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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
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- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHEN: June 25, at 9:00 am
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WHERE: Federal Building, 501 Magazine St.
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 New Orleans, LA
RESERVATIONS: Federal Information Center
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Rules and Regulations

Federal Register

Vol. 56, No. 110

Friday, June 7, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1494

Export Bonus Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this interim rule which establishes in the form of regulations the criteria considered in evaluating and approving proposals for country and commodity initiatives under the Export Enhancement Program (EEP) and the Dairy Export Incentive Program (DEIP). The criteria for the EEP and the DEIP are found in subparts A and C, respectively, of 7 CFR part 1494. This interim rule also establishes program operation regulations for the DEIP in subpart D. Program operations regulations for the EEP have already been codified at subpart B.

DATES: Interim rule effective June 7, 1991; comments must be submitted on or before August 6, 1991.

ADDRESSES: Comments must be submitted in writing to Philip Mackie, Assistant Administrator, Commodity and Marketing Programs, USDA, FAS, room 5089-S, 1400 Independence Avenue SW., Washington, DC 20250-1000, telephone (202) 447-4761. All comments received will be available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: For further information regarding the criteria for the EEP or the DEIP, contact Philip Mackie, Assistant Administrator, Commodity and Marketing Programs, USDA, FAS, room 5089-S, 1400 Independence Avenue SW.,

Washington, DC 20250-1000, telephone (202) 447-4761. For further information regarding the regulations for the operation of the DEIP, contact L.T. McElvain, Director, CCC Operations Division, USDA, FAS, room 4503-S, 1400 Independence Avenue SW., Washington, DC 20250-1000, telephone (202) 447-6211.

SUPPLEMENTARY INFORMATION:

Regulatory Requirements

This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation N. 1512-1 and has been designated as "nonmajor." It has been determined that this rule will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This interim rule has been submitted to the Office of Management and Budget (OMB) for review. It is expected that OMB will assign it a control number for the purposes of the Paperwork Reduction Act. Public reporting burden for collections of information required under the operations of the Dairy Export Incentive Program (Part 1494, subpart D) is estimated to average 26 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection, including suggestions for

reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Background

Section 403(a)(1) of the Agricultural Trade Act of 1978, as amended by section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990 (hereinafter referred to as the 1990 Act), which became law on November 28, 1990, requires the Secretary of Agriculture to "specify by regulation the criteria used to evaluate and approve proposals" for each commercial export program. This would include the EEP and the DEIP, and the criteria for these programs have been set forth in subparts A and C, respectively, of part 1494. The EEP and the DEIP are administered by the Foreign Agricultural Service (FAS), on behalf of CCC.

In the Federal Register of June 3, 1991, CCC published a final rule establishing the program operations regulations for the EEP in subpart B of part 1494. The program criteria deal with an aspect of the EEP other than the establishment and operation of specific EEP Agreements, which is the subject of subpart B. Therefore, it was determined that the EEP criteria would be codified in a separate subpart of part 1494, and subpart A was reserved for that purpose at the time that the final rule for subpart B was published in the Federal Register. The criteria set forth in subpart A for evaluating and approving proposals for country and commodity initiatives under the EEP are based upon EEP criteria which were published in a Notice in the Federal Register on November 27, 1989 (54 FR 48785). This interim rule supersedes that Notice.

The criteria considered in evaluating and approving proposals for country and commodity initiatives under the DEIP are the same as those used for the EEP. Therefore, § 1494.1101, in subpart C of this interim rule, provides that the criteria set forth in § 1494.20 for the EEP will also apply to the DEIP.

This interim rule establishes, as subpart D of part 1494, the program operations regulations for the DEIP. Like the EEP, the DEIP has previously been administered through the issuance of "Announcements" and "Invitations for Offers" (Invitations). It has been determined that the DEIP should be operated in a manner consistent with the published regulations for the EEP. Therefore, § 1494.1200 provides that, except as otherwise stated in subpart D, the program operations regulations set forth in subpart B for the EEP will also apply to the DEIP.

Three provisions relating specifically to the DEIP are found in §§ 1494.1201, 1494.1202, and 1494.1203. A definition of "eligible commodity" for the purposes of the DEIP is found in § 1494.1201 and supersedes the definition in § 1494.201(p). Section 1494.1202 is required by section 153 of the Food Security Act of 1985, as amended, which provides that regulations issued by the Secretary of Agriculture shall ensure that, if CCC certificates furnished to an exporter as a bonus under the DEIP are exchanged for dairy products, the exporter must sell for export such dairy products or an equal quantity of other dairy products. This provision will only apply if CCC makes dairy products available to be exchanged for CCC certificates. They are not available for exchange at the present time. Section 1494.1203 deals with the Paperwork Reduction Act with respect to the DEIP.

FAS will continue to maintain the system of issuing Invitations for targeted countries under the DEIP. Any terms and conditions relating to particular, Invitations issued under the DEIP will be specifically provided for in such Invitations.

This is being issued as an interim rule because Section 404 of the Agricultural Trade Act of 1978, as amended by section 1531 of the 1990 Act, requires that "[n]ot later than 180 days after the date of this Act [November 28, 1990], the Secretary shall issue regulations implementing the provisions of this Act." 7 U.S.C. 5664. The EEP and the DEIP are programs currently being operated by CCC and this interim rule is generally consistent with current policies and operational procedures for the programs.

List of Subjects in 7 CFR Part 1494

Administrative practices and procedures, Agricultural commodities,

Exports, Reporting and recordkeeping requirements.

Accordingly, 7 CFR chapter XIV, part 1494 is amended as follows:

PART 1494—[AMENDED]

1. The authority citation for 7 CFR part 1494 is removed and the authority citation for subpart B is added to read as follows:

Authority. 15 U.S.C. 714c; 7 U.S.C. 5602, 5651, 5661, 5662, 5676.

2. A new subpart A, consisting of §§ 1494.10 and 1494.20, a new subpart C, consisting of §§ 1494.1100 and 1494.1101, and a new subpart D, consisting of §§ 1494.1200 through 1494.1203, is added to read as follows:

Subpart A—Export Enhancement Program Criteria

Sec.
1494.10 General statement.
1494.20 Criteria.
* * * * *

Subpart C—Dairy Export Incentive Program Criteria

Sec.
1494.1100 General statement.
1494.1101 Criteria.

Subpart D—Dairy Export Incentive Program Operations

Sec.
1494.1200 Program operations.
1494.1201 Definition of eligible commodity.
1494.1202 Exchange of CCC certificates for dairy products.
1494.1203 Paperwork reduction act.

Subpart A—Export Enhancement Program Criteria

Authority: 7 U.S.C. 5663.

§ 1494.10 General statement.

This subpart sets forth the criteria to be considered in evaluating and approving proposals for initiatives to facilitate export sales under the Commodity Credit Corporation's (CCC) Export Enhancement Program (EEP). These criteria are interrelated and will be considered together in order to select eligible commodities and eligible countries for EEP initiatives which will best meet the program's objectives. The objectives of the program are to discourage unfair trade practices by other countries, to increase U.S. agricultural commodity exports, and to encourage other countries exporting agricultural commodities to undertake serious negotiations on agricultural trade problems. Under the EEP, bonuses

are made available by CCC to enable exporters to meet prevailing world prices for targeted commodities in targeted destinations. In the operation of the EEP, CCC will make reasonable efforts to avoid the displacement of usual marketings of U.S. agricultural commodities.

