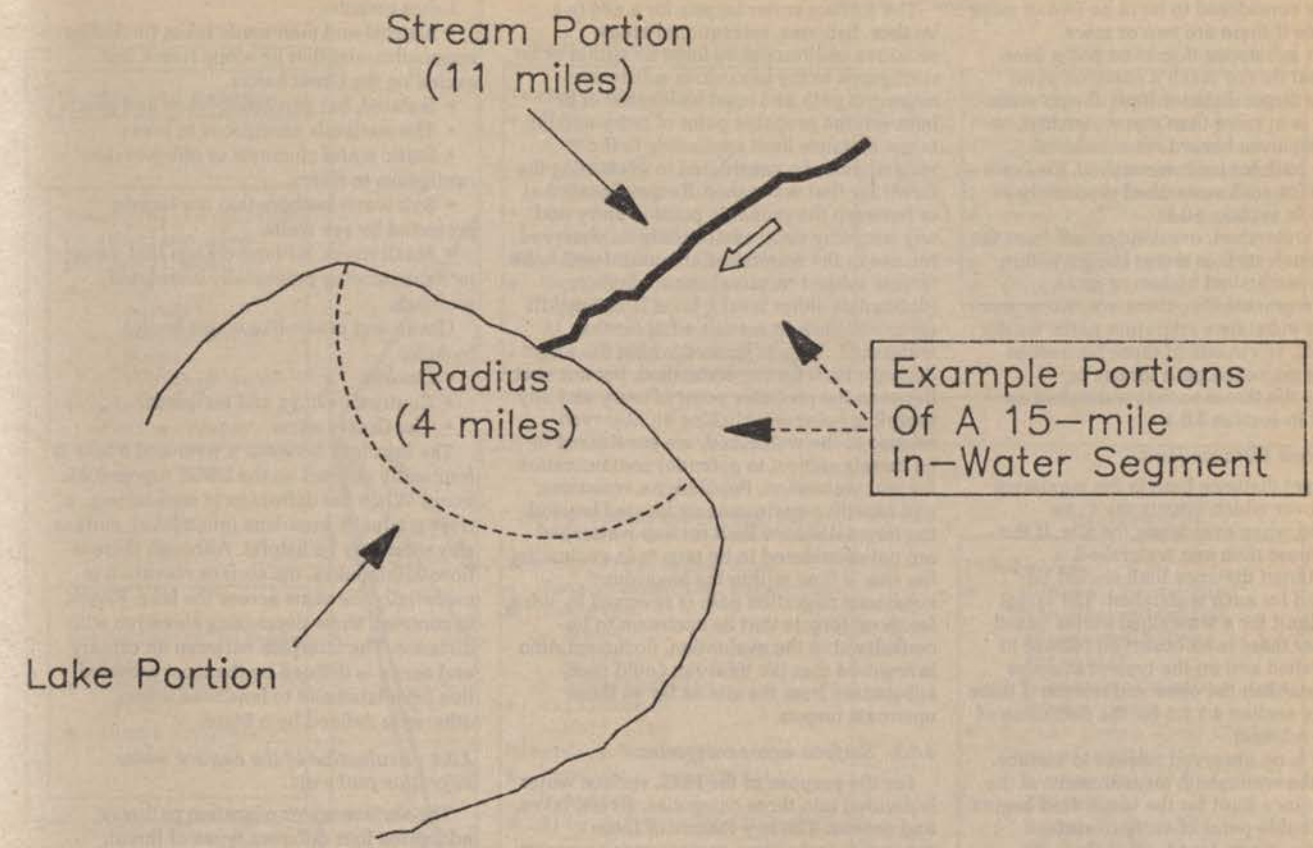

FIGURE 4-2
EXAMPLE OF THE IN-WATER SEGMENT OF A HAZARDOUS SUBSTANCE MIGRATION PATH

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A site is considered to be in on two or more watersheds if there are two or more hazardous substance migration paths from the site that do not reach a common point within the target distance limit downstream. If the site is in more than one watershed, define a separate hazardous substance migration path for each watershed. Evaluate the threat for each watershed separately as described in section 4.0.4.

If for a watershed, overland runoff from the site can reach surface water bodies within that same watershed by two or more overland segments (i.e., there are two or more hazardous substance migration paths for the watershed), select one of these hazardous substance migration path for use in evaluating the threat to that watershed as described in section 4.0.4.

4.0.2 Target distance limit.

The target distance limit is the maximum distance over which targets are to be considered when evaluating the site. If the site is in more than one watershed, a separate target distance limit should be determined for each watershed. The target distance limit for a watershed varies based on whether there is an observed release to the watershed and on the type of samples used to establish the observed release if there is one (see section 4.1.1.1 for the definition of observed release).

If there is no observed release to surface water in the watershed, measurement of the target distance limit for the watershed begins at the probable point of entry to surface water and extends for 15 miles along the water from the point. If there is an observed release to the watershed that is based on aqueous or benthic samples, measurement of the target distance limit for the watershed begins at the probable point of entry; the target distance limit extends either for 15 miles along the water or to the most distant sample point indicating an observed release to that watershed, whichever is greater. If there is an observed release based on sediment samples, the target distance limit for the watershed extends to a distance of 15 miles along the water beyond the most distant sediment sample indicating an observed release to the watershed.

The surface water targets for a site (e.g., intakes, fisheries, recreational areas, sensitive environments) must lie within or be contiguous to the hazardous substance migration path and must be located at or between the probable point of entry and the target distance limit applicable to the watershed to be considered in evaluating the threat for that watershed. Targets located at or between the probable point of entry and any sampling point establishing an observed release to the watershed are considered to be targets subject to actual contamination (defined as either level I, level II, or level III concentrations in section 4.1.3) for that watershed. Targets located within the target distance limit for the watershed, but not at or between the probable point of entry and any sampling point establishing an observed release to the watershed, are considered to be targets subject to potential contamination for that watershed. Populations, resources, and sensitive environments located beyond the target distance limit for any watershed are not considered to be targets in evaluating the site. If flow within the hazardous substance migration path is reversed by tides, for those targets that lie upstream to be considered in the evaluation, documentation is required that the tidal run could carry substances from the site as far as those upstream targets.

4.0.3 Surface water categories.

For the purpose of the HRS, surface water is divided into three categories: rivers, lakes, and oceans. The key feature of these categories is the time necessary to transport hazardous substances over the target distance limit.

For HRS purposes, rivers include:

- Perennially flowing waters from the point of origin to the ocean (including estuaries) and the wetlands contiguous to these flowing waters.
- The aboveground portion of disappearing rivers.
- Man-made ditches only insofar as they perennially flow into other surface water.
- Intermittent streams and contiguous intermittent ditches only in those arid or semi-arid areas with less than 20 inches of mean annual precipitation.

Lakes include:

- Natural and man-made lakes (including impoundments) that lie along rivers, but excluding the Great Lakes.
- Isolated, but perennial, lakes and ponds.
- The wetlands contiguous to lakes.
- Static water channels or oxbow lakes contiguous to rivers.
- Salt water harbors that are largely protected by sea walls.
- Small rivers, without diking, that merge into surrounding perennially inundated wetlands.

Ocean and ocean-like water bodies include:

- Oceans.
- Contiguous bays and wetlands.
- The Great Lakes.

The interface between a river and a lake is frequently defined on the USGS topographic maps. When the definition is unclear (e.g., a river gradually broadens into a lake), surface elevation may be helpful. Although there is flow within lakes, the surface elevation is essentially the same across the lake. Rivers, in contrast, show decreasing elevation with distance. The interface between an estuary and ocean is defined by the most seaward line from landhead to landhead unless otherwise defined by a State.

4.0.4 Evaluation of the surface water migration pathway.

The surface water migration pathway addresses four different types of threat: drinking water threat, human food chain threat, recreational threat and environmental threat. Each of these threats are evaluated for each watershed based on the following three factor categories:

- Likelihood of Release (LR).
- Waste Characteristics (WC).
- Targets (T).

Figure 4–3 indicates the factors included within each of the factor categories for each type of threat. The evaluation of the factors, factor categories, and threats is discussed in the following sections.

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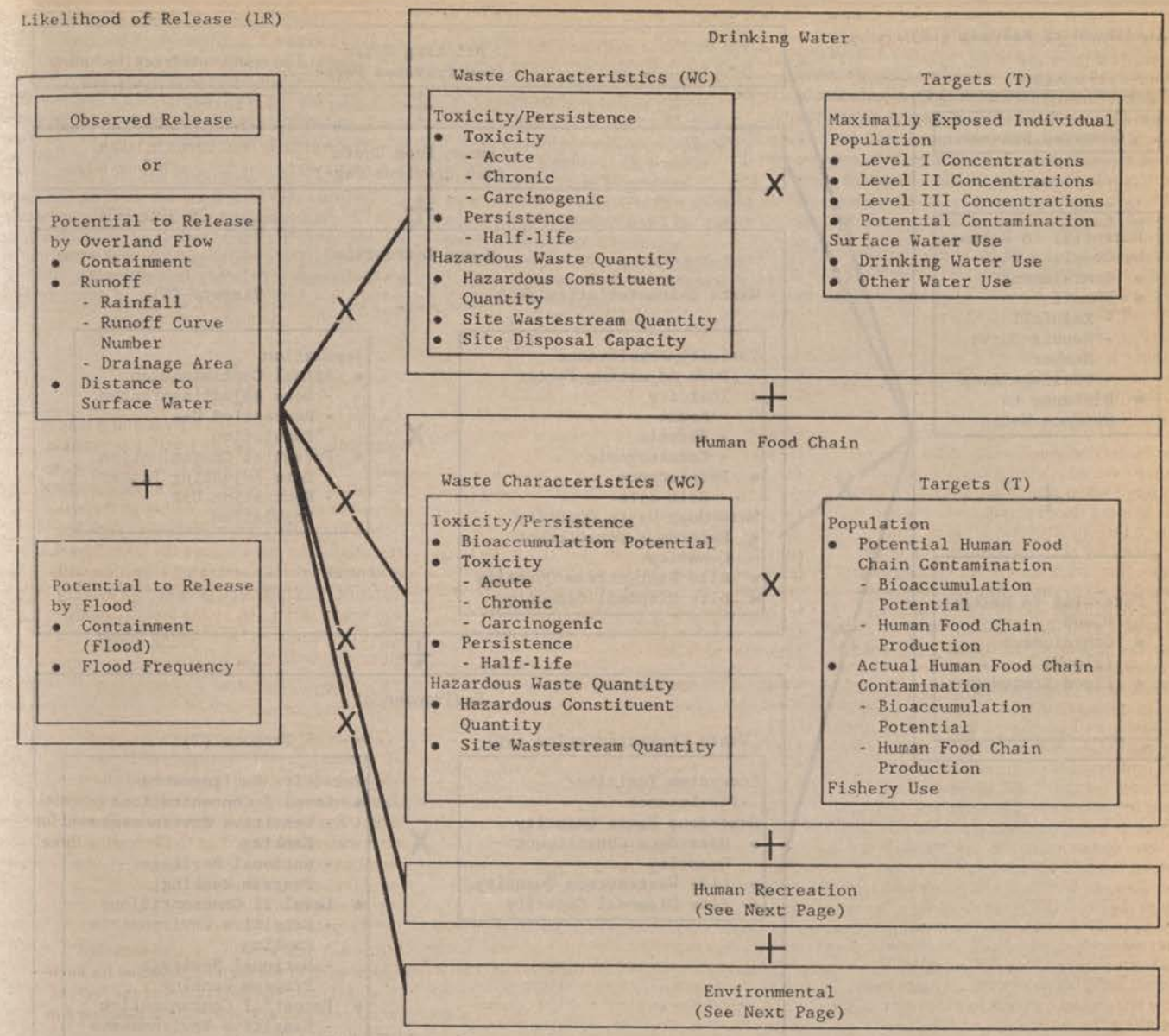

FIGURE 4-3
OVERVIEW OF SURFACE WATER MIGRATION PATHWAY

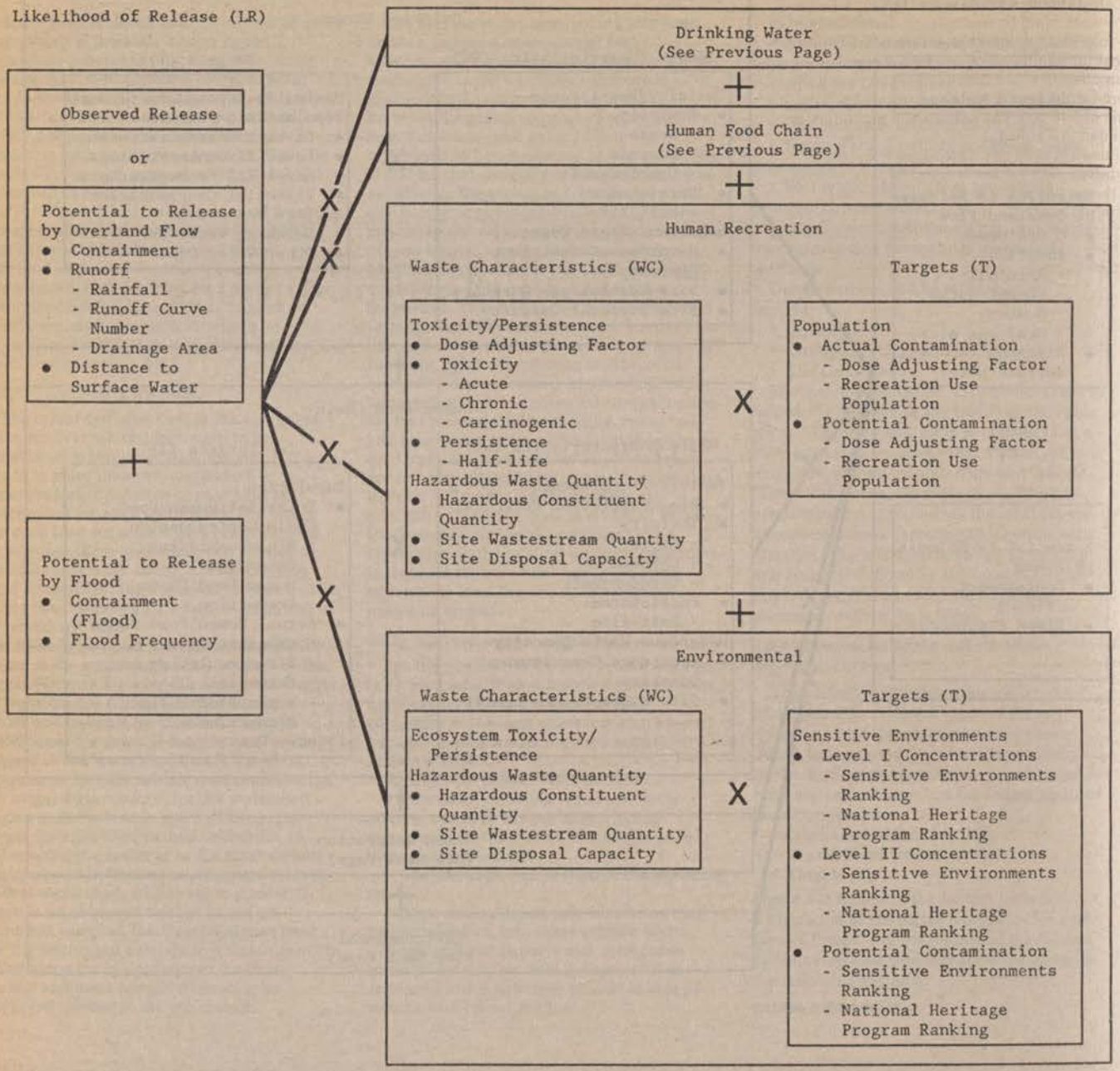

FIGURE 4-3
OVERVIEW OF SURFACE WATER MIGRATION PATHWAY
(Concluded)

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Calculate the surface water migration score for a watershed by multiplying, for each of the four threats, the values assigned to that threat for likelihood of release, waste characteristics and targets. Sum the resultant score for the four threats and normalize to a scale of 0 to 100. The calculation procedure is outlined in Table 4–1.

If there is only one hazardous substance migration path for the watershed (see section 4.0.1), use this score as the surface water migration score for the watershed. If there are two or more hazardous substance migration paths for the watershed, calculate a separate surface water migration score for each hazardous substance migration path for the watershed. For this calculation, include in the evaluation of waste characteristics for each of the hazardous substance migration paths, all those hazardous substances that are available to migrate (see section 4.1.2) along any of these hazardous substance migration paths. Select the highest surface water migration score for these hazardous substance migration paths. Use this score as the surface water migration score for the watershed. If the site is in only one watershed, use the surface water migration score for that watershed as the surface water migration score for the site.

If the site is in more than one watershed, calculate a separate surface water migration score for each watershed, using the likelihood of release, waste characteristics, and targets applicable to each watershed. Use a separate Table 4–1 to record the evaluation of each watershed. Sum the surface water migration score for each watershed. This sum is the surface water migration pathway score for the site, subject to a maximum score of 100. Enter this score on Table 4–1.

Figure 4–4 illustrates this process.

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TABLE 4-1
SURFACE WATER MIGRATION PATHWAY SCORESHEET

Factor Categories and Factors	Maximum Value	Value Assigned	
DRINKING WATER THREAT			
Likelihood of Release			
1. Observed Release	120		
2. Potential to Release by Overland Flow			
2a. Containment	10		
2b. Runoff	6		
2c. Distance to Surface Water	6		
2d. Potential to Release by Overland Flow (Lines 2a x (2b + 2c))	120		
3. Potential to Release by Flood			
3a. Containment (Flood)	10		
3b. Flood Frequency	12		
3c. Potential to Release by Flood (Lines 3a x 3b)	120		
4. Potential to Release (Lines 2d + 3c, subject to a maximum of 120)	120		
5. Likelihood of Release (Higher of Lines 1 or 4)	120		
Waste Characteristics			
6. Toxicity/Persistence	100		
7. Hazardous Waste Quantity	100		
8. Waste Characteristics (Lines 6 + 7)	200		
Targets			
9. Maximally Exposed Individual	50		
10. Population			
10a. Level I Concentrations	200		
10b. Level II Concentrations	200		
10c. Level III Concentrations	200		
10d. Potential Contamination	200		
10e. Population (Lines 10a + 10b + 10c + 10d, subject to a maximum of 200)	200		

TABLE 4-1
SURFACE WATER MIGRATION PATHWAY SCORESHEET (Continued)

Factor Categories and Factors	Maximum Value	Value Assigned
DRINKING WATER THREAT (Concluded)		
Targets (Concluded)		
11. Surface Water Use		
11a. Drinking Water Use	50	____
11b. Other Water Use	20	____
11c. Surface Water Use (Lines 11a + 11b)	50	____
12. Targets (Lines 9 + 10e + 11c, subject to a maximum of 200)	200	____
Drinking Water Threat Score		
13. Drinking Water Threat (Lines 5 x 8 x 12)	4.8×10^6	____
HUMAN FOOD CHAIN THREAT		
Likelihood of Release		
14. Likelihood of Release (Same Value as Line 5)	120	____
Waste Characteristics		
15. Toxicity/Persistence	100	____
16. Hazardous Waste Quantity	100	____
17. Waste Characteristics (Lines 15 + 16)	200	____

TABLE 4-1
SURFACE WATER MIGRATION PATHWAY SCORESHEET (Continued)

Factor Categories and Factors	Maximum Value	Value Assigned	
HUMAN FOOD CHAIN THREAT (Concluded)			
Targets			
18. Population			
18a. Potential Human Food Chain Contamination	200	____	
18b. Actual Human Food Chain Contamination	200	____	
18c. Population (Lines 18a + 18b, subject to a maximum of 200)	200	____	
19. Fishery Use	50	____	
20. Targets (Lines 18c + 19, subject to a maximum of 200)	200		____
Human Food Chain Threat Score			
21. Human Food Chain Threat (Lines 14 x 17 x 20)	4.8×10^6		____
HUMAN RECREATION THREAT			
Likelihood of Release			
22. Likelihood of Release (Same value as Line 5)	120		____
Waste Characteristics			
23. Toxicity/Persistence	100	____	
24. Hazardous Waste Quantity	100	____	
25. Waste Characteristics (Lines 23 + 24)	200		____

TABLE 4-1
SURFACE WATER MIGRATION PATHWAY SCORESHEET (Continued)

Factor Categories and Factors	Maximum Value	Value Assigned	
HUMAN RECREATION THREAT (Concluded)			
Targets			
26. Population			
26a. Actual Contamination (Highest value assigned to any recreation area, subject to a maximum of 200)	200	____	
26b. Potential Contamination (Highest value assigned to any recreation area, subject to a maximum of 200)	200	____	
26c. Population (Higher of values on Lines 26a or 26b)	200	____	
27. Targets (Value from Line 26c)	200		____
Human Recreation Threat Score			
28. Human Recreation Threat (Lines 22 x 25 x 27)	4.8×10^6		____
ENVIRONMENTAL THREAT			
Likelihood of Release			
29. Likelihood of Release (Same Value as Line 5)	120		____
Waste Characteristics			
30. Ecosystem Toxicity/Persistence	100	____	
31. Hazardous Waste Quantity	100	____	
32. Waste Characteristics (Lines 30 + 31)	200		____

TABLE 4-1
SURFACE WATER MIGRATION PATHWAY SCORESHEET (Concluded)

Factor Categories and Factors	Maximum Value	Value Assigned
ENVIRONMENTAL THREAT (Concluded)		
Targets		
33. Sensitive Environments		
33a. Level I Concentrations	120	____
33b. Level II Concentrations	120	____
33c. Potential Contamination	120	____
33d. Sensitive Environments (Lines 33a + 33b + 33c, subject to a maximum of 120)	120	____
34. Targets (Value from Line 33)	120	____
Environmental Threat Score		
35. Environmental Threat (Lines 29 x 32 x 34)	2.88×10^6	____
SURFACE WATER MIGRATION PATHWAY SCORE FOR A WATERSHED		
36. Watershed Score[1] [(Lines 13 + 21 + 28 + 35)/48,000, subject to a maximum of 100]	100	____
SURFACE WATER MIGRATION PATHWAY SCORE		
37. Pathway Score (S_{sw})[1] (Sum of scores from Line 36 for all watersheds evaluated, subject to a maximum of 100)	100	____

[1]These scores are not to be rounded to the nearest integer.

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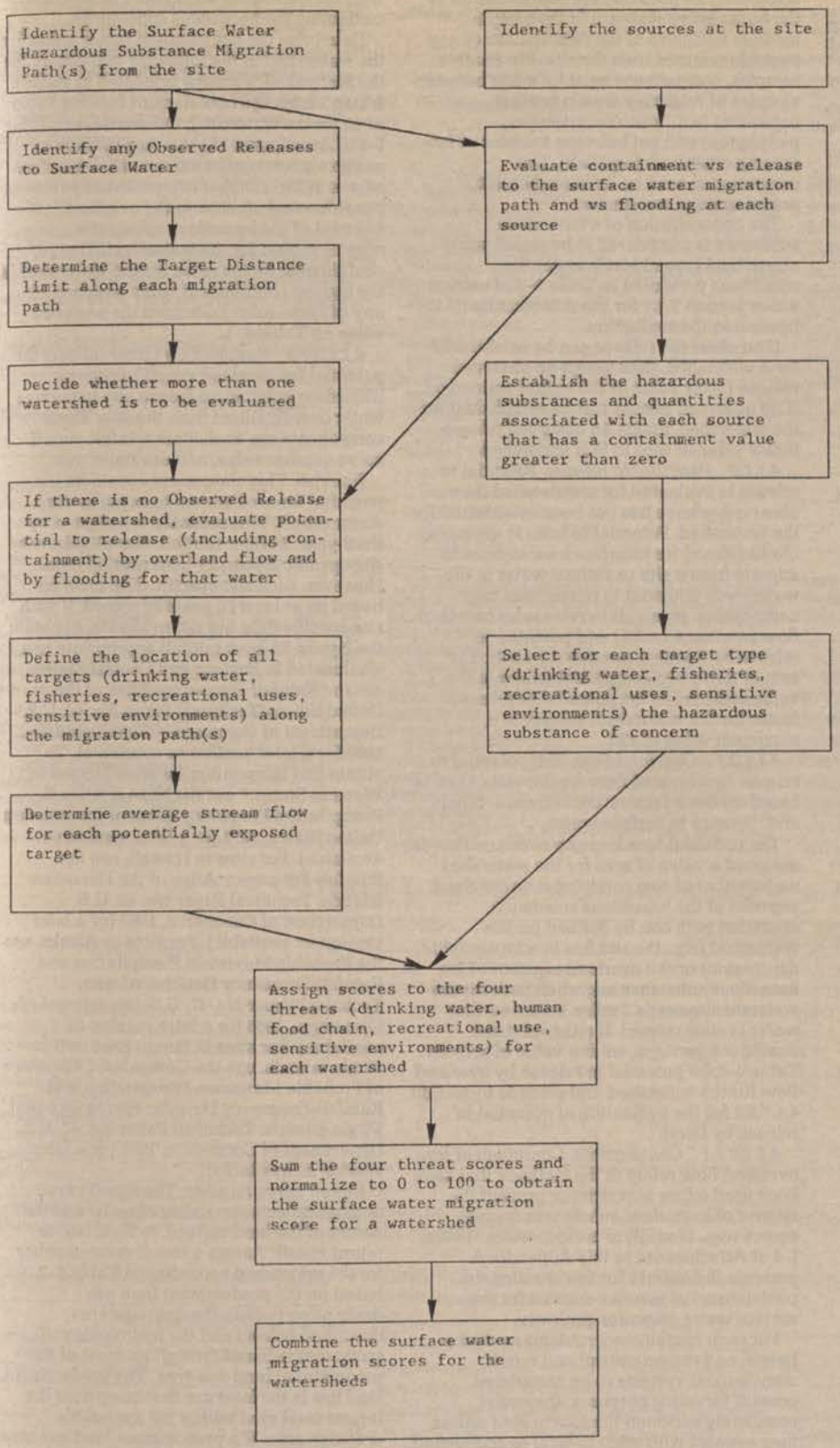

FIGURE 4-4
PROCEDURE FOR EVALUATING THE SURFACE WATER MIGRATION PATHWAY

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4.1 Drinking water threat.

The drinking water threat is used to evaluate the threat associated with the actual or potential release of hazardous substances from a site to drinking water resources. The drinking water threat score for each watershed is the product of the values for three factor categories: likelihood of release, waste characteristics and targets.

4.1.1 Drinking water threat likelihood of release.

The likelihood of release factor category reflects, for a watershed, the likelihood of a site releasing hazardous substances to the surface water in that watershed. The factor category is evaluated for each watershed in terms of an observed release factor and a potential to release factor.

4.1.1.1 Observed release. An observed release to surface water is established for a watershed whenever it can be demonstrated that a site has released a hazardous substance to the surface water in the watershed. This demonstration can be based on either direct observation of the release or indirect observation (i.e., the analysis of samples taken from surface water).

In the case of direct observation, material (e.g., leachate) from the site must be seen entering surface water either through migration or be known to have entered surface water through direct deposition. Further, available information must indicate that the material deposited in or observed entering surface water contained one or more hazardous substances. Such information should include an analysis of the hazardous substances contained in samples of the material or other similiar documentation of the content of the material. In the case of migration the available information must indicate that hazardous substances in the material have reached surface water. For the hazardous substances to be considered to have reached surface water, samples of the migrating material must be taken near the observed point of entry of the material into surface water or the source of the released material must be near the observed point of entry. Finally, documentation both that an area has been flooded at a time that hazardous substances were present and that the hazardous substances were in contact with the flood waters also constitutes an observed release.

In the case of indirect observation, the samples must indicate that a significant increase in ambient hazardous substance concentration has occurred relative to the background concentration for the site (as described below). Further, the available information must support the attribution of some portion of the increase to the site. Attribution can be based on sampling information such as the location of the samplers or other source apportionment techniques.

A significant increase is determined by comparing either surface water, benthic, or sediment samples, one of which must be a background sample for the watershed. The comparisons must be made between similar types of samples (e.g., between two or more surface water samples). The background sample should be chosen to reflect, as completely as possible, the concentration of the hazardous substance in the sample medium exclusive of the contribution of any possible releases from the site. For benthic samples, comparisons must be made between samples of relatively sessile benthic organisms (e.g., macroinvertebates, periphyton) and not between samples of far-ranging organisms (e.g., fish). The comparisons must be between benthic organisms that are similar.

The concentration of a hazardous substance is considered to be significantly above background levels under the conditions presented in Table 2–2 of section 2. See section 2.1.1 for the detection limits to be used in the evaluation.

If an observed release can be established for a watershed, then assign an observed release factor value of 120 to that watershed. If no observed release can be established for the watershed, assign an observed release factor value of zero to that watershed.

4.1.1.2 Potential to release. Potential to release is evaluated for a watershed if an observed release has not been established for the watershed. Potential to release assesses the likelihood for hazardous substances to migrate from a site to surface water in the watershed. Potential to release has two components: potential to release by overland flow (section 4.1.1.2.1) and potential to release by flooding (section 4.1.1.2.2). The sum of these two component values is the value assigned to the potential to release factor for the watershed, subject to a maximum value of 120.

4.1.1.2.1 Overland flow. The potential to release by overland flow for the watershed is based on three factors: containment, runoff, and distance to surface water.

The potential to release by overland flow is assigned a value of zero for the watershed under either of two conditions: no overland segment of the hazardous substance migration path can be defined for the watershed (e.g., the site lies in a topographic depression) or the overland segment of the hazardous substance migration path for the watershed exceeds 2 miles before surface water is encountered. If either of these conditions pertains, enter a value of zero on Table 4–1 for potential to release by overland flow for the watershed and precede to section 4.1.1.2.2 for the evaluation of potential to release by flood.

4.1.1.2.1.1 Containment. Containment for overland flow refers to the methods that have been used either to restrict or prevent the release of hazardous substances from a source (e.g., landfill) to surface water. Table I–4 of Attachment I to this Appendix A presents the criteria for use in rating the containment of inactive sources for the surface water migration pathway.

For such containment systems as diking, berms, and run-on control and runoff management systems to be considered present for rating purposes, they must completely surround the source area unless they connect with other natural or engineered barriers that together completely surround the source area. For liners to be considered present for rating purposes, they must be continuous and must cover all earth surrounding the source likely to be in contact with the hazardous substances or leachate containing the hazardous substances.

Determine the containment factor value for the watershed in the following manner. If, for the watershed, a source is located in surface water, assign the containment factor a value of 10 for the watershed. Otherwise, use Table I–4 of Attachment I to this Appendix A to assign a containment value to each inactive source at the site that can potentially release hazardous substances to the overland segment of the hazardous substance migration path for the watershed. The containment factor value for the watershed is the highest containment value assigned to any of these sources. Record the assigned value on Table 4–1.

4.1.1.2.1.2 Runoff. This factor reflects the potential for overland runoff to convey hazardous substances from a site to surface water downgradient from the site. Three components are evaluated: rainfall, runoff curve number value, and drainage area.

Rainfall. This component considers the potential for area storms to cause surface water runoff. This potential is reflected by the 2-year, 24-hour rainfall. If available, use site specific 2-year, 24-hour rainfall data. However, such site-specific data must be based on at least 20 years of record. If such site-specific data are not available, to obtain the 2-year, 24-hour rainfall appropriate to a site located in Eastern and Central States, use the Rainfall Frequency Atlas of the United States, Technical Paper No. 40, U.S. Department of Commerce, Washington, DC, 1963 (or a later version as available). To obtain this information for sites located in 11 Western States,[8] use the NOAA Atlas II, Precipitation-Frequency Atlas of the Western United States, 1973 (or a later version as available). For sites in Hawaii, use the Rainfall-Frequency Atlas of the Hawaiian Islands, Technical Paper No. 43, U.S. Department of Commerce, 1962 (or a later version as available). For sites in Alaska, use the Probable Maximum Precipitation and Rainfall-Frequency Data for Alaska, Technical Paper No. 47, U.S. Department of Commerce, 1963 (or a later version as available). For sites in Puerto Rico or the Virgin Islands, use the Generalized Estimates of Probable Maximum Precipitation and Rainfall-Frequency Data for Puerto Rico and Virgin Islands, Technical Paper No. 42, U.S. Department of Commerce, 1961 (or a later version as available).

Runoff curve number. The runoff curve number reflects the ability of soils, and the nature of the land surface, to facilitate or retard runoff. Assign a runoff curve number for the watershed according to Table 4–2, based on the predominant land use description (within the drainage area described below) and the hydrologic soil group that is found throughout most of the predominant land use area. The predominant land use is the land use that comprises the largest total area within the applicable drainage area. If a predominant land use area cannot be delineated, use the one in the

[8] These 11 states are Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

drainage area described below that yields the highest curve number, taking into consideration its respective hydrologic soil group. If a predominant soil group cannot be delineated, use the one in the drainage area that yields the highest curve number.

Most of the soils in the U.S. have been classified into the four hydrologic soil groups listed in Table 4–2. For soils, obtain their hydrologic soil group from U.S. Soil Conservation Service, Urban Hydrology for Small Watersheds, Technical Release 55, Appendix A, U.S. Department of Agriculture, Washington, D.C., 1986 (or later as available).