§ 1494.20 Criteria.

The criteria considered by CCC in reviewing proposals for initiatives will include, but not be limited to, the following:

(a) The expected contribution of proposed initiatives in furthering trade policy negotiations and, in particular, in furthering the U.S. trade policy negotiating strategy of countering competitors' subsidies and other unfair trade practices by displacing such countries' subsidized exports in targeted countries;

(b) The contribution which initiatives will make toward realizing U.S. agricultural export goals and, in particular, in developing, expanding, or maintaining markets for U.S. agricultural commodities;

(c) The effect that sales facilitated by initiatives would have on non-subsidizing exporters of agricultural products; and

(d) The subsidy requirements of proposed initiatives compared to the expected benefits.

Subpart C—Dairy Export Incentive Program Criteria

Authority: 7 U.S.C. 5663.

§ 1494.1100 General statement.

This subpart sets forth the criteria to be considered in evaluating and approving proposals for initiatives to facilitate export sales under the Commodity Credit Corporation's (CCC) Dairy Export Incentive Program (DEIP). These criteria are interrelated and will be considered together in order to select eligible commodities and eligible countries for DEIP initiatives which will best meet the program's objectives. The objectives of the program are to increase U.S. agricultural commodity exports and to encourage other countries exporting agricultural commodities to undertake serious negotiations on agricultural trade problems. Under the DEIP, bonuses are made available by CCC to enable exporters to meet prevailing world prices for targeted dairy products in targeted destinations. In the operation of the DEIP, CCC will make reasonable

efforts to avoid the displacement of commercial export sales of U.S. dairy products and to ensure that sales facilitated by the DEIP are in addition to, and not in place of, any export sales of dairy products that the exporter would have otherwise made in the absence of the program.

§ 1494.1101 Criteria.

The criteria considered in evaluating and approving proposals for the DEIP are those set forth in § 1494.20 of this part.

Subpart D—Dairy Export Incentive Program Operations

Authority: 15 U.S.C. 713a-14.

§ 1494.1200 Program operations.

Except as otherwise provided in this subpart, the program operations provisions of subpart B of this part, relating to the Export Enhancement Program, will also apply to the Dairy Export Incentive Program (DEIP). Any terms or conditions relating to a particular Invitation for Offers (Invitation) under the DEIP will be specifically provided for in such Invitation.

§ 1494.1201 Definition of eligible commodity.

For the purpose of the DEIP, the eligible commodity is defined as the U.S. agricultural commodity, which is a dairy product, specified as eligible for export under the applicable Invitation, which is of the kind, type, and/or grade of commodity specified in the applicable Invitation.

§ 1494.1202 Exchange of CCC certificates for dairy products.

If the exporter is paid a bonus under the DEIP in the form of CCC certificates, and if CCC permits such certificates to be exchanged for dairy products, then the exporter must sell for export such dairy products or an equal quantity of other dairy products.

§ 1494.1203 Paperwork Reduction Act.

The information collection requirements contained in this subpart have been submitted to the Office of Management and Budget (OMB) and will be assigned an OMB control number.

Signed this 3d day of June, 1991 at Washington, DC.

F. Paul Dickerson,

General Sales Manager and Vice President,
Commodity Credit Corporation.

[FR Doc. 91-13373 Filed 6-6-91; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-ANE-11; Amdt. 39-7020; AD 91-12-09]

Airworthiness Directives; General Electric Company (GE) CF6-6 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Electric CF6-6 series turbofan engines, which requires eddy current inspections and provides criteria for removal service of certain stage 1 fan disks which may have metallurgical defects. This AD is prompted by the probability of the existence of a metallurgical defect in the disk bore which can adversely affect the service life of the disk. This condition, if not corrected, could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective June 27, 1991.

Comments must be received no later than June 27, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 27, 1991.

ADDRESSES: Send comments in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ANE-11, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, or deliver in duplicate to Room 311 at the above address.

Comments may be inspected at the above location between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service information may be obtained from General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Room 311, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Robert E. Guyotte, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; (617) 273-7094.

SUPPLEMENTARY INFORMATION: On November 24, 1989, the FAA issued AD 89-20-01 R1, Amendment 39-6411 (54 FR 51015, December 12, 1989), to establish ultrasonic inspection requirements for certain stage 1 fan disks installed on GE CF6-6 series turbofan engines. That action was prompted by an uncontained engine failure resulting from the presence of a metallurgical defect in the disk bore of a stage 1 fan disk.

Since issuance of AD 89-20-01 R1, the FAA has determined that a crack associated with a metallurgical defect located in the stage 1 fan disk bore forward corner may not be detectable by the ultrasonic inspection. Further analysis indicates that this type of crack could propagate to failure prior to the fan disk reaching its life limit. This condition, if not corrected, could result in an uncontained engine failure and damage to the aircraft.

The FAA has reviewed and approved the technical content of GE Service Bulletin (SB) CF6-6 72-947, Revision 4, dated February 8, 1991, which describes new procedures for eddy current inspection of the stage 1 fan disk.

Since this situation is likely to exist or develop on other engines of this same type design, this AD requires repetitive eddy current fan disk bore inspections and provides criteria for the removal from service of affected disks in accordance with the service bulletin previously described.

Since a situation exists which could result in an uncontained engine failure, there is a need to minimize the exposure of revenue service aircraft to this unsafe condition. In addition, based on the above and the need to inspect and remove from service contain stage 1 disks that have metallurgical defects, as soon as practicable, a situation exists that requires the immediate adoption of this regulation. Therefore, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ANE-11, 12 New England Executive Park, Burlington, Massachusetts 01803-5299. All communications received by the deadline date indicated above will be considered by the Administrator, and

the AD may be changed in light of the comments received.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

91-12-09 General Electric Company:

Amendment 39-7020. Docket No. 91-ANE-11.

Applicability: General Electric Company (GE) CF6-6b series turbofan engines installed on, but not limited to, McDonnell Douglas DC10-10 aircraft.

Compliance: Required as indicated, unless previously accomplished.

To prevent an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Eddy current inspect in accordance with GE CF6-6 Service Bulletin (SB) 72-947, Revision 4, dated February 8, 1991, the bore forward corner of stage 1 fan disks identified by serial number (S/N) in Tables 2, 3, and 3 Addendum of GE CF6-6 SB 72-947, Revision 4, dated February 8, 1991, as follows:

(1) For disks which have not received an eddy current inspection in accordance with the Accomplishment Instructions of GE CF6-6 SB 72-947, Revision 4, dated February 8, 1991, in accordance with the following schedule:

(i) Within the next 100 cycles in service (CIS) after the effective date of this AD for those disks which on the effective date of this AD have accumulated 1,250 CIS or greater since accomplishing the immersion ultrasonic inspection of AD 89-20-01 R1, Amendment 39-6411 (54 FR 51015, December 12, 1989).