TABLE 4–2.—RUNOFF CURVE NUMBER [1]

Predominant land use	Hydrologic soil group [2]			
	A	B	C	D
Cultivated land:				
With runoff control (e.g., contour farming, sod waterways, terraces)	60	70	80	80
Without runoff control	70	80	90	90
Pasture or range land:				
Poor condition (exposed soil, erosion evident)	70	80	85	90
Good condition	40	60	75	80
Meadow	30	60	70	80
Wood or forest land:				
Thin stand or little soil cover	45	65	75	85
Normal stand or good soil cover	25	55	70	75
Open grass covered areas (lawns, parks, golf courses, cemeteries, etc):				
Good grass cover (75% or more coverage)	40	60	75	80
Poor grass cover (less than 75% coverage)	50	70	80	85
Industrial districts	80	90	90	95
Residential lots	60	75	85	90
Paved lots (parking lots, driveways, large roofs)	100	100	100	100
Streets and roads:				
Paved with curbs and storm sewers	100	100	100	100
Gravel	75	85	90	90
Dirt	70	80	85	90
Landfills:				
Surface composed of clay	—	—	—	90
Surface composed of debris	70	—	—	—
Surface composed of sod:				
Good sod cover (75% or more)	40	—	—	—
Poor sod cover (less than 75%)	50	—	—	—

[1] Curve numbers based on U.S. Soil Conservation Service, Technical Release No. 55, Urban Hydrology for Small Watersheds, U.S. Department of Agriculture, Washington, DC, 1986. Curve numbers have been rounded. (—) indicates soil group not relevant.

[2] The hydrologic soil groups are as follows:

A—Low runoff potential—soils having a high infiltration rate even when thoroughly wetted and consisting chiefly of deep, well-drained to excessively drained sands or gravels.

B—Soils having a moderate infiltration rate when thoroughly wetted and consisting chiefly of moderately deep to deep, moderately well-drained to well-drained soils with moderately fine to moderately coarse texture.

C—Soils having a slow infiltration rate when thoroughly wetted and consisting chiefly of soils with a layer that impedes downward movement of water or soils with moderately fine to fine texture.

D—High runoff potential—soils having a very slow infiltration rate when thoroughly wetted and consisting chiefly of clay soils with a high swelling potential, soils with a permanent high water table, soils with a claypan or clay layer at or near the surface, and shallow soils over nearly impervious material.

Drainage area. The drainage area reflects the land area which contributes to the runoff from a site that can enter the hazardous substance migration path for the watershed. This drainage area includes both the site area and the area upgradient of the site, but excludes any portion of the drainage area where runoff is diverted away from entering the site by storm sewers or run-on control and/or runoff management systems. Use Table 4–3 to assign the drainage area value for a watershed.

TABLE 4–3.—VALUE FOR SIZE OF DRAINAGE AREA

Size of drainage area in acres	Assigned value
Less than 50 acres	1
50 to 500 acres	2
Greater than 500 acres	3

Calculation of runoff value. Use Table 4–4 to assign a combined rainfall/runoff curve number value for the watershed based on the rainfall and the runoff curve number. Enter this combined value, along with the assigned value for drainage area, into Table 4–5 to determine the runoff factor value for the watershed. Enter the runoff factor value in Table 4–1.

TABLE 4–4.—RAINFALL/RUNOFF CURVE NUMBER VALUE [1]

Rainfall (inches)	Runoff curve No. (CN)															
	25	30	35	40	45	50	55	60	65	70	75	80	85	90	95	100
Less than 1.0	0	0	0	0	0	0	0	0	0	1	1	1	2	2	2	2
1.0 to less than 1.2	0	0	0	0	0	0	0	0	0	1	1	2	2	2	2	3
1.2 to less than 1.4	0	0	0	0	0	0	0	0	1	1	2	2	2	2	2	3
1.4 to less than 1.6	0	0	0	0	0	0	0	1	1	2	2	2	2	2	3	3
1.6 to less than 1.8	0	0	0	0	0	0	0	1	1	2	2	2	2	2	3	3
1.8 to less than 2.0	0	0	0	0	0	0	1	1	2	2	2	2	2	3	3	3
2.0 to less than 2.5	0	0	0	0	1	2	2	2	2	2	2	2	3	3	3	3
2.5 to less than 3.0	0	0	0	1	1	2	2	2	2	2	2	3	3	3	3	3
3.0 to less than 4.0	0	0	1	1	2	2	2	2	3	3	3	3	3	3	3	3
4.0 or greater	0	1	1	2	2	2	2	3	3	3	3	3	3	3	3	3

[1] This table is based on the runoff per unit area estimated using a rainfall/curve number equation (U.S. Soil Conservation Service, Technical Release No. 55, Urban Hydrology for Small Watersheds, U.S. Department of Agriculture, Washington, DC, 1986).

TABLE 4–5.—RUNOFF FACTOR VALUE

Drainage area value	Rainfall/Runoff Curve Number Value			
	0	1	2	3
1	1	2	4	4
2	2	3	5	6
3	3	5	6	6

4.1.1.2.1.3 Distance to surface water. This factor indicates the potential for hazardous substances to flow overland from the site to a surface water body in the watershed. Measure the distance to surface water as the distance along the overland segment from a source to either the mean high water level for tidal waters or the mean water level for other surface waters. Use Table 4–6 to assign a value to the distance to surface water factor for the watershed. Enter the assigned factor value for distance to surface water in Table 4–1.

TABLE 4–6.—DISTANCE TO SURFACE WATER FACTOR VALUES

Distance	Assigned value
Greater than 1.5 miles to 2 miles	1
Greater than 2,500 feet to 1.5 miles	2
Greater than 1,000 feet to 2,500 feet	3
Greater than 500 feet to 1,000 feet	4
100 feet to 500 feet	5
Less than 100 feet	6

4.1.1.2.1.4 Calculation of the factor value for potential to release by overland flow. Sum the factor values for runoff and distance to surface water for the watershed and multiply the sum by the factor value for containment. Enter the result in Table 4–1 as the factor value for potential to release by overland flow for the watershed.

4.1.1.2.2 Potential to release by flood. This factor reflects the potential for hazardous substances to be released to surface water as a result of a site being partially or fully inundated by a flood from surface water in the watershed. The potential for release due to flooding is evaluated for each watershed as the product of containment (flood) and a flood frequency factor.

If a source is located within a specified floodplain, it can become partially or fully submerged during the occurrence of a flood that is equal to or greater than the specified flood. For example, a source located in a 10-year floodplain can be submerged during the occurrence of flood with recurrence period equal to or longer than 10 years. Furthermore, containment that is adequate to prevent any washout of hazardous substances by a flood of a specified recurrence period may not be adequate to prevent washout by a flood with a longer recurrence period. Consequently, each source within the watershed must be evaluated separately for containment (flood) and for flood frequency for each floodplain in which it lies.

4.1.1.2.2.1 Containment (flood). This factor reflects the methods that have been used to prevent the release of hazardous substances from a source if it is partially or fully inundated by a flood. For each source within the watershed, assign from Table 4–7 a value for containment (flood) for each of the floodplains in which the source is partially or fully located (see section 4.1.1.2.2.2 for the applicable floodplains). If the source is not in one or more of the floodplains listed in section 4.1.1.2.2.2, then, for that source, assign a containment (flood) value of zero to each of the listed floodplains in which the source does not lie.

TABLE 4–7.—CONTAINMENT (FLOOD) VALUES

Containment criteria	Assigned value
Certification by a professional engineer that containment at the source is adequate to prevent any washout of hazardous substances by the flood being evaluated	0
Other	10

4.1.1.2.2.2 Flood frequency. This factor reflects the potential for a source or any portion of the source to be inundated by a flood from surface water within the watershed. For each source within the watershed, assign a value for flood frequency for each of the floodplains in which the source is partially or fully located. Assign the values using the criteria in Table 4–8.

TABLE 4–8.—FLOOD FREQUENCY FACTOR VALUES

Floodplain criteria	Assigned value
Source floods annually	12
Source in 10-year floodplain	10
Source in 100-year floodplain	5
Source in 500-year floodplain	1
None of the above	0

4.1.1.2.2.3 Calculation of the factor value for potential to release by flood. For each source within the watershed and for each floodplain in which the source is located, calculate a potential to release by flood value. Calculate this value as the product of the containment (flood) value and the flood frequency value for the floodplain. Select the highest value calculated for these sources. Use this value as the value for the potential to release by flood factor for the watershed. Enter, in Table 4–1, this potential to release by flood value for the watershed as well as the values for containment (flood) and flood frequency that yielded this highest value.

4.1.1.2.3 Calculation of potential to release factor value. Sum the values for the watershed for potential to release by overland flow and potential to release by flood. Assign this sum as the potential to release factor value for the watershed, subject to a maximum value of 120. Enter this value in Table 4–1.

4.1.1.3 Calculation of drinking water threat likelihood to release value. If an observed release is established for the watershed, assign the observed release factor value as the likelihood of release value for the watershed. Otherwise, assign the potential to release factor value for that watershed as the likelihood of release value for the watershed. Enter the value in Table 4–1.

4.1.2 Drinking water threat waste characteristics.

This factor category assesses waste characteristics that reflect the rate, duration, and relative toxicity of potential hazardous substances releases from the site. Two factors are included: toxicity/persistence and hazardous waste quantity.

The hazardous substances at the site that are to be considered in the evaluation of a watershed are restricted to those that are available to migrate via the surface water hazardous substance migration path for the watershed (section 4.0.1). Those hazardous substances available to migrate include hazardous substances establishing an observed release to surface water in the watershed as well as all hazardous substances found or documented to have been deposited at the site in a source that could be assigned a surface water containment value for either overland flow (section 4.1.1.2.1.1) or flood (section 4.1.1.2.2.1) that is greater than zero for the watershed. Also, hazardous substances whose location on the site cannot be determined but that could have been deposited in any source with a surface water containment value greater than zero are considered to be available to migrate to surface water. Hazardous substances whose location on the site cannot be determined shall be assumed to have been placed in all sources on the site, except those specific sources for which there is definitive information that indicates that the hazardous substances were not or cannot have been placed in the source.

4.1.2.1 Toxicity/persistence. In determining the toxicity/persistence value for the watershed, evaluate all hazardous substances that are available to migrate by the hazardous substance migration path for the watershed. For each hazardous substance considered, assign a toxicity value and a persistence value as described in the following sections. Combine these values into a single toxicity/persistence value for each hazardous substance as described in section 4.1.2.1.3.

4.1.2.1.1 Toxicity. Assign a toxicity value in the same manner as is discussed in Section 2.2.1.1 for each hazardous substance that is considered to be available to migrate to surface water in the watershed.

4.1.2.1.2 Persistence. Persistence of hazardous substances in the surface water environment is evaluated based on the expected reduction of the hazardous substance concentration, as a result of decay processes, over the target distance limit. Assess the persistence of hazardous substances in terms of half-life. The half-life is defined as the time to reduce the initial concentration by half as a result of the combined decay processes of biodegradation, hydrolysis, photolysis, volatilization, and free-radical oxidation.

Estimate the half-life ($t_{1/2}$) of a hazardous substance as follows:

$$t_{1/2} = \frac{1}{\frac{1}{h} + \frac{1}{b} + \frac{1}{ox} + \frac{1}{p} + \frac{1}{v}}$$

where $h = (t_{1/2})_h$ = Hydrolysis half-life.
$b = (t_{1/2})_b$ = Biodegradation half-life.
$ox = (t_{1/2})_o$ = Oxidation half-life.
$p = (t_{1/2})_p$ = Photolysis half-life.
$v = (t_{1/2})_v$ = Volatilization half-life.

Estimate the hydrolysis, biodegradation, oxidation, photolysis, and volatization half-lives using the methodology in Attachment II to this Appendix A. If one or more of these five component half-lives cannot be estimated based on available data, delete the component for that half-life from the denominator of the above equation. If none of these five component half-lives can be estimated from available data, a default procedure is used as described below. A separate half-life should be estimated for lakes and for rivers, oceans, and the Great Lakes.

If a half-life can be estimated for a hazardous substance, assign the hazardous substance a persistence value using the

appropriate portion of Table 4–9 (i.e., lake; or river, ocean, or Great Lake). If a half-life cannot be estimated from available data for those hazardous substances that are metals (or metalloids), assign a persistence value of 3 to the hazardous substance as a default for all surface water bodies. For other hazardous substances, assign a persistence value of 2 to the hazardous substance as a default for rivers, the ocean, and the Great Lakes, and a persistence value of 1 as a default for lakes.

TABLE 4–9.—PERSISTENCE VALUE

Substance half-life (days)	Assigned value
Persistence in Rivers, the Ocean, and the Great Lakes	
Less than or equal to 0.01	0
Greater than 0.01 but less than or equal to 0.1	1
Greater than 0.1 but less than or equal to 0.5	2
Greater than 0.5	3
Persistence in Lakes	
Less than or equal to 0.02	0
Greater than 0.02 but less than or equal to 2	1
Greater than 2 but less than or equal to 20	2
Greater than 20	3

Select the appropriate portion of Table 4–9 to be used in assigning the persistence value based on the type of surface water body in which the nearest drinking water intake along the hazardous substance migration path is located. If there are no drinking water intakes, then select the appropriate portion of Table 4–9 based on the type of surface water body in which the nearest intake used for any of the other water uses listed in Section 4.1.3.3 is located. If the in-water segment of the hazardous substance migration path between the probable point of entry and the selected nearest intake includes both lakes and other water bodies, use the criteria for lakes only if more than half the distance to this nearest intake lies in the lake(s). Otherwise, use the criteria for rivers, the ocean, and the Great Lakes. In those cases where there is no target intake (e.g., the water is usable but not used), use the criteria for lakes only if more than half the in-water segment of the hazardous substance migration path lies in the lake(s). Otherwise, use the criteria for rivers, the ocean, and the Great Lakes.

4.1.2.1.3 Calculation of toxicity/persistence value. Based on the overall toxicity value and the persistence value, assign a toxicity/persistence value for each hazardous substance available to migration to surface water using Table 4–10. Use the value for the substance with the highest toxicity/persistence value for the watershed as the value for this factor for the watershed. Enter this value in Table 4–1.

TABLE 4–10.—TOXICITY/PERSISTENCE VALUE

	Persistence value			
	0	1	2	3
Toxicity value:				
0	0	0	0	0
1	10	27	43	60
2	20	37	53	70
3	30	47	63	80
4	40	57	73	90
5	50	67	83	100

4.1.2.2 Hazardous waste quantity. Assign a hazardous waste quantity factor value for the watershed in the same manner as is discussed in section 2.2.2 for those wastes deposited at the site that are considered to be available to the hazardous substance migration path for the watershed. Enter the value for the hazardous waste quantity factor for the watershed in Table 4–1.

4.1.2.3 Calculation of drinking water threat waste characteristics value. Sum the toxicity/persistence and hazardous waste quantity factor values for the watershed. Assign this sum as the value for drinking water threat waste characteristics for the watershed. Enter the value in Table 4–1.

4.1.3 Drinking water threat targets.

The targets factor category for the drinking water threat reflects the human population and resources potentially at risk from an actual or potential release of hazardous substances from the site to surface water resources used for drinking water or for agricultural, industrial, or commerical purposes. Three factors are evaluated: maximally exposed individual, population, and surface water use. The values for these three factors are determined as described below for each watershed and summed to obtain the overall value for drinking water threat targets for the watershed, subject to a maximum value of 200.

For two of the factors, maximally exposed individual and population, their evaluation is based on whether the target surface water intakes are considered to be subject to actual or potential contamination as defined in section 4.0.2. The determination of actual contamination can be based on samples taken at the intake or downstream from the intake as discussed in section 4.0.2. The concentrations of those hazardous substances that are present in comparable samples and that are significantly above background levels and attributable at least in part to the site (i.e., those hazardous substance concentrations that establish an observed release) define exposure concentrations for the intake. If there is more than one set of comparable samples, there may be more than one set of exposure concentrations. If the exposure concentrations are measured at the surface water intake, they can be based on the concentrations found in untreated water or treated water where treatment has not contributed to the level of the hazardous substances detected.

Actual contamination at an intake is evaluated as either level I concentrations, level II concentrations, or level III concentrations. The determination of which level applies at the intake is made based on a comparison of the exposure concentrations from comparable samples with their health-based benchmarks. Level I concentrations apply to those intakes at which one or more sets of exposure concentrations, either individually or collectively, exceed health-based benchmarks. Level II concentrations apply to those intakes for which all of the sets of exposure concentrations collectively do not exceed health-based benchmarks but for which at least one set exceeds 0.1 percent of the health-based benchmarks. This level also applies to those intakes for which the level I criteria are not met, but for which there is one or more hazardous substances in an exposure concentration that do not have health-based benchmarks available. Level III concentrations apply to those intakes for which all of the exposure concentrations collectively do not exceed 0.1 percent of health-based benchmarks. Table 3–12 (section 3.3.1) lists the criteria for determining the health-based benchmarks to be used for hazardous substances in drinking water. Table 3–13 (section 3.3.2) summarizes the criteria for determining which level applies at an intake. The procedure for making the determination is presented below.

In determining the level that applies, consider only those samples and only those hazardous substances in a sample that establish an observed release. With the exception noted below, if one or more such hazardous substances are present in a sample (or comparable samples) taken from an intake, then calculate for each such hazardous substance the percentage of its health-based benchmark at which it is present. If any hazardous substance is present in more than one comparable sample, then use the highest concentration of that hazardous substance from the comparable samples as the exposure concentration in determining the percentage of its health-based benchmark at which it is present. Sum these percentages without rounding-off. Treat sets of samples that are not comparable as separate sets of exposure concentrations, calculating separate sums for each such set. Use the highest calculated sum to determine which level is applicable as follows.

If the highest sum exceeds 100 percent, then the actual contamination at the intake is considered to meet the criteria for level I concentrations. If the highest sum is less than or equal to 100 but greater than 0.1, then the actual contamination at the intake is considered to meet the criteria for level II concentrations. If the highest sum is less than or equal to 0.1, then the actual contamination at the intake is considered to meet the criteria for level III concentrations.

The exception to the above procedure is that if one or more hazardous substances are present in a sample from the intake at concentrations that establish an observed release and for which no benchmarks are available, then the contamination at the intake is considered to meet the criteria for level II concentrations unless it can be demonstrated that the level I criteria are also met. If the level I criteria are met, they apply.

4.1.3.1 Maximally exposed individual. This factor reflects the threat to the maximally exposed individual (MEI). The calculation of the factor value requires the assignment of the appropriate dilution weighting factor from Table 4–11 for the nearest drinking water intake (either public or private) along the hazardous substance migration path for the watershed. Do not consider standby intakes in evaluating this factor unless the standby intake is used for supply at least once every year (i.e., annually).

TABLE 4–11.—DILUTION WEIGHTING FACTORS

Surface water characteristic	Average annual flow in cubic feet per second (CFS)	Assigned value[1]
Minimum perennial stream	Less than 5 cfs.	10
Small to moderate stream	5 to 50 cfs.	1
Moderate to large stream	Greater than 50 to 500 cfs.	0.1
Large streams to rivers	Greater than 500 to 10,000 cfs.	0.005
Major rivers	Greater than 10,000 cfs.	0.001
Ocean or the Great Lakes	Not applicable.	0.001
Mixing zone of quiet flowing rivers.	Greater than 50 cfs.	0.5

[1] The dilution weighting factor value is not to be rounded to the nearest integer.

The assignment of a dilution weighting factor requires an estimate of average annual flow sufficient to assign a stream or river to one of five categories in Table 4–11, ranging from minimum perennial stream to major river. The preferred datum is average annual discharge as defined in the U.S. Geological Survey Water Resources Data Annual Report. If this datum is not available, the average annual flow may be established based on other criteria such as annual gauging information for a period of less than five years, stream morphology, watershed area and runoff, or interpolation or extrapolation from points of documented average flow.

When the target intake being evaluated is located on a river, assign the dilution weighting factor based on the average flow in the river at the target intake. If the intake is on a lake, assign the dilution weighting factor based on the sum of the average flows for the rivers entering the lake up to the point of the intake. In those cases where flow is decreasing with distance, use the highest average flow between the intake and the probable point of entry; however, if the decrease in flow results primarily from evaporation, use the flow at the intake. Assign the ocean and the Great Lakes the same dilution weighting factor as a major river, as indicated in Table 4–11. In those cases where there is flow from a surface water body with a lower dilution weighting factor value to a surface water body with a higher dilution weighting factor value (i.e., flow is from a surface water body with more dilution to one with less dilution), then use the lower dilution weighting factor value as the dilution weighting factor value for the latter surface water body.

Mixing of hazardous substances is rapidly achieved in turbulent rivers (e.g., rocky bottoms, rapids), whereas hazardous substances tend to remain as a slug or plume for longer distances in quiet-flowing rivers (e.g., silted bottom and meandering). A zone of mixing is to be applied to a quiet-flowing river that contains the probable point of entry from the site to surface water. The zone of mixing starts at this probable point of entry and, with one exception, extends for 3 miles from the probable point of entry. The exception is that if the surface water characteristics change to turbulent within this 3-mile distance, the zone of mixing extends only to the point at which the change occurs. Assign a dilution weighting factor value of 0.5 for any intake that lies within the zone of mixing if the quiet-flowing river has an average flow greater than 50 cubic feet per second. Beyond this zone of mixing, assign a quiet-flowing river the same dilution weighting factor value as any other river. For a quiet-flowing river with an average flow less than or equal to 50 cubic feet per second, do not use the river characteristic "mixing zone of the quiet flowing river" in assigning the dilution weighting factor value to any portion of the river.

To calculate the value for the MEI factor for the watershed, multiple the dilution weighting factor for the nearest intake by 50, subject to a maximum MEI factor value of 50. If, however, there is actual contamination at any drinking water intake within the target distance limit for the watershed and the criteria for level I concentrations (as defined in sections 4.0.2 and 4.1.3) are met at any intake, assign the MEI factor a value of 50 for the watershed. Do not consider standby intakes in evaluating the MEI factor unless the standby intake is used for supply at least once a year (i.e., annually). Enter the value assigned in Table 4–1.

4.1.3.2 Population. This factor reflects the number of people at risk from actual or potential contamination of the in-water segment of the hazardous substance migration path for the watershed. The population factor is evaluated, as described below, from four additional factors: level I concentrations, level II concentrations, level III concentrations, and potential contamination. Evaluate the level I concentrations factor described in section 4.1.3.2.1 for each intake meeting the criteria for level I concentrations. Evaluate the level II concentrations factor described in section 4.1.3.2.2 for each intake meeting the criteria for level II concentrations. Evaluate the level III concentrations factor described in section 4.1.3.2.3 for each intake meeting the criteria for level III concentrations. Evaluate the potential contamination factor described in section 4.1.3.2.4 for all other intakes.

The population count to be used in evaluating each of these factors should include persons served by drinking water drawn from intakes (both public and private) that are along the surface water hazardous substance migration path for the watershed (section 4.0.1) and that are within the target distance limits defined in section 4.0.2. Include residents as well as others who would regularly use the water, such as students and workers. Exclude transient populations such as customers and travelers passing through the area in autos, buses, or trains. In determining the population served by an intake, if the water from the intake is blended with other water (e.g., water from other intakes or ground water wells), count the population regularly served by the entire blended system as the population served by the intake. When a standby intake is maintained on a regular basis so that surface water supplies can be withdrawn, treat the standby intake as an active intake and count the population.

Use exact population counts where possible. If actual residential population figures are not available, the population should be estimated by determining the number of residences and multiplying each residence by the most recent U.S. Census factor for the number of persons per residence for the county in which the residence is located.

4.1.3.2.1 Level I concentrations. This factor represents the total number of people who are exposed to hazardous substances in drinking water at concentrations that both establish an observed release and, either individually or collectively, meet the level I criteria (as defined in sections 4.0.2 and 4.1.3). Only count persons in this category who use intakes that are subject to level I concentrations as defined in section 4.1.3.

The population count is the value for this factor, subject to a maximum value of 200. Sum the number of people served by water from intakes that are subject to level I concentrations and enter the value in Table 4–1, subject to the maximum of 200.

4.1.3.2.2 Level II concentrations. This factor represents the total number of people who are exposed to hazardous substances in drinking water which are at concentrations, either individually or collectively, that establish an observed release and that do not meet the level I criteria, but that do meet the level II criteria (as defined in sections 4.0.2 and 4.1.3). Populations counted under the level I concentrations factor are not counted under this factor.

Sum the number of people served by water from intakes that are subject to level II concentrations. This sum divided by 10 is the value for this factor, subject to a maximum of 200. Enter the value in Table 4–1.

4.1.3.2.3 Level III concentrations. This factor represents the total number of people who are exposed to hazardous substances in drinking water that are at concentrations which establish an observed release, but that individually or collectively do not meet the level I or II criteria (as defined in sections 4.0.2 and 4.1.3). Populations counted under the level I or level II concentrations factors are not included in this factor.

Sum the number of people served by water from intakes that are subject to level III concentrations. This sum divided by 100 is the value for this factor, subject to a maximum of 200. Enter the value in Table 4–1.

4.1.3.2.4 Potential contamination. This factor represents the population within the target distance limit for the watershed, that is potentially exposed to hazardous substances in drinking water (i.e., population served by surface water intakes subject to potential contamination as defined in section 4.1.3). Thus, populations counted in the level I, level II, and level III concentrations factors are not included.

Calculate the value for the potential contamination factor (PC) for the watershed as follows, subject to a maximum value of 200:

$$PC = \frac{1}{100} \times \sum_{i=1}^{n} P_i \quad D_i$$

where:

P_i = Population using intake i.
D_i = Dilution weighting factor for intake i.
n = Number of intakes.

Determine the appropriate dilution weighting factor for each intake from Table 4–11, as described in section 4.1.3.1. Enter the value for PC in Table 4–1, subject to a maximum of 200.

4.1.3.2.5 Calculation of population factor value. Sum the factor values for level I concentrations, level II concentrations, level III concentrations, and potential contamination. Assign this sum as the population factor value for the watershed, subject to a maximum value of 200. Enter this value in Table 4–1.

4.1.3.3 Surface water use. This factor indicates the use and value of surface water drawn from the in-water segment of the hazardous substance migration path within the target distance limit for the watershed. Two categories of surface water use are evaluated: drinking water use and other water use.

4.1.3.3.1 Drinking water use. Drinking water use is a measure of the use of surface water for direct human ingestion. Assess all intakes drawing drinking water from the in-water segment of the hazardous substance migration path that are within the target distance limit for the watershed. The drinking water use value for an intake is the highest value that can be assigned to any drinking water use for that intake. Assign a drinking water use value to the intake using Table 4–12. If there are no intakes within the target distance limit, assign a value from Table 4–12 to the surface water within the target distance limit for the watershed based on its resource value for drinking water use.

TABLE 4–12.—DRINKING WATER USE—SURFACE WATER

Type of use	Assigned value
DRINKING WATER—PUBLIC WATER SUPPLY [1]	
An adequate alternative supply has not been developed:	
—and no studies have been completed which verify that such a supply is technically and economically feasible	50
—but could be developed, although it would be threatened by the site	45
—but could be developed and would be unthreatened by the site	40
An alternative source is already developed and can be brought into use without major changes in the system:	
—alternate source threatened by the site	35
—alternate source unthreatened by the site	30
The target intake being evaluated is a standby intake for the system:	
—used less than annually, but used within past 10 years	25
—maintained but not used within the past 10 years	20
DRINKING WATER—PRIVATE WATER SUPPLY [1]	
No alternative supply is readily available with minimum hookup requirements	40
An alternative unthreatened supply is readily available with mimimum hookup requirements	15
NOT CURRENTLY USED FOR DRINKING WATER	
Designated by State for drinking water use [2] but not currently used	15
Not currently used and does not meet the criteria for an assigned value of zero	5
Not usable without extensive treatment because of naturally-occurring water quality problems	0

[1] An intake is defined as a public water supply if it is part of a system having at least 15 service connections or regularly serves at least 25 individuals. An intake is defined as private water supply, for HRS purposes, if it is part of a system that does not meet the definition of a public water supply. A standby intake, if used for supply at least once every year (i.e., annually), is treated as if it is a public or private water supply and not as a standby well.

[2] Table I–1 of Attachment I of this Appendix A presents the State designations for drinking water use.

To be defined as adequate in Table 4–12, an alternative supply must be capable of providing sufficient volume and also must not require extensive or unconventional treatment (e.g., for high salinity). Bottled water or water delivered by vehicle is considered for HRS purposes to be a temporary measure rather than an alternative supply. An alternative supply is considered threatened if water from the alternative supply is withdrawn from surface water within the target distance limit of the site, providing that a hazardous substance migration path can be defined for the watershed containing that surface water. An alternate supply is also considered threatened if water from the alternate supply is withdrawn from aquifers within the ground water target distance limit (see section 3.0.1.1) of the site.

4.1.3.3.2 Other water use. Other water use is a measure of the use of surface water for agricultural, commercial and industrial purposes. Assess all intakes drawing water from the in-water segment of the hazardous substance migration path that are within the target distance limit for the watershed. The other water use value for an intake is the highest value that can be assigned to any other water use for that intake. Assign an other water use value to the intake using Table 4–13.

TABLE 4–13.—OTHER WATER USE—SURFACE WATER

Type of use	Assigned value
Used for irrigation (5 acre minimum) of commercial food crops or commercial forage crops	20
Used for commercial livestock watering	20
Used for commercial food preparation	15
Used for commercial/industrial purposes other than drinking water, recreation, fishery, or transportation	10
Not used for any of the above	0

4.1.3.3.3 Calculation of surface water use factor value. For all of the intakes evaluated (or for the resource use), select the highest value assigned from section 4.1.3.3.1 and assign that highest value to the drinking water factor for the watershed. Similarly, for all of the intakes evaluated for the watershed (except the one used to assign the drinking water factor value), select the highest value assigned from section 4.1.3.3.2 and assign the other water use factor that highest value.[9] Sum the assigned values for the drinking water use factor and the other use factor. Assign this sum, not to exceed 50, as the value for the surface water use factor for the watershed.

Note that if the surface water use factor is assigned a nonzero value for the watershed, then the fisheries use factor in section 4.2.3.2 must be assigned a value of zero for the watershed. If the fisheries use factor is assigned a nonzero value for the watershed, then the surface water use factor must be assigned a value of zero for the watershed. The use (surface water use or fisheries use) which results in the higher overall surface water migration pathway score for the watershed should be assigned the nonzero factor value; the other use should be assigned a factor value of zero.[10]

[9] Note that this procedure may be performed in the opposite order (i.e., assign other water use factor value first) if it results in higher value being assigned to the surface water use factor.

[10] Note this determination can be made as follows: Multiply the value for the waste

Continued

Enter the value for drinking water use and the value for other water use for the watershed on Table 4–1. If the fisheries use factor is to be assigned a nonzero value, then enter in Table 4–1 a zero for the surface water use factor. Otherwise, sum the values for drinking water use and other water use and enter the sum, subject to a maximum value of 50, on Table 4–1 as the value for the surface water use factor for the watershed.

4.1.3.4 Calculation of the drinking water threat targets value. Sum the MEI, population and surface water use factor values for the watershed. This sum is the drinking water threat targets value for the watershed, subject to a maximum value of 200. Enter the targets value in Table 4–1.

4.1.4 Calculation of the drinking water threat score for a watershed.

Multiply the values for the likelihood of release (maximum value of 120), waste characteristics (maximum value of 200), and drinking water threat targets (maximum value of 200) for the watershed. The product is the drinking water threat score for the watershed. Enter the score (maximum value of 4,800,000) in Table 4–1.

4.2 Human food chain threat.

The human food chain threat is used to evaluate the threat associated with the actual or potential release of hazardous substances to surface waters containing human food chain organisms. The human food chain threat score for a watershed is the product of the values for three factor categories: likelihood of release, waste characteristics and targets.

4.2.1 Human food chain threat likelihood of release.

Assign the same value for human food chain threat likelihood of release for the watershed as was assigned for drinking water threat likelihood of release for the watershed in section 4.1.1.3. Enter this value in Table 4–1.

4.2.2 Human food chain threat waste characteristics.

This factor category assesses waste characteristics that reflect the rate, duration and relative human toxicity of potential hazardous substances releases from the site to the human food chain. Two factors are included: toxicity/persistence and hazardous waste quantity.

4.2.2.1 Toxicity/persistence. Evaluate toxicity/persistence for the human food chain threat in the same manner as toxicity/persistence is evaluated for the drinking water threat (Section 4.1.2.1) except as discussed below. The major exception relates to the role that bioaccumulation potential plays in the selection of the substance whose toxicity/persistence value is employed in the evaluation for the watershed. The hazardous substances to be considered are all those eligible to be considered for the drinking water threat for the watershed (see section 4.1.2).

4.2.2.1.1 Bioaccumulation potential. Use the following data hierarchy to assign a bioaccumulation potential value to each hazardous substance:

- Bioconcentration factor (BCF) data.
- Logarithm of the n-octanol-water partition coefficient (log Pow) data.
- Water solubility data.

Assign a bioaccumulation potential value to each hazardous substance using Table 4–14.

TABLE 4–14.—BIOACCUMULATION POTENTIAL VALUE

	Assigned value [1]
If BCF data are available, assign a value as follows:	
BCF	
Greater than or equal to 10,000	6
1,000 to less than 10,000	5
100 to less than 1,000	4
10 to less than 100	3
1 to less than 10	2
Less than 1	1
If BCF data are not available, assign a value as follows:	
Log Pow	
5.5 to 6.0	6
4.5 to less than 5.5	5
3.2 to less than 4.5	4
2.0 to less than 3.2	3
0.8 to less than 2.0	2
Less than 0.8	1
If Log Pow data are not available or exceed 6.0, assign a value as follows:	
Water Solubility (mg/l)	
Less than 25	6
25 to 500	5
Greater than 500 to 1500	4
Greater than 1500	1

[1] If the hazardous substance biomagnifies, increase the assigned value by one, except that the assigned value may not exceed 6.

If a BCF is available for any aquatic human food chain organism for the substance being evaluated, use the BCF to assign the bioaccumulation potential value to the hazardous substance. Use the following hierarchy for BCF data:

- BCF values in EPA Water Quality Criteria Documents.
- BCF values from peer reviewed literature.

If, within the same level of the hierarchy, BCFs are available for more than one species or from more than one bioassay of the same species, use the highest reported BCF in assigning a bioaccumulation potential value to the hazardous substance.

If BCF data are not available for the hazardous substance, use log Pow data to assign a bioaccumulation potential value to organic substances. Log Pow data are not to be used to assign a value to inorganic substances. If log Pow data are not available for the hazardous substance or if the log Pow exceeds 6.0, use water solubility data to assign a bioaccumulation potential value. (Use water solubility data as defined in section 3.2.1.2.) If none of these data are available, assign the hazardous substance the minimum bioaccumulation potential value of 1.

If a hazardous substance is reported in EPA Water Quality Criteria documents or peer reviewed literature to biomagnify [11], increase the assigned value by one in all cases, except that a hazardous substance must not be assigned a bioaccumulation potential value higher than 6.

4.2.2.1.2 Toxicity. Select those hazardous substances that have the highest bioaccumulation potential value. Assign a value for toxicity to these hazardous substances using the same procedures described in section 4.1.2.1.1.

4.2.2.1.3 Persistence. Evaluate the persistence of the set of hazardous substances that have the highest bioaccumulation potential value. Assign a value for persistence to each hazardous substance in the set, using the same procedures described in section 4.1.2.1.2, with one exception. In assigning the persistence value, use the predominant water category (i.e., lake; or river, ocean or Great Lake) between the probable point of entry and the nearest fishery (not the nearest drinking water intake) along the hazardous substance migration path for the watershed to determine which portion of the persistence rating table is to be used. The predominant water category is determined based on distance as described in section 4.1.2.1.2.

4.2.2.1.4 Calculation of the toxicity/persistence value, considering bioaccumulation. Bioaccumulation potential is considered in the selection of the substance whose toxicity/persistence value is employed in evaluating the human food chain threat for the watershed. For the set of hazardous substances with the highest bioaccumulation potential value for the watershed, assign a toxicity/persistence value to each hazardous substance in the set, using Table 4–10. Select that hazardous substance with the highest human toxicity/persistence value. Use the toxicity/persistence value of this hazardous substance as the assigned toxicity/persistence factor value for the watershed. The bioaccumulation potential value of this same hazardous substance must also be used in evaluating human exposure for the watershed in section 4.2.3. Enter the value for toxicity/persistence for this hazardous substance in Table 4–1.

4.2.2.2 Hazardous waste quantity. Assign the same factor value for hazardous waste quantity for the watershed as is assigned in section 4.1.2.2. Enter this value in Table 4–1.

4.2.2.3 Calculation of human food chain threat waste characteristics value. Sum the toxicity/persistence and hazardous waste quantity factor value for the watershed. Assign this sum as the value for the human food chain threat waste characteristics for the watershed. Enter this value in Table 4–1.

characteristics (drinking water) factor category times the value for the surface water use factor, and multiply the value for the waste characteristics (human food chain) factor category times fishery use factor value. For the smaller of the two products, assign its "use" factor the value of zero.

[11] Biomagnification is the process whereby the tissue concentration of a bioaccumulated substance increases at each step in the food chain, as the substance moves through two or more trophic levels.

4.2.3 Human food chain threat targets.

This targets factor category reflects the human population and fishery resources potentially at risk from an actual or potential release of hazardous substances from the site to aquatic human food chain resources. Two factors are evaluated: population and fishery use.

4.2.3.1 Population. The population factor value is determined for the watershed from two factors: potential human food chain contamination and actual human food chain contamination.

The actual human food chain contamination factor is to be used only for those fisheries along the hazardous substance migration path for the watershed at which either of the following apply:

- There is a closed fishery, and the hazardous substance(s) for which the fishery has been closed has been documented in an observed release from the site for the watershed, and at least a portion of the fishery is within the boundaries of the observed release (i.e., probable point of entry to furthest sampling point establishing the observed release).
- A tissue sample from a human food chain organism from a fishery exceeds an FDA action level and the hazardous substance which exceeds the FDA action level has been documented in an observed release from the site, and at least a portion of the fishery is within the boundaries of the observed release.

The potential human food chain contamination factor is to be used for all other fisheries that are partially or fully within the target distance limit for the watershed, including fisheries partially or fully within the boundaries of an observed release for the watershed that do not meet either of the two criteria listed above. If only a portion of a fishery is within the target distance limit, only that portion is considered in the evaluation of the population factor.

4.2.3.1.1 Potential human food chain contamination. This factor reflects the threat to the human population potentially exposed to hazardous substances through the aquatic human food chain. This factor is evaluated only for those fisheries that do not meet the criteria for actual human food chain contamination and that are partially or fully within the target distance limit for the watershed. Calculate the value for the potential human food chain contamination factor (PF) for the watershed as follows, subject to a maximum value of 200:

$$PF = \frac{1}{100} \times \sum_{i=1}^{n} P_i D_i$$

where:

P_i = Human food chain population for fishery i.

D_i = Dilution weighting factor for fishery i.

n = Number of fisheries.

Assign the dilution weighting factor a value as indicated in Table 4–7 of section 4.1.3.1, with the following exception: the river characteristic "mixing zone of quiet flowing rivers" is not to be used in assigning a dilution weighting factor. Determine the value for the human food chain population for each fishery, using values assigned to the bioaccumulation potential and to human food chain production as described below. Set boundaries between fisheries at those points where a change in human food chain production results in a different assigned value or where a change in stream flow results in a change in the dilution weighting factor.

In assigning the bioaccumulation potential value, use the bioaccumulation potential value for the same hazardous substance used to assign the toxicity/persistence factor value for this watershed in section 4.2.2.1.4.

The human food chain production is the annual production (in pounds) of human food chain organisms (e.g., fish, shellfish) from within the fishery under evaluation. Estimate human food chain production using the following hierarchy of data:

- Actual data on yield from the surface water body or on the stocking rate for the surface water body.
- Actual data on productivity of the surface water body.
- Default values on standing crop from Table I–5 of Attachment I to this Appendix A.

Convert standing crop data (a common measure of productivity) to pounds of fish per year within the hazardous substance migration path. In addition, multiply the standing crop data by 0.2 to convert the standing crop data to human food chain yield. (Note that each 1 foot section of stream width over a distance of 15 miles is equivalent to 1.82 acres.) Use Table 4–15 to assign human food chain production a value.

TABLE 4–15.—VALUES FOR HUMAN FOOD CHAIN PRODUCTION

Human food chain production (pounds per year)	Assigned value
0	0
Greater than 0 to 10	1
Greater than 10 to 100	2
Greater than 100 to 1,000	3
Greater than 1,000 to 10,000	4
Greater than 10,000 to 100,000	5
Greater than 100,000 to 1,000,000	6
Greater than 10^6 to 10^7	7
Greater than 10^7	8

Based on the values assigned to bioaccumulation potential and human food chain production, determine the value for human food chain population using Table 4–16.

TABLE 4–16.—HUMAN FOOD CHAIN POPULATION VALUE

	Human Food Chain Production Value								
	0	1	2	3	4	5	6	7	8
Bioaccumulation potential factor:									
6	0	160	1,600	16,000	160,000	1.6×10^6	1.6×10^7	* 2.0×10^7	2.0×10^7
5	0	16	160	1,600	16,000	160,000	1.6×10^6	1.6×10^7	2.0×10^7
4	0	2	16	160	1,600	16,000	160,000	1.6×10^6	1.6×10^7
3	0	0	2	16	160	1,600	16,000	160,000	1.6×10^6
2	0	0	0	2	16	160	1,600	16,000	160,000
1	0	0	0	0	2	16	160	1,600	16,000

* A value of 2.0×10^7 or greater will result in the maximum value for the human exposure factor for all dilution weighting factors.

Calculate the value for the potential human food chain contamination factor for the watershed using the formula for PF in this section. Enter the value, subject to a maximum of 200, in Table 4–1.

4.2.3.1.2 Actual human food chain contamination. This factor is to be used only for those fisheries which meet either of the two criteria in section 4.2.3.1. If these criteria do not apply, assign this factor a value of zero for the watershed, and enter the value in Table 4–1.

If either criteria applies for the watershed, estimate the human food chain population value for each such fishery from Table 4–16, using values assigned to the bioaccumulation potential and to human food production as described below.

In assigning the bioaccumulation potential value, use the bioaccumulation potential value for the same hazardous substance used to assign the toxicity/persistence factor value for this watershed in Section 4.2.2.1.4. Human food chain production is assigned a value as described in Section 4.2.3.1.1, except that for a closed fishery the data on yield, stocking rate, or productivity that are to be considered within the specified data hierarchy are to be the most recent data available for the period prior to closure of the fishery.

Calculate the value for the actual human food chain contamination for the watershed as the sum of the human food chain population values for each fishery, subject to a maximum factor value of 200. Enter the factor value in Table 4–1.

4.2.3.1.3 Calculation of the population factor value. Sum the values for potential human food chain contamination and actual human food chain contamination for the watershed. Assign this sum as the population factor value for the watershed, subject to a maximum value of 200. Enter this factor value in Table 4–1.

4.2.3.2 Fishery use. This factor reflects the nature and utility of the fisheries along the hazardous substance migration path for the watershed. Assign each fishery the highest value applicable from Table 4–17.

TABLE 4–17.—VALUES FOR FISHERY USE

Activity	Assigned Value
Commercial fishing for human consumption (including fish farming)	50
Subsistence fishing	40
Recreation/sport fishing	30
None of the above	0

For all the fisheries evaluated for the watershed, select the highest value assigned to any fishery and assign the fishery use factor that highest value, except as noted below.

If the fishery use factor has an assigned value of zero for the watershed, enter that value on Table 4–1. If the fishery use factor has a nonzero value and the surface water use factor (section 4.1.4) has a value of zero for the watershed, enter the value of the fishery use factor in Table 4–1. If, however, both the fishery use factor and the surface water use factor have a nonzero value assigned for the watershed, one of those values must be set to zero for the watershed. The use (fishery use or surface water use) which results in the highest overall surface water migration pathway score for the watershed should be assigned the nonzero factor value and the other use should be assigned a factor value of zero.[12] Decide which use factor is to be assigned the nonzero value and which is to be assigned the zero value for the watershed. Adjust the value for the surface water use factor in Table 4–1 in this manner if necessary, and enter the value for fishery use in Table 4–1.

[12] Note that this determination can be made as follows. Multiply the value for the waste characteristics (drinking water threat) factor category times the value for the surface water use factor, and multiply the value for the waste characteristics (human food chain threat) times the value for fishery use factor. For the smaller of the two products, assign its "use" factor the value of zero. (Note that the maximum value for both drinking water targets and human food chain targets is 200. Consequently, if the value for the fishery use factor exceeds 200 minus the population factor value assigned in section 4.2.3.1.3, then use a value equal to 200 minus this population factor value in the above calculation in place of the fishery use factor value. Similary, if the value for the surface water use factor exceeds 200 minus the population factor value assigned in section 4.1.3.2.5 minus the MEI factor value assigned in section 4.1.3.1, then use a value equal to 200 minus this population factor value minus this MEI factor value in the above calculation in place of the surface water use factor value.)

4.2.3.3 Calculation of human food chain threat targets value. Sum the population and fishery use factor values for the watershed. This sum is the human food chain threat targets value for the watershed, subject to a maximum value of 200. Enter the value in Table 4–1.

4.2.4 Calculation of the human food chain threat score for a watershed.

Multiply the human food chain threat values for likelihood of release (maximum value of 120), waste characteristics (maximum value of 200), and targets (maximum value of 200) for the watershed. Assign this product as the human food chain threat score for the watershed. Enter the score (maximum value of 4,800,000) in Table 4–1.

4.3 Human recreation threat.

The human recreation threat is used to evaluate the threat associated with the actual or potential release of hazardous substances to surface water used for human recreation. Recreation is defined, for the evaluation of this threat, as swimming or fishing in surface water. Recreation areas are those in which these activities take place. However, rivers with average annual flows less than 5 cubic feet per second and ponds less than 5 acres in size are excluded from consideration.

The human recreation threat score is the product of the values for three factor categories: likelihood of release, waste characteristics, and targets.

4.3.1 Human recreation threat likelihood of release.

Assign the same value for human recreation threat likelihood of release for the watershed as is assigned in section 4.1.1.3 for drinking water threat likelihood of release for the watershed. Enter this value in Table 4–1.

4.3.2 Human recreation threat waste characteristics.

This factor category assesses waste characteristics that reflect the rate, duration, and relative human toxicity of potential hazardous substances releases from the site to surface waters used for recreation in the watershed. Two factors are included: toxicity/persistence and hazardous waste quantity.

4.3.2.1 Toxicity/persistence. Evaluate toxicity/persistence for the human recreation threat in the same manner that toxicity/persistence is evaluated for the drinking water threat (section 4.1.2.1) except as discussed below. The major exception relates to the role that the dose adjusting factor plays in the selection of the substance whose toxicity/persistence value is employed in the evaluation for the watershed. The hazardous substances to be considered are all those eligible to be considered for the drinking water threat for the watershed (see section 4.1.2).

4.3.2.1.1 Dose adjusting factor. The dose adjusting factor represents the ratio of the dose of a hazardous substance that an individual would obtain via recreation in surface water to the dose that would be obtained via consumption of the same surface water as drinking water. Assign a dose adjusting factor value to each hazardous substance using the following equation and Table 4–18.

$$DF = (0.66 \times D_p) + (0.16 \times MF) + 0.0013$$

where:

DF = Dose adjusting factor.

D_p = Dermal permeability constant for the hazardous substance (cm/hr).

MF = Mass flux dilution factor for the hazardous substance ($1/m^3$).

TABLE 4–18.—DOSE ADJUSTING FACTOR EVALUATION TABLE

Dose Adjusting Factor (DF)	Assigned factor value
Greater than or equal to 0.1	3
0.01 to less than 0.1	2
0.001 to less than 0.01	1

Use values for the dermal permeability constant obtained from peer reviewed literature. If no such data are available, set $D_p = 0$ for that hazardous substance. "Analysis of Human Health Risks of Recreational Exposure to Toxic Pollutants in Surface Waters Near National Priority List (NPL) Sites, Appendix A," (EPA Contract No. 68–01–7090), Versar Inc., Springfield, VA, 1987, describes the method used to obtain the mass flux dilution factor for a hazardous substance.

4.3.2.1.2 Toxicity. Select those hazardous substances that have the highest dose adjusting factor value. Assign a value for toxicity to those hazardous substances using the same procedures described in Section 4.1.2.1.1.

4.3.2.1.3 Persistence. Evaluate the persistence of the set of hazardous substances that have the highest dose adjusting factor. Assign a value for persistence using the same procedures described in section 4.1.2.1.2, with one exception. In assigning the persistence value, use the predominant water category (i.e., lake; or river, ocean or Great Lake) between the probable point of entry and the nearest recreation area (not the nearest drinking water intake) along the hazardous substance migration path for the watershed to determine which portion of the persistence rating table is to be used. The predominant water category is determined based on distance as described in section 4.1.2.1.2.

4.3.2.1.4 Calculation of the toxicity/persistence value, considering the dose adjusting factor. The dose adjusting factor is considered in the selection of the hazardous substance whose toxicity/persistence value is employed in evaluating the human recreation threat for the watershed. For the set of hazardous substances with the highest dose adjusting factor value for the watershed, assign a toxicity/persistence value to each hazardous substance in the set, using Table 4–10. Select that hazardous substance with the highest human toxicity/persistence value. Use the toxicity/persistence value of this hazardous substance as the assigned toxicity/persistence factor value for the watershed. The dose adjusting factor value for this same hazardous substance must also

be used in evaluating human recreation targets for the watershed in section 4.3.3. Enter the value for toxicity/persistence for this hazardous substance in Table 4–1.

4.3.2.2 Hazardous waste quantity. Assign the same factor value for hazardous waste quantity for the watershed as is assigned in section 4.1.2.2. Enter this value in Table 4–1.

4.3.2.3 Calculation of human recreation threat waste characteristics value. Sum the toxicity/persistence and hazardous waste quantity factor values for the watershed. Assign this sum as the value for human recreation threat waste characteristics for the watershed. Enter this value in Table 4–1.

4.3.3 Human recreation threat targets.

This targets factor category reflects the human population potentially at risk from an actual or potential release of hazardous substances from the site to surface waters used for recreation. The human recreation targets are evaluated based on one factor: population. (This factor also includes components for evaluating the attractiveness and accessibility of the surface water recreation area.) The evaluation of the population factor is based on whether the surface water recreation areas are considered to be subject to actual or potential contamination as defined in section 4.0.2. The determination of whether a specific recreation area is subject to actual or potential contamination is to be made as described in section 4.1.3.

4.3.3.1 Population. The population factor value for the watershed is determined from two factors: actual contamination and potential contamination.

4.3.3.1.1 Actual contamination. This factor is to be used only for those recreation areas that are subject to actual contamination as defined in sections 4.0.2 and 4.1.3 and that are wholly or partially within the target distance limit for the watershed. If only a portion of the recreation area is within the target distance limit for the watershed, consider only that portion in the evaluation. If there are no recreation areas that meet these criteria, assign the actual contamination factor a value of zero, and enter this value in Table 4–1.

If there are recreation areas that meet the above criteria, a human recreation population value is derived for each such recreation area as described in section 4.3.3.1.1.2. The human recreation population value is derived using values assigned to the dose adjusting factor and to the recreation use population factor for that recreation area. The value for the recreation use population factor for the recreation area is determined as discussed in section 4.3.3.1.1.1. The value for the dose adjusting factor is determined as discussed in section 4.3.2.1.1; use the dose adjusting factor value for the same hazardous substance used to assign the toxicity/persistence factor value for the watershed in section 4.3.2.1.4. Boundaries between recreation areas are set at those points where a change in recreation use population value results in a different assigned value or where a change in stream flow results in a change in the dilution weighting factor.

4.3.3.1.1.1 Recreation use population. To determine the recreation use population factor value for a recreation area, first use Table 4–19 and the criteria discussed below to place the recreation area into a recreation category and then to assign an accessibility/attractiveness factor value to the recreation area based on this recreation category. The accessibility/attractiveness factor value is not to be rounded to the nearest integer.

TABLE 4–19.—ACCESSIBILITY/ATTRACTIVENESS FACTOR[1]

Recreation area category[2]	Accessibility/attractiveness factor value[3]	Distance limit (miles)
Capitol use and access improvements	1.00	125 [4](N=8)
Access improvements only	0.66	80 (N=6)
Observed use only	0.33	40 (N=4)
None of the above criteria apply and access is not restricted	0.08	10 (N=2)

[1] Applies to flowing water bodies (greater than or equal to 5 CFS) and lakes/reservoirs/ponds (greater than or equal to 5 acres).

[2] See text for the specific types of recreation areas within each category.

[3] If more than one category applies, select the highest factor value that applies. The accessibility/attractiveness factor value is not to be rounded to the nearest integer.

[4] N=Number of distance categories in Table 4–20 to be used within the indicated distance limit for evaluating the recreation use population factor for the recreation area.

Assign an accessibility/attractiveness factor value of 1.0 when any one of the following are present at the waterfront for that recreation area: designated swimming beaches and areas, boat ramps or boat rental facilities, public recreation piers, marinas, waterfront parks, waterfront campgrounds, waterfront picnic areas, recreation fish stocking (e.g., trout streams), or designated water-sport recreation areas.

Assign a factor value of 0.66 where the following are present: public land access or roads or bridges that provide waterfront access to the public, but no other capital improvements are present.

Assign a factor value of 0.33 when there are no signs of access or use improvements and the surface water is observed to be in use for recreational activities.

Assign a factor value of 0.08 for other surface waters except those whose access is restricted (e.g., by private, nonresidential property owners). Where access is restricted and none of the other categories apply, assign a factor value of zero.

Next, based on the applicable recreation category, use Table 4–19 to select the maximum distance over which the recreation use population is to be estimated for the recreation area and the number of distance categories (N) to be used in counting the population within this maximum distance limit. Table 4–20 indicates the specific distance categories in which population is to be counted within this maximum distance limit and the distance category multipliers to be applied to the population count within each of these distance categories. The location for centering these distance measurements is defined as the access point of the recreation area nearest the largest population center within the appropriate maximum distance limit determined from Table 4–19; the location for centering these measurements is not the site itself.

TABLE 4–20.—DISTANCE CATEGORY MULTIPLIERS FOR CALCULATION OF RECREATION USE POPULATION

Distance category (miles)	Multiplier [1]
Distance Category Multipliers for Rivers (Greater than or equal to 5 CFS) and Ponds (5 to 500 Acres)	
0 to less than 5	0.45
5 to less than 10	0.15
10 to less than 20	0.074
20 to less than 40	0.037
40 to less than 60	0.022
60 to less than 80	0.016
80 to less than 100	0.012
100 to less than 125	0.010
Distance Category Multipliers for Small Lakes (Greater than 500 to 1,000 Acres)	
0 to less than 5	0.46
5 to less than 10	0.15
10 to less than 20	0.077
20 to less than 40	0.039
40 to less than 60	0.023
60 to less than 80	0.017
80 to less than 100	0.013
100 to less than 125	0.011
Distance Category Multipliers for Medium Lakes (Greater than 1,000 to 5,000 Acres)	
0 to less than 5	0.52
5 to less than 10	0.17
10 to less than 20	0.086
20 to less than 40	0.04
40 to less than 60	0.026
60 to less than 80	0.019
80 to less than 100	0.014
100 to less than 125	0.012
Distance Category Multipliers for Large Lakes (Greater than 5,000 Acres)	
0 to less than 5	0.65
5 to less than 10	0.22
10 to less than 20	0.11
20 to less than 40	0.055
40 to less than 60	0.033
60 to less than 80	0.023
80 to less than 100	0.018
100 to less than 125	0.015

[1] These multipliers are not to be rounded to the nearest integer.

Determine the population residing within each applicable distance category. Use actual population numbers where possible. If such data are not available, use Bureau of Census data (which is available in both noncomputerized form and as part of available computerized population data bases).

Determine a recreation use population value (RU) for a recreation area using the following equation:

$$RU = AAFX \sum_{i=1}^{n} M_i P_i$$

where:

RU=Recreation use population value.

AAF=Accessibility/attractiveness factor value for the recreation area.

N=Number of distance categories applicable to the recreation area.
M_i=Multiplier associated with distance category i.
P_i=Number of people within distance category i.

Use Table 4–21 to assign a value to the recreation use population factor for each recreation area based on the value of RU calculated above.

TABLE 4–21.—RECREATION USE POPULATION FACTOR VALUES

Recreation use population value (RU)	Assigned factor value
Greater than 1,000,000	7
100,000 to less than 1,000,000	6
10,000 to less than 100,000	5
1,000 to less than 10,000	4
100 to less than 1,000	3
10 to less than 100	2
1 to less than 10	1
0	0

4.3.3.1.1.2 Determination of human recreation population value. Based on the values assigned to the dose adjusting factor and the recreation use population factor, use Table 4–22 to determine the human recreation population value for each recreation area.

TABLE 4–22.—HUMAN RECREATION POPULATION VALUE

	Recreation Use Population Factor Value							
	0	1	2	3	4	5	6	7
Does Adjusting Factor Value:								
3	0	3	25	250	2,500	25,000	250,000	2,500,000
2	0	0	3	25	250	2,500	25,000	250,000
1	0	0	0	3	25	250	2,500	25,000

4.3.3.1.1.3 Determination of actual contamination factor value. Divide the human recreation population value for each recreation area by 10. Use the resulting value as the value for the actual contamination factor for that recreation area. Select the highest actual contamination factor value assigned to any recreation area evaluated for the watershed. Assign the value selected as the value for the actual contamination factor for the watershed, subject to a maximum factor value of 200. Enter this factor value in Table 4–1.

4.3.3.1.2 Potential contamination. This factor reflects the threat to the human population potentially exposed to hazardous substances through aquatic recreation activities. This factor is evaluated only for those recreation areas that are not subject to actual contamination as defined in Sections 4.0.2 and 4.1.3. and that are wholly or partially within the target distance limit for the watershed (see section 4.3.3.1.1). If only a portion of the recreation area is within the target distance limit for the watershed, consider only that portion in the evaluation.

Calculate a human recreation population value as described in sections 4.3.3.1.1.1 and 4.3.3.1.1.2 for each recreation area evaluated for potential contamination for the watershed. Assign a dilution weighting factor value for the recreation area as indicated in Table 4–11 of section 4.1.3.1, with the following exception: the river characteristic "mixing zone of quiet flowing rivers" is not to be used in assigning a dilution weighting factor value. Determine boundaries between recreation areas as described in section 4.3.3.1.1.

Multiply the population value calculated above by the dilution factor value and divide the result by 100. Use the resulting value as the value for the potential contamination factor value for that recreation area. Select the highest potential contamination factor value assigned to any recreation area evaluated for the watershed. Assign the value selected as the value for the potential contamination factor for the watershed, subject to a maximum factor value of 200. Enter this factor value in Table 4–1.

4.3.3.1.3 Calculation of human recreation threat targets value. Assign the higher of the values for the actual contamination and potential contamination factors as the population factor value for the watershed, subject to a maximum value of 200. Enter this value in Table 4–1. Assign this same value to the human recreation threat targets factor category for the watershed and enter the value in Table 4–1.

4.3.4 Calculation of the human recreation threat score for a watershed.

Multiply the human recreation threat values for likelihood of release (maximum value of 120), waste characteristics (maximum value of 200), and targets (maximum value of 200) for the watershed. The product is the human recreation threat score for the watershed. Enter the resulting product (maximum value of 4,800,000) in Table 4–1.

4.4 Environmental threat.

The environmental threat is used to evaluate the threat associated with the actual or potential release of hazardous substances to surface water related sensitive environments. The environmental threat score for the watershed is the product of the values for the following: likelihood of release, waste characteristics, and targets.

4.4.1 Environmental threat likelihood of release.

Assign the same value for environmental threat likelihood of release for the watershed as is assigned for drinking water threat likelihood of release for the watershed in section 4.1.1.3. Enter this value in Table 4–1.

4.4.2 Environmental threat waste characteristics.

This factor category assesses waste characteristics that reflect the rate, duration, and relative ecological toxicity of potential hazardous substances releases from the site to surface water related sensitive environments. Two factors are included: ecosystem toxicity/persistence and waste quantity.

4.4.2.1 Ecosystem toxicity/persistence. The hazardous substances to be considered in evaluating ecosystem toxicity/persistence for the watershed are all those eligible to be considered in evaluating drinking water toxicity/persistence [section 4.1.2.1] for the watershed.

4.4.2.1.1 Ecosystem toxicity. Assign an ecosystem toxicity value to each hazardous substance for the watershed using Table 4–23.

Use the following hierarchy of data in assigning the ecosystem toxicity value:

- EPA chronic water quality criteria for the substance.
- EPA acute water quality criteria for the substance.
- Lowest LC50 value reported in peer reviewed literature for the substance.

TABLE 4–23.—ECOSYSTEM TOXICITY VALUE

	Assigned value
If an EPA chronic water quality criterion is available, assign a value as follows:	
EPA Chronic Water Quality Criterion	
Less than 1 ug/l	5
1 to 10 ug/l	4
Greater than 10 to 100 ug/l	3
Greater than 100 to 1,000 ug/l	2
Greater than 1,000 to 10,000 ug/l	1
Greater than 10,000 ug/l	0
If an EPA chronic water quality criterion is not available, assign a value from the EPA acute water quality criterion/100 as follows:	
EPA Acute Water Quality Criterion/100	
Less than 1 ug/l	5
1 to 10 ug/l	4

TABLE 4-23.—ECOSYSTEM TOXICITY VALUE—Continued

	Assigned value
Greater than 10 to 100 ug/l	3
Greater than 100 to 1,000 ug/l	2
Greater than 1,000 to 10,000 ug/l	1
Greater than 10,000 ug/l	0
If an EPA acute water quality criterion is also not available, assign a value from the LC_{50}/100 as follows:	
LC_{50}/100	
Less than 1 ug/l	5
1 to 10 ug/l	4
Greater than 10 to 100 ug/l	3
Greater than 100 to 1,000 ug/l	2
Greater than 1,000 to 10,000 ug/l	1
Greater than 10,000 ug/l	0

The EPA water quality criteria refer to water quality criteria for the protection of aquatic life (freshwater and saltwater) as presented in "Quality Criteria for Water 1986", EPA 440/5-86-001 (or later as available). If an EPA chronic water quality criterion is available for the hazardous substance being evaluated, use it to assign the ecosystem toxicity value. If the EPA chronic criterion is not available, use the EPA acute criterion, divided by 100, to assign the ecosystem toxicity value. If neither criterion is available, use the lowest LC_{50} value reported in peer reviewed literature, divided by 100, to assign the ecosystem toxicity value.

If the applicable EPA water quality criterion or LC_{50} value for the hazardous substance is available for both freshwater and saltwater, calculate a separate ecosystem toxicity value for freshwater and saltwater for the hazardous substance. If only a freshwater criterion or LC_{50} value is available, use it for both freshwater and saltwater. If only a saltwater criterion or LC_{50} value is available, use it for both saltwater and freshwater. If all sensitive environments being evaluated for the watershed are in freshwater, assign the hazardous substance the ecosystem toxicity value for freshwater. If all are in saltwater, assign the hazardous substance the ecosystem toxicity value for saltwater. If some are in freshwater and some are in saltwater, assign the hazardous substance the higher of the freshwater or saltwater ecosystem toxicity values.

4.4.2.1.2 Persistence. Assign a value for persistence for each hazardous substance available to the hazardous substance migration path for the watershed using the procedure outlined in section 4.1.2.1.2. However, in assigning the persistence value, use the predominant water category (i.e., lake or river; ocean or Great Lake) between the probable point of entry and the nearest sensitive environment (not the nearest drinking water intake) along the hazardous substance migration path for the watershed to determine which portion of Table 4-9 is to be used. The predominant water category is determined based on distance as described in section 4.1.2.1.2.

4.4.2.1.3 Calculation of toxicity/persistence factor value. Assign a toxicity/persistence value from Table 4-24 to each hazardous substance evaluated for the watershed, using the values assigned to the hazardous substance for ecosystem toxicity and persistence. Use the value for the substance with the highest toxicity/persistence value for the watershed as the value for this factor. Enter this value in Table 4-1.

TABLE 4-24.—ECOSYSTEM TOXICITY/PERSISTENCE VALUE

	Persistence value			
	0	1	2	3
Ecosystem toxicity value:				
0	0	0	0	0
1	10	27	43	60
2	20	37	53	70
3	30	47	63	80
4	40	57	73	90
5	50	67	83	100

4.4.2.2 Hazardous waste quantity. Assign the same factor value for hazardous waste quantity for the watershed as is assigned in section 4.1.2.2. Enter this value in Table 4-1.

4.4.2.3 Calculation of environmental threat waste characteristics value. Sum the toxicity/persistence factor value and the hazardous waste quantity factor value for the watershed. This sum is the environmental threat waste characteristics value for the watershed. Enter this value on Table 4-1.

4.4.3 Environmental targets.

The environmental targets factor category reflects the sensitive environments potentially at risk from an actual or potential release of hazardous substances from the site to surface water. The environmental targets for a watershed are evaluated based on one factor: sensitive environments. The evaluation is based on whether the sensitive environments are considered to be subject to actual or potential contamination as defined in section 4.0.2. Actual contamination is evaluated under a level I concentrations factor (i.e., exposure concentration exceeds ecological-based benchmarks) or a level II concentrations factor (i.e., exposure concentration does not exceed ecological-based benchmarks), as appropriate.

Determine whether a sensitive environment is subject to potential contamination, level I concentrations, or level II concentrations using the general methodology described in section 4.1.3 with the following modifications. Use ecological-based benchmarks (Table 4-25) rather than health-based benchmarks (Table 3-12) in determining if the level I criteria apply. If there is actual contamination and it does not meet the level I criteria, then the contamination is considered to meet the criteria for level II concentrations. In determining the level that applies consider only those samples and only those hazardous substances in a sample that establish an observed release. The samples considered may be taken at any location within the sensitive environment (or adjacent to the sensitive environment if contiguous to the migration path) or downstream from the sensitive environment. Table 4-25 lists the criteria for determining the ecological-based benchmarks to be used for hazardous substances in surface water.

TABLE 4-25.—Ecological-Based Benchmarks for Hazardous Substances in Surface Water

The appropriate ecological-based benchmark is selected from the EPA Water Quality Criteria for the protection of aquatic life (fresh water or salt water) as follows:

- If, within the target distance limit, the sensitive environment being evaluated is in freshwater, use the freshwater criteria as the benchmark.
- If, within the target distance limit, the sensitive environment being evaluated is in saltwater, use the saltwater criteria as the benchmark.
- If, within the target distance limit, the sensitive environment being evaluated is in both freshwater and saltwater, use the lower of the freshwater or saltwater criteria as the benchmark.

In all cases, use the chronic criteria if it is specified; otherwise, use the acute criteria as the benchmark.

4.4.3.1 Sensitive environments. Sensitive environments are determined from three factors: Level I concentrations, level II concentrations, and potential contamination.

4.4.3.1.1 Level I concentrations. This factor represents the sensitive environments along the hazardous substance migration path for the watersheds that are exposed to hazardous substances at exposure concentrations that exceed ecological-based benchmarks (see Table 4-25). Only count sensitive environments that are subject to level I concentrations as defined in section 4.4.3.