(ii) Within the next 100 CIS after the effective date of this AD or prior to accumulating 1,250 CIS since accomplishing the immersion ultrasonic inspection of AD 89-20-01 R1, whichever comes later for those disks which on the effective date of this AD have accumulated less than 1,250 CIS since the immersion ultrasonic inspection.

(2) For those disks which on the effective date of this AD have received an eddy current inspection in accordance with the Accomplishment Instructions of GE CF6-6 SB 72-947, Revision 4, dated February 8, 1991, in accordance with the following schedule:

(i) Within the next 100 CIS after the effective date of this AD for those disks which on the effective date of this AD have accumulated 1,500 CIS or greater since accomplishing the immersion ultrasonic inspection of AD 89-20-01 R1.

(ii) Within the next 100 CIS after the effective date of this AD or prior to accumulating 1,500 CIS since accomplishing the immersion ultrasonic inspection of AD 89-20-01 R1, whichever comes later, for those disks which on this AD have accumulated less than 1,500 CIS since accomplishing the immersion ultrasonic inspection.

(b) Thereafter, eddy current inspect the bore forward corner of stage 1 fan disks which meet the acceptance criteria of paragraph 2.B(2)(c) of the Accomplishment instructions of GE CF6-6 SB 72-947, Revision 4, dated February 8, 1991, at intervals not to exceed 500 CIS since last eddy current inspection.

(c) Remove from service prior to further flight and replace with a serviceable part, disks inspected in accordance with paragraphs (a) and (b) of this AD, which do not meet the acceptance criteria of paragraph 2.B(2)(c) of the Accomplishment Instructions of GE CF6-6 SB 72-947, Revision 4, dated February 8, 1991.

(d) Remove from service all stage 1 fan disks identified by S/N in Tables 2, 3, and 3 Addendum of GE CF6-6 SB 72-947, Revision 4, dated February 8, 1991, at the next shop visit but no later than 2,500 CIS since

immersion ultrasonic inspection or June 30, 1992, whichever occurs first.

(e) For the purpose of this AD, "Shop visit" is defined as the induction of the engine into the shop for any reason.

(f) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(g) Upon submission of substantiating data by an owner or operator through an FAA (maintenance, avionics, or operations) Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedules specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

The inspections shall be done in accordance with the following General Electric service document:

| Document No. | Page No. | Issue | Date |
|------------------|-----------|--------|---------------|
| CF6-6 SB 72-947. | 1 thru 13 | Rev. 4 | Feb. 8, 1991. |
| Total Pages: | 13. | | |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies can be obtained from General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts 01803-5299 or at the office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-7020, AD 91-12-09) becomes effective on June 27, 1991.

Issued in Burlington, Massachusetts, on May 21, 1991.

Jack A. Sain,

Manager, Engine and Propeller Directorate Aircraft Certification Service.

[FR Doc. 91-13495 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 90-ASW-49]

Establishment of Jet Route J-244; NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes new Jet Route J-244 between Las Vegas, NM, and Zuni, NM. This new route provides a direct and shorter route between these areas as well as an additional means to travel to Phoenix,

AZ. This action aids flight planning and improves the flow of traffic in the area.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT:

Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On January 25, 1991, the FAA proposed to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) to establish a new Jet Route J-242 between Las Vegas, NM, and Zuni, NM (56 FR 2882). However, the Southwest Regional Office has requested that J-242 be changed to J-244 due to similar sounding route numbers in that area. It is possible that pilots could misunderstand air traffic control instructions. Therefore, J-242 is now renamed J-244. This jet route permits a direct charted route between these areas where aircraft are usually radar vectored. The new J-244 aids in sequencing traffic landing in Phoenix, AZ. This action aids flight planning and saves fuel.

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. Except for editorial changes and the renaming of J-242 to J-244, this amendment is the same as that proposed in the notice. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations establishes a new Jet Route J-244 between Las Vegas, NM, and Zuni, NM. This jet route permits a direct charted route between these areas where aircraft are usually radar vectored. The new J-244 aids in sequencing traffic landing in Phoenix, AZ.

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 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 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.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-244 [New]

From Las Vegas, NM; Zuni, NM; INT Zuni 242° and Salt River, AZ, 051° radials; Salt River.

Issued in Washington, DC on May 30, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-13514 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-13-M

RAILROAD RETIREMENT BOARD

20 CFR Part 323

RIN 3220-AA84

Nongovernmental Plans for Unemployment or Sickness Insurance

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends chapter II of title 20 of the Code of Federal Regulations by adding a new part 323. Part 323 defines, for purposes of the Railroad Unemployment Insurance Act, what is meant by the phrase "nongovernmental plan for unemployment or sickness insurance," the standards by which the Board will determine whether a proposed plan qualifies as a nongovernmental plan,

and the procedure by which an employer may obtain a determination by the Board as to whether such a plan so qualifies.

EFFECTIVE DATE: June 7, 1991.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, Bureau of Law, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513, (FTS) 386-4513.

SUPPLEMENTARY INFORMATION: The Railroad Unemployment Insurance Act (RUIA) provides for the payment of benefits to qualified railroad employees for their days of unemployment or days of sickness, as defined in section 1(k) of the RUIA. Under section 1(k), no day can be a day of unemployment or a day of sickness for any employee if "remuneration" is payable to or accrues to the employee for such day. Section 1(j) of the RUIA and part 322 of the Board's regulations define the term "remuneration" as meaning all pay for services for hire, including pay for time lost, and all other earned income payable or accruing with respect to any day. However, section 1(j) excludes from the definition of "remuneration" any money payments received by an employee pursuant to any nongovernmental plan for unemployment insurance, maternity insurance, or sickness insurance.

With the elimination of maternity benefits as a separate category of benefits under the RUIA by section 201 of Public Law 90-257 (82 Stat. 16, 23), the reference to maternity insurance in section 1(j) is obsolete. Consequently, part 323 confines itself to defining nongovernmental plans for unemployment or sickness insurance, their content, and the standards for Board approval of such plans.

The Board considers it necessary to publish a regulation on the subject of nongovernmental plans for unemployment or sickness insurance because of the growing number of such plans in recent years. At the same time, many railroad employees have been affected by railroad mergers, consolidations or abandonments, and many of them are entitled to receive payment of dismissal allowances pursuant to an order of the Interstate Commerce Commission or to a wage guarantee plan or agreement. A dismissal allowance or similar wage guarantee is a form of "remuneration" that prevents the payment of benefits under the RUIA or causes such benefits

to be recoverable by the Board. See § 322.7 of the Board's regulations and section 2(f) of the RUIA (45 U.S.C. 352(f)). This rule makes it clear that such payments are not made pursuant to a nongovernmental plan merely because the plan provides an offset for benefits received under the RUIA.

In addition, because benefit payments under nongovernmental plans are not "compensation" under section 1(i) of the RUIA, such benefit payments are not subject to payment of contributions under part 345 of this chapter. Nor are such payments subject to taxes under the Railroad Retirement Tax Act. See Rev. Rul. 90-72, 1990-21 IRB 19, May 21, 1990. Accordingly, the Board considers it necessary and desirable to clearly distinguish employer payments under nongovernmental plans from other employer payments to employees due to unemployment and sickness and to create a formal procedure by which an employer may obtain from the Board a ruling as to whether payments it may have to make to an employee under such plans would, or would not, be regarded as "remuneration" within the meaning of section 1(j) of the Act.