Assign values to each sensitive environment using either Table 2-18 or 2-19 in section 2.3.4. If a sensitive environment can be assigned values from both tables, use the table that assigns the higher values to the sensitive environment. Calculate the value (SH) of this factor for the watershed as follows, subject to a maximum value of 120:

$$SH = 10 \times \sum_{i=1}^{n} S_i$$

where:

S_i = Value(s) assigned to sensitive environment i.

n = Number of sensitive environments identified for the level I concentrations factor.

Enter the value in Table 4-1.

4.4.3.1.2 Level II concentrations. This factor represents the sensitive environments along the hazardous substance migration path for the watersheds that are exposed to hazardous substances at exposure concentrations that do not exceed ecological-based benchmarks (see Table 4-25) or for which ecological-based benchmarks do not exist for hazardous substances in the exposure concentration. Count only those

environments that are subject to level II concentrations as defined in section 4.4.3. Do not count any sensitive environments that have already been included in the evaluation of the level I concentrations factor for this watershed.

Assign values to each sensitive environment using either Table 2–18 or 2–19 in section 2.3.4. If a sensitive environment can be assigned values from both tables, use the table that assigns the higher values to the sensitive environment. Calculate the value (SL) of this factor for the watershed as follows, subject to a maximum value of 120:

$$SL = \sum_{i=1}^{n} S_i$$

where:

S_i = Value(s) assigned to sensitive i.
n = Number of sensitive environments identified for the level II concentrations factor.

Enter the value in Table 4–1.

4.4.3.1.3 Potential contamination. This factor represents the sensitive environments within the target distance limit for the watershed (section 4.0.2) that are potentially exposed to hazardous substances along the surface water hazardous substance migration path. Thus, sensitive environments counted in the level I or level II concentrations factors are not included.

Calculate the value of the potential contamination factor (SP) for the watershed as follows, subject to a maximum value of 120:

$$SP = \frac{1}{10} \sum_{i=1}^{n} S_i D_i$$

where:

S_i = Value(s) assigned to sensitive environment i.
D_i = Dilution weighting factor for sensitive environment i.
n = Number of sensitive environments identified for the potential contamination factor.

Assign values to each sensitive environment using either Table 2–18 or 2–19 in section 2.3.4. If a sensitive environment can be assigned values from both tables, use the table that assigns the higher values to the sensitive environment. Determine the appropriate dilution weighting factor for each sensitive environment from Table 4–11, as described in section 4.1.3.1, with the following exception: the river characteristic "mixing zone of quiet flowing rivers" is not to be used in assigning a dilution weighting factor. If more than one dilution weighting factor can be assigned to the sensitive environment (e.g., a wetland that is contiguous both to a small stream and to the main branch of the river), assign the highest value for the dilution weighting factor from among those that apply.

Enter the value for this factor, subject to a maximum of 120, in Table 4–1.

4.4.3.1.4 Calculation of environmental threat targets factor value. Sum the values for level I concentrations, level II concentrations, and potential contamination for the watershed. This sum is the environmental threat targets value for the watershed, subject to a maximum value of 120.

Enter the value in Table 4–1.

4.4.4 Calculation of environmental threat score for a watershed.

Multiply the environmental threat values for likelihood of release (maximum value of 120), waste characteristics (maximum value of 200), and targets (maximum value of 120) for the watershed. Assign the product as the environmental threat score for the watershed. Enter the resulting product (maximum value of 2,880,000) in Table 4–1.

4.5 Surface water migration pathway score for a watershed.

Sum the scores for the four types of threats for the watershed (drinking water, human food chain, recreation and environmental), subject to a maximum score of 4,800,000, and divide by 48,000. The resulting score is the surface water migration pathway score for the watershed. Enter the result in Table 4–1.

4.6 Surface water migration pathway score.

Sum the surface water migration pathway scores for each watershed. This sum is the surface water migration pathway score for the site, subject to a maximum score of 100. Enter this score in Table 4–1.

5.0 Onsite exposure pathway.

The onsite exposure pathway addresses the relative risks to people and to terrestrial sensitive environments, that are associated with direct contact with soils or wastes containing hazardous substances. These risks are evaluated based on the following: the likelihood of there being exposure through direct physical contact to hazardous substances in soils or sources containing shallow wastes (i.e., wastes on or above the land surface, or those contaminated soils or wastes not more than 2 feet below the land surface), the relative frequency and duration of such exposures, the relative toxicity of the hazardous substances, and the size and composition of the potentially exposed population.

Two types of threats are evaluated: the threat to the resident population and the threat to the nearby population. Both of these threats are evaluated based on three factor catagories:

- Likelihood of Exposure (LE).
- Waste Characteristics (WC).
- Targets (T).

Figure 5–1 indicates the factors included within each factor category for each type of threat.

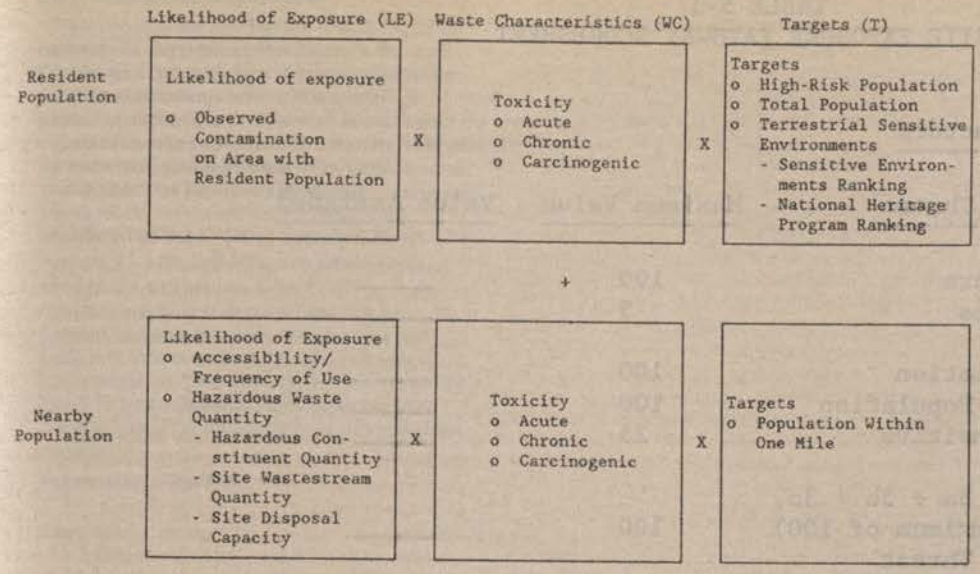

FIGURE 5-1
OVERVIEW OF THE ONSITE EXPOSURE PATHWAY

The onsite exposure pathway score (S_{on}) is calculated by multiplying, for each type of threat, the values for likelihood of exposure, waste characteristics, and targets. The resultant score is summed for the two types of threats and divided by a scaling factor to normalize it to a scale of 0 to 100. This calculation procedure is outlined in Table 5-1.

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TABLE 5-1
ONSITE EXPOSURE PATHWAY SCORESHEET

Factor Categories and Factors		Maximum Value	Value Assigned	
Resident Population Threat				
1.	Likelihood of Exposure	100	____	
2.	Waste Characteristics	5	____	
3.	Targets			
	3a. High-Risk Population	100	____	
	3b. Total Resident Population	100	____	
	3c. Terrestrial Sensitive Environments	25	____	
	3d. Targets (Lines 3a + 3b + 3c, subject to a maximum of 100)	100	____	
4.	Resident Population Threat Score (Lines 1 x 2 x 3d)	50,000		____
Nearby Population Threat				
5.	Likelihood of Exposure			
	5a. Waste Quantity	100	____	
	5b. Accessibility/Frequency of Use	100	____	
	5c. Likelihood of Exposure	100	____	
6.	Waste Characteristics	5	____	
7.	Targets			
	7a. Population Within 1-Mile	100	____	
	7b. Targets (Line 7a, subject to a maximum of 100)	100	____	
8.	Nearby Population Threat Score (Lines 5c x 6 x 7)	50,000		____
Onsite Exposure Pathway Score				
9.	Onsite Exposure Pathway Score (S_{os}) (Lines [4+8]/500, subject to a maximum of 100)	100		____ | ____ |

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5.0.1 General considerations.

The process for scoring the onsite exposure pathway is diagrammed in Figure 5–2. Observed contamination is considered to be present at locations where analytical evidence shows the presence of hazardous substances, attributable to the site, in soils or sources containing shallow wastes at concentrations significantly above background levels under the conditions presented in Table 2–2 of section 2. See section 2.1.1 for the detection limits to be used in the evaluation. Observed contamination is also considered to be present in areas between the site and the sampling locations that establish observed contamination, providing that these areas are likely to be contaminated by releases from the site based on topography or other surface conditions.

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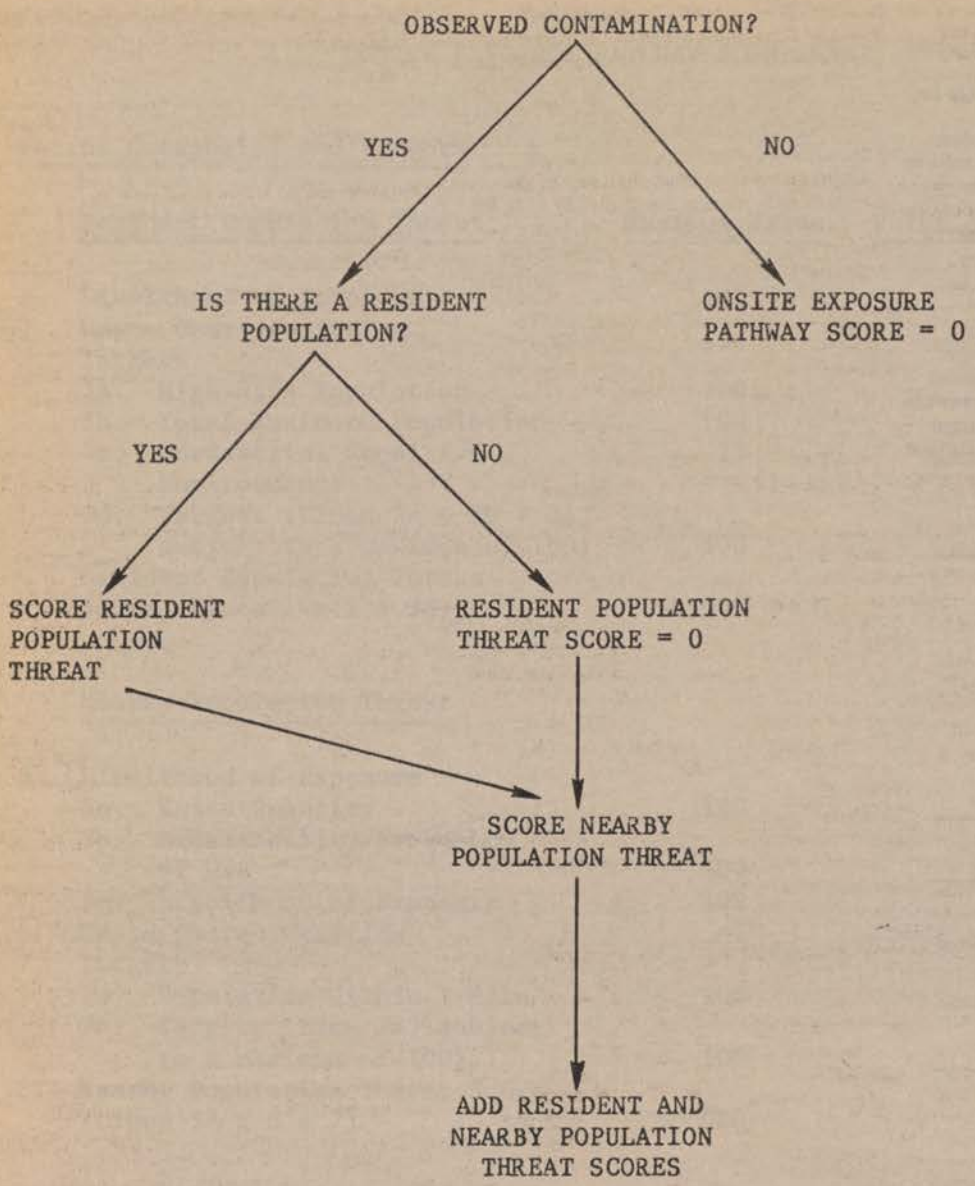

FIGURE 5-2
ONSITE EXPOSURE PATHWAY SCORING PROCESS

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If there is no observed contamination, assign the onsite exposure pathway a score of zero. If there is observed contamination, assign scores for the resident population threat and the nearby population threat as indicated in sections 5.1 and 5.2.

5.1 Resident population threat.

The resident population consists of the following: people living or attending school or day care on property where there is observed contamination; and terrestrial sensitive environments where there is observed contamination. If no people or terrestrial sensitive environments meet these criteria, assign the resident population threat a score of zero.

5.1.1 Likelihood of exposure.

If there is observed contamination on an area containing resident population, assign a value of 100 to the likelihood of exposure factor. Otherwise, assign a value of zero for both this factor and the resident population threat and proceed to the evaluation of the nearby population threat (section 5.2). Enter the value assigned in Table 5–1.

5.1.2 Waste characteristics.

The waste characteristics factor category consists of one factor: toxicity. Toxicity is evaluated for all those hazardous substances attributable to the site that are observed in soils and sources containing shallow wastes at levels significantly above background levels. Assign a toxicity value to these hazardous substances as specified in section 2.2.1.1. The value for this factor category is the highest toxicity value assigned to any of these hazardous substances. Enter this value in Table 5–1.

5.1.3 Targets.

The resident population targets category is based on three factors: high-risk population, total resident population, and terrestrial sensitive environments.

For any of these three populations to be considered in this factor category, one of two criteria must be met:

- There must be observed contamination attributable to the site within the property boundary of a residence, school, or day-care center, or within the boundaries of a terrestrial sensitive environment.
- The property boundary of a residence, school, day-care center, or terrestrial sensitive environment must lie within an area between the site and points of observed contamination attributable to the site and be likely to be contaminated by releases from the site based on topography or other surface conditions.

5.1.3.1 High-risk population. The high-risk population is composed of all children less than seven years old, as of the date of the SI or action equivalent to the SI, who meet either of the eligibility criteria for the resident population threat targets factor category as described above. Action equivalent to the SI includes evaluations performed by EPA prior to conducting removal actions, or by States prior to conducting response actions.

Children meeting more than one of the above criteria may be counted only once for this factor. Assign a value to this factor by multiplying the number of children in this high-risk population by ten. Enter this value in Table 5–1.

5.1.3.2 Total resident population. The total resident population is determined by counting all individuals who live or attend school or day care on property that meets either of the eligibility criteria for the resident population threat targets factor category as described above. Children counted for the high-risk population factor are not to be counted in evaluating this factor.

Assign a value to this factor by multiplying the total number of people counted in the resident population by two. Enter this value in Table 5–1.

5.1.3.3 Terrestrial sensitive environments. Assign values from either Table 5–2 or Table 2–19 of section 2.3.4 to each terrestrial sensitive environment that meets either of the eligibility criteria for the resident threat targets factor category as described above. If a sensitive environment can be assigned values from both tables, use the table that assigns the higher values to the sensitive environment. Calculate the value for this factor by dividing the value for the highest scoring sensitive environment by four. Enter this value in Table 5–1.

TABLE 5–2.—TERRESTRIAL SENSITIVE ENVIRONMENTS FACTOR VALUES

Terrestrial sensitive environments	Assigned value
Terrestrial critical habitat for federally designated endangered or threatened species	
National park	100
Designated Federal wilderness area	
Terrestrial habitat known to be used by Federally designated or proposed threatened or endangered species	
National preserve (terrestrial)	75
National or State terrestrial wildlife refuge	
Federal land designated for protection of natural ecosystems	
Administratively proposed Federal wilderness area	
Terrestrial habitat known to be used by State-designated endangered or threatened species	50
Terrestrial habitat known to be used by species under review as to its Federally designated threatened and endangered status	
State lands designated for wildlife or game management	25

5.1.3.4 Calculation of resident population targets score. Sum the values for the three resident population targets factors. This sum is the resident population targets category value, subject to a maximum value of 100. Enter this value in Table 5–1.

5.1.4 Resident population threat score.

Multiply the values for likelihood of exposure, waste characteristics, and targets for the resident population threat. This product is the resident population threat score. Enter this score in Table 5–1.

5.2 Nearby population threat.

The nearby population consists of individuals who live or go to school within a one-mile travel distance of the site and who do not meet the criteria for the resident population targets (see section 5.1.3).

5.2.1 Likelihood of exposure.

Two factors are included in the nearby population likelihood of exposure factor category: waste quantity and accessibility/frequency of use.

5.2.1.1 Waste quantity. The waste quantity factor for the site is evaluated based on the total areal extent of the site. Only the area covered by sources with wastes either on or above the surface or not more than 2 feet below the surface may be counted for this factor. Use Table 5–3 to assign a value to each source based on its area. For those sources where areal extent is not readily attainable, use the default measures in Table 5–3 applicable to each source type to assign a value to each source by using the following data (in order of preference): quantity of hazardous substances deposited in the source, quantity of waste deposited in the source that contains hazardous substance, source volume. Use a lower measure in the hierarchy only if data are not complete for a higher measure in the hierarchy. If more than one measure is used, assign the source the highest value that results from any of the measures used.

TABLE 5-3.—NEARBY POPULATION WASTE QUANTITY FACTOR VALUES

	Assigned factor value		
	0	1 to 100	100
PRIMARY MEASURE			
Contaminated Area (A) (ft^2)	Less than 5,000	A/5,000	500,000+
DEFAULT MEASURES			
Landfill:			
HSQ [1] (lbs)	Less than 1.95	HSQ/1.95	195+
QWD [2] (lbs)	Less than 9,728	QWD/9,728	972,800+
V [3] (yd^3)	Less than 4,864	V/4,864	486,400+
Surface Impoundment:			
HSQ (lbs)	Less than 444	HSQ/444	44,400+
QWD (lbs)	Less than 2.2×10^6	QWD/2.2×10^6	2.2×10^8+
V (yd^3)	Less than 1,111	V/1,111	111,100+
Land Treatment:			
HSQ (lbs)	Less than 1.5	HSQ/1.5	150+
QWD (lbs)	Less than 7,047	QWD/7,407	740,700+
Waste Pile:			
HSQ (lbs)	Less than 1,946	HSQ/1,946	194,600+
QWD (lbs)	Less than 9.7×10^6	QWD/9.7×10^6+	9.7×10^8+
V (yd^3)	Less than 4,864	V/4,864	486,400+
Contaminated Soil:			
HSQ (lbs)	Less than 0.15	HSQ/0.15	15+
QWD (lbs)	Less than 741	AWD/741	74,100+
V (yd^3)	Less than 370	V/370	37,000+

[1] HSQ: Hazardous Substance Quantity.
[2] QWD: Waste Quantity as Deposited.
[3] V: Volume.

Sum the values assigned to each eligible source within the site. This sum is the value for this factor, subject to a maximum value to 100. Enter this value in Table 5-1.

5.2.1.2 Accessibility/frequency of use. Accessibility refers both to the measures taken to limit access by humans or animals to areas with observed contamination and to natural barriers that may reduce access to such areas. Frequency of use is a measure of the expected level of use based on the characteristics of the areas with observed contamination.

Use Table 5-4 to assign a value for accessibility/frequency of use to areas with observed contamination. Any land used for residences is not considered in assigning a value for the accessibility/frequency of use factor. Select the highest value assigned to any area. This is the value for the accessibility/frequency of use factor. Enter this value in Table 5-1.

TABLE 5-4.—CRITERIA FOR ASSIGNING ACCESSIBILITY/FREQUENCY OF USE VALUES

Accessibility/frequency of use	Assigned value
Observed contamination on the property of a park, playground, school, or other areas designated for use by the public	100
Observed contamination on land (excluding land used for residences) with no continuous barrier to entry or a barrier that has been breached; or observed contamination on lands where there are clear indications of human recreational activity	75
Observed contamination on land (excluding land used for residences) protected by a continuous and effective barrier to entry or monitored by 24-hour surveillance	50
Observed contamination on land (excluding land used for residences) protected by a continuous and effective barrier to entry and 24-hour surveillance	25
Presence of an artificial barrier and a natural barrier combining to restrict access to hazardous substances (e.g., a fence combined with a cliff), which completely surrounds the facility; and a means to control entry, at all times, through gates or other entrances to the facility (e.g., an attendant, television monitors, or controlled roadway access to the facility)	5

5.2.1.3 Likelihood of exposure value. Assign a value for the likelihood of exposure factor using the matrix in Table 5-5, based on the values asigned to the waste quantity and accessibility/frequency of use factors. Enter this value in Table 5-1.

TABLE 5-5.— NEARBY POPULATION LIKELIHOOD OF EXPOSURE MATRIX

	Accessibility/frequency of use factor value				
	100	75	50	25	5
Waste Quantity Factor Value:					
76 to 100	100	100	75	50	25
51 to 75	100	75	50	25	10
26 to 50	75	50	25	10	0
1 to 25	50	25	10	0	0
0	25	10	0	0	0
No observed Contamination	0	0	0	0	0

5.2.2 Waste characteristics.

The waste characteristics factor category consists of one factor: toxicity. For every hazardous substance on the site significantly above background levels, assign a toxicity value as specified in section 2.2.1.1. The value for this factor category is the highest toxicity value assigned to any of these hazardous substances. Enter this value in Table 5-1.

5.2.3 Targets.

The nearby population targets factor category is evaluated based on one factor: population within a 1-mile travel distance from the site.

The population within a 1-mile travel distance from the site includes residents as well as students who attend school within this travel distance. Populations counted in the resident population threat are not counted under this factor. In determining the distance of an individual from the site, measure the overland distance an individual would have to travel. If there are no natural barriers to travel, such as a river, the travel distances from the site to the population are measured along a straight line from the site. If barriers exist, the distance must be measured from the site to the nearest crossing and from there to the individual as shown in Figure 5-3.

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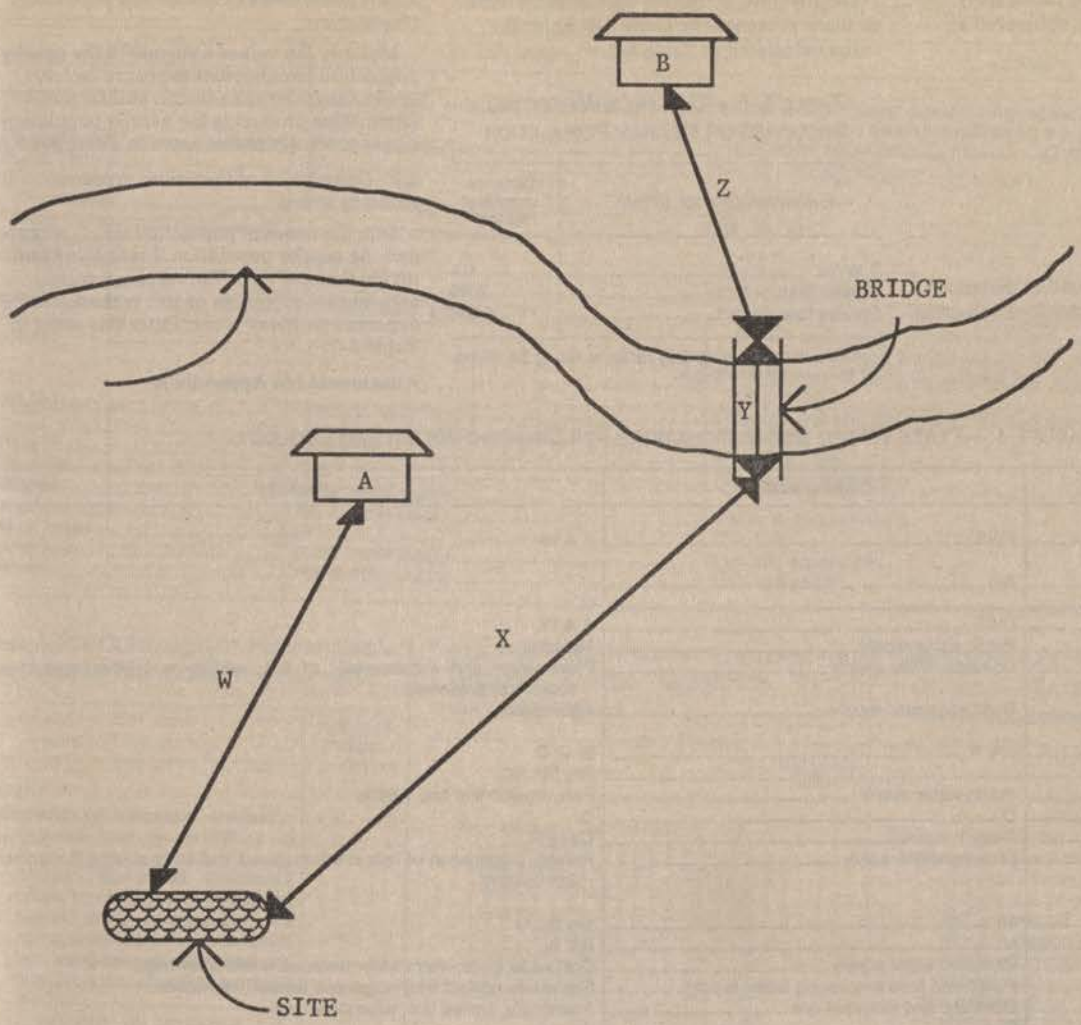

DISTANCE TO A = W

DISTANCE TO B = X + Y + Z

FIGURE 5-3
MEASUREMENT OF DISTANCE TO NEARBY POPULATION

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Calculate the value for this factor (PN) using the following equation, subject to a maximum value of 100:

$$PN = \sum_{i=1}^{3} P_i D_i$$

Where:
P_i = Population within evaluation distance i.
D_i = Distance weighting factor for evaluating distance i.

The distance weighting factors to be used as those presented in Table 5–6. Enter the value calculated in Table 5–1.

TABLE 5–6.—DISTANCE WEIGHTING FACTORS FOR NEARBY POPULATION

Evaluation distance (miles)	Distance weighting factor[1]
0 to ¼	0.1
Greater than ¼ to ½	0.05
Greater than ½ to 1	0.025

[1] This distance weighting factor is not to be rounded to the nearest integer.

5.2.4 Calculation of the nearby population threat score.

Multiply the values assigned to the nearby population likelihood of exposure factor, waste characteristics factor, and targets factor. This product is the nearby population threat score. Enter this score in Table 5–1.

5.3 Calculation of the onsite exposure pathway score.

Sum the resident population threat score and the nearby population threat score and divide the sum by 5. The resulting value, subject to a maximum of 100, is the onsite exposure pathway score. Enter this score in Table 5–1.

Attachment I to Appendix A

TABLE I–1.—STATE WATER USE DESIGNATIONS FOR DRINKING WATER AND ECOLOGY

State	Drinking water	Ecology
1. Alabama	PWS	F & W.
2. Alaska:		
—Fresh Water	A(i)	C.
—Marine Water		C.
3. Arizona	DWS	A & W.
4. Arkansas	Public water supply	Fisheries.
5. California	Domestic water supply	Preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.
6. Colorado	Domestic water supply	Aquatic life.
7. Connecticut:		
—Inland Waters	AA; A	B; C; D.
—Coastal and Marine		SA; SB; SC.
8. Delaware	Public water supply	Fish, Aquatic life, and Wildlife.
9. District of Columbia	D	C.
10. Florida	Class I	Class III.
11. Georgia	Drinking water supply	Fishing, propagation of fish, shellfish, game and other aquatic life; primary trout waters.
12. Hawaii:		
—Inland Waters	1b	1a; 1b; 1c.
—Marine Waters		AA; A.
13. Idaho	Domestic water supply	Cold water biota; warm water biota; salmonid spawning.
14. Illinois	Public and food processing water supply	Secondary contact and indigenous aquatic life waters.
15. Indiana	Domestic and industrial use	Aquatic life; limited use; exceptional use.
16. Iowa	C	B.
17. Kansas	Domestic water supply	Aquatic life use.
18. Kentucky	DWS	WAH; CAH; OWR.
19. Louisiana	D	C; G.
20. Maine:		
—Fresh Waters	A; B–1; B–2	B–1; B–2; C.
—Great Ponds	GP–A; GP–B	GP–B.
—Tidal or Marine		SA; SB–1; SB–2; SC; SD.
21. Maryland	I	I; III.
22. Massachusetts:		
—Inland Waters	A	B; C.
—Coastal or Marine		SA; SB; SC.
23. Michigan	Public water supply	Warmwater fish; other indigenous aquatic life and wildlife; coldwater fish.
24. Minnesota	Domestic consumption	Fisheries and recreation; agriculture and wildlife.
25. Mississippi	Public water supply	Fish and wildlife.
26. Missouri	Drinking water supply	Livestock and wildlife watering; protection of aquatic life.
27. Montana	A–closed; A–1; B–1; B–2; B–3	A–1; B–1; B–2; B–3; C–2; C–3.
28. Nebraska	Public drinking water supply	Aquatic life-coldwater habitat.
29. Nevada	A; B; C	A; B; C; D.
30. New Hampshire	A; B	B; C.
31. New Jersey	FW–2	FW–1; PL; FW–2; SE–1; SE–2; SE–3; SC.
32. New Mexico	Domestic water supply	Coldwater fishery; high quality cold water fishery; marginal coldwater fishery; warmwater fishery; limited warmwater fishery; livestock and wildlife watering.
33. New York:		
—Fresh Surface	AA, A	N; AA; A; B; C.
—Saline Surface		SA; SB; SC.
34. North Carolina:		
—Freshwater	WS–I; WS–II; WS–III	B; C.
—Saltwater		SA; SB; SC.
35. North Dakota	I; IA; II	I; IA; II.
36. Ohio	C(1)	A(1); A(2); A(3); A(4); A(5).
37. Oklahoma	Public and private water supplies; emergency public and private water supplies.	Fish and wildlife propagation.

TABLE I-1.—STATE WATER USE DESIGNATIONS FOR DRINKING WATER AND ECOLOGY—Continued

State	Drinking water	Ecology
38. Oregon	Public domestic water supply; private domestic water supply.	Salmonid fish rearing; salmonid fish spawning; resident fish and aquatic life; wildlife and hunting; anadromous fish and passage.
39. Pennsylvania	PWS	CWF; WWF; MF; AWS; HQ; EV.
40. Puerto Rico	SD	SA; SB; SC; SD; SE.
41. Rhode Island:		
—Freshwater	A; B	B; C; D.
—Sea Water		SA; SB; SC.
42. South Carolina:		
—Freshwaters	AA; A; B	AA; A-trout; A; B-trout; B.
—Tidal salt waters		SAA; SA; SB; SC.
43. South Dakota	Domestic water supply waters	Cold water permanent fish life propagation waters; cold water marginal fish life propagation waters; warmwater permanent fish life propagation waters; warmwater semipermanent fish life propagation waters; warmwater marginal fish life propagation waters; wildlife propagation and stock watering.
44. Tennessee	Domestic water supply	Livestock watering and wildlife; fish and aquatic life; trout waters.
45. Texas	Domestic water supply	Aquatic life.
46. Utah	1A; 1B; 1C	3A; 3B; 3C; 3D.
47. Vermont	A; B	Fish habitat designation.
48. Virginia	Public water supply	
49. Washington	AA; A; Lake class	AA; A; B; C; Lake class.
50. West Virginia	B-1	C-1; C-2.
51. Wisconsin	Public water supply	Fish and aquatic life.
52. Wyoming	Public water supply	Fish and wildlife.