On January 16, 1991, the Board published this rule as a proposed rule (56 FR 1587), inviting comments on or before March 18, 1991. No comments were received.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. There are no information collections contemplated by part 323.

List of Subjects in 20 CFR Part 323

Railroad employees, Railroad employers, Railroad unemployment benefits.

For the reasons set out in the preamble, title 20, chapter II of the Code of Federal Regulations is amended by adding a new part 323 to read as follows:

PART 323—NONGOVERNMENTAL PLANS FOR UNEMPLOYMENT OR SICKNESS INSURANCE

Sec.

- 323.1 Introduction.
- 323.2 Definition of nongovernmental plan for unemployment or sickness insurance.
- 323.3 Standards for Board approval of a nongovernmental plan.
- 323.4 Guidelines for content of a nongovernmental plan.
- 323.5 Submitting proposed plan for Board approval.
- 323.6 Treatment of benefit payments under a nongovernmental plan for purposes of contributions.
- 323.7 Effective date.

Authority: 45 U.S.C. 362(1).

§ 323.1 Introduction.

(a) This part defines the phrase "nongovernmental plan for unemployment or sickness insurance" and sets forth the procedure by which an employer may obtain a determination by the Railroad Retirement Board as to whether a particular plan that such employer maintains for its employees qualifies as a nongovernmental plan. In general, any payment by an employer to an employee for services rendered as an employee will be considered to be "remuneration" within the meaning of section 1(j) of the Railroad Unemployment Insurance Act and part 322 of this chapter. This includes employer payments that relate to an employee's loss of earnings during a period of time when the employee is unemployed or sick, including sickness resulting from injury. The exception is when an employer pays an employee a benefit pursuant to the provisions of a nongovernmental plan for unemployment or sickness insurance established by an employer for the benefit of its employees. Benefit payments under such plans are not remuneration and do not affect an employee's eligibility for unemployment or sickness benefits under the Railroad Unemployment Insurance Act.

(b) This part does not have any general applicability to private insurance contracts under which an insurance company, pursuant to a policy of insurance maintained by or for an employee, pays medical or hospital expenses or other cash benefits to or in behalf of an employee. Nor does this part apply to any private plan for relief of unemployment established by a party other than an employer such as, for example, a plan established by a labor union under which it undertakes to pay benefits to striking members of the union out of a strike insurance fund. Insurance policy benefits and strike unemployment benefits, although paid under plans that are nongovernmental in nature, are not considered remuneration for services under the general definition of "remuneration". See part 322 of this chapter.

§ 323.2 Definition of nongovernmental plan for unemployment or sickness insurance.

A nongovernmental plan for unemployment or sickness insurance is a benefit plan, program or policy that is in the nature of insurance and is designed and established by an employer for the purpose of supplementing the benefits that an employee of such employer may receive

under the Railroad Unemployment Insurance Act during a period of unemployment or sickness. A nongovernmental plan may be established by labor-management agreement or by unilateral employer action. Payments under such plans are referred to as supplemental unemployment benefits (SUB pay) or supplemental sickness benefits, rather than as wages, salary or pay for time lost, because their inherent nature is to supplement benefit payments under the Railroad Unemployment Insurance Act rather than to replace or duplicate such payments.

§ 323.3 Standards for Board approval of a nongovernmental plan.

An unemployment or sickness benefit plan qualifies as a nongovernmental plan if it conforms to the following standards:

(a) The plan is in writing and has been published or otherwise communicated to covered employees prior to the inception of the plan;

(b) Benefits under the plan are payable only to employees who are involuntarily laid off or separated from the service of the employer or who are absent from work on account of illness or injury;

(c) Payment of benefits under the plan is conditioned upon a covered employee's meeting the eligibility conditions governing payment of benefits under the Railroad Unemployment Insurance Act. However, a plan will not be disqualified merely because it:

(1) Provides benefits during any waiting period required under the Railroad Unemployment Insurance Act, or

(2) Provides benefits after an employee has exhausted rights to benefits under the Railroad Unemployment Insurance Act, or

(3) Provides benefits during a period when the employee is not a "qualified employee", within the meaning of part 302 of this chapter;

(d) Payment of benefits under the plan is coordinated with benefit payments to which the employee may be entitled under the Railroad Unemployment Insurance Act. In general, plan benefit payments will be considered coordinated with Railroad Unemployment Insurance Act benefit payments when computation of the plan benefits takes Railroad Unemployment Insurance Act benefit entitlement into consideration in such a way as to make it clear that the plan is supplementing Railroad Unemployment Insurance Act benefit payments for days of

unemployment or days of sickness. For example, a plan that provides for payment of a specified daily benefit amount is considered coordinated with Railroad Unemployment Insurance Act benefit payments if the plan provides that the daily benefit amount otherwise payable to the employee is reduced by the amount of benefits that the employee received or could receive under the Railroad Unemployment Insurance Act for the same day if the employee had met all the eligibility criteria for such benefit. Similarly, there is acceptable coordination if the plan simply provides for payment of an amount as an "add-on" benefit to the amount of Railroad Unemployment Insurance Act benefits paid or payable. On the other hand, a plan that allows payment so as to compensate an employee for railroad or non-railroad earnings that are lower in amount than what the employee would get under the plan if he or she were not employed is not considered coordinated with benefit payments under the Railroad Unemployment Insurance Act because an employer payment made under such circumstances supplements earnings rather than benefit payments under the Railroad Unemployment Insurance Act. No Railroad Unemployment Insurance Act benefits are payable to an employee who is earning remuneration from railroad or non-railroad employment. Employer payments that make up for low earnings are pay for time lost and therefore are "compensation" and "remuneration";

(e) The plan confers upon covered employees an enforceable right to the benefits under the plan. The plan may not commit to management discretion any decision as to whether such employee will actually be paid the benefits to which he is entitled under the plan or the amount to be paid;

(f) The plan may not provide benefits to a covered employee in an amount that, when added to his or her Railroad Unemployment Insurance Act benefits, is greater than the wages of salary that would have been paid if the employee were employed; and

(g) The plan incorporates the features set forth in § 323.4 of this part and has been approved by the Board's Director of Unemployment and Sickness Insurance as a nongovernmental plan for unemployment or sickness insurance.

§ 323.4 Guidelines for content of a nongovernmental plan.