TABLE I-2.—CONTAINMENT FACTORS FOR GROUND WATER MIGRATION PATHWAY

	Assigned value
Landfill:	
Evidence of hazardous substance migration from the landfill; or no liner; or none of the following present: Maintained engineered cover, functioning and maintained run-on control system and runoff management system, or functioning leachate collection and removal system immediately above the liner	10
No evidence of hazardous substance migration from the landfill, a liner, and any one of the following present: Maintained engineered cover, functioning and maintained run-on control system and runoff management system, or functioning leachate collection and removed system immediately above the liner	9
No evidence of hazardous substance migration from the landfill, a liner, and any two of the following present: Maintained engineered cover, functioning and maintained run-on control system and runoff management system, or functioning leachate collection and removal system immediately above the liner	7
No evidence of hazardous substance migration from the landfill; and all of the following present: Liner with functioning leachate collection and removal system immediately above the liner, functioning ground water monitoring system, maintained engineered cover and functioning and maintained run-on control system and runoff management system	5
No evidence of hazardous substance migration from the landfill; and single liner with functioning leachate collection and removal system immediately above the liner, functioning ground water monitoring system, no bulk or noncontainerized liquids or materials containing free liquids deposited in the landfill, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	3
No evidence of hazardous substance migration from the landfill; and double liner with functioning leachate collection and removal system above and between such liners, functioning ground water monitoring system, any one deficiency in the physical containment system (i.e., bulk or noncontainerized liquids or materials containing free liquids deposited in the landfill, no or nonfunctioning or nonmaintained run-on control system and runoff management system, or no or nonmaintained engineered cover)	3
No evidence of hazardous substance migration from the landfill; and double liner with functioning leachate collection and removal system above and between such liners, functioning ground water monitoring system, no bulk or noncontainerized liquids or materials containing free liquids deposited in the landfill, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	0
Surface impoundment:	
Evidence of hazardous substance migration from the surface impoundment; or no liner; or free liquids present with either no diking, unsound diking, or diking that is not regularly inspected and maintained	10
No evidence of hazardous substance migration from the surface impoundment, free liquids present, a liner, sound diking that is regularly inspected and maintained, and adequate freeboard	9
No evidence of hazardous substance migration from the surface impoundment, free liquids present, a single liner with functioning leachate collection and removal system below the liner, functioning ground water monitoring system, sound diking that is regularly inspected and maintained, and adequate freeboard	*
No evidence of hazardous substance migration from the surface impoundment, free liquids present, a double liner with functioning leachate collection and removal system between the liners, functioning ground water monitoring system, sound diking that is regularly inspected and maintained, and adequate freeboard	3
No evidence of hazardous substance migration from the surface impoundment and all free liquids eliminated at closure (either by removal of liquids or solidification of remaining wastes and waste residues	(a)

TABLE I-2.—CONTAINMENT FACTORS FOR GROUND WATER MIGRATION PATHWAY—Continued

	Assigned value
Pile:	
Evidence of hazardous substance migration from the pile area (i.e., pile area includes pile and any containment structure that may be present); or no liner; or none of the following present: maintained engineered cover over the pile, functioning and maintained run-on control system and runoff management system, or functioning leachate collection and removal system immediately above the liner	10
No evidence of hazardous substance migration from the pile area, a liner, and one of the following present: Maintained engineered cover, functioning and maintained run-on control system and runoff management system, or functioning leachate collection and removal system immediately above the liner	9
No evidence of hazardous substance migration from the pile area, a liner, and any two of the following present: Maintained engineered cover, functioning and maintained run-on control system and runoff management system, functioning leachate collection and removal system immediately above the liner	7
No evidence of hazardous substance migration from the pile area, a liner, and all of the following present: Maintained engineered cover, functioning and maintained run-on control system and runoff management system, functioning leachate collection and removal system immediately above the liner, and functioning ground water monitoring system	5
No evidence of hazardous substance migration from the pile area; and single liner with functioning leachate collection system immediately above the liner, ground water monitoring system, no bulk or noncontainerized liquids or materials containing free liquids deposited in the pile, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	3
No evidence of hazardous substance migration from the pile area; and double liner with functioning leachate collection and removal system above and between such liners, ground water monitoring system, and any one deficiency in the physical containment system (i.e., bulk or noncontainerized liquids or materials containing free liquids deposited in the pile, no or nonfunctioning or nonmaintained run-on control system and runoff management system, or no or nonmaintained engineered cover)	3
No evidence of hazardous substance migration from the pile area; and double liner with functioning leachate collection and removal system above and between such liners, functioning ground water monitoring system, no bulk or noncontainerized liquids or materials containing free liquids deposited in the pile, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	0
Pile inside or under a maintained structure that provides protection from precipitation so that neither runoff nor leachate is generated, liquids or materials containing free liquids are not deposited in the pile, and functioning and maintained run-on control is present	0
Containers:	
All containers buried	(b)
Evidence of hazardous substance migration from the container area (i.e., container area includes containers and any containment structures that may be present); or no liner (or no essentially impervious base) under the container area; or no diking (or similar structure) surrounding container area; or diking surrounding container area unsound or not regularly inspected and maintained	10
No evidence of hazardous substance migration from the container area, a liner (or essentially impervious base) under the container area, and container area surrounded by sound diking that is regularly inspected and maintained	9
No evidence of hazardous substance migration from the container area; container area surrounded by sound diking that is regularly inspected and maintained; and an essentially impervious base under the container area with a liquids collection and removal system	7
No evidence of hazardous substance migration from the container area, free liquids present, container area surrounded by sound diking that is regularly inspected and maintained, containment system has sufficient capacity to hold total volume of all containers and to provide adequate freeboard, single liner under container area with functioning leachate collection and removal system below the liner, and functioning ground water monitoring system	5
No evidence of hazardous substance migration from the container area; container area surrounded by sound diking that is regularly inspected and maintained; containment system includes an essentially impervious base, a liquids collection system, sufficient capacity to contain 10 percent of the volume of all the containers, and functioning and maintained run-on control; functioning ground water monitoring system; and spilled or leaked hazardous substances and accumulated precipitation removed in a timely manner to prevent overflow of the collection system, at least weekly inspection of containers, hazardous substances in leaking or deteriorating containers transferred to containers in good condition, and containers sealed except when waste is added or removed	5
No evidence of hazardous substance migration from the container area, free liquids present, container area surrounded by sound diking that is regularly inspected and maintained, containment system has sufficient capacity to hold total volume of all containers and to provide adequate freeboard, double liner under container area with functioning leachate collection and removal system between the liners, and functioning ground water monitoring system	3
Containers inside or under a maintained structure that provides protection from precipitation so that neither runoff nor leachate would be generated from any containers that were unsealed or ruptured, liquids or materials containing free liquids are not deposited in any container, and functioning and maintained run-on control is present	0
All containers removed, all containers were sealed and intact, and no evidence of hazardous substance migration from any container	0
No evidence of hazardous substance migration from the container area, containers leaking, and all free liquids eliminated at closure (either by removal or liquids or solidification of remaining wastes and waste residues)	(a)
Tank:	
Below ground tank	(b)

TABLE I-2.—CONTAINMENT FACTORS FOR GROUND WATER MIGRATION PATHWAY—Continued

	Assigned value
Evidence of hazardous substance migration from the tank area (i.e., tank area includes tank, ancillary equipment such as piping, and any containment structures); or tank and ancillary equipment not provided with secondary containment (e.g., liner under tank area, vault system, double wall); or no diking (or similar structure) surrounding tank and ancillary equipment; or diking surrounding tank and ancillary equipment unsound or not regularly inspected and maintained	10
No evidence of hazardous substance migration from the tank area, tank and ancillary equipment provided with secondary containment, and tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained	9
No evidence of hazardous substance migration from tank area; tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained; tank and ancillary equipment provided with secondary containment with a leak detection and collection system	7
No evidence of hazardous substances migration from the tank area, tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained, containment system has sufficient capacity to hold total volume of all tanks within the containment area and to provide adequate freeboard, single liner under that tank area with functioning leachate collection and removal system below the liner, and functioning ground water monitoring system	5
No evidence of hazardous substance migration from the tank area; tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained; tank and ancillary equipment provided with secondary containment system that detects and collects spilled or leaked hazardous substances and accumulated precipitation and has sufficient capacity to contain 110 percent of the volume of the largest tank within the containment area; spilled or leaked hazardous substances and accumulated precipitation removed in a timely manner; and at least weekly inspection of tank and secondary containment system, and all leaking or unfit-for-use tank systems promptly responded to; and functioning ground water monitoring system	5
No evidence of hazardous substances migration from the tank area, tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained, containment system has sufficient capacity to hold total volume of all tanks within the containment area and to provide adequate freeboard, double liner under container area with functioning leachate collection and removal system between the liners, and functioning ground water monitoring system	3
Tank is above ground, and inside or under a maintained structure that provides protection from precipitation so that neither runoff nor leachate would be generated from any material released from the tank, liquids or materials containing free liquids are not deposited in any tank, and functioning and maintained run-on control is present	0
Land treatment:	
Evidence of hazardous substances migration from the land treatment zone; or no functioning and maintained run-on control and runoff management system	10
No evidence of hazardous substances migration from the land treatment zone and functioning and maintained run-on control and runoff management system	7
No evidence of hazardous substances migration from the land treatment zone, functioning and maintained run-on control and runoff management system, and vegetative cover established over entire land treatment area	5
No evidence of hazardous substances migration from the land treatment zone and land treatment area maintained in compliance with requirements of 40 CFR 264.280	0
Other types of sources:	
Evidence of hazardous substances migration from the source area; or no liner; or none of the following present: Maintained engineered cover, functioning and maintained run-on control system and runoff management system, or functioning leachate collection and removal system immediately above the liner	10
No evidence of hazardous substances migration from the source area, a liner, and any one of the following present: Maintained engineered cover, or functioning and maintained run-on control system and runoff management system, or functioning leachate collection and removal system immediately above the liner	9
Other types of sources:	
No evidence of hazardous substances migration from the source area, a liner, and any two of the following present: Maintained engineered cover, functioning and maintained run-on control system and runoff management system, or functioning leachate collection and removal system immediately above the liner	7
No evidence of hazardous substances migration from the source area and all of the following present: Liner with functioning leachate collection and removal system immediately above the liner, functioning ground water monitoring system, maintained engineered cover and functioning and maintained run-on control system and runoff management system	5
No evidence of hazardous substances migration from the source area; and single liner with functioning leachate collection and removal system immediately above the liner, functioning ground water monitoring system, no bulk or noncontainerized liquids or materials containing free liquids deposited in the source area, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	3
No evidence of hazardous substances migration from the source area; and double liner with functioning leachate collection and removal system above and between such liners, functioning ground water monitoring system, and any one deficiency in the physical containment system (i.e., bulk or noncontainerized liquids or materials containing free liquids deposited in the source area, no or nonfunctioning or nonmaintained run-on control system and runoff management system, or no or nonmaintained engineered cover)	3
No evidence of hazardous substances migration from the source area; and double liner with functioning leachate collection and removal system above and between such liners, functioning ground water monitoring system, no bulk or noncontainerized liquids or materials containing free liquids deposited in the source area, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	0
Source area inside or under a maintained structure that provides protection from precipitation so that neither runoff nor leachate is generated, liquids or materials containing free liquids are not deposited in the source area, and functioning and maintained run-on control is present	0

a. Evaluate as a landfill without bulk or free liquids deposited.
b. Evaluate as a landfill.

TABLE I-3.—MINIMUM TO MAXIMUM ANNUAL NET PRECIPITATION FOR EACH STATE (IN INCHES) AS DERIVED FROM THE NET PRECIPITATION METHODOLOGY [1]

State	Weather station name	Minimum	Weather station name	Maximum
AL	Montgomery WSO	20	Haleyville	32
AK	Northway FAA AP	2	Little Port Walter	203
AZ	Wellton	0	Junipine	12
AR	Fort Smith WSO	15	Mount Ida 3 SE	26
CA	Blythe	0	Strawberry Valley	69
CO	John Martin Dam	0	Crested Butte	15
CT	Bridgeport WSO	20	Norfolk 2 SW	31
DE	Newark University Farm	17	Wilmington Porter Res	20
FL	Key West WSO	0	Milton Exp Station	26
GA	Fort Stewart	10	Clayton 1 W	43
HI	Lahaina 361	1	Mountain View 91	151
ID	Chilly Barton Flat	2	Wallace Woodland Park	25
IL	Pontiac	11	Rosiclare	21
IN	Hobart	12	Paoli Radio WVAK	22
IA	Hawarden	5	Dubuque WSO	16
KS	Johnson 11 ESE	1	Columbus 6 NNW	13
KY	Ashland	17	Russellville	26
LA	Lake Charles WSO	16	Bunkie	27
ME	Presque Isle	17	Bar Harbor	33
MD	Cumberland 2	14	Oakland 1 SE	24
MA	Birch Hill Dam	20	Blue Hill WSO	28
MI	MIO Hydro Plant	10	Marquette FAA AP	19
MN	Crookston NW Exp Sta	3	Duluth WSO	10
MS	Biloxi City	22	Tupelo 2 WNW	29
MO	Kansas City FAA AP	6	Charleston	23
MT	Opheim 12 SSE	1	Heron 2 NW	21
NE	Mitchell 5 E	1	Falls City	9
NV	Desert Natl WL Range	0	Glenbrook	11
NH	Lebanon FAA Airport	17	Mt. Washington WSO	76
NJ	Shiloh	17	Charlotteburg	27
NM	Carlsbad Caverns	0	Chama	8
NY	Mount Morris 2 W	10	Boonville 2 SSW	36
NC	Asheville	15	Highlands 2 S	55
ND	Parshall	2	Fullerton 1 ESE	5
OH	Put in Bay Perry Mon	11	Chardon	22
OK	Kenton	0	Idabel	20
OR	Burns WSO AP	2	Otis 2 NE	78
PA	Donora 1 SW	13	Pleasant Mount 1 W	26
RI	Block Island WSO	22	Kingston	27
SC	Charleston City WSO	11	Caesars Head 1 NE	53
SD	Camp Crook	2	Lead 1 SE	13
TN	Greeneville Exp Sta	17	Monteagle	34
TX	Alpine	0	Center	20
UT	Capitol Ref Natl Mon	1	Silver Lake Brighton	32
VT	Burlington WSO	14	Readsboro 1 SSE	28
VA	Dale Enterprise	11	Big Meadows	28
WA	Sunnyside	3	Ranier Paradise RS	100
WV	Franklin 2 NE	11	Pickens 1	42
WI	Sponner Exp Farm	7	Lake Geneva	13
WY	Deaver	1	Moran 5 WNW	15

[1] Based on over 3,300 weather stations in the U.S. for which average monthly precipitation and average monthly temperature data are available.

TABLE I-4.—CONTAINMENT FACTORS FOR SURFACE WATER MIGRATION PATHWAY

	Assigned value
Landfill:	
Evidence of hazardous substance migration from the landfill; or none of the following present: maintained engineered cover, functioning and maintained run-on control system and runoff management system, or liner with functioning leachate collection and removal system immediately above the liner	10
No evidence of hazardous substance migration from the landfill; and any one of the following present: maintained engineered cover, functioning and maintained run-on control system and runoff management system, or liner with functioning leachate collection and removed system immediately above the liner	9
No evidence of hazardous substance migration from the landfill; and any two of the following present: maintained engineered cover, functioning and maintained run-on control system and runoff management system, or liner with functioning leachate collection and removal system immediately above the liner	7
No evidence of hazardous substance migration from the landfill; and all of the following present: maintained engineered cover, functioning and maintained run-on control system and runoff management system, and liner with functioning leachate collection and removal system immediately above the liner	5
No evidence of hazardous substance migration from the landfill; and single liner with functioning leachate collection and removal system immediately above the liner, no bulk or noncontainerized liquids or materials containing free liquids deposited in the landfill, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	3
No evidence of hazardous substance migration from the landfill; and double liner with functioning leachate collection and removal system above and between such liners and any one deficiency in the physical containment system (i.e., bulk or noncontainerized liquids or materials containing free liquids deposited in the landfill, no or nonfunctioning or nonmaintained run-on control system and runoff management system, or no or nonmaintained engineered cover)	3
No evidence of hazardous substance migration from the landfill; and double liner with functioning leachate collection and removal system above and between such liners, no bulk or noncontainerized liquids or materials containing free liquids deposited in the landfill, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	0
Surface impoundment:	
Evidence of hazardous substance migration from the surface impoundment; or free liquids present with either no diking, unsound diking, or diking that is not regularly inspected and maintained	10
No evidence of hazardous substance migration from the surface impoundment, free liquids present, sound diking that is regularly inspected and maintained, and adequate freeboard	9
No evidence of hazardous substance migration from the surface impoundment, free liquids present, sound diking that is regularly inspected and maintained, adequate freeboard, and a single liner	7
No evidence of hazardous substance migration from the surface impoundment, free liquids present, sound diking that is regularly inspected and maintained, adequate freeboard, and a single liner with functioning leachate collection and removal system below the liner	5
No evidence of hazardous substance migration from the surface impoundment, free liquids present, sound diking that is regularly inspected and maintained, adequate freeboard, and a double liner with functioning leachate collection and removal system between the liners	3
No evidence of hazardous substance migration from the surface impoundment and all free liquids eliminated at closure (either by removal of liquids or solidification of remaining wastes and waste residues)	(a)
Pile:	
Evidence of hazardous substance migration from the pile area (i.e., pile area includes pile and any containment structure that may be present) or neither of the following present: maintained engineered cover, or functioning and maintained run-on control system and runoff management system	10
No evidence of hazardous substance migration from the pile area and either of the following present: maintained engineered cover, or functioning and maintained run-on control system and runoff management system	9
No evidence of hazardous substance migration from the pile area and any two of the following present: maintained engineered cover, functioning and maintained run-on control system and runoff management system, or liner with functioning leachate collection and removal system immediately above the liner	7
No evidence of hazardous substance migration from the pile area and all of the following present: maintained engineered cover, functioning and maintained run-on control system and runoff management system, and liner with functioning leachate collection and removal system immediately above the liner	5
No evidence of hazardous substance migration from the pile area; and single liner with functioning leachate collection system immediately above the liner, no bulk or noncontainerized liquids or materials containing free liquids deposited in the pile, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	3
No evidence of hazardous substance migration from the pile area; and double liner with functioning leachate collection and removal system above and between such liners and any one deficiency in the physical containment system (i.e., bulk or noncontainerized liquids or materials containing free liquids deposited in the pile, no or nonfunctioning or nonmaintained run-on control system and runoff management system, or no or nonmaintained engineered cover)	3
No evidence of hazardous substance migration from the pile area; and double liner with functioning leachate collection and removal system above and between such liners, no bulk or noncontainerized liquids or materials containing free liquids deposited in the pile, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	0
Pile inside or under a maintained structure that provides protection from precipitation so that neither runoff nor leachate is generated, liquids or materials containing free liquids are not deposited in the pile, and functioning and maintained run-on control is present	0
Container:	
All containers buried	(b)

TABLE I-4.—CONTAINMENT FACTORS FOR SURFACE WATER MIGRATION PATHWAY—Continued

	Assigned value
Evidence of hazardous substance migration from the container area (i.e., container area includes containers and any containment structures that may be present); no diking (or similar structure) surrounding container area; or diking surrounding container area unsound or not regularly inspected and maintained	10
No evidence of hazardous substance migration from the container area and container area surrounded by sound diking that is regularly inspected and maintained	9
No evidence of hazardous substance migration from the container area; container area surrounded by sound diking that is regularly inspected and maintained; and an essentially impervious base under the container area with a liquids collection and removal system	7
No evidence of hazardous substance migration from the container area; container area surrounded by sound diking that is regularly inspected and maintained; containment system includes an essentially impervious base, a liquids collection system, sufficient capacity to contain 10 percent of the volume of all the containers, and functioning and maintained run-on control; and spilled or leaked hazardous substances and accumulated precipitation removed in a timely manner to prevent overflow of the collection system, at least weekly inspection of containers, hazardous substances in leaking or deteriorating containers transferred to containers in good condition, and containers sealed except when waste is added or removed	5
No evidence of hazardous substance migration from the container area, free liquids present, container area surrounded by sound diking that is regularly inspected and maintained, containment system has sufficient capacity to hold total volume of all containers and to provide adequate freeboard, and single liner under container area with functioning leachate collection and removal system below the liner	5
No evidence of hazardous substance migration from the container area, free liquids present, container area surrounded by sound diking that is regularly inspected and maintained, containment system has sufficient capacity to hold total volume of all containers and to provide adequate freeboard, and double liner under container area with functioning leachate collection and removal system between the liners	3

TABLE I-4.—CONTAINMENT FACTORS FOR SURFACE WATER MIGRATION PATHWAY—Continued

	Assigned value
Containers inside or under a maintained structure that provides protection from precipitation so that neither runoff nor leachate would be generated from any containers that were unsealed or ruptured, liquids or materials containing free liquids are not deposited in any container, and functioning and maintained run-on control is present	0
All containers removed, all containers were sealed and intact, and no evidence of hazardous substance migration from any container	0
No evidence of hazardous substance migration from the container area, containers leaking, and all free liquids eliminated at closure (either by removal or liquids or solidification of remaining wastes and waste residues)	(a)
Tank:	
Below ground tank	(b)
Evidence of hazardous substance migration from the tank area (i.e., tank area includes tank, ancillary equipment such as piping, and any containment structures); no diking (or similar structure) surrounding tank and ancillary equipment; or diking surrounding tank and ancillary equipment unsound or not regularly inspected and maintained	10
No evidence of hazardous substance migration from the tank area, and tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained	9
No evidence of hazardous substance migration from tank area; tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained; tank and ancillary equipment provided with secondary containment (e.g., liner under tank area, vault system, double-wall) with a leak detection and collection system	7
No evidence of hazardous substance migration from the tank area; tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained; tank and ancillary equipment provided with secondary containment system that detects and collects spilled or leaked hazardous substances and accumulated precipitation and has sufficient capacity to contain 110 percent of the volume of the largest tank within the containment area; spilled or leaked hazardous substances and accumulated precipitation removed in a timely manner; at least weekly inspection of tank and secondary containment system, and all leaking or unfit-for-use tank systems promptly responded to	5

TABLE I-4.—CONTAINMENT FACTORS FOR SURFACE WATER MIGRATION PATHWAY—Continued

	Assigned value
No evidence of hazardous substances migration from the tank area, tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained, containment system has sufficient capacity to hold total volume of all tanks within the containment area and to provide adequate freeboard, and single liner under that tank area with functioning leachate collection and removal system below the liner	5
No evidence of hazardous substances migration from the tank area, tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained, containment system has sufficient capacity to hold total volume of all tanks within the containment area and to provide adequate freeboard, and double liner under container area with functioning leachate collection and removal system between the liners	3
Tank is above ground, and inside or under a maintained structure that provides protection from precipitation so that neither runoff nor leachate would be generated from any material released from the tank, liquids or materials containing free liquids are not deposited in any tank, and functioning and maintained run-on control is present	0
Land Treatment:	
Evidence of hazardous substances migration from the land treatment zone; or no functioning and maintained run-on control and runoff management system	10
No evidence of hazardous substances migration from the land treatment zone and functioning and maintained run-on control and runoff management system	7
No evidence of hazardous substances migration from the land treatment zone, functioning and maintained run-on control and runoff management system, and vegetative cover established over entire land treatment area	5
No evidence of hazardous substances migration from the land treatment zone and land treatment area maintained in compliance with requirements of 40 CFR 264.280	0
Other Types of Sources:	
Evidence of hazardous substances migration from the source area; or neither of the following present: maintained engineered cover, or functioning and maintained run-on control system and runoff management system	10

TABLE I-4.—CONTAINMENT FACTORS FOR SURFACE WATER MIGRATION PATHWAY—Continued

	Assigned value
No evidence of hazardous substances migration from the source area and either of the following present: maintained engineered cover, or functioning and maintained run-on control system and runoff management system	9
No evidence of hazardous substances migration from the source area and any two of the following present: maintained engineered cover, functioning and maintained run-on control system and runoff management system, or liner with functioning leachate collection and removal system immediately above the liner.	7
No evidence of hazardous substances migration from the source area and all of the following present: maintained engineered cover, functioning and maintained run-on control system and runoff management system, and liner with functioning leachate collection and removal system immediately above the liner.	5
No evidence of hazardous substances migration from the source area; and single liner with functioning leachate collection and removal system immediately above the liner, no bulk or noncontainerized liquids or materials containing free liquids deposited in the source area, functioning and maintained run-on control system and runoff management system, and maintained engineered cover.	3
No evidence of hazardous substances migration from the source area; and double liner with functioning leachate collection and removal system above and between such liners and any one deficiency in the physical containment system (i.e., bulk or noncontainerized liquids or materials containing free liquids deposited in the source area, no or nonfunctioning or nonmaintained run-on control system and runoff management system, or no or nonmaintained engineered cover)	3
No evidence of hazardous substances migration from the source area; and double liner with functioning leachate collection and removal system above and between such liners, no bulk or noncontainerized liquids or materials containing free liquids deposited in the source area, functioning and maintained run-on control system and runoff management system, and maintained engineered cover.	c

TABLE I-4.—CONTAINMENT FACTORS FOR SURFACE WATER MIGRATION PATHWAY—Continued

	Assigned value
Source area inside or under a maintained structure that provides protection from precipitation so that neither runoff nor leachate is generated, liquids or materials containing free liquids are not deposited in the source area, and functioning and maintained run-on control is present.	0

a. Evaluate as a landfill without bulk or free liquids deposited.
b. Evaluate as a landfill.

TABLE I-5.—STANDING CROP DEFAULT DATA

Habitat	Pounds per acre	Comments
RIVER/STREAM		
COLD		
WI Rivers	14	Bass only.
PA trout stream	24	Trout only.
CA trout stream	41	Trout only.
WI Rivers	26	Pike only.
WY tailwaters	46	Trout only.
Mountain stream	51	Not U.S.
Trout streams	55	Average.
Mt. trout streams	40–226	Average.
MI streams	195	Bass streams.
WI streams	33	Smallmouth bass.
OH streams	11	Smallmouth bass.
MO streams	8	Smallmouth bass.
MD streams	16	Smallmouth bass.
MIDWESTERN		
Chariton River, MO.	53	Channelized.
Chariton River, MO.	304	Unchannelized.
Chariton River, MO.	152	Carp only.
OH streams	56	Average.
MO streams	72	Average.
Midwestern smallmouth stream.	114	Average.
Midwestern largemouth stream.	168	Average.
IN streams	158	Average.
IN streams	124	Largemouth.
IL streams	164	Average.
OK streams	174	Average.
WARM		
Warmwater Streams.	9–43	Average.
Warmwater Streams.	72	Courtois Creek.
Warmwater Streams.	56–90	Ozarks average.
Warmwater Streams.	120	Northern streams.
River backwaters and oxbows.	500	Average.
Tropical rivers	979–1,600	Lagoons.
OTHER		
Upper Mississippi	7–8	All species (1962–1973).
Lower Mississippi borrow pit.	51–3,199	All species.

TABLE I-5.—STANDING CROP DEFAULT DATA—Continued

Habitat	Pounds per acre	Comments
Lower Mississippi (delta region)	530	Mosey Lake (mostly shad).
Lower Mississippi (delta region).	51–299	Wolf Lake (mostly shad).
RIVER BASIN		
Atchafalaya R.B., LA.	767	Lower basin stations.
Atchafalaya R.B., LA.	495	Upper basin stations.
LAKES		
Backwater lakes	397	Largemouth bass.
NY lake	47	Perch & bass.
Northern lake	51	Suckers.
Cold trout lakes	50	Average.
Lakes & ponds	58	Mixed species.
FL bass lake	97	All fish.
IO lake	123	Bullheads.
MI lakes	46	Slow growing perch.
MI lakes	88	Average diversity.
MI lakes	104	Unusual populations.
Lake Tohopekaliga, FL.	59–127	Before and after drawdown.
Warmwater lakes	125–150	Average.
MS oxbow lakes	202	Average.
Natural lakes	50–150	Average.
KY lakes	49–200	Average.
WI lakes	210	64% are minnows.
Lake Wingra, WI	440	Large fish.
AR lakes	89–445	Average range.
Alpine lakes	0.6–7	Average.
Tropical lakes	45–178	Average.
Atchafalaya Basin	270	Crawfish.
Atchafalaya Basin	624	Finfish.
Floodplain lakes	440	No overflow.
6 oxbow lakes, LA	156–267	Mostly channel cat and centrarchids.
7 backwater lakes	397	Average.
Wallum Lake, RI	14–17	Combined fish species.
Floa Lake, WI	3	Pumpkinseed & bluegill.
IL Lakes	18–36	
Third Sister Lake, MI.	86	Rotenone catch.
Third Sister Lake, MI.	13	Bass (average).
5 Lakes, FL (1–10ha).	7	Bass (average) only legal size.
Backwater lakes, LA.	24	Bass 250mm.
Lower Lock Alpine.	30	Bass.
Wintergreen Lake, MI.	48	Bass.
Cuba lakes, Cove Sampling.	83	Bass (average).
5 Lakes, FL	22–110	Ocala National Forest.
RESERVOIRS		
West VA reservoir	9	Largemouth bass.
IL, artificially heated.	8–18	Bass and carp.
170 reservoirs	23	All bass.
GA reservoir	48	All species.
CO reservoir	82	Average.
LA reservoirs	73	Average.
127 reservoirs	180–186	Average, all species.
Reservoirs and ponds.	200–300	Average.

TABLE I–5.—STANDING CROP DEFAULT DATA—Continued

Habitat	Pounds per acre	Comments
Impoundments	200–400	Average.
Midwest reservoirs.	400	Average.
Barkley Lake, KY	771	Small bay.
Power plant cooling lake in Texas.	1,000–2,000	Bass & tilapia.
Bobwhite Lake, IA	7	Largemouth bass.
Red Hawk Lake, IA.	24	Largemouth bass.
3 reservoirs, OK	8	Largemouth bass (average).
Carl Blackwell Lake, OK.	1	Largemouth bass.
Buds Lake, IA	3	Largemouth bass.
Lanier Lake, GA	8	Largemouth bass (average).
34 reservoirs TX & MA.	19	Largemouth bass (average).
IA reservoirs	112	Largemouth bass (average).
Fast Osceola, IA	29	Largemouth bass.
Bastrop Lake, TX	33	Largemouth bass.
Ridgelake, IL	49	Largemouth bass (average).
North American Lakes & reservoirs.	15	Bass (average).
Clear Lake	1	Bass.
Clear Lake	15	Bass (average).
68 Gamefish Lakes, MN.	7	Bass (average).
44 Roughfish Lakes, NM.	6	Bass (average).
FL, WI 30 lakes	7	Bass (mean).
Brown's Lake, WI	24	Bass (average).
Cacapon Lake, WV.	9	Bass (average).
14 Lakes, MI (0.3–8.7 ha).	7	Bass (average).
Deep Creek reservoir, MD.	100	Mixed species.
Cherokee Reservoir, TX.	1,550	Mixed species.
PONDS		
Cold ponds	69	Grebe Lake.
Carp ponds	356	Unfertilized.
Bullhead ponds	178	Unfertilized.
Small desert pond	133	Eutrophic.
Kansas pond	168	Channel catfish.
MI ponds	289	Bluegills.
Southern ponds	230–330	Average.
AL ponds	498	Bass & bluegill.
Stocked AL pond	527	Tilapia.
Ashville pond, RI	48	Combined fish sp.
Meshanticut pond, RI.	500	Combined fish sp. Few catchable bass/pickerel.
MA ponds (23)	86	Average.
OK ponds	91	Sunfishes.
IL ponds	88	Smallmouth bass.
NY ponds	18	Smallmouth bass.
IA ponds (balanced).	13	Largemouth bass (avg.).
IA ponds	14	Largemouth bass (avg.) (overpopulated w/bluegill).
IA ponds	23	Largemouth bass (avg.).
IA ponds	2	Largemouth bass (overpopulated w/bass).
MI ponds	21	Largemouth bass.
IL ponds	125	Only "large" bass (avg.).
Ridge Lake, IL	357	Largemouth bass (avg.).
Ridge Lake, IL	48	(Over 254 mm).
Breon's pond, PA	15,771	Largemouth bass all sizes.
Rearing ponds U.S.	18,787	Largemouth bass.
MI ponds	147	Largemouth bass (avg.).
NY ponds	72	Largemouth bass (avg.).
AL pond	255	Largemouth bass.
MO ponds	72	No harvest.
Lake Toho Pekaligo, FL.	43	Littoral zone.
Lake Toho Pekaligo, FL.	46	Limnetic zone.
WV pond	88	Largemouth bass.
AL ponds	2,360	Bass fed.
FERTILIZED PONDS		
Carp & bullhead	1,070	Southern.
3 ponds, IL	447	Largemouth bass (avg.).
3 ponds,IL	69	Largemouth bass (avg.).
3 ponds,IL	60	Only "large" bass (avg.).
COASTAL		
Newport River, NC.	8	Littoral area estuary.
Mystic River, MA	18	Polluted estuary.
Narragansett Bay, RI.	28	Demersal fish.
Gulf of Mexico	54	Avg. Gulf.
Beach canals, LA	3–367	Gulf canals.
LA estuary	351	All estuary fish.
Chesapeake Bay	250	Nearshore-saltwater.
Chesapeake Bay	750	All finfish.
South Atlantic	286	Fish & shellfish.
Gulf Coast	432	Fish & shellfish.
Guadalupe Bay, TX.	11	
CA (3-mi zone)	293	Commercial catch.
OR (3-mi zone)	152	Commercial catch.
WA (3-mi zone)	444	Commercial catch.
AL Coastal	60	Estuary commercial catch.
LA Coastal	314	Estuary commercial catch.
MS Coastal	1011	Estuary commercial catch.
FL Coastal	48	Estuary commercial catch.
GA Coastal	35	Estuary commercial catch.
NC Coastal	128	Estuary commercial catch.
SC Coastal	26	Estuary commercial catch.
TX Coastal	[1] 57–68	Estuary commercial catch.
MA Coastal	1,267	Estuary commercial catch.
NH Coastal	320	Estuary commercial catch.
MA Coastal	1,984	Estuary commercial catch.
RI Coastal	1,209	Estuary commercial catch.
CT Coastal	19	Estuary commercial catch.
NY Coastal	90	Estuary commercial catch.
NJ Coastal	155	Estuary commercial catch.
DE Coastal	14	Estuary commercial catch.
MD Coastal	84	Estuary commercial catch.
VA Coastal	751	Estuary commercial catch.
Laguna Madre, TX	18–337	Range-winter minimum/summer maximum.
Caminada estuary, LA.	649	
LacDes Allemands, LA.	87	Channel catfish.
Barataria-Caminada Bay, LA.	9	Shrimp only (1967–1972).

[1] Includes fish and shellfish.

Attachment II to Appendix A

II.0 Methodology for calculating half-lives.

This section describes the methodology for calculating the hydrolysis half-life, the biodegradation half-life, the free-radical oxidation half-life, the photolysis half-life, and the volatilization half-life.

II.1 Hydrolysis.

The hydrolysis half-life $(t_{1/2})_h$ is calculated as follows:

$$(t_{1/2})_h = 0.693/K_h$$

where K_h is the hydrolysis rate constant.

The hydrolysis rate constant K_h includes contributions from acid-catalyzed hydrolysis, base-catalyzed hydrolysis, and nucleophilic reaction with water (which is often referred to as neutral hydrolysis). The value of K_h is determined as follows:

$$K_h = K_a[H^+] + K_n + K_b[OH^-]$$

where:

K_h = Total hydrolysis rate constant, in units of $(time)^{-1}$

K_a = Acid hydrolysis rate constant, in units of $(M)^{-1}(time)^{-1}$ where M is moles per liter.

K_b = Base hydrolysis rate constant, in units of $(M)^{-1}(time)^{-1}$.

K_n = Neutral hydrolysis rate constant, in units of $(time)^{-1}$.

$[H^+]$=Hydrogen ion concentration, in units of M.

$[OH^-]$=Hydroxyl ion concentration, in units of M.

Obtain the values of K_a, K_b, and K_n from peer reviewed literature. If the hydrolysis rates are reported for a temperature (T) other than 25 °C, multiply the reported rates by a temperature adjustment factor of $(1.116)^{T-25}$. This temperature adjustment factor will cause the rate constant to vary by a factor of 3 for each 10 °C change in temperature.

Assume the pH of the water to be in the range of 6 to 9. Calculate the value of K_h at pH 6 (i.e., $[H^+]=10^{-6}$ M and $[OH^-]=10^{-8}$ M) and at pH 9 (i.e., $[H^+]=10^{-9}$ M and $[OH^-]=10^{-5}$ M). Select the lower of the two calculated values. Use this as the value of the total hydrolysis rate constant K_h.

II.2 Biodegradation.

The biodegradation half-life $(t_{1/2})_b$ is calculated as follows:

$(t_{1/2})_b=0.693/K_b$

where K_b is the biodegradation rate constant, in units of $(time)^{-1}$.

Obtain the value of K_b from peer-reviewed literature. If the rate is reported for a temperature (T) other than 25 °C, multiply the reported value by a temperature adjustment factor of $(1.07)^{25-T}$.

In some cases, the biodegradation rate is specified as a second order rate constant (e.g., in units of (volume) $(cells)^{-1}$ $(time)^{-1}$), rather than as a first order rate constant (i.e., in unit of $(time)^{-1}$). When a second order rate constant is specified, multiply the rate specified by an assumed microorganism concentration of 10^4 cells/ml to obtain the value of K_b.

II.3 Free-radical oxidation.

Oxidation half-life $(t_{1/2})_o$ is calculated as follows:

$(t_{1/2})_o=0.693/K_o$

where K_o is the total oxidation rate constant.

The total oxidation rate includes contributions from oxidation by peroxyl radicals, oxidation by singlet oxygen, and oxidation by other unspecified oxidants. The total oxidation rate constant is calculated as follows:

$K_o=K_R[R]+K_S[S]+K_x[X]$

where:

K_R=Rate constant for oxidation by peroxyl radical.

K_S=Rate constant for oxidation by singlet oxygen.

K_X=Rate constant for oxidation by other oxidants.

$[R]$=Peroxyl radical concentration $[RO_2\bullet]$.

$[S]$=Singlet oxygen concentration $[^1O_2\bullet]$.

$[X]$=Other oxidants concentration $[OX\bullet]$.

Obtain the values of K_R, K_S, and K_X from peer reviewed literature. Assume the peroxyl radical concentration to be 10^{-9} M and the singlet oxygen concentration to be 10^{-11} M. Rate constants for oxidation by other oxidants are rarely available and need not be included unless available.

II.4 Photolysis.

The photolysis half-life $(t_{1/2})_p$ is calculated as follows:

$(t_{1/2})_p=0.693/K_p$

where K_p is the photolysis rate.

The photolysis rate K_p used in calculating the photolysis half-life is to be the rate averaged over both a 24-hour day receiving the mean annual sunlight and the depth of the water body.

Obtain the value of the photolysis rate from peer-reviewed literature. If the reported value is for a mid-day near surface situation, multiply the value by $2/\pi$ to convert from a mid-day to a daily average value, and then multiply by 1/30 to convert from near surface to a depth average value. The value of the photolysis rate may also be obtained from existing studies that have estimated the photolysis rate using laboratory data on absorption spectrum and quantum yield in conjunction with the method specified in Burns et al. (1982).[1]

II.5 Volatilization.

The volatilization half-life $(t_{1/2})_v$ is calculated as follows:

$(t_{1/2})_v=0.693/K_v$

where K_v=Volatilization rate, in units of $(time)^{-1}$.

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[1] Burns, L.A., D.M. Cline, and R.R. Lassiter, 1982. Exposure Analysis Modeling System (EXAM): User Manual and System Documentation. U.S. Environmental Protection Agency, Environmental Research Laboratory, Athens, GA.

Estimate the value of K_V using the following equation:

$$K_V = \frac{1}{L}\left(\frac{1}{A} + \frac{RT}{B}\right)^{-1}$$

$$A = K_1^O (D_1^C/D_1^O)^m$$

$$B = H_c K_g^W (D_g^C/D_g^W)^n$$

where:

L = Mixing depth of the water body in units of cm; assumed it to be 200 cm.

K_1^O = Liquid phase mass transport coefficient of oxygen in the water body in the units of cm $hour^{-1}$; assumed it to be 8 cm $hour^{-1}$ in rivers and 1.8 cm $hour^{-1}$ in lakes.

D_1^C = Liquid phase diffusion coefficient of the hazardous substance in water, in units of cm^2 sec^{-1}.

D_1^O = Liquid phase diffusion coefficient of oxygen in water, in units of cm^2 sec^{-1}.

m = Coefficient depending on the liquid phase turbulence; assume it to be 0.7.

R = Gas constant, 62.4 torr $(°K)^{-1}M^{-1}$, or 8.205×10^{-5} m^3 atm $(°K)^{-1}$ mol^{-1}.

T = Temperature in unit of °K; assume it to be 298°K.

H_c = Henry's constant in unit of torr M^{-1} or m^3 atm mol^{-1}.

K_g^W = Gas phase transport coefficient for water in units of cm $hour^{-1}$; assume it to be 2,100 cm $hour^{-1}$.

D_g^C = Gas phase diffusion coefficient of the hazardous substance in air, in units of cm^2 sec^{-1}.

D_g^W = Gas phase diffusion coefficient of water in air, in units of cm^2 sec^{-1}.

n = Coefficient depending on the gas phase turbulence; assume it to be 0.7.

Obtain the value of Henry's constant from peer-reviewed literature. The ratio of the liquid diffusion constants for the hazardous substance and oxygen (D_1^C/D_1^O) is related to the ratio of their molecular weights and is calculated as follows:

$$\frac{D_1^C}{D_1^O} = \left(\frac{W_C}{W_O}\right)^{-2/3} = \left(\frac{W_C}{32}\right)^{-2/3}$$

where: W_C = Molecular weight of hazardous substance.
W_O = Molecular weight of oxygen.

Similarily, the ratio of gas diffusion constants for the chemical and water (D_g^C/D_g^W) is related to the ratio of their molecular weights and is calculated as follows:

$$\frac{D_g^C}{D_g^W} = \left(\frac{W_C}{W_W}\right)^{-2/3} = \left(\frac{W_C}{18}\right)^{-2/3}$$

where: W_W = Molecular weight of water.

[FR Doc. 88-26790 Filed 12-22-88; 8:45 am]
BILLING CODE 6560-50-C

federal register

Friday
December 23, 1988

Part IV

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for October 1988

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53111; FRL-3488-4]

Premanufacture Notices; Monthly Status Report for October 1988

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption requests pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for OCTOBER 1988.

Nonconfidential portions of the PMNs and exemption requests may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday thru Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53111]" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during OCTOBER; (b) PMNs received previous and still under review at the end of OCTOBER; (c) PMNs for which the notice review period has ended during OCTOBER; (d) chemical substances for which EPA has received a notice of commencement to manufacture during OCTOBER; and (e) PMNs for which the review period has been suspended. Therefore, the OCTOBER 1988 PMN Status Report is being published.

Date: December 2, 1988.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report, October 1988

I. 92 Premanufacture Notices and Exemption Requests Received During the Month

PMN No.	
P 88-2427	P 89-0045
P 88-2562	P 89-0046
P 88-2581	P 89-0047
P 89-0001	P 89-0048
P 89-0003	P 89-0049
P 89-0004	P 89-0050
P 89-0005	P 89-0051
P 89-0006	P 89-0052
P 89-0007	P 89-0053
P 89-0008	P 89-0054
P 89-0009	P 89-0055
P 89-0010	P 89-0056
P 89-0011	P 89-0057
P 89-0012	P 89-0058
P 89-0013	P 89-0059
P 89-0014	P 89-0060
P 89-0015	P 89-0061
P 89-0016	P 89-0062
P 89-0017	P 89-0063
P 89-0018	P 89-0064
P 89-0019	P 89-0065
P 89-0020	P 89-0066
P 89-0021	P 89-0067
P 89-0022	P 89-0068
P 89-0023	P 89-0069
P 89-0024	P 89-0070
P 89-0025	P 89-0071
P 89-0026	P 89-0072
P 89-0027	Y 89-0001
P 89-0028	Y 89-0002
P 89-0029	Y 89-0003
P 89-0030	Y 89-0004
P 89-0031	Y 89-0005
P 89-0032	Y 89-0006
P 89-0033	Y 89-0007
P 89-0034	Y 89-0008
P 89-0035	Y 89-0009
P 89-0036	Y 89-0010
P 89-0037	Y 89-0012
P 89-0038	Y 89-0013
P 89-0039	Y 89-0014
P 89-0040	Y 89-0015
P 89-0041	Y 89-0016
P 89-0042	Y 89-0017
P 89-0043	Y 89-0018
P 89-0044	

II. 681 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.	
P 83-0669	P 86-0592
P 85-0216	P 86-1078
P 85-0535	P 86-1189
P 85-0536	P 86-1235
P 85-0619	P 86-1602
P 85-0718	P 86-1603
P 85-0941	P 86-1604
P 86-0065	P 86-1607
P 86-0066	P 87-0057
P 86-0067	P 87-0058
P 86-0092	P 87-0059
P 86-0294	P 87-0068
P 86-0295	P 87-0105
P 87-0197	P 88-0890
P 87-0198	P 88-0894
44	P 88-0898
42 P 87-0199	P 88-0900
P 87-0200	P 88-0918
P 87-0201	P 88-0972
P 87-0323	P 88-0981
P 87-0326	P 88-0985
P 87-0770	P 88-0997
P 87-0794	P 88-0998
P 87-0930	P 88-0999
P 87-0931	P 88-1005
P 87-0963	P 88-1020
P 87-1028	P 88-1021
P 87-1066	P 88-1035
P 87-1104	P 88-1037
P 87-1192	P 88-1063
P 87-1226	P 88-1069
P 87-1227	P 88-1070
P 87-1273	P 88-1071
P 87-1337	P 88-1109
P 87-1379	P 88-1115
P 87-1417	P 88-1116
P 87-1436	P 88-1117
P 87-1437	P 88-1118
P 87-1542	P 88-1120
P 87-1546	P 88-1136
P 87-1547	P 88-1154
P 87-1548	P 88-1163
P 87-1549	P 88-1168
P 87-1555	P 88-1169
P 87-1673	P 88-1170
P 87-1676	P 88-1189
P 87-1677	P 88-1205
P 87-1679	P 88-1206
P 87-1680	P 88-1211
P 87-1694	P 88-1212
P 87-1759	P 88-1219
P 87-1769	P 88-1220
P 87-1770	P 88-1221
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P 88-0225	P 88-1274
P 88-0275	P 88-1275
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P 88-0353	P 88-1278
P 88-0387	P 88-1293
P 88-0388	P 88-1303
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P 88-0436	P 88-1367
P 88-0468	P 88-1377
P 88-0515	P 88-1403
P 88-0522	P 88-1425
P 88-0567	P 88-1426
P 88-0568	P 88-1439
P 88-0576	P 88-1440
P 88-0598	P 88-1443
P 88-0602	P 88-1446
P 88-0606	P 88-1460
P 88-0622	P 88-1473
P 88-0658	P 88-1508
P 88-0671	P 88-1514
P 88-0701	P 88-1529
P 88-0715	P 88-1540
P 88-0726	P 88-1543
P 88-0792	P 88-1559
P 88-0831	P 88-1564
P 88-0836	P 88-1567
P 88-0837	P 88-1568
P 88-0862	P 88-1570
P 88-0864	P 88-1598
P 88-0875	P 88-1611
P 88-0884	P 88-1616
P 88-0888	P 88-1617
P 88-0889	P 88-1618

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III. 233 PREMANUFACTURE NOTICES AND EXEMPTION REQUEST FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OR THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAS BEEN ADDED TO THE INVENTORY)

PMN No.

P 87-0973
P 87-1787
P 88-0049
P 88-0182
P 88-0288
P 88-0290
P 88-0854
P 88-0898
P 88-1197
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Y 89-0010

IV. 62 Chemical substances for which EPA has received notices of commencement to manufacture

PMN No.	Identity/generic name	Date of commencement
P 82-0559	G Disubstituted benzene	Oct. 7, 1988.
P 83-1033	G C6-8 carboxylic acid	Mar. 15, 1985.
P 85-0353	G Polymer of aliphatic diisocyanate, aliphatic glycols, aliphatic diacid, aromatic anhydride and alkylene oxides	Jan. 6, 1986.
P 85-0986	G Functional aliphatic isocyanate based polymer	Aug. 25, 1988.
P 85-1284	G Alkanoic ester derivative of an alkanol and a carbonmonocyclic anhydride	Sept. 1, 1988.
P 86-1257	G Hydroxy functional acrylic methacrylate polymer	Feb. 10, 1988.
P 86-1436	G Methylenebis (isocyanatocyc ohexane), polymer with alkanediol, phthalic anhydride, tone M-100, and polyalkylenetriol	Oct. 12, 1988.
P 87-0075	G Mixed aldehyde novolacs	Jan. 12, 1987.
P 87-0076	G Mixed aldehyde novolacs	Jan. 12, 1987.
P 87-0152	G Salt of heterocyclicalkenyl, substituted (phenylpyrazole)	Aug. 25, 1988.
P 87-0920	G Organic salt of sulfonic acid	Aug. 31, 1988.
P 87-1041	G 1,2 -epoxypropionamide-glycidamide melamine resin	Sept. 21, 1988.
P 87-1637	Polymer of chloroethene-2-propenoic acid monoester with 1, 2-propandiol, '2-butenedioic acid	Feb. 20, 1988.
P 88-0054	G Azomethynine dye	Feb. 19, 1988.
P 88-0108	G Modified organosilicone	May 7, 1988.
P 88-0166	G Chlorinated alkyd resin	Aug. 30, 1988.
P 88-0243	G Paint jet magnenta ink	Apr. 7, 1988.
P 88-0256	2-mercaptonicotine	Sept. 28, 1988.
P 88-0270	G Nitroaromatic thiazoic and derivative	Aug. 31, 1988.
P 88-0456	G (Nitroaromatic alkyl)-substituted-heterocycle	Aug. 23, 1988.
P 88-0475	Formamide, N,N-dimethyl-	Sept. 15, 1988.
P 88-0476	G 2-Propenoic acid, 2-methyl-, methyl ester, polymer with poly(difluoromethylene). omega.-(2-((1-oxo-2-propenyl)oxy)ethyl)-	Sept. 15, 1988.
P 88-0477	G 5-(Substituted benzylidene)-5H-dibenzo(A,D) cycloheptene	Sept. 15, 1988.
P 88-0478	Formamide, N,N-dimethyl-	Sept. 15, 1988.
P 88-0481	G Aldehyde, polymer with ethenol	Sept. 15, 1988.
P 88-0483	G 2-Propenoic acid, 2-methyl-, methyl ester, polymer with siloxane and silicones, di-methyl	Sept. 15, 1988.
P 88-0484	G Carbonic dichloride, polymer with bis phenol	Sept. 15, 1988.
P 88-0527	G Silane-modified polyurethane, polyvinyl alcohol copolymer	Sept. 20, 1988.
P 88-0618	Trimethoxysilylpropyl-N-methyldiallyl ammonium chloride	Oct. 5, 1988.
P 88-0798	G Substituted-phenyl-substituted-tetrazolyl-substituted-naphthalenecarboxamide	Sept. 8, 1988.
P 88-0810	Polymer of: diglycidyl ether bisphenol A and polyoxypropylene polymer containing urethane linkages and terminated with mercaptan groups.	Sept. 2, 1988.
P 88-0905	G Polyimide	Sept. 19, 1988.
P 88-1045	G Substituted nitrophenylalkyl substituted thioxotetrazole	Aug. 25, 1988.
P 88-1102	G Fluoroalkyl aromatic chloramine	Sept. 30, 1988.
P 88-1108	G Alcohols, C16-12, ethoxylate, reaction product with maleic anhydride	July 20, 1988.
P 88-1164	G Thermoplastic polyimide precursor	Sept. 7, 1988.
P 88-1175	G Polyamic acid	Oct. 3, 1988.
P 88-1190	G Brominated aromatic compound	Aug. 22, 1988.
P 88-1300	G Modified polyester resin	Aug. 31, 1988
P 88-1360	G Partially fluorinated polyamide	Sept. 20, 1988.

IV. 62 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/generic name	Date of commencement
P 88-1362	G Aromatic tetracarboxylic acid, methylated	Sept. 20, 1988.
P 88-1401	G Substituted lactone	Sept. 13, 1988.
P 88-1402	G Substituted lactone	Sept. 13, 1988.
P 88-1411	G Thermoplastic polyamide resin	Sept. 21, 1988.
P 88-1489	G Alkyl salt of polycarboxylic acid	Sept. 28, 1988.
P 88-1533	Toluene diisocyanate(2, 4isomer); toluene diisocyanate(2,6 isomer); salicylic acid; dipropylene glycol; 2-(2-aminoethyl)amino) ethanol; diglycidylethe of bisphenol A.	Sept. 16, 1988.
P 88-1534	4,4-diphenylmethane diisocyanate; dipropylene glycol; a 2000 MW polyester diol	Sept. 16, 1988.
P 88-1535	Toluene diisocyanate(2,4 isomer); toluene diisocyanate(2,6 isomer); 4,4-diphenylmethane diisocyanate; triisopropanolamine; 1000 MW polypropylene glycol prepolymer.	Sept. 16, 1988.
P 88-1537	4,4-diphenylamine diisocyanate; 1000 MW polypropylene glycol prepolymer dipropylene glycol, a 2000 MW polyester diol	Sept. 16, 1988.
P 88-1542	Rosin, dicyclopentadiene, dimer fatty acid, soya oil	Sept. 12, 1988.
P 88-1546	Xylene-formaldehyde polymer, reaction with rosin	Sept. 10, 1988.
P 88-1557	G Blocked isocyanate	Sept. 7, 1988.
P 88-1560	G Cationic acrylic resin	Sept. 7, 1988.
P 88-1603	G Vinyl acrylic copolymer	Sept. 26, 1988.
P 88-1614	G Metal hydride	Sept. 26, 1988.
P 88-1708	G Polymer of butyl acrylate with mixed alkyl methacrylates and alkyl maleate	Oct. 24, 1988.
Y 86-0051	G Lambda I polymer	Sept. 27, 1988.
Y 86-0124	G Copolymer of acrylic and methacrylic esters	Aug. 30, 1988.
Y 86-0250	G Aliphatic aromatic polyester	Nov. 10, 1986.
Y 88-0162	G Aqueous solutions of acrylic polymer salts	Apr. 29, 1988.
Y 88-0187	G Polyetherester	Sept. 6, 1988.
Y 88-0197	G Sunflower oil alkyd	Aug. 23, 1988.

V. 51 PREMANUFACTURE NOTICES FOR WHICH THE PERIOD HAS BEEN SUSPENDED

PMN No.

P 83-0669
P 86-0092
P 87-1228
P 87-1227
P 87-1417
P 87-1436
P 88-0134
P 88-0138
P 88-0436
P 88-0701
P 88-0854
P 88-0894
P 88-1219
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P 88-1761
P 88-1763
P 88-1783
P 88-1801
P 88-1802
P 88-1823
P 88-2010
P 88-2273
P 88-2398
Y 88-0277
Y 88-0278
Y 88-0339
Y 88-0346
Y 89-0002
Y 89-0003

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BILLING CODE 6560-50-M

federal register

Friday
December 23, 1988

Part V

Department of the Treasury

31 CFR Part 0

Minimum Standards of Conduct; Final Rule

DEPARTMENT OF THE TREASURY

31 CFR Part 0

Minimum Standards of Conduct

AGENCY: Treasury Department.

ACTION: Final rule.

SUMMARY: This rule amends the Department of the Treasury's Minimum Standards of Conduct. The amendment is total, and this rule substitutes for the existing Standards.

The Ethics in Government Act of 1978, as amended, made a number of changes in the post-employment restrictions of 18 U.S.C. 207, as well as imposing new and distinctly different financial disclosure requirements on certain Federal employees. These changes in the law are not reflected in the Department's current Minimum Standards of Conduct. Recognizing that an amendment to the Standards was required, the Department formed an internal task force to review the entire Standards for needed changes. This rule is the result of that review.

EFFECTIVE DATE: December 23, 1988.

ADDRESS: Deputy General Counsel, Room 3308, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: William L. Murphy, (202) 566–2327.

SUPPLEMENTARY INFORMATION: The Department of the Treasury published a notice of proposed rulemaking on the revision of the Department's Minimum Standards of Conduct in the **Federal Register** on December 1, 1987 (52 FR 45648). One comment was received from outside the Department. That commenter expressed concern that some of the rules (particularly 0.735–36 and 0.735–96) could have an impact on the spouses of employees, thus taking the rules outside of the definition of an internal management regulation. The commenter expressed a view that as a result, a regulatory impact analysis is required. We disagree. By their terms, these rules apply only to the Department's employees. In response to an internal comment, an exception to the gift rule has been restored which was present in the previous rules and was omitted by mistake in the proposed rule. This change permits acceptance of food or refreshments under certain circumstances at organized functions where attendance is of benefit to the Department.

One commenter expressed concern about the effect of the promulgation of these revised Standards of Conduct. In response, the former Standards were in full force until the effective date of this amendment. Any act in violation of those rules, even if not a violation under these revised rules, is fully subject to appropriate discipline. Similarly, any act done prior to the effective date of these rules which would be in violation of these rules but was not a violation of the prior rules is not subject to discipline.

In addition, we have corrected several typographical errors which appeared in the proposed rule and clarified terminology.

Executive Order 12291 and Regulatory Flexibility Act

Because this rule relates solely to the internal management, operations, and personnel of the Treasury Department, Executive Order 12291 does not apply and a regulatory impact analysis is not required. For similar reasons, and although the Department did solicit public comments, no notice of proposed rulemaking is required by 5 U.S.C. 553 or any other law. Accordingly, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply and a regulatory flexibility analysis is not required.

Drafting Information

The principal author of these regulations is Mr. William L. Murphy, Senior Counsel, Department of the Treasury. Other present and former personnel in the Treasury Department participated in the development of the regulations, both as to substance and style.

List of Subjects in 31 CFR Part 0

Standards of conduct.

31 CFR Subtitle A is amended by revising Part 0 to read as follows:

PART 0—STANDARDS OF CONDUCT

Subpart A—General Provisions

Sec.
0.735–1 Purpose.
0.735–2 Scope.
0.735–3 Policy.
0.735–4 Definitions.

Responsibilities

0.735–5 Assignment of responsibilities.
0.735–6 Department.
0.735–7 The Department's counselor.
0.735–8 Deputy counselor.
0.735–9 Role of personnel officers.
0.735–10 Bureaus.
0.735–11 Supervisors.
0.735–12 Employees.

Subpart B—Rules of Conduct

Conflicts of Interest Statutes

0.735–20 General.
0.735–21 Summary of provisions of criminal code which define conflicts of interest.

Rules of Conduct

0.735–30 Proscribed actions; responsibilities.
0.735–31 Political activity.
0.735–32 Strikes.
0.735–33 Gifts or gratuities from government employees.
0.735–34 Gifts or gratuities from outside sources.
0.735–35 Gifts or gratuities from foreign governments.
0.735–36 Outside financial interests.
0.735–37 Using official designation.
0.735–38 Purchase of government property.
0.735–39 Outside employment and other outside activities—General rules.
0.735–40 Teaching, writing, lecturing, and speechmaking.
0.735–41 Gambling, betting, and lotteries.
0.735–42 Use of intoxicants; controlled substances.
0.735–43 Indebtedness; tax obligations.
0.735–44 Care of documents.
0.735–45 Lending or borrowing money.
0.735–46 Use of government cars.
0.735–47 Disclosure of information to the public.
0.735–48 Giving testimony.
0.735–49 Personal communications.
0.735–50 Use of Federal property.
0.735–51 Conduct while on official duty or on Government property.
0.735–52 Influencing legislation or petitioning Congress.
0.735–53 Soliciting, selling, and canvassing.
0.735–54 Office of Personnel Management examination processes.
0.735–55 Falsification of official records.
0.735–56 Miscellaneous statutory provisions.
0.735–57 General conduct prejudicial to the Government.
0.735–58 Nondiscrimination.
0.735–59 Possession of weapons and explosives.
0.735–60 Privacy Act.

Subpart C—Confidential Statement of Employment and Financial Interest

0.735–90 General.
0.735–91 Criteria for designation of employees required to submit confidential statements.
0.735–92 Exceptions.
0.735–93 Grievances; form and content of statements.
0.735–94 Time and place for submission of employees' initial statements.
0.735–95 Annual statements.
0.735–96 Interests of employees' relatives.
0.735–97 Information not known by employees.
0.735–98 Information excluded.
0.735–99 Review of statements.
0.735–100 Confidentiality of employees' statements.
0.735–101 Effect of employees' statements on other requirements.

Subpart D—Executive Personnel Financial Disclosure Requirements

0.735–150 General.
0.735–151 Procedure.
0.735–152 Penalties.
0.735–153 Supplemental information.
0.735–154 Exemptions from filing.
0.735–155 Ethics Agreements.

Sec.

Subpart E—Special Government Employees

Conflict of Interest Statutes

0.735–210 Applicability of 18 U.S.C. 203 and 205.
0.735–211 Applicability of 18 U.S.C. 207.
0.735–212 Applicability of 18 U.S.C. 208.

Rules of Conduct

0.735–215 Applicability of Subpart B of this part.

Consultants and Advisers

0.735–220 Advice on rules of conduct and conflicts of interest statutes.
0.735–221 Industry, labor, agricultural, and other representatives.

Procedures to be Followed in the Department

0.735–230 Information and assistance to special Government employees and their supervisors.
0.735–231 Disclosure of financial interests.
0.735–232 Service with other Federal agencies.
0.735–233 Resolution of cases involving a conflict or apparent conflict of interest.
0.735–234 Legal interpretation.
0.735–235 Safeguarding information.

Subpart F—Employees Stationed in Foreign Countries

General Provisions

0.735–300 Purpose.
0.735–301 Policy.
0.735–302 General provisions governing conduct in foreign countries.

Additional Rules of Conduct

0.735–310 Basic rule of conduct.
0.735–311 Applicability to American employees.
0.735–312 Applicability to members of families.
0.735–313 Expression of thoughts and views.
0.735–314 Political activities.
0.735–315 Acceptance of employment by a member of a family.
0.735–316 Sale of personal automobiles and other personal property.

Advise and Counseling

0.735–320 Responsibility for guidance and assistance.

Authority: 5 U.S.C. 301, 5 U.S.C. 7301, Executive Order 11222, 18 U.S.C. 208, 5 CFR Part 735.

Subpart A—General provisions

§ 0.735–1 Purpose.

This part describes the Standards of Conduct required of all Department of the Treasury employees. The regulations in this part implement the Office of Personnel Management regulations (5 CFR Part 735) in accordance with Executive Order 11222, as amended. The Standards of Conduct in this part are not to be considered all inclusive and may be supplemented by the Department and bureaus to meet specific needs. The absence of a specific published standard of conduct covering an act tending to discredit an employee or the Department does not mean that such an act is condoned, is permissible, or would not call for and result in corrective or disciplinary action.

§ 0.735–2 Scope.

This part covers the following subject areas:

(a) Subpart A of this part sets the general policy and definitions to be applied in interpreting the Department's Minimum Standards of Conduct and allocates responsibility in implementing these standards;

(b) Subpart B of this part summarizes the principal conflict of interest statutes and defines rules of conduct and procedures for all regular employees;

(c) Subpart C of this part contains rules concerning confidential financial disclosure;

(d) Subpart D of this part contains rules concerning public financial disclosure by Executive Personnel;

(e) Subpart E of this part applies to special Government employees and advisers;

(f) Subpart F of this part sets forth additional rules and guidelines applicable to employees stationed in foreign countries.

§ 0.735–3 Policy.

(a) Executive Order 11222 of May 8, 1965, as amended (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 their government. Each individual officer, employee, or adviser of government must help to earn and must honor that trust by his (or her) own integrity and conduct in all official actions.

(b) Personnel of the Department of the Treasury are expected to adhere to the above stated principles and to standards of behavior that will reflect credit on the Government. The Department'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 Treasury activities. Those few employees who violate the laws or the rules or regulations on conduct in this part will be disciplined in accordance with the gravity of the offenses committed.

(c) Disciplinary action may be in addition to any penalty prescribed by law. If disciplinary or other remedial action is necessary, it will be taken only after consideration of the explanation of the employee and will be effected in accordance with applicable laws and regulations. Remedial action may include, but is not limited to:

(1) Changes in assigned duties.

(2) Disqualification for a particular assignment.

(3) Divestment by the employee of his or her conflicting interest.

(4) Disciplinary action.

§ 0.735–4 Definitions.

In this part: (a) "Regular employee" or "employee" means an officer or employee of the Department of the Treasury, but does not include a special Government employee.

(b) "Special Government employee" means an officer or employee of the Department of the Treasury, or an employee detailed from another agency to the Department, who is retained, designated, appointed, employed, or detailed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis.

(c) "Adviser" means a person who provides advice as a representative of an outside group and not as an employee or special Government employee.

(d) "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.

(e) "Bureau" means for purposes of these regulations the Internal Revenue Service, Office of the Comptroller of the Currency, Bureau of Alcohol, Tobacco and Firearms, U.S. Customs Service, U.S. Secret Service, Federal Law Enforcement Training Center, Financial Management Service, Bureau of the Public Debt, U.S. Savings Bonds Division, United States Mint, Bureau of Engraving & Printing, Departmental Offices and the Legal Division.

Responsibilities

§ 0.735–5 Assignment of responsibilities.

The assignment of responsibilities to carry out the provisions of this part is described below in § 0.735–6—§ 0.735–12.

§ 0.735–6 Department.

The Department's responsibilities are to:

(a) Issue policy and basic Standards of Conduct applicable to all Treasury employees,

(b) Periodically review the basic standards issued and to review initially and periodically those additional standards issued by the bureaus,

(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 management and to employees on the application of Standards of Conduct.

§ 0.735–7 The Department's counselor.

The Deputy General Counsel is the Ethics Counselor for the Department on matters covered by the regulations in this part. In addition, the Deputy General Counsel is the Department's Designated Agency Ethics Official (DAEO) for the purposes of the Ethics in Government Act, as amended. There will be an Alternate Designated Agency Ethics Official and such Deputy Designated Ethics Officials as the Deputy General Counsel appoints. The Deputy General Counsel is responsible for coordination of the counseling service within the Department and for interpretations on questions of conflicts of interest and other matters under this part. This includes providing the guidance required by section 206(b)(7) of the Ethics in Government Act.

§ 0.735–8 Deputy counselors.

The Chief Counsel or Legal Counsel for each bureau, or his or her designee, is the Deputy Ethics Counselor for that bureau.

As such, his or her responsibility is to give authoritative advice and guidance on conflicts of interest and other matters covered by this part.

§ 0.735–9 Role of personnel officers.

(a) Personnel officers at all organizational levels are responsible for providing general guidance and assistance to supervisors and employees in implementing and adhering to the provisions of the regulations in this part. Where questions arise or where advice is sought by other supervisors or employees which involve either advice or interpretation which is legal in nature, personnel officers will be responsible for seeing that the advice or interpretation is sought or obtained from the Deputy Ethics Counselor or the Ethics Counselor, as appropriate. Personnel officers will ensure that a briefing is given to all new employees on the rules in this part and the statutory provisions summarized in § 0.735–21. These officers will further ensure that all departing employees are briefed on the applicable post-employment restrictions of 18 U.S.C. 207, 5 CFR Part 737, this part and other applicable restrictions.

(b) The Department's Director of Personnel will issue a directive detailing implementation of this requirement.

§ 0.735–10 Bureaus.

The responsibilities of the bureaus are to:

(a) Provide employees with basic Standards of Conduct and any additional Standards and explanations necessary to effectively carry out the policy of the President and of the Department,

(b) See that employees and supervisors are aware of their responsibilities in maintaining and adhering to established Standards of Conduct,

(c) Inform employees as to how and from whom they may get additional clarification of Standards of Conduct and related laws, rules, and regulations,

(d) Advise employees of the location or availability or regulations governing conduct in and on Treasury buildings and grounds (§ 0.735–51),

(e) Ensure that appropriate disciplinary action is taken against employees who violate Standards of Conduct and related laws, rules and regulations and against supervisors who fail to carry out their responsibilities in taking or recommending disciplinary action when appropriate against employees under them who have committed such offenses, and

(f) Review and evaluate the effectiveness of standards issued and their application.

Note.—Bureaus shall provide employees with copies of the regulations in this part and will require a written receipt from each employee. New employees shall be given copies of the regulations in this part at the time of their employment. All employees will be timely reminded of periodic requirements (such as the requirement to promptly file and pay tax during the tax season, political restrictions during election campaigns, etc.) as well as continually educated concerning these rules. This may be done by posting the Standards on the bulletin board, by reminders in house organs or by other forms of written communication, including payroll inserts. In addition, employees will be reminded annually of their obligation to follow the Standards of Conduct.

§ 0.735–11 Supervisors.