At a minimum, a nongovernmental plan for unemployment or sickness insurance should contain the following features:

(a) The title of the plan (e.g., Supplemental Unemployment Benefit Plan or Supplemental Sickness Benefit Plan);

(b) A statement of purpose, such as the following:

There is hereby established a nongovernmental plan for (unemployment insurance) (sickness insurance) [specify which one] within the meaning of section 1(j) of the Railroad Unemployment Insurance Act. The purpose of this plan is to supplement the benefits that an eligible employee may receive under that Act and not to replace or duplicate such benefits. Payments under this plan are designed as one of the benefits of employment with [name of employer] and are not intended as pay for time lost or any other form of remuneration for services rendered as an employee;

(c) A statement as to which class or craft of employees, or other specified group of employees, is covered by the plan;

(d) The criteria governing a particular covered employee's eligibility for supplemental benefits under the plan;

(e) The dollar amount of supplemental benefits payable on a periodic basis to an eligible employee, the duration of supplemental benefits, how such benefits will be computed, and the conditions under which an employee will be disqualified or benefit payments reduced or terminated; and

(f) The identity of the plan administrator and the procedure by which a covered employee may claim supplemental benefits under the plan, including forms to be filed (if any), how to file, the time limit for filing, and how an employee may appeal from a denial of supplemental benefits.

§ 323.5 Submitting proposed plan for Board approval.

An employer shall submit each proposed plan, or a proposed revision to an existing plan, to the Director of Unemployment and Sickness Insurance, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611. The Director shall determine whether the plan or revision conforms to this part. Approval shall be effective as of the effective date of the plan. If not approved, the Director will advise the employer in which particular respects the proposed plan or revision does not conform to this part.

§ 323.6 Treatment of benefit payments under a nongovernmental plan for purposes of contributions.

Benefit payments under nongovernmental plans approved by the Board under this part are not "compensation" as defined in section 1(i) of the Railroad Unemployment Insurance Act, and therefore they are

not subject to contribution under part 345 of this chapter.

§ 323.7 Effective date.

(a) This part shall not apply to a plan approved by the Director of Unemployment and Sickness Insurance prior to the effective date of this part. However, it shall apply to any proposed revision to such plan.

(b) Any plan in effect on the effective date of this part that has not been approved by the Director of Unemployment and Sickness Insurance shall be considered a proposed plan for purposes of § 323.5.

Dated: May 30, 1991.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91-13456 Filed 6-6-91; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-91-02]

Special Local Regulations: Bay City Fireworks Display, Saginaw River, Bay City, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special local regulations are being adopted for the Bay City Fireworks Display on the 6th of July 1991.

EFFECTIVE DATE: These regulations become effective from 9 p.m. until 12 midnight (EDST) on the 6th of July 1991.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060 (216) 522-4420.

SUPPLEMENTARY INFORMATION: On 15 March 1991, the Coast Guard published a notice of proposed rulemaking in the *Federal Register* for these regulations (56 FR 11134). Interested persons were requested to submit comments and no comments were received.

Drafting Information: The drafters of this rulemaking are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations: The Bay City Fireworks Display will be conducted at the south end of the Veterans Memorial Park with the fireworks being fired over the Saginaw River on the 4th, 5th and 6th of July 1991. This event has been held in the past without special local regulations, but due to the growth of this event and the unusually large number of spectator craft in the area on the last evening of the fireworks display, which could pose hazards to navigation in the area, the Coast Guard is establishing special local regulations for the 6th of July 1991. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station, Saginaw River, MI).

Economic Assessment and Certification: These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations: In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 would be amended to add a temporary section 100.35-T0902 to read as follows:

§ 100.35-T0902 Bay City Fireworks Display, Saginaw River, Bay City, MI.

(a) *Regulated Area:* That portion of the Saginaw River from the Veterans Memorial Bridge to 1000 yards south of the same bridge.

(b) *Special Local Regulations:*

(1) The above area will be closed to vessel navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 9 p.m. until 12 midnight (EDST) on the 6th of July 1991.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: May 23, 1991.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 91-13568 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 09-91-08]

Special Local Regulations: Friendship Festival Air Show, Niagara River and Buffalo Harbor, Buffalo, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the Friendship Festival Air Show. This event will be held over the Niagara River and Buffalo Harbor on the 29th and 30th of June 1991. The regulations are needed to provide a clear area below the flight path for the air show, and for the safety

of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective from 1 p.m. (EDST) until 5 p.m. (EDST), each day, on the 29th and 30th of June 1991.

FOR FURTHER INFORMATION CONTACT:

Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 552-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 1 May 1991, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Friendship Festival Air Show will be conducted over the Niagara River and Buffalo Harbor on the 29th and 30th of June 1991. This event will have approximately 15, domestic and foreign, private and military aircraft performing low flying aircraft demonstrations and high performance aircraft aerobatics, which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Commander, U.S. Coast Guard Group Buffalo, NY).

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35-T0908 to read as follows:

§ 100.35-T0908 Friendship Festival Air Show, Niagara River and Buffalo Harbor, Buffalo, NY.

(a) *Regulated Area:* That portion of the Niagara River and Buffalo Harbor from the east shore, at the Peace Bridge, westward along the south side of the bridge to the International Border; southward along the International Border to the Abandoned Light House, then southeast to the West Breakwater Light (LLNR 2620), thence in a northeasterly direction connecting the following points: the Old Breakwater North End Light (LLNR 2655), to the North Breakwater South End Light (LLNR 2660), to the Black Rock Canal Lighted Buoy No. 1 (LLNR 2725), to the Black Rock Canal Lighted Buoy No. 3 (LLNR 2735), to the Black Rock Canal Light No. 4 (LLNR 2740); then northward along the shore to the Peace Bridge.

(b) *Special Local Regulations:*

(1) The above area will be closed to vessel navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 1 p.m. (EDST) until 5 p.m. (EDST), each day, on the 29th and 30th of June 1991.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander". Any vessel, not authorized to participate in the event,

desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: May 23, 1991.

G.A. Penington,

Commander, Ninth Coast Guard District.

[FR Doc. 91-13569 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGC-09-91-11]

Special Local Regulations: Milwaukee Summerfest, Milwaukee Harbor, Lake Michigan, Milwaukee, WI

AGENCY: Coast Guard, DOT.

ACTION: Temporary Rule.

SUMMARY: Special Local Regulations are being adopted for the Milwaukee Summerfest. This festival will involve several events within the lagoon directly adjacent to the Summerfest grounds in Milwaukee Harbor from the 25th of June 1991 until the 21st of July 1991. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective at 11:30 a.m. (CDST) until 12 midnight (CDST), each day, from the 25th of June 1991 until the 21st of July 1991.

FOR FURTHER INFORMATION CONTACT:

Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 26 April 1991, and there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Milwaukee Summerfest will be conducting several events within the man-made lagoon directly adjacent to the Summerfest grounds in Milwaukee Harbor from 25 June 1991 until 21 July 1991. This festival will have daily activities, that will include approximately 50 combined waterski boats, jet skis, wind surfers, and a hole in one golf course green located on a 180 foot anchored barge, which could pose hazards to navigation in the area. Are vessel desiring to enter the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Milwaukee, WI).

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 AND 33 CFR 100.35.

2. Part 100 would be amended to add a temporary § 100.35-T0911 to read as follows:

§ 100.35-T0911 Milwaukee Summerfest, Lake Michigan, Milwaukee Harbor, Milwaukee, WI.