It is the responsibility of each supervisor to:

(a) Know the Standards of Conduct applicable to him or her and the employees under his or her supervision,

(b) Advise the employees under his or her supervision to help them obtain advice on the application of the Standards of Conduct,

(c) Adhere to the Standards of Conduct,

(d) See that the employees under his or her supervision know and adhere to them also, and

(e) 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.

§ 0.735–12 Employees.

(a) Each employee in the Department is required to:

(1) Know the Standards of Conduct and their application in his or her case.

(2) Seek information from his or her supervisor in case of doubt or misunderstanding on the application of the Standards of Conduct,

(3) Adhere to the Standards of Conduct, and

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

(b) Any employee who has information indicating that another employee engaged in any criminal conduct or violated any of the rules of these Standards of Conduct shall promptly convey such information to the Inspector General or to the appropriate internal affairs office of the Bureau of Alcohol, Tobacco and Firearms; U.S. Customs Service; Internal Revenue Service; or U.S. Secret Service. (An attorney in the Legal Division who obtains such information during the course of representation shall instead report to the appropriate Chief or Legal Counsel or the Deputy General Counsel.) The confidentiality of the source of such report will be maintained in a manner appropriate to the circumstances of the case.

(c) Employees shall report information of the type discussed in paragraph (b) of this section related to foreign intelligence or other information of the type covered by Executive Order 12356 to the Inspector General except that Legal Division attorneys who gain information during representation shall report this to the Deputy General Counsel.

Subpart B—Rules of Conduct

Conflict of Interest Statutes

§ 0.735–20 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 or her public duties and responsibilities. The potential conflict is of concern whether it is real or only apparent. In addition to the conflict of interest statutes, summarized in § 0.735–21, the Department has rules concerning conflicts of interest that appear in §§ 0.735.34, 0.735.35, 0.735.36, and 0.735.39.

§ 0.735–21 Summary of provisions of criminal code which define conflicts of interest.

The following is a brief sumary of the provisions of the criminal code, 18 U.S.C. 201 *et seq.*, which define the conflicts of interest which are subject to fine and imprisonment. These provisions have been interpreted by the Attorney General in a memorandum distributed to Heads of Departments and Agencies, dated January 28, 1963, 28 FR 985 and published in a note following 18 U.S.C. 201. Specific examples of the application of the post-employment restrictions are provided by the Office of Government Ethics in 5 CFR Part 737. It should be noted that lesser prohibitions apply to special Government employees than to regular employees as indicated in Subpart E 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, rendered by the employee or another in relation to any matter in which the United States is a party or has a substantial interest, before any Department or agency.

(Example: any Government employee's acceptance of compensation for Federal tax representation is prohibited, whether the employee provided the representation or not.)

(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 or interest in such claim for assistance in its prosecution, or

(2) Acting as an agent or attorney for anyone before any Department, agency or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest.

This section does not prohibit a regular Government employee from acting with official approval and with or without compensation as agent or attorney for his or her parents, spouse, child or any person for whom, or for any estate for which, he or she is serving as guardian or other fiduciary, with certain exceptions set forth in section 205. (See § 0.735–39 for Departmental restrictions.) The provisions of this section and section 203 do not prevent an employee, if not inconsistent with the faithful performance of his or her duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty or other personnel administration matter in connection with such matter.

(c) *18 U.S.C. 207(a).* Section 207(a) prohibits a former employee at any time after his or her employment has ceased, from acting as agent or attorney (including making any oral or written communications with the intent to influence) 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 or has a direct and substantial interest and in which he or she participated personally and substantially as an employee.

(d) *18 U.S.C. 207(b)(i).* Section 207(b)(i) prohibits any such former Government employee within two years after his or her employment from acting as an agent or attorney for, or otherwise representing (including making an oral or written communication with the intent to influence) 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 or directly and substantially interested and which was under his or her official responsibility within one year prior to the termination of such responsibility.

(e) *18 U.S.C. 207(b)(ii).* Section 207(b)(ii) imposes an additional restriction which applies only to "Senior Employees." All executive level employees, together with those in Senior Executive Service who have been designated in 5 CFR 737.33 are "Senior Employees." A former "Senior Employee" may not aid or assist in representing by personal presence at a formal or informal appearance for a period of two years after employment with respect to any particular matter in which the employee would be prohibited from personally representing by Section 207(a) on account of personal and substantial participation as a Government employee.

(f) *18 U.S.C. 207(c).* Section 207(c) prohibits a former "Senior Employee" from acting as an agent or attorney for anyone other than the United States, or making an oral or written communication with the intent to influence, in any particular matter (but not necessarily involving a specific party or parties) before or to the employee's former agency for one year after employment. Certain Treasury components have been designated as "separate agencies" for purposes of this rule in 5 CFR 737.31. However, heads of these components may not take advantage of this separate agency designation and are barred from appearing before the Department as a whole. Similarly, those who supervise a component even though not part of it may not avail themselves of the designation.

(g) *18 U.S.C. 208.* Section 208 prohibits any employee from participating personally and substantially as a Government employee in any particular matter in which to his or her knowledge the employee, the employee's spouse, minor child, partner, organization in which the employee is serving as an officer, director, trustee, partner or employee, or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest. An employee may be exempted from the provision of this section if he or she makes full disclosure of the financial interest to the official responsible for his or her 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 that employee's service. (Example: an auditor who owns stock in a company may not perform an audit of that company and an attorney working on a matter involving a company may not negotiate for employment with the law firm representing the company.) *See* § 0.735–37 for specific rules relating to negotiating employment. *See* § 0.735–36(e) for a general exemption of certain financial interests from the scope of this prohibition. Exemptions from the prohibition of section 208 may be made by general rule or regulation pursuant to section 208(b)(2). Specific exemptions pursuant to section 208(b)(1) may be made:

(1) For employees in the Departmental Offices by a superior official not lower than Deputy Assistant Secretary;

(2) For employees in bureaus by an official designated by the bureau head (this authority should not be delegated lower than the equivalent of Deputy Assistant Secretary); and

(3) For employees in the Legal Division by the Chief or Legal Counsel or Deputy General Counsel.

(h) *18 U.S.C. 209.* Section 209 prohibits any employee from receiving any salary or any contribution to or supplementation of salary as compensation for services as a Government 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. 4101–4118. In addition, payments by state or local governments and relocation expenses paid to White House fellows or participants in executive exchange programs may be accepted.

Rules of Conduct

§ 0.735–30 Proscribed actions; responsibilities.

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

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a Government decision outside official channels; or

(6) Afffecting adversely the confidence of the public in the integrity of the Government.

(b) An employee shall not unlawfully disclose personal information with respect to an individual which information has been obtained in the course of the employee's official duties.

(c) Employees may express their personal views on assigned matters to their immediate supervisors. Nevertheless, they are required to implement authorized decisions of their supervisors.

(d) Employees are expected to be courteous and tactful in their official relations with the public.

§ 0.735–31 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 (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 the statutory provisions and the Office of Personnel Management's regulations on this subject (5 U.S.C. 7324–7327 and 5 CFR Part 733). Employees are free to make political contributions, subject to two restrictions. First, 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 (5 U.S.C. 7323). Second, employees may not make contributions to an officer or employee of the Government who is the employer or employing authority of the contributing employee, or to an authorized committee of that officer or employee (18 U.S.C. 603). Employees may be disqualified from employment for knowingly supporting or advocating the violent overthrow of our constitutional form of government (5 U.S.C. 7532 and E.O. 10450, as amended).

§ 0.735–32 Strikes.

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

§ 0.735–33 Gifts or gratuities from Government employees.

(a) Employees of the Federal Government are prohibited from soliciting contributions from other employees 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 than themselves (5 U.S.C. 7351).

(b) Collections of spontaneous origin may be made for voluntary token gifts on special occasions, such as marriage, retirement, 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. However, supervisors may not solicit contributions from an employee under their supervision under any circumstances. In no case should general solicitations be made for a gift, nor should gifts to the recipients be in cash, except that small amounts (*e.g.*, under $20) remaining after the purchase of a gift may be included with the gift. A collection may be made, in accordance with the limitations set forth in paragraphs (a) and (b) of this section, with supervisory approval, for a cash gift to assist in a catastrophic illness or disaster, provided that these collections are limited to co-workers of approximately equal status to the recipient employee, and to his or her immediate supervisors.

(c) Employees must not be placed under pressure for personal contributions and the solictor must make it clear to all prospective contributors that contributions are voluntary.

§ 0.735–34 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 Department of the Treasury, (2) conducts operations or activities that are regulated by the Department, or (3) has interests that may be substantially affected by the performance or nonperformance of his or her official duty.

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

(1) Acceptance of gifts, entertainment, and food is proper when circumstances make it clear that obvious family or personal relationships (such as those between the employee and the parents, children, friends or spouse of the employee), rather than the business relationship of the persons concerned, are the motivating factors. (Friends for purposes of this rule are those with whom the employee has a long standing or close personal relationship.)

(2) Acceptance of food or 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 where an employee may properly be in attendance, provided there is no pattern of accepting such food or refreshments from a single source. This exception also applies when Treasury officials are in attendance at large organized functions which are considered appropriate ones to attend because of the recognized benefit of such attendance to Treasury operations.

(3) If food or refreshments are received under circumstances that preclude immediate payment without embarrassment, and the acceptance is not authorized by paragraph (b)(1) or (2) of this section, it will be permitted to be accepted, but only if, within a reasonable period of time, the employee actually reimburses the host or has made a good faith effort to reimburse a host who will not accept reimbursement.

(4) Employees may accept gifts, the personal receipt of which is prohibited by these rules, where under the immediate circumstances, refusal would create embarrassment if: (i) The employee promptly turns the gift over to the Departmental Gift Unit (or as

specified in bureau directive) for return or other appropriate disposition; or

(ii) The employee directly returns the gift or writes a brief letter to the donor advising that Department rules do not permit the employee to accept the item. The employee will then submit the letter and the gift item to his or her supervisor who will arrange for mailing the letter and returning the gift item to the donor at Government expense.

(5) 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 or regulation.

(6) Employees may accept unsolicited advertising or promotional material such as pens, pencils, note pads, calendars and other items of nominal intrinsic value. Employees may accept discounts afforded to Government employees as a whole, or to other groups of which the employee is a part, except when the entity is one which has business dealings with or is regulated by the employee's bureau.

(c) The rules set forth in paragraphs (a) and (b) of this section also apply to an employee who consents to the offer or acceptance of any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value by a person other than that employee, under circumstances which might reasonably be construed as influencing or improperly relating to past, present, or future performance of the employee's governmental duties.

(d) The receipt of payment or reimbursement by outside sources for the expenses of travel and subsistence for activities related to Government employment is permitted only in accordance with § 0.735–40.

(e) This section is not an attempt to classify all possible situations involving gifts or gratuities from outside sources. It is presented to assist management and employees in interpreting the rule and applying it. Cases must be judged on their individual merits. Employees must exercise sound judgment to comply with the intent of the rule. For example, acceptance of a gift permitted under paragraph (b) of this section might be inappropriate in certain circumstances. If there is any reasonable doubt about accepting a gift or gratuity, the employee should submit his or her questions in writing to the immediate supervisor and obtain a written opinion as to whether acceptance of the gift or gratuity is permissible under the rules of conduct.

§ 0.735–35 Gifts or gratuities from foreign governments.

(a) The Constitution prohibits employees from accepting from foreign governments, except with the consent of the Congress, presents emoluments, offices, or titles. Congress has given its consent in 5 U.S.C. 7342 to the acceptance of certain specified gifts and decorations. Employees may retain gifts of minimal value meant as a souvenir or mark of courtesy if not prohibited by agency regulations.

(b) Minimal value for foreign government gifts to Treasury employees is $180.00 (or such higher amount established in 41 CFR Part 101–49).

(c) All gifts in excess of minimal value, the refusal of which would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, may be accepted and deposited with the Department within sixty days of acceptance.

(d) Deposit with the Department means delivery to the Departmental Gift Unit or other deposit authorized in the current Treasury Directive on Foreign Gifts.

(e) Any foreign gift must be reported as prescribed in the current Treasury Directive on Foreign Gifts.

§ 0.735–36 Outside financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that may reasonably be expected to be in conflict, or appears to be in conflict, with his or her Government duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his or her employment with the Department.

(b) Any employee who has a financial or other interest which may be affected by a matter to which the employee is assigned, shall promptly notify his or her supervisor of the potential conflict of interest. The supervisor is responsible for ensuring that the employee does not work on any matter which would create a conflict of interest (other interests which might require disqualification include membership in a nonprofit organization, financial interests of friends or relatives in a matter, and the like). Employees should consult with the Ethics Counselor or supervisor in case of doubt.

(c) An employee who is negotiating for, or has an arrangement concerning, prospective employment may not participate in a matter in which the prospective employer has a financial interest. Financial interest for this rule includes an indirect interest, such as when the prospective employer is representing a client which has a direct interest in the matter. To assist employees, the following rules apply to employment negotiating situations:

(1) An arrangement for employment includes a tacit agreement to return to a former employer.

(2) A negotiating situation exists either during active negotiation, where an employee solicits employment, or where an employee does not promptly reject an unsolicited offer of employment.

(3) The types of matters which the employee must refrain from participating in include not only particular matters, such as individual cases, but general matters such as drafting of regulations which would have a direct and predictable impact on the prospective employer.

(4) Employees should promptly notify their supervisor in writing of all employment arrangements and negotiations with an individual or organization which has financial interests actually or potentially affected by any matter on which the employee is working unless advised by an Ethics Counselor that a given negotiation need not be reported.

(d) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, Executive Order 11222, as amended, this Part, or other regulations or directives.

(e) Pursuant to 18 U.S.C. 208(b)(2), the financial interests described below are deemed to be too remote and inconsequential to affect the integrity of employees' services. Therefore, an employee will not be in violation of section 208(a) for participating in a matter in which he or she has such interest. However, employees should refrain from participating in matters notwithstanding this waiver if such participation would result in an improper appearance. The financial interests referred to above are:

(1) Stocks or bonds of publicly traded corporations with a value of $1,000 or less;

(2) Stocks or bonds in the investment portfolio of a diversified mutual fund in which an employee has invested.

§ 0.735–37 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, financial or business interests of the user.

§ 0.735–38 Purchase of Government property.

(a) Employees are prohibited from, either directly or indirectly, bidding or purchasing at any sale of property either owned by the Government and under control of the employees' bureau (or a bureau over which the employee exercises supervision) or seized and sold under the direction of the employees' bureau.

(b) Government property under the control of the Department shall not be sold to a Government employee (including an employee of any Treasury bureau other than the disposing bureau), either directly or indirectly, unless an authorized representative of the bureau disposing of the property has determined that the sale is in the best interests of the Government.

(c) Before purchasing any Government property, either directly or indirectly, from any agency other than Treasury, employees of the Department shall make known to the disposing agency that they are such employees. Employees are permitted to purchase such property unless prohibited by the disposing agency's rules. If the disposing agency's rules defer to the employing agency's rules, the procedures in paragraph (b) of this section shall apply to purchases by Treasury employees.

(d) This section does not apply to items sold generally to the public at fixed prices, such as Mint numismatic products. In addition, a foreign gift deposited with the Department may be purchased by the donee employee pursuant to 5 U.S.C. 7342 and 41 CFR Part 101–49.

§ 0.735–39 Outside employment and other outside activities—General rules.

(a) Employees shall not engage in any outside employment or other outside activities with or without compensation, which—

(1) Interfere with the efficient performance of official duties,

(2) Might bring discredit on or cause unfavorable and justifiable criticism of the Government,

(3) Might reasonably result in a conflict of interest, or an apparent conflict of interest, with official duties and responsibilities, or

(4) Might result in the unauthorized use or disclosure of classified or sensitive information.

(b) Bureau heads will establish appropriate instructions to meet their particular needs in regard to outside employment and other outside activities of their employees. Generally, these instructions will require employees to obtain written permission from appropriate approving officials. All approvals should be reviewed annually. To simplify administration of this rule, bureaus may include in their instructions criteria not inconsistent with the regulations in this Part which provide for outside activities which are clearly permissible and would not require written permission. Bureaus will retain in employees' Official Personnel Files all requests whether granted or not. In addition, bureaus will retain a separate file of all requests and approvals for the use of the counselor and deputy counselors.

(c) Under 5 U.S.C. App. (section 210 of the Ethics in Government Act of 1978, Pub. L. 95–521) all employees who are compensated at a pay grade in the General Schedule of grade 16 or above and who occupy full-time positions appointment to which is required to be made by the President, by and with the advice and consent of the Senate, may not have outside earned income which is in excess of 15 percent of their salary in any calendar year.

§ 0.735–40 Teaching, writing, lecturing, and speechmaking.

(a) This section sets forth rules regarding teaching, writing, lecturing or speaking, whether in a private or official capacity, which is dependent on information the employee obtained as a result of Government employment, or related to Treasury Department business. Teaching, writing, lecturing or speaking not dependent on information obtained as a result of Government employment, or related to Treasury Department business, or governed by § 0.735–39 and bureau regulations on outside employment.

(b) The following procedures control these activities dependent on Government information or related to Treasury Department business.

(1) *Use or release of nonpublic information.* An employee may not use or release in a teaching, writing, lecturing, or speechmaking activity (whether as an official duty or in a private capacity) information gained as a result of Government employment which has not been made available to the general public, or will not be made available on request, unless the appropriate approving official gives written authorization for such use or release based upon a determination that such use or release is in the public interest.

(2) *Activities undertaken as an official duty.* An employee may engage in teaching, writing, lecturing, or speechmaking as an official duty. If consistent with the proper expenditure of public funds, such activities may be permitted as official duties. Approval of the activity by the employee's supervisor and the content of the teaching, writing, lecturing or speechmaking engagement by the appropriate approving official is required. If undertaken as an official duty, all expenses are to be borne by the Treasury Department and the employee may receive no other compensation or reimbursement. However, the employee may, under 5 U.S.C. 4111 and 5 CFR Part 410, accept reimbursement for actual travel and reasonable lodging and subsistence expenses from organizations determined by the Secretary to be tax exempt as described in 26 U.S.C. 501(c)(3) or from state, county or municipal governments, if no U.S. Government payment or reimbursement is made for the expense, and the acceptance of the payment is consistent with the Department's policy of eliminating any conflict of interest or appearance of a conflict of interest with his or her official duties and responsibilities. While an employee may incur additional expenses, no reimbursement of such excess is permitted except by a person who:

(i) Is a relative or close personal friend, and

(ii) Makes such payment solely from personal funds.

Any payment or reimbursement shall be subject to the rules of this part pertaining to gifts and gratuities. Subject to these same limitations and approval requirements, reimbursement for reasonable travel expenses of a spouse or traveling companion who accompanies the employee may be accepted.

(3) *Activities undertaken in a private capacity.* (i) An employee may teach, write, lecture, or speak on matters related to Treasury Department business or which will draw from information gained while a Government employee (subject to paragraph (c)(2) of this section if nonpublic information is involved) in a private capacity subject to the following limitations:

(A) An advance copy or outline (such as a course outline) of any speech, writing, etc., must be given to the appropriate approving official who may disapprove the presentation;

(B) The employee may not use his or her official title without specific written approval by the appropriate approving official. An example of title use where approval is normally appropriate is where the employee's Government position is referred to in biographical

information provided in conjunction with the outside activity; and

(C) The employee may not utilize Government time or facilities to prepare the presentation or submission. Acceptance of honoraria is discouraged.

(ii) If an honorarium or other compensation is to be received, specific written approval is required. (Presidential appointees shall obtain personal written approval of the Secretary).

(iii) If an honorarium or other compensation is not to be received, further approval is not needed, unless required by bureau regulations.

(iv) Employees may accept payment for travel, lodging, and subsistence expenses actually incurred from the person or group sponsoring an activity determined not to be an official duty, if the payment is reasonable in amount and otherwise consistent with the Department's policy to eliminate any conflict of interest or appearance of a conflict of interest with the official duties and responsibilities of the employee. Presidential appointees shall obtain the personal written approval of the Deputy Secretary or Secretary before accepting any such payment. An employee may incur excess expenses not reimbursable under this subsection. Payment or reimbursement of such expenses is permitted by a person who:

(A) Is a relative or close personal friend,

(B) Makes such payment solely from personal funds, provided

(C) That such payment is in accordance with the rules of this part pertaining to gifts and gratuities. Payment of these excess expenses by anyone other than a relative or close personal friend requires approval as compensation under paragraph (c)(4)(ii) of this section.

(4) *Reporting requirements.* All employees receiving compensation or reimbursement for expenses for teaching, writing, lecturing, or speechmaking devoted to the responsibilities, programs or activities of the Department, or drawing upon official data or ideas which have not been made public, shall immediately submit a written report to the appropriate approving official 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 appropriate approving official to furnish other relevant information concerning these payments.

(5) *Other restrictions.* (i) Under 5 CFR 735.203(c), the Secretary of the Treasury may not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Treasury Department, or which draws substantially on official data or ideas which have not been made public.

(ii) Under 2 U.S.C. 441i, employees are prohibited from receiving honoraria of more than $2,000 for any appearance, speech, or article;

(iii) Presidential appointees should be aware that the earned income limitation described in § 0.735–39(c) applies to honoraria.

(c) For purposes of this section the "appropriate approving official" shall be, in the case of employees within a bureau, the bureau head or deputy; in the case of employees within an office, the office head or deputy; and in the case of a bureau or office head, the official to whom the bureau or office head reports pursuant to Treasury Department Order No. 101–5. (This authority may be delegated in writing.)

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

§ 0.735–41 Gambling, betting, and lotteries.

(a) Except as provided for in paragraph (c) of this section an employee shall not participate while on Government-owned or leased property or while on duty for the Government, in any form of illegal gambling, betting, lotteries or the sending of chain letters, even if such activities are in support of a worthy cause.

(b) Possession on Government-owned or leased premises of any numbers slip or ticket, record, notation, receipt or other writing of a type ordinarily used in any illegal form of gambling, such as a tip sheet or dream book, unless explained to the satisfaction of the head of the bureau or his delegate, shall be prima facia evidence that the employee is participating in an illegal form of gambling on such premises.

(c) This section does not preclude: (1) Activities necessitated by an employee's law enforcement duties; or (2) purchase of lottery tickets sold on Government-owned or leased property by blind vendors, as provided for in the Randolph Sheppard Act (20 U.S.C. 107a(a)(5)) except in those states or localities where such gambling is prohibited by statute, ordinance or other applicable laws.

§ 0.735–42 Use of intoxicants; controlled substances.

(a) Employees must refrain from using intoxicants or controlled substances habitually, to excess or in any way which adversely affects their work performance. In addition, employees are forbidden from engaging in the illegal sale, use or possession of controlled substances while on Department premises or on official duty.

(b) Employees in violation of paragraph (a) of this section may be subject to disciplinary action up to and including dismissal.

(c) In addition, each employee should be aware that any use of intoxicants or use, sale or possession of controlled substances found to be prejudicial to the Government may subject that employee to disciplinary action. See § 0.735–57.

§ 0.735–43 Indebtedness; tax obligations.

(a) Employees shall not without good reason fail to maintain good credit and a reputation for prompt settlement of their just financial obligations in a proper and timely manner. They are expected to manage their private financial affairs in a manner which will not cause embarrassment to the Treasury Department. This particularly includes just financial obligations to Federal, State, and local governments for taxes as well as private concerns and individuals. 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, as provided by paragraph (b) of this section. "In a proper and timely manner," as used in this section, means in a manner which the Department determines does not, under the circumstances, reflect adversely on the Department as his or her employer. In the event of disputes between an employee and an alleged creditor, this section does not require the Department to determine the validity or amount of the disputed debt.

(b) In accordance with the requirement in paragraph (a) of this section that employees pay their just financial obligations in a proper and timely manner, employees must timely pay any valid tax due to a Federal, State, or local government agency. A "valid tax due" as used in this paragraph includes:

(1) A balance due on an original return as filed with a government agency;

(2) An uncontested tax assessment of a government agency;

(3) A tax otherwise due a government agency which is acknowledged by the employee; or

(4) A final administrative determination confirmed by notice of a tax lien issued by a government agency.

(c) In addition, it is expected that employees will file timely and properly all tax returns in keeping with the requirements of law, regulation or ordinance, whether or not a tax is due.

§ 0.735–44 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, 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 sent to file when no longer needed for official purposes. Disposal or destruction of records and documents is to be made in accordance with established requirements. There are specific instructions relating to the safeguarding of classified or other sensitive information which are furnished to employees authorized to have access to such information. See further the regulations in Part 1 of this title which implement 5 U.S.C. 301, 552 and 552a governing the care and the disclosure of records in the Department of the Treasury; § 0.735–61 of this part; and see the relevant statutes and regulations, if any, issued by a bureau or office to which the record belongs.

§ 0.735–45 Lending or borrowing money.

Employees shall not, either directly or 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 Treasury employee who exercises supervision over that borrower, or over whom that borrower exercises supervision.

§ 0.735–46 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. 1344. Employees who violate this section shall be suspended from duty without compensation for not less than one month and may be suspended for a longer period or removed from office if circumstances warrant.

§ 0.735–47 Disclosure of information to the public.

Employees may not disclose official information without either appropriate general or specific authority under Department or bureau regulations. However, employees who are so authorized should make every effort to comply promptly and courteously with requests by the public for information, when permitted to do so by law. See further 31 CFR 1.9, 1.10, and 1.28(b).

§ 0.735–48 Giving testimony.

(a) When directed to do so by competent Treasury authority, employees must testify and respond to questions truthfully, under oath when required, concerning matters of official interest.

(b) The information provided by an employee pursuant to paragraph (a) of this section shall be furnished to authorized persons in the Department of the Treasury who have a need for the information in the performance of their duties.

(c) Failure to testify, respond to questions, or give truthful answers, under oath when required, pursuant to paragraph (a) of this section, may subject employees to dismissal from Federal employment or other disciplinary or adverse action. Furnishing false information may also result in criminal prosecution.

(d) The authority for soliciting information pursuant to paragraph (a) of this section is granted in 5 U.S.C. 301 (Authorization of Agency Heads to Prescribe Regulations for their Departments); Executive Orders 10450 (Security Requirements For Government Employees) and 11222 (Prescribing Standards of Ethical Conduct For Government Officers and Employees); and 26 U.S.C. 7801 (Authority of the Secretary of the Treasury).

§ 0.735–49 Personal communications.

Employees may not conduct personal business while on official duty. Personal use of telephones is restricted to essential need. Employees who receive personal mail at their office will advise addressers to stop sending such mail to the Department address.

§ 0.735–50 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. Employees also have a positive responsibility to protect and conserve all Federal property including equipment and supplies entrusted or issued to them.

§ 0.735–51 Conduct while on official duty or on Government property.

Employees must adhere to the regulations governing conduct in and on the Treasury Building, and Treasury Annex Building and grounds (Part 407 of this title); the Bureau of Engraving and Printing, and Bureau of Engraving and Printing Annex Building and grounds (Part 605 of this title); the Bureau of the Mint buildings and grounds located in Denver, Fort Knox, New York, Philadelphia, San Francisco, and West Point (Part 91 of this title); the grounds of the Federal Law Enforcement Training Center (Part 700 of this title); and Treasury-occupied General Services Administration buildings and grounds (41 CFR Subpart 101–19.3). In addition, each employee must refrain from acting in a manner unbecoming a Treasury employee, while on official duty or in Government buildings.

§ 0.735–52 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 Department of the Treasury (18 U.S.C. 1913). Employees have the right 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. 7211) when not using Government time, money or property.

§ 0.735–53 Soliciting, selling, and canvassing.

Except when authorized by the head of the bureau, office or division concerned, and except as provided by § 0.735–33, 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 Treasury.

§ 0.735–54 Office of Personnel Management 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 Office of Personnel Management statutory provisions, 5 U.S.C. Chapter 33 and the Office of Personnel Management regulations. Employees shall not participate either directly or indirectly in any of the following actions:

(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 Office of Personnel Management examinations and examination ratings; or

(d) Obstruct the right of any person to take examinations according to the Office of Personnel Management rules and regulations.

§ 0.735–55 Falsification of official records.

(a) Employees shall avoid making false, misleading or ambiguous statements, deliberately or willfully, whether oral 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 action; 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.

(b) Furnishing false information may subject employees to dismissal from Federal employment, or other disciplinary or adverse action; and may also result in criminal prosecution (18 U.S.C. 1001).

§ 0.735–56 Miscellaneous statutory provisions.

Bureau heads should advise employees of any laws which relate specifically to employees in their bureaus. The attention of every employee is directed to the statutes relating to conduct listed below: (a) Pub. L. 96–303, July 3, 1980, 94 Stat. 855, 856, the "Code of Ethics for Government Service" (5 U.S.C. 7301 note).

(b) The prohibition placed on Department of the Treasury employees against carrying on any trade in any public funds or debts or obtaining any personal gain from transacting the Department's business (31 U.S.C. 329).

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

(d) The prohibition against the misuse of official mail for private purposes (18 U.S.C. 1719).

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

(f) The prohibition 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).

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

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

(i) The prohibitions against—

(1) The disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783);

(2) The disclosure of confidential information (18 U.S.C. 1905);

(3) The unlawful disclosure of personal information (5 U.S.C. 552a); and

(4) The disclosure of tax information (26 U.S.C. 6103).

(j) 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).

(k) 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).

(l) 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 or her sale to or purchase of property from, a private foundation.

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

(n) The prohibition against interfering with Office of Personnel Management examinations (18 U.S.C. 1917).

(o) The prohibition against striking against the Government (18 U.S.C. 1918).

§ 0.735–57 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, or notoriously disgraceful conduct, or any other conduct prejudicial to the Government. See Federal Personnel Manual Chapter 731 for general guidance on the use of the terms "criminal, infamous, dishonest, or notoriously disgraceful conduct."

§ 0.735–58 Nondiscrimination.

While in the performance of duty, no employee may discriminate against any other employee, applicant for employment, or person dealing with the Department on official business because of race, color, religion, national origin, sex, age, or handicap. Nor may any employee engage in acts of sexual harassment.

§ 0.735–59 Possession of weapons and explosives.

Employees while on official duty or while in Government buildings shall not have in their possession firearms, other dangerous or deadly weapons or explosives, either openly or concealed, except for official purposes.

§ 0.735–60 Privacy Act.

(a) The head of each office and division shall be responsible for assuring that employees under their supervision are advised of the provisions of the Privacy Act, including the criminal penalties and civil remedies provided therein. Also, that employees are made aware of their responsibilities to protect the privacy of individuals by:

(1) Avoiding unauthorized disclosure either orally or in writing;

(2) Assuring that information maintained is accurate, relevant, timely and complete;

(3) Insuring that no system of records, as defined in section 2(a)(5) of the Act is maintained without public notice.

(b) Employees of the Department of the Treasury shall:

(1) Collect no information of a personal nature from individuals unless authorized to collect it to achieve a

function or carry out a responsibility of the Department;

(2) Collect from individuals only that information which is necessary to Department functions or responsibilities;

(3) Collect information, wherever possible, directly from the individual to whom it relates, unless related to a system exempted under 5 U.S.C. 552a(j);

(4) Inform individuals from whom information is collected of the authority for collection, the purposes thereof, the use that will be made of the information, and the effects, both legal and practical, of not furnishing information;

(5) Neither collect, maintain, use nor disseminate information concerning an individual's religious or political beliefs or activities or an individual's membership in associations or organizations, unless—

(i) The individual has volunteered such information;

(ii) The information is expressly authorized by statute to be collected, maintained, used or disseminated; or

(iii) The activities involved are pertinent to and within the scope of an authorized investigation, adjudication or correctional activity;

(6) Advise their supervisors of the existence or contemplated development of any record system which is capable of retrieving information about individuals by individual identifier;

(7) Disseminate no-information concerning individuals outside the Department except when authorized by 5 U.S.C. 552a or pursuant to a routine use published in the **Federal Register**;

(8) Keep an accounting in accordance with applicable directives, of all disclosure of personal information outside the Department, whether made orally or in writing;

(9) Maintain and process information concerning individuals with care in order to insure that no inadvertent disclosure of the information is made either within or without the Department; and

(10) Assure that the proper Department authorities are aware of any information in a system maintained by the Department which is not authorized to be maintained under the provisions of the Privacy Act of 1974, including information on First Amendment activities, or information that is inaccurate, irrelevant or so incomplete as to risk unfairness to the individual concerned.

(c) Employees may be charged with a misdemeanor and a fine up to $5,000 for the following violations:

(1) Willful disclosure of records which is prohibited by section 3 of the Privacy Act of 1974 after having knowledge that disclosure of the specific material is so prohibited,

(2) Willful maintenance of records without meeting the requirements of publication of a notice concerning such system in the **Federal Register** under section 3(e)[4] of the Privacy Act; or

(3) Obtaining records under false pretenses.

Subpart C—Confidential Statement of Employment and Financial Interest

§ 0.735–90 General.

(a) Section 403 of Executive Order 11222, as amended by Executive Order 12565, authorizes the Office of Personnel Management to prescribe regulations requiring certain officers and employees in the Executive Branch to file confidential statements of employment and financial interests.

(b) This subpart describes Treasury procedures required to implement Executive Order 11222, as amended, and the regulations of the Office of Personnel Management, 5 CFR Part 735.

(c) Treasury officers required to file public financial disclosure reports by virtue of the Ethics in Government Act of 1978 shall do so in accordance with the procedures set out in Subpart D and will not be required to file confidential statements under this subpart, except as provided by § 0.735–153.

(d) Each bureau will submit a list of positions which meet the criteria for filing confidential statements to the Designated Agency Ethics Official by March 1 of each year. The Designated Agency Ethics Official will designate positions for coverage by April 1 of each year. Bureaus will advise employees of their filing requirements by May 1 of each year.