(a) *Regulated Area:* That portion of Lake Michigan, Milwaukee Harbor, and area defined as the uncharted lagoon or basin, north of the mouth of the Milwaukee River and directly adjacent to the Summerfest grounds, enclosed by shore on the west and a "comma" shaped man-made rock wall on the east. The construction of the lagoon is such that a small "basin" has been created with one entrance located at the northwest end, thus, there is no "thru traffic". Four special buoys will be set by the sponsor to delineate the entrance to the basin (lagoon).

(b) *Special Local Regulations:* (1) The above area will be closed to vessel navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 11:30 a.m. (CDST) until 12 midnight (CDST), each day, from the 25th of June 1991 until the 21st of July 1991.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel, not authorized to participate in the event, desiring to enter the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. When granted approval by the Coast Guard Patrol Commander, vessels entering the regulated area will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the

operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: May 23, 1991.

G.A. Pennington,
Commander, Ninth Coast Guard District.
[FR Doc. 91-13570 Filed 6-6-91; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 09-91-07]

Special Local Regulations: Muskegon Lake Offshore Run, Muskegon Lake, Muskegon, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the Muskegon Lake Offshore Run to be held on Muskegon Lake, Muskegon, MI, on the 29th and 30th of June 1991. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective at 7 a.m. (EDST) and terminate at 6 p.m. (EDST), each day, on the 29th and 30th of June 1991.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 15 April 1991, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this rulemaking are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Muskegon Lake Offshore Run will be conducted on Muskegon Lake, Muskegon, MI, on the 29th and 30th of

June 1991. This event will have approximately forty, 21 to 40 foot, APBA registered offshore powerboats that will draw an unusually large number of spectator craft in the area, which could pose hazards to navigation in the area. In order to provide for the safety of life and property, the Coast Guard will restrict commercial vessel traffic, 20 meters or more in length (65.6 ft.) from the Muskegon Lake in its entirety. Commercial vessels of 20 meters or more in length (65.6 ft.) desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Commanding Officer, U.S. Coast Guard Station, Grand Haven, MI).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 would be amended to add a temporary § 100.35-T0907 to read as follows:

§ 100.35-T0907 Muskegon Lake Offshore Run, Muskegon Lake, Muskegon, MI.

(a) *Regulated Area:* Muskegon Lake in its entirety.

(b) *Special Local Regulations:* (1) The above area will be closed to navigation and anchorage by commercial vessels of 20 meters or more in length (65.6 ft.), from 7 a.m. (EDST) until 6 p.m. (EDST), each day, on the 29th and 30th of June 1991, except when expressly authorized by the Coast Guard Patrol Commander.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander". Commercial vessels of 20 meters or more in length (65.6 ft.) desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: May 23, 1991.

G.A. Penington,

Commander, Ninth Coast Guard District.

[FR Doc. 91-13571 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-14-M

SUMMARY: Special local regulations are being adopted for Riverfest 91, a regatta which includes two boat parades, a canoe race, Bud Light Ski Team demonstration, and launch events including a boat show, music, craft vendors, art show, and others, to be held on the Mohawk River in Schenectady County, NY. This event will be held from 10 a.m. to 11 p.m. on June 22, 1991. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: This temporary regulation is effective from 10 a.m. to 11 p.m. on June 22, 1991.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Eric G. Westerberg, Chief Boating Safety Affairs Branch, (617) 223-8310.

SUPPLEMENTARY INFORMATION: In accordance with 5 USC 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until April, 1991, and there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are LTJG E.G. Westerberg, project officer, First Coast Guard District Boating Safety Affairs Branch, and LT R.E. Korroch, project attorney, First Coast Guard District Legal Division.

Discussion of Regulations

Riverfest 91 is a regatta which will be held adjacent to the town of Schenectady, NY on the Mohawk River. The regulated area will be the Mohawk River in the area bounded from buoy 56 to buoy 104. No vessel other than participants or those vessels authorized by either the sponsor or the Coast Guard Patrol Commander shall enter the regulated area. The regulated area will be patrolled by the Coast Guard, Coast Guard Auxiliary, sponsor provided patrols and state and local law enforcement officials.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 USC 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-T1052 is added to read as follows:

§ 100.35-T1052 Riverfest 91, Schenectady, New York.

(a) *Regulated Area.* The race area is that portion of the Mohawk River, adjacent to Schenectady, New York, bounded from buoy 56 to buoy 104.

(b) *Special Local Regulations.* (1) The following requirements will be placed on vessels operating within the regulated area during the effective period of regulation:

(i) Vessels, including tows, greater than 20 meters in length shall not transit the regulated area at any time during the effective period, unless authorized by the Coast Guard Patrol Commander.

(ii) Vessels less than 20 meters in length may transit the regulated area if escorted by official regatta patrol vessels specified in paragraph (d) below.

(iii) Unless otherwise directed by the Coast Guard Patrol Commander, transiting vessels shall: remain clear of the race course area as marked by the sponsor provided buoys, not interfere with races, and remain outside the designated regulated area.

(iv) Official patrol vessels include Coast Guard and Coast Guard Auxiliary vessels and other vessels so designated by the regatta sponsor or Coast Guard patrol personnel.

(v) No person or vessel may enter or remain in the regulated area during the effective period unless participating in the event, or authorized to be there by the sponsor or Coast Guard patrol personnel.

(2) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators. Spectator vessels should be at anchor within the designated spectator area.

(3) The sponsor shall be responsible for proper marking of the course within the regulated area and adequately marking the boundaries of the spectator area. All turn and spectator area buoys shall be established in a position agreeable to the Coast Guard Patrol Commander not later than one hour prior to the start of each event. All buoys marking the course and spectator area must be removed not later than one hour after completion of each day's event.

(4) The sponsor shall be required to provide no less than (6) six vessels for spectator control and to secure the race area. If insufficient sponsor provided vessels arrive to control the event, the Coast Guard Patrol Commander may

33 CFR Part 100

[CGD1 91-052]

Special Local Regulations: Riverfest 91, Mohawk River, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

terminate the event. These vessels shall be on scene no later than one hour prior to the start of the event.

(5) The Patrol Commander reserves the right to cancel the race in its entirety or to suspend the race for safety violations at any time including during the race.

(6) In the event of an emergency or as directed by the Coast Guard Patrol Commander, the sponsor shall dismantle the race course to allow the passage of any U.S. Government vessel or any other designated emergency vessel. At the discretion of the Patrol Commander, any violation of the provisions contained within this regulation shall be sufficient grounds to terminate this event.

(7) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(8) For any violation of this regulation, the following maximum penalties are authorized by law:

- (i) \$500 for any persons in charge of the navigation of a vessel.
- (ii) \$500 for the owner of a vessel, if he or she is actually on board.
- (iii) \$250 for any other person.
- (iv) Suspension or revocation of a license for a Licensed Officer.

(c) *Effective Dates.* These regulations are effective between the hours of 10 a.m. and 8 p.m. local time on 22 June 1991.

Dated: May 29, 1991.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard,

Commander, First Coast Guard District,

[FR Doc. 91-13572 Filed 6-8-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 09-91-09]

Special Local Regulations: Ultra Can-Am Challenge Kilo Speed Trials, Buffalo Outer Harbor, Lake Erie, Buffalo, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the Ultra Can-Am Challenge Kilo Speed Trials. This event will be held on the Buffalo Outer Harbor

on the 28th of June 1991 from 9 a.m. (EDST) until 2 p.m. (EDST). The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective from 9 a.m. (EDST) until 2 p.m. (EDST) on the 28th of June 1991.

FOR FURTHER INFORMATION CONTACT:

Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 1 May 1991, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Ultra Can-Am Challenge Kilo Speed Trials will be conducted on the Buffalo Outer Harbor, Lake Erie, Buffalo, NY, on the 28th of June 1991. This event will have an estimated 30, 24 to 45 foot, offshore racing boats, which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Buffalo, NY).

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectators into the area for the duration of the event. This should have a

favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary section 100.35-T0909 to read as follows:

§ 100.35-T0909 Ultra Can-Am Challenge Kilo Speed Trials, Buffalo Outer Harbor, Lake Erie, Buffalo, NY.

(a) *Regulated Area:* That portion of the Buffalo Outer Harbor between the main line of the shore and the Outer Harbor Breakwall, from 100 yards northward of the Seaway Piers to one-half mile southward of the entrance to the Port of Buffalo Small Boat Harbor. Recreational vessels located at marinas in the above regulated area will be allowed to transit the area when the actual speed runs are not taking place, but only with the prior approval of the Coast Guard Patrol Commander.

(b) *Special Local Regulations:* (1) The above area will be closed to vessel navigation and anchorage, except when expressly authorized by the Coast Guard Partol Commander, from 9 a.m. (EDST) until 2 p.m. (EDST) on the 28th of June 1991.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander". Any vessel, not authorized to participate in the event, desiring to transit the regulated area

may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations; and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: May 23, 1991.

G.A. Penington,
Rear Admiral, U.S. Coast Guard,
Commander, Ninth Coast Guard District.
[FR Doc. 91-13573 Filed 6-6-91; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 09-91-10]

Special Local Regulations: Ultra Can-Am Challenge 72 Mile Divisional Offshore Race, Buffalo Outer Harbor, Lake Erie, Buffalo, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the Ultra Can-Am Challenge 72 Mile Divisional Offshore Race. This event will be held on the Buffalo Outer Harbor and Lake Erie on the 29th of June 1991 from 11 a.m. (EDST) until 1 p.m. (EDST). If the weather on the 29th of June 1991 is inclement, the race will be held on the 30th of June 1991. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective from 11 a.m. (EDST) until 1 p.m. (EDST) on the 29th of June 1991.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science

Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 1 May 1991, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Ultra Can-Am Challenge 72 Mile Divisional Offshore Race will be conducted on the Buffalo Outer Harbor and Lake Erie, Buffalo, NY, on the 29th of June 1991. This event will have an estimated 50, 24 to 45 foot, offshore race boats, which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Buffalo, NY).

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectators into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100 [AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary section 100.35-T0910 to read as follows:

§ 100.35-T0910 Ultra Can-Am Challenge 72 Mile Divisional Offshore Race, Buffalo Outer Harbor, Lake Erie, Buffalo, NY.

(a) *Regulated Area:* That portion of Lake Erie, Outer Buffalo Harbor and Buffalo River entrance enclosed by a line running from the South Buffalo Dike Disposal Light Number 2 (LLNR 2840), westward to a position 42 degrees 49 minutes 11 seconds North, 078 degrees 56 minutes 05 seconds West, then northward to a position 42 degrees 53 minutes 30 seconds North, 078 degrees 54 minutes 11 seconds West, thence eastward to the breakwall, then southward along the breakwall crossing the Black Rock Canal and Buffalo River entrances, then southward along the shore to the South Buffalo Dike Disposal Light Number 2 (LLNR 2840).

(b) *Special Local Regulations:*

(1) The above area will be closed to vessel navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 11 a.m. (EDST) until 1 p.m. (EDST) on the 29th of June 1991.

(2) If the weather on the 29th of June 1991 is inclement, the race and the regulated area will be postponed until 11 a.m. (EDST) on the 30th of June 1991. If postponed, notice will be given the 29th of June 1991 over the U.S. Coast Guard Radio Net.

(3) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard

Patrol Commander". Any vessel, not authorized to participate in the event, desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(4) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(5) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(6) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(7) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: May 23, 1991.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander,
Ninth Coast Guard District.

[FR Doc. 91-13574 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-14-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1222

[RIN 3095-AA45]

Creation and Maintenance of Records; Removal of Nonrecord Materials

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: NARA is revising its regulation on removal of nonrecord materials from agency custody to address comments received on the regulation. This revision clarifies conditions under which departing Government officials may remove such materials. This regulation affects Federal agencies.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mary Ann Palmos or Nancy Allard at 202-501-5110 (FTS 241-5110).

SUPPLEMENTARY INFORMATION: On July 2, 1990, NARA published a final rule revising 36 CFR part 1222, Creation and Maintenance of Records; Adequate and Proper Documentation (55 FR 27422). Comments were invited on a new § 1222.42, Removal of nonrecord materials, because that section had not been included in the notice of proposed rulemaking on the revision of 36 CFR part 1222. Comments were received from five Federal agencies. All comments have been carefully considered in the development of this final rule.

Several comments concerned the applicability of this section to personal papers because NARA used the phrase "personal copies of agency records" as an example of nonrecord materials. We have revised the example of nonrecord materials to read "extra copies of agency records kept only for convenience of reference" to clarify that the section does not apply to personal papers. Personal papers are defined in 36 CFR 1222.36(a); they include diaries, journals, personal correspondence, or other personal notes that are not prepared or used for, or circulated or communicated in the course of, transacting Government business. Nonrecord materials covered by § 1222.42 are Government-owned documentary materials such as extra copies of agency records maintained at an individual's desk for convenience of reference and extra copies of printed agency reports, pamphlets, and handbooks.

Most of the comments addressed the issue of protection of security classified information in nonrecord material. We have revised the section based on language suggested by the Information Security Oversight Office to clarify that classified information in nonrecord material removed from a Government agency must be protected under conditions equivalent to those required of the agency and that the originating agency or its successor in function, not the individual who removed the material, retains control over access to the classified information.

In response to another comment, we have clarified the requirement to protect nonrecord material that contains sensitive unclassified information, such as information contained in a Privacy Act system of records or information that the agency would withhold from public release under a Freedom of Information Act exemption.

One commenter expressed concern that allowing agency heads to approve their own removal of nonrecord materials was a conflict of interest in need of an appropriate check and balance. We do not believe that the

regulation can specify an approval procedure that would eliminate the problem. We encourage agency records officials to alert their agency head to the requirements in this regulation for proper protection and control of security-classified and sensitive information in nonrecord materials.

As suggested by this commenter, we have changed the wording of the first sentence of the section to emphasize that nonrecord materials cannot be removed from an agency without approval of either the agency head or the agency records official.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1222

Archives and records.

For the reasons set forth in the preamble, chapter XII of title 36 of the Code of Federal Regulations is amended as follows:

PART 1222—CREATION AND MAINTENANCE OF RECORDS; ADEQUATE AND PROPER DOCUMENTATION

1. The authority statement for part 1222 continues to read as follows:

Authority: 44 U.S.C. 2904, 3101, and 3102.