§ 0.735–91 Criteria for designation of employees required to submit confidential statements.

Except as provided in § 0.735–93 confidential statements of employment and financial interest will be filed by the following employees:

(a) Those classified at GS–13 to GS–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) Administering or monitoring grants or subsidies;

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

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

(b) Those classified at GS–13 to GS–15 under 5 U.S.C. 5332, or at comparable pay level under another authority, who are in positions determined to 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 (a) and (b) of this section, but only when the inclusion of the position has been specifically justified 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.

(d) A list of designated positions requiring filing will be published annually as a Departmental directive.

§ 0.735–92 Exceptions.

Employees in positions that meet the criteria in paragraph (a) of § 0.735–91 may be excluded by the Designated Agency Ethics Official from the reporting requirement when it is determined that:

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

(b) 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.

§ 0.735–93 Grievances; form and conduct of statements.

(a) An employee who believes that his or her position has been improperly designated as one requiring submission of a confidential statement of employment and financial interest may challenge that determination through the agency's normal grievance procedure.

(b) The confidential statements of employment and financial interests required under this subpart for use by employees and special Government employees shall contain, at a minimum, the information required by the formats prescribed by the Office of Personnel Management in the Federal Personnel Manual. Such statements shall not include questions that go beyond, or are in greater detail than those included in Office of Personnel Management

formats without the approval of the Office of Personnel Management.

§ 0.735–94 Time and place for submission of employees' initial statements.

Each employee required to submit a statement of employment and financial interests shall submit that statement to the office or official designated by the bureau head (reviewing official) not later than 30 days after the employee's entrance on duty in a covered position.

§ 0.735–95 Annual statements.

Employees shall submit an annual statement of employment and financial interests that shows changes in or additions to their original statement up to and including June 30 of each year, except when the Office of Personnel Management authorizes a different date. A complete report is required even if no change has occurred since the last report. This statement is required to be submitted to the reviewing official no later than July 31 each year. 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 in a violation of the conflict of interest provisions of 18 U.S.C. 208, Subpart C of 5 CFR Part 735, or this part.

§ 0.735–96 Interests of employees' relatives.

For purposes of completing the confidential statement of employment and financial interest, the interests of a spouse, minor child, or other member of the employee's immediate household are to be considered interests of the employee. In other words, those blood relations who are residents of the employee's household are to be treated for purposes of completing the financial statement as though they were the employee and, therefore, the report of financial interests should reflect their employment and financial interests in the same manner that the employment and financial interests of the employee are shown.

§ 0.735–97 Information not known by employees.

If any information required to be included in a statement of employment and financial interests, 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.

§ 0.735–98 Information excluded.

The regulations in this subpart do not require an employee to submit on a statement of employment and financial interests any information relating to the employee's exercise of First Amendment rights, or 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.

§ 0.735–99 Review of statements.

(a) Each bureau will make provision for a review of the statements submitted by its employees. This review may be made either by the bureau head or his or her designee. 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, the employee concerned shall be given an opportunity to explain the conflict or apparent conflict. If the conflict or apparent conflict is not resolved at the bureau or a lower organizational level, the matter will be referred to the Designated Agency Ethics Official.

(1) The assistance of the Designated Agency Ethics Official may be sought at any time.

(2) Each bureau head will submit a statistical report to the Designated Agency Ethics Official weekly beginning August 15 until the review process is complete. The report shall contain the number of statements required, the number received and the results of the reviews (such as the number approved and those awaiting final resolution).

(b) Notwithstanding paragraph (a) of this section, attorneys in the Legal Division shall submit their statements to their immediate supervisor for review, who will forward the statements to the Deputy General Counsel.

(c) In the case of officers who file public financial disclosure reports and who are also required by their bureaus to file supplemental information on a confidential basis in accordance with § 0.735–153, the supplemental information shall be filed with the head of the bureau, or his or her designee; and in the case of a bureau head filing such supplemental information, he or she shall submit it to the official in the Office of the Secretary to whom he or she reports under Treasury Department Order No. 101–5. Reviewing officials shall inform employees required to file supplementary statements in writing that such statements are due on or about June 15 each year. The statements will be reviewed by reviewing officials by August 31 and resolution shall be completed no later than September 30. Approval of each supplementary statement shall be shown affirmatively by initialing an "O.K." or other symbol of approval and the date of approval. The official shall submit a copy of each statement to the Designated Agency Ethics Official no later than September 15.

§ 0.735–100 Confidentiality of employees' statements.

(a) Statements of employment and financial interests shall be held in confidence. To ensure this confidentiality, bureaus and offices shall designate which employees are authorized to review and retain the statements. Employees so designated 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.

(b) Criminal penalties may be imposed on an employee who willfully and knowingly discloses to an unauthorized person information protected under the Privacy Act.

§ 0.735–101 Effect of employees' statements on other requirements.

The submission of a statement or supplementary information by an employee does not permit the employee or any other person to participate in a matter in which the employee's or the other person's participation is prohibited by law, order, or regulation.

Subpart D—Executive Personnel Financial Disclosure Requirements

§ 0.735–150 General.

Executive personnel are required to file public financial disclosure statements upon appointment, termination, and annually in accord with the regulations of the Office of Government Ethics, 5 CFR Part 734. For purposes of this provision, executive personnel are all those, at the Executive Level; in the Senior Executive Service; classified at GS–16 or above; paid at the minimum rate of basic pay fixed for GS–16 if paid under other than the General Schedule; or exempted from the competitive service by reason of occupying a position of a confidential or policymaking character (Schedule C),

unless exempted from reporting by the Office of Government Ethics. For more information regarding this exemption as well as exemptions for special Government employees, and for those serving in a covered position for less than sixty-one days in a calendar year, see § 0.735–155.

§ 0.735–151 Procedure.

All executive personnel will file public financial statements on Standard Form 278 (or such other form as is prescribed by the Office of Government Ethics) pursuant to 5 CFR Part 734 and instructions which will be provided to each covered employee.

§ 0.735–152 Penalties.

Penalties for failure to file, or for falsification of a financial disclosure form are provided by the Ethics in Government Act of 1978. These penalties are a civil penalty of up to $5,000 and administrative remedies which may include adverse action under 5 CFR Part 752.

§ 0.735–153 Supplemental information.

Executive personnel required to file public financial disclosure reports are generally exempt from the requirement to submit Confidential Statements of Employment and Financial Interests. Nevertheless, such executive personnel may be required to submit supplemental information on a confidential basis if it is determined that such information is needed by Treasury or the executive's bureau for enforcement of specific statutes or regulations not having Governmentwide application. Upon receipt of sufficient justification by a bureau, the Designated Agency Ethics Official will approve requests for the collection of supplemental information and seek the approval of the Office of Personnel Management, if necessary.

§ 0.735–154 Exemptions from filing.

(a) Schedule C employees classified below GS–16 (or paid at a rate lower than GS–16 step 1 if not classified in the General Schedule) may be exempted from filing if they have no role in advising or making policy determinations with respect to agency programs or policies (such as those serving as chauffeurs, private secretaries, stenographers, and the like) pursuant to 5 CFR 734–203. The Director of Personnel will provide a list to the Designated Agency Ethics Official of those who are believed to meet the requirements for exclusion by April 15 of each year. The list will include a description of each position and the name of the incumbent. After review, the list will be provided to the Office of Government Ethics by May 15 of each year. The Director of Personnel will notify those on this final list of their exemption. In the event of subsequent disapproval of any exemption by the Office of Government Ethics the Designated Agency Ethics Official will notify the Director of Personnel so that the Director may require filing by that individual.

(b) Creation of new Schedule C positions during the year requires an immediate determination of exemption. The Director of Personnel shall make the report required in paragraph (a) of this section (if exemption is believed appropriate) not later than ten days after the individual's entrance on duty. The procedures in paragraph (a) of this section will be followed for these special reports.

(c) An individual may be exempted from filing if the Designated Agency Ethics Official determines that the employee will serve sixty days or less in a covered position. The Director of Personnel or bureau heads will promptly request such exemptions if appropriate. A report is required 15 days after the sixty-first day of service of an exempted employee (5 CFR 734.204).

(d) Special Government employees who serve more than sixty days may be exempted from public disclosure by the Director of the Office of Government Ethics. Copies of exemption requests shall be sent to the Designated Agency Ethics Official. The waiver request must be filed with the Office of Government Ethics within:

(1) Ten days after the individual knows that he or she will serve more than sixty days in any calendar year; or

(2) The expiration of the sixty days. Rules governing this waiver are at 5 CFR 734.205.

§ 0.735–155 Ethics agreements.

An ethics agreement is a written commitment by an employee to take certain actions, such as recusal, divestiture and the like to avoid an actual or potential conflict of interest. Nominees to positions requiring Senate confirmation are the most likely to execute such agreements as part of the appointment and confirmation process. There are special rules concerning ethics agreements at 5 CFR 734.803 *et seq.* These rules cover notification of the creation of such an agreement, notification of compliance with the terms of the agreement, and provisions for filing and retention of agreements.

Subpart E—Special Government Employees

Conflict of Interest Statutes

§ 0.735–210 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. 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 two sections impose only the following major restrictions upon a special Government employee:

(1) He or she may not, except in the discharge of his or her official duties represent anyone else (or receive compensation from another's representation) 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 direct and substantial interest and in which he or she has at any time participated in the course of his or her Government employment.

(2) He or she may not, except in the discharge of his or her official duties, represent anyone else (or receive compensation from another's representation) 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 he or she has served the agency no more than 60 days during the past 365. He or she 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 he or she does not serve the Government as well as on the days when he or she does.

(c) An employee who undertakes service with the Department of the Treasury and another department or agency shall inform each of his or her arrangements with the other.

(d) There may be situations where a special Government employee has a responsible position with his or her regular employer which requires him or

her to particiate personally in contract negotiations with the Department. In this situation, the special Government employee should participate in the negotiations for his or her employer only with the knowledge of a responsible Treasury official; *i.e.*, the full-time official to whom the special Government employee reports. Prior to permitting such participation, the responsible Treasury official shall obtain approval in writing of the Deputy General Counsel.

(e) Section 205 of Title 18, U.S.C., contains certain exemptions. 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 his or her performance of work under a grant or contract for which he or she would otherwise be disqualified because he or she had participated in the matter for the Government or it is pending in an agency he or she 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 205 or Title 18 U.S.C. to allow a special Government employee to represent before such department or agency either his or her regular employer or another person or organization in the performance of work under a grant or contract, provided the national interest so requires. The action required to effect the exemption is a certification by the Secretary to be submitted for publication in the Federal Register. Such certifications will be fowarded to the Secretary through the Deputy General Counsel, and the exemption will not take effect until the certification is published.

(f) The other exemption permits a special Government employee to represent, with or without compensation, a parent, spouse, child, or another person or an estate he or she serves as a fiduciary, but only if he or she has the approval of the official responsible for appointments to his or her position and the matter involved is neither one in which he or she has participated personally or substantially nor one under his or her official responsibility. The term "official responsibility" is defined in 18 U.S.C. 202 to mean the direct administrative or operating authority, whether intermediate or final and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action in the Department of the Treasury.

§ 0.735–211 Applicability of 18 U.S.C. 207.

(a) Section 207 of Title 18, Code applies to individuals who have left Government service, including former special Government employees. It prevents a former employee or special Government employee from representing another person in connection with certain matters (or making oral or written communications, with the intent to influence, to the Government or a court) in which he or she participated personally and substantially on behalf of the Government. The matters are those involving a specific party or parties in which the United States is also a party or has a direct and sustantial interest. In addition, section 207 of Title 18, U.S.C. prevents a former employee for a period of two years after his or her employment has ceased, from representing another person (or making oral or written communications with the intent to influence) in such matters before a court, department or agency if the matters were within the area of his or her official responsibility at any time during the last year of his or her Government service. It should be noted that a consultant or adviser usually does not have "official responsibility."

(b) A special Government employee who serves sixty-one days or more in a given calendar year in a position designated as a Senior Employee position in 5 CFR Part 737 may not represent anyone other than the United States before the employee's former agency in any particular matter (whether a specific party or parties are involved or not) and may not make oral or written communications, with intent to influence, to that agency for a period of one year after his or her employment has ceased. For purposes of this restriction, certain components of the Department of the Treasury have been designated as separate agencies from the balance of the Department in 5 CFR 737.31.

§ 0.735–212 Applicability of 18 U.S.C. 208.

(a) Section 208 of Title 18, U.S.C., 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 personally and substantially as a Government officer or employee in a particular matter in which, to his or her knowledge, the employee, the employee's spouse, minor child, partner, or a profit or nonprofit organization with which the employee has or is serving as officer, director, trustee, partner or employee, or any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment, has a financial interest. However, the section permits such an employee's agency to grant him or her an exemption if the interest is not so substantial as to affect the integrity of his or her service. Insignificant interests may also be waived by a general rule or regulation.

(b) For the purposes of 18 U.S.C. 208, the phrase "participates personally and substantially in a particular matter" applies to participation through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter. 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 the section. 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 where the financial interest involved is minimal in value.

Rules of Conduct

§ 0.735–215 Applicability of Subpart B of this part.

The rules of conduct (§§ 0.735–20 through 0.735–61) contained in Subpart B of this part shall also apply to special Government employees insofar as their employment with the Treasury Department is concerned. However, the prohibition in § 0.735–31, concerning active participation in political management or campaigns (5 U.S.C. 734), only applies to special Government employees on days that they serve the Department. In addition, where there are specific statutes applicable to employees in certain Treasury bureaus, the bureaus concerned should inform their special Government employees of the applicability of those statutes to them.

Consultants and Advisers

§ 0.735–220 Advice on rules of conduct and conflicts of interest statutes.

If a special Government employee who is a consultant, expert, or an adviser has doubt as to the ethics of any conduct falling within the Standards of Conduct and conflicts of interest statutes, he or she should confer with the Ethics Counselor or a Deputy Counselor.

§ 0.735–221 Industry, labor, agricultural and other representatives.

There are situations where an adviser or member of an advisory committee may be providing advice as a representative of an outside group and not as an employee or special Government employee of the Department. Such questions normally arise with respect to members of advisory committees within the departments. Some advisory committees are clearly composed of representatives of industries. The Attorney General has ruled that the Advisory Group to the Commissioner of Internal Revenue is composed of persons serving in a representative capacity. Bureaus or offices using advisory committees may seek the advice of the Ethics Counselor or a Deputy Counselor to determine whether members of any given advisory committee are serving in a representative capacity and not as employees of the Department. Persons serving in a representative capacity are not subject to the conflict of interest laws, and are not required to file statements of employment and financial interest, but they should nonetheless be guided by the considerations in this part covering such points as use of inside information, abuse of office, and gifts.

Procedures To Be Followed in the Department

§ 0.735–230 Information and assistance to special Government employees and their supervisors.

Each special Government employee appointed in the Department and each supervisor of a special Government employee will be given a copy of this part and will be required to familiarize himself or herself 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, he or she will be referred to the Ethics Counselor or a Deputy Counselor

§ 0.735–231 Disclosure of financial interests.

(a) In order to carry out the 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, each special Government employee will, at the time of initial employment and each reappointment thereto, be required to supply a statement of—

(1) All other employment and

(2) The financial interests of the special Government employee which the head of the bureau or office in which he or she serves determines are relevant in light of the duties he or she is to perform, including, but not limited to, the name of companies in which he or she has a financial interest, and the nature of such financial interest.

Each statement of financial interests will be forwarded to the Deputy General Counsel through the Advisory Committee on Ethical Standards along with a statement of the duties which the proposed special Government employee will be assigned.

(b) The supervisor of the special Government employee should review the statement of employment and financial interests in relationship to the duties to be performed and initially determine that no conflict of interest exists prior to submission of the material to the Advisory Committee. Such statements must be kept current during the period the special Government employee is on the Government rolls. Changes in or additions to the information contained in an employee's statement of employment and financial interest must be promptly reported by the filing of an amended statement. Such changes would include the undertaking of new employment or the acquisition of new financial interest.

(c) The Department official or bureau head appointing a member of an advisory board or committee to serve in an individual rather than a representative capacity may:

(1) Waive disclosure of financial information when he or she considers that such information is not relevant to the advisory duties of the board or committee, or

(2) Waive disclosure of financial information except that which is relevant to the advisory duties of such board or committee.

Such waiver or partial waiver is for the convenience of the Department and shall in no instance be considered a substitute for the exemption procedures described in § 0.735–212, "Applicability of 18 U.S.C. 208" in this subpart. If the official or bureau head elects to waive or partially waive disclosure of information as described in this paragraph rather than obtain complete disclosure of financial information, he or she must report in writing to the Designated Agency Ethics Official the names of the persons to whom waivers were granted and the specific reasons for the waivers. In cases of doubt as to which of these actions is appropriate, he or she should obtain advice from the Designated Agency Ethics Official.

§ 0.735–232 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 Department and each of the agencies of his or her arrangements with the others so that appropriate administrative measures may be effected. Information of 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 Department.

§ 0.735–233 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 to the Ethics Counselor, who in turn, will report to the Secretary. In any such situation, the special Government employee shall be provided an opportunity to explain the conflict or appearance of conflict.

§ 0.735–234 Legal interpretation.

Whenever the Ethics Counselor believes that a substantial legal question is raised by the employment of a particular special Government employee, the Ethics Counselor will advise the Office of Government Ethics in order to insure a consistent and authoritative interpretation of the law.

§ 0.735–235 Safeguarding of information.

(a) Statements of employment and financial interests, and supplementary statements shall be held in confidence. To ensure this confidentiality, bureaus and offices shall designate which employees are authorized to review and retain the statements. Employees so designated 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.

(b) Criminal penalties may be imposed on an employee who willingly and knowingly discloses to an unauthorized person prohibited information under the Privacy Act. See § 0.735–61.

(c) The unauthorized disclosure of employees' confidential statements may be the basis for civil action against the Department under the Privacy Act. See U.S.C. 552a(g)(1)(D).

Subpart F—Employees Stationed in Foreign Countries

General Provisions

§ 0.735–300 Purpose.

The General Provisions set forth in Subpart A of this part are applicable to all employees stationed in foreign countries. In addition, (a) regular employees stationed in foreign countries are responsible for adhering to the provisions of Subpart B of this part; (b) special Government employees are responsible for adhering to the provisions of Subpart E of this part; (c) this subpart sets forth additional rules and guidelines applicable to employees and special Government employees stationed in foreign countries.

§ 0.735–301 Policy.

Treasury employees and special Government employees on official duty in foreign countries are both representatives of the Department of the Treasury and the United States Government and guests of the country in which they serve. This subpart is intended simply to emphasize these points.

§ 0.735–302 General provisions governing conduct in foreign countries.

Treasury employees and special Government employees should familiarize themselves with the Standards of Conduct for State Department personnel overseas and be guided accordingly. The most important provisions regarding conduct, not otherwise covered in this subpart, are contained in §§ 0.735–310–0.735–316. Since application of the standards may vary slightly in different countries due to local differences, Treasury employees should look to the State Department or the U.S. Embassy for the country in which service is being performed for guidance, interpretation and assistance.

Additional Rules of Conduct

§ 0.735–310 Basic rule of conduct.

Treasury employees and special Government employees are obligated to obey the laws of the country in which they are assigned and to observe the rules of moral and courteous conduct in their official and personal lives.

§ 0.735–311 Applicability to American employees.

Each head of a Treasury organization overseas shall ensure that all employees and special Government employees under his or her jurisdiction have read and are familiar with the provisions of this part.

§ 0.735–312 Applicability to members of families.

Restrictions placed on Treasury employees and special Government employees with respect to speeches, interviews and participation in activities abroad also shall apply to those members of the family of the employee and special Government employee who normally reside with him or her and are dependent on him or her. An employee or special Government employee shall be held to strict accountability for the actions of his or her family. Members of an employees' or special Government employee's family shall avoid expressing views which are unfriendly to or critical of the United States or the host country, its Government, institutions, or people, either to or in the presence of persons of a foreign nationality. They shall, in addition, refrain from engaging in, or associating closely with, groups of people or organizations engaged in activities which are inimical to or embarrassing to the Government of the United States.

§ 0.735–313 Expression of thoughts and views.

Employees and special Government employees shall not allude in public speeches and newspaper interviews to disputes between governments or to active political issues in the United States or elsewhere, except with the authorization of the Department.

§ 0.735–314 Political activities.

Treasury employees and special Government employees shall not engage in any form of political activity in the country to which they are assigned. (This restriction does not apply to alien spouses who may continue to vote in their own countries.)

§ 0.735–315 Acceptance of employment by a member of a family.

Members of the family of Treasury employee or special Government employee overseas shall not transact or be interested in any business or engage for profit in any professions in the country to which the employee or special Government employee is assigned without the approval of the bureau concerned. However, if the bureau so determines, no approval is required for such employment by the U.S. Government.

§ 0.735–316 Sale of personal automobiles and other personal property.

The following provisions apply to all American employees and special Government employees regardless of agency, attached to United States embassies and constituent posts:

(a) The importation, sale or export of personal property including automobiles of American employees and special Government employees and their dependents must be in accordance with the laws, regulations and conventions of the host country.

(b) Personal property, including motor vehicles, brought to posts abroad by American employees and special Government employees must be for their bona fide personal use or that of their dependents, and not with intent of sale or transfer.

(c) Automobiles purchased for shipment to new posts of assignments should be unostentatious in appearance and modestly equipped.

(d) The employee or special Government employee will not be permitted to sell the employee's personal property, including motor vehicles, at an amount in excess of the price the employee paid for it plus any taxes and customs duty paid by the employee, or for any valuable consideration in excess of the total of these amounts. However, an employee need not sell personal property, including motor vehicles; it may be exported at the employee's or U.S. Government expense, under pertinent travel or shipping regulations. The employee must export it if required to do so by local law, local government regulation, or rules established by the ambassador.

(e) Full responsibility rests with the ambassador for controlling the importation and sale of personal property by all American employees or special Government employees attached to the embassy or constituent posts. He or she will issue and ensure compliance with local regulations consistent with policy prescribed herein and with other applicable regulations.

(f) Since conditions surrounding the importation and sale of personal property, including motor vehicles, vary widely country by country, Treasury must rely on the ambassador to issue detailed local regulations and procedures tailored to meet unique local situations. In issuing such local regulations and procedures consideration should be given to the

following alternatives among others available to the ambassador. The ambassador may:

(1) Limit or prohibit importation of certain kinds of personal property. (For example, he or she may limit the number or frequency of motor vehicles imported.)

(2) Limit classes of persons to whom sales may be made. (For example, he or she may arrange for personal property sales to the host government, or to the U.S. Mission's commissary or employee association for use or rental by it.)

(3) Limit the conversion of currency realized from the sale of personal property.

(4) Require the exportation of personal property at Government or the employee's or special Government employee's expense under applicable travel or shipping regulations.

Advice and Counseling

§ 0.735–320 Responsibility for guidance and assistance.

Supervisors in charge of Treasury activities overseas are responsible for providing guidance and assistance to their employees and special Government employees regarding conduct in such overseas activities. In the event the supervisor in the overseas location needs assistance and guidance or interpretation, he or she should first look to the State Department representative in the overseas country. If that is not possible or if he or she needs further assistance, he or she should contact his or her bureau head. Bureaus may refer questions on the regulations in this part to the Ethics Counselor who will confer with the State Department where necessary to assure uniformity of interpretation and application of this Subpart to employees stationed in foreign countries.

December 13, 1988.

Mark Sullivan III,

General Counsel.

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December 23, 1988

Part VI

Department of Labor

Employment and Training Administration

20 CFR Part 602

Federal State Unemployment Insurance Program; Revenue Quality Control Design Issues; Notice and Opportunity to Comment

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 602

Federal State Unemployment Insurance Program; Revenue Quality Control Design Issues

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice and opportunity to comment on design issues of proposed Quality Control program for State unemployment insurance revenue operations (Revenue Quality Control).

SUMMARY: The Employment and Training Administration requests comments on basic issues affecting the design of a Quality Control program for State unemployment insurance (UI) revenue operations. This notice also provides information about public consultation in designing the program, constraints affecting its design, and policy principles which have already been established. The program, called Revenue Quality Control, is intended to complement State managers' efforts to improve their UI programs, by providing them with objective information on the quality of existing revenue collection operations. This information may also at a later date be used to help carry out the Secretary of Labor's responsibilities to oversee the Federal-State unemployment compensation program.

DATE: Comments must be received in the Department of Labor by the close of business on February 21, 1989.

ADDRESS: Submit comments to Mary Ann Wyrsch, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–4531, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Janet Sten, Director, Revenue Quality Control Work Group, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–4015, Washington, DC 20210. Telephone (202) 535–0634 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Background

On September 3, 1987, the Department of Labor (the Department) published a regulation at 20 CFR Part 602 establishing a mandatory Unemployment Insurance (UI) Quality Control (QC) program. This program is intended to yield data which will help State managers improve program quality. Although the regulation provided that the UI QC program would cover all major aspects of the largest UI programs, the Department initially mandated only the first phase of QC, which reviews the quality of paid claims in a selected group of UI programs. Effective October 5, 1987, all State Employment Security Agencies (SESAs) were required to have implemented this first phase of UI QC. All extensions or modifications of QC beyond the first phase are to be preceded by careful pilot testing and evaluation; and the implementing regulation will be modified as needed to reflect each change. This notice is designed to solicit comments on issues pertinent to the design of a QC system to review UI revenue collection operations, an extension of QC the Department agreed would be one of the first steps on a path toward a comprehensive UI QC program. Once the design issues have been resolved, Revenue Quality Control (RQC) will be pilot tested, after which the QC regulation will be appropriately modified and RQC will be implemented in all States according to an appropriate schedule.

B. RQC Terminology

RQC will examine the operation of SESA programs for receiving and processing money received in or for the State unemployment fund, including employer contributions, payments in lieu of contributions (reimbursements), employee contributions where applicable, and penalties and interest. Given the variety of payments to be included in the program, the term "revenue" rather than "tax" or "contributions" has been chosen to identify this phase of the QC program. However, more common terminology has been used at some points in this notice (e.g. "tax staff") where using the word "revenue" would be awkward or confusing.

C. Public Consultation Process

RQC must be designed without benefit of a "Random Audit" type model (which guided benefit payments QC's development), in an environment of State laws and institutions which is much more diverse than the benefit payment environment. For this reason, and because it is essential such a system reflect and support State management objectives, the Department has already engaged in extensive informal information gathering and information exchanges with interested parties. Department staff have already met individually with UI tax staff in 13 States, and with staff of selected organizations representing all major interest groups in the UI system. RQC presentations on plans and principles have been made before large gatherings such as the State UI Administrators and International Association of Personnel in Employment Security (IAPES).

This notice and subsequent Federal Register notices will initiate the formal consultation process. In addition, the RQC workgroup will initially comprise Federal, National and Regional Office staff, technical support contractor staff, and selected State UI tax experts serving on Intergovernmental Personnel Act (IPA) assignments to the RQC workgroup. Progress will be reported, and comment on concerns solicited, periodically via regular ETA information vehicles. When the testing stage is reached, pilot State staff will be asked to work with the workgroup to refine the designs before final pilot testing begins.

D. Constraints

The design and implementation of RQC will be performed without a permanent increase in Federal or SESA QC staffing, and without an increase in UI data collection and reporting requirements. Efforts will be made to identify offsets and reductions to current performance and reporting requirements, the resources for which can be redirected to RQC. The system will be automated, not manual. There are no preconceptions about methodology: data collection methods will be determined by data needs, and it is hoped that automated reports can be used extensively.

E. RQC and Federal Oversight

Although the Department may eventually use some RQC input in connection with the Secretary's Federal oversight responsibilities, the RQC process will not be the means for determining how its findings might be so used. This latter task will be accomplished as part of a performance review being developed separately which will be subject to public comment before being put into place.

F. Established Principles for RQC

Some of the principles and design features of Benefits Quality Control (BQC) will apply to RQC. This notice will outline them and outline the process of choosing among features where BQC decisions have not necessarily established precedents.

1. *RQC Will Be Mandatory.* Following the precedent of BQC, States will be required to have an RQC program.

2. *RQC's Purpose.* RQC's overall purpose is to provide a core of

information through which the quality of State UI revenue operations can be objectively assessed so that actions can be taken to improve them where warranted. This information is intended not only for the use of State managers, but also to help the Department carry out its oversight, technical assistance and policy development responsibilities.

3. *RQC's Scope.* Examination of the State UI revenue operation will cover required employer payments and employee contributions, where applicable. The quality of UI benefit payments and revenue is influenced by factors both internal and external to the agency; RQC's objective is to develop measures of the quality with which the State performs the UI revenue collection operations under its direct control. Consequently, RQC will *not* be explicitly concerned with such elements as the effect of macroeconomic factors, e.g., the level of unemployment or other measures of economic activity; although by affecting workloads they affect the quality of UI activity, they are out of the agency's control. Nor will it review the decisions through which the agencies set basic program values such as the revenue rate, wage base and benefit levels which are designed to ensure fiscal solvency or wage replacement adequacy; nor the level of administrative funding and its effect on quality by agency staff; nor will RQC assess the effectiveness with which IRS collects and processes the Federal Unemployment Tax Act (FUTA) revenue. Ultimately, RQC findings may enable judgments to be made about the effect of external or indirect factors, but this will require combining QC and non-QC information.

G. RQC Design Questions

Aside from the established principles set forth above, RQC's basic structural and design characteristics remain open to discussion. The Department is eager to receive all interested parties' comments on what these characteristics should be before final decisions are made. The following questions are designed to elicit input on the broadest design issues.

1. *The Meaning of Quality in RQC.* The goal of RQC is to improve, where possible and necessary, the quality of UI revenue operations. These operations appear to have three salient dimensions of quality: Timeliness, accuracy and completeness, although not all dimensions may be equally important or applicable for every revenue operation. For example, completeness might be relevant for collections and status determination.

Question 1a: Are timeliness, accuracy, and completeness the dimensions of quality for UI revenue operations?

Question 1b: Are there other applicable dimensions which RQC should attempt to reflect and measure, e.g., the direct impact on Trust Fund balances?

Question 1c: If there are tradeoffs in measuring or accomplishing various dimensions, how should a balance be struck among them?

2. *Classification.* In the Department's initial conceptualization of the RQC, UI revenue operations have been divided into the following subfunctions for analysis (these functional classifications are not intended to define a desirable organizational structure):

- Status determination (identifying and ascertaining the liable status of new and successor firms; notifying employers; inactivating/removing accounts from the rolls; assigning initial revenue rate and handling employer appeals);
- Cashiering (receiving and preparing contributions for deposit and depositing them into the clearing account);
- Account maintenance (all activities associated with establishing and maintaining records of employer contributions and reports and processing the information into related outputs. This includes inputs such as: status report information, contribution report data, wage record data, delinquency collection results, audit data, and benefit charge data. Examples of outputs include: wage information, data for audit, change information, inactivation/termination of accounts, experience rate notices, 940 certification, debit memos, delinquency notices, credit memos and statistical reports.);
- Report delinquency (identifying and collecting delinquent reports and issuing estimated assessments);
- Collections (identifying delinquent employers, collecting overdue balances, and writing off uncollectables);
- Field audit (selecting employers for audit, examining employer records to determine whether wages or taxes have been reported in accordance with the law and agency policy, assisting employers to comply, and handling employer appeals); and
- Blocked claims (analyzing and investigating to resolve claims disputes due to missing or inaccurate wage/separation information).

Question 2a: Is this the most effective way to classify the revenue subfunctions, and if not, what is a better classification?

Question 2b: Of the above (or reclassified) subfunctions, which should be included in RQC and which excluded? Why?

Question 2c: Does the list contain any omissions?

3. *RQC Measures (Output and/or Process)?* As noted above in the Background section, States will be required to collect a core of standard measures for RQC. Depending in part on the answers to earlier questions:

Question 3a: Should the data be limited to a *minimal* set of measures that capture the quality of critical or key revenue function *outputs*, the ones most likely of interest for Federal oversight measures (e.g., no more than accuracy, timeliness and completeness for key end-products of each subfunction noted in (2 above); or

Question 3b: In an effort to facilitate program improvements, should the data include a fuller set of output-related measures, data on *processes* leading to each outcome or supporting data thought useful for guiding program improvements? (Examples of the last might include information on how well a process was operating or where/why a process allowed a problem to occur; how an error was detected; or employer characteristics which could be used for error prone profiling.)

4. *State vs. Federal Roles.* BQC involves a largely Federal design, and procedures and methods remain a Federal responsibility. State staff carry out day-to-day operations. Federal staff monitor its operations to ensure adherence to established procedures. The plans for consultation and involvement of non-Federal personnel in the design of RQC are outlined above.

Question 4a: Should SESAs and Federal roles for operations, methodology, and monitoring follow the model of BQC, or is another division of responsibilities preferable? If the latter, please explain.

5. *Standard Methodology.* For measures not used as "Federal oversight" measures, should States be required to follow a standard methodology in developing RQC information? If not, what kind of process will ensure that the diverse methodologies do not result in inaccurate, biased, or easily manipulated data?

6. *Other Basic Issues.* The above categories have attempted to reflect dimensions of the RQC design at the broadest possible level. Do you have other concerns at a similarly fundamental level which the Department needs to consider and reflect in its design of this program?

H. Next Steps

Upon receipt of comments on the above, the Department will prepare initial design specifications for the Revenue QC program. Comments on additional, more specific issues, arising at that stage of design will be solicited through a subsequent **Federal Register** notice.

Signed at Washington, DC, this 14th day of December, 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 88-29565 Filed 12-22-88; 8:45 am]

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