2. Section 1222.42 is revised to read as follows:

§ 1222.42 Removal of nonrecord materials.

(a) Nonrecord materials, including extra copies of agency records kept only for convenience of reference, may be removed from Government agencies only with the approval of the head of the agency or the individual authorized to act for the agency on matters pertaining to agency records.

(b) Agencies shall ensure that when nonrecord material containing classified information is removed from the executive branch, it is protected under conditions equivalent to those required of executive branch agencies. The originating agency or its successor in function retains control over access to such classified information, even after it is properly removed from the agency.

(c) Agencies shall ensure the appropriate protection of nonrecord material containing information which is restricted from release under the Privacy Act or other statutes, when such restricted nonrecord material is removed from Government agencies.

Dated: May 6, 1991.
 Don W. Wilson,
 Archivist of the United States.
 [FR Doc. 91-13478 Filed 6-6-91; 8:45 am]
 BILLING CODE 7515-01-M

**FEDERAL EMERGENCY
 MANAGEMENT AGENCY**

44 CFR Part 64

[Docket No. FEMA 7514]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies two communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date listed within this rule because of failure to enforce their floodplain management regulations in accordance with NFIP requirements. If FEMA receives documentation that the communities have taken action to bring their floodplain management program into compliance with NFIP requirements prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the

National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59, et. seq.). Accordingly, the City of Grand Tower, Illinois and the Town of Smithers, West Virginia will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in these communities. However, the communities may submit documentation that they have corrected the deficiencies in their floodplain management programs and remedied all violations to the maximum extent possible that have been identified, prior to the actual suspension date. If this documentation is submitted and approved by FEMA, the communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if these communities were suspended on the suspension date, contact the appropriate FEMA Regional Office of the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map. The date of this flood map is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities

listed on the date shown in the last column.

The Administrator finds that notice and public comment procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because the communities listed in this final rule have been adequately notified.

The communities have received a 90-day probationary letter, a 30-day show cause letter in March 1991, and a 30-day suspension notice in May 1991. These notifications were addressed to the chief executive officer of each community, indicating that their community will be suspended unless the required corrective actions and remedial measures are taken prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to enforce adequate floodplain management, thus placing itself in noncompliance with the Federal standards required for community participation. In each entry, a complete chronology of the effective date appears for the listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

| State and location | Community No. | Effective date authorization/cancellation of sale of Flood Insurance in community | Current effective map date | Date certain federal assistance no longer available in special food hazard areas |
|--|---------------|---|----------------------------|--|
| Region III West Virginia: Smithers, town of, Fayette County. | 540033 | June 12, 1975, Emerg.; Apr. 15, 1982, Reg.; June 17, 1991; Susp. | Apr. 15, 1982 | June 17, 1991 |

| State and location | Community No. | Effective date authorization/cancellation of sale of Flood Insurance in community | Current effective map date | Date certain federal assistance no longer available in special flood hazard areas |
|---|---------------|---|----------------------------|---|
| Region V Illinois: Grand Tower, city of, Jackson County | 170300 | Apr. 30, 1974, Emerg.; May 16, 1983, Reg.; June 17, 1991, Susp. | May 16, 1983 | Do. |

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: May 28, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-13505 Filed 6-6-91; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-575; RM-7236]

Radio Broadcasting Services; Clarksburg, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of the Harrison Corporation, substitutes Channel 221A for Channel 224A at Clarksburg, West Virginia, and modifies its license for Station WVHF-FM to specify operation on the alternate Class A channel. See 55FR 49924, December 3, 1990. Channel 221A can be allotted to Clarksburg in compliance with the Commission's minimum distance separation requirements without a site restriction at the petitioner's specified site. The coordinates for Channel 221A at Clarksburg are North Latitude 39-15-48 and West Longitude 80-23-40. Since Clarksburg is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 19, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-575, adopted May 22, 1991, and released June 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by removing Channel 224A and adding Channel 221A, at Clarksburg.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-13432 Filed 6-6-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-447; RM-7351]

Radio Broadcasting Services; Bowling Green, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 244C3 for Channel 244A at Bowling Green, Kentucky, and modifies the license for Station WCBZ(FM) to specify operation on the higher class channel, at the request of Bowling Green Broadcasters, Inc. See 55 FR 42861, November 24, 1990. Channel 244C3 can be allotted to Bowling Green in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.3 kilometers (10.7 miles) west of the community as requested by petitioner. The coordinates are North Latitude 36-56-00 and West Longitude 86-38-12.

With this action, this proceeding is terminated.

EFFECTIVE DATE: July 19, 1991.

FOR FURTHER INFORMATION CONTACT:

Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-447, adopted May 22, 1991, and released June 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 244A and adding Channel 244C3 at Bowling Green.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-13428 Filed 6-6-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-321; RM-7303]

Radio Broadcasting Services; Paragould and Lake City, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 285A from Paragould to Lake

City, Arkansas, and modifies the license of North Arkansas Radio Co., Inc., for Station KDXY(FM) to specify operation on Channel 285C3, as requested, pursuant to the provisions of § 1.420(i) of the Commission's Rules. The allotment of Channel 285C3 to Lake City will provide the community with its first local aural transmission service without depriving Paragould of local aural transmission service. See 55 FR 28241, July 10, 1990. Coordinates used for Channel 285C3 at Lake City are 35-51-30 and 90-34-30. With this action, the proceeding is terminated.

EFFECTIVE DATE: July 19, 1991.

FOR FURTHER INFORMATION CONTACT:

Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-321, adopted May 22, 1991, and released June 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 285A at Paragould and adding Channel 285C3, Lake City.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-13431 Filed 6-6-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-517; RM-6979]

Radio Broadcasting Services; Ogelsby, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of David B. Knoll, allots Channel 271A to Ogelsby, Illinois, as that community's first local FM service. See FR 48775, November 27, 1989. Channel 271A can be allotted to Ogelsby in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates are North Latitude 41-17-43 and West Longitude 89-03-34. With this action, this proceeding is terminated.

EFFECTIVE DATES: July 19, 1991; the window period for filing applications will open on July 22, 1991, and close on August 21, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-517, adopted May 22, 1991, and released June 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Illinois by adding Ogelsby, Channel 271A.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-13429 Filed 6-6-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-570; RM-7061, RM-7110]

Radio Broadcasting Services; Lafayette, TN, and Campbellsville, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ivan Davis, allots Channel 281A to Lafayette, Tennessee. See 54 FR 52423, December 21, 1989. Channel 281A can be allotted to Lafayette, Tennessee, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for the allotment of Channel 281A to Lafayette, Tennessee, are North Latitude 36-31-24 and West Longitude 86-01-36. A proposal to substitute Channel 281C3 for Channel 281A at Campbellsville, Kentucky, and modify the authorization of Station WCKQ(FM) accordingly is dismissed. With this action, this proceeding is terminated.

EFFECTIVE DATES: July 19, 1991. The window period for filing applications will open on July 22, 1991, and close on August 21, 1991.

FOR FURTHER INFORMATION CONTACT:

Pamela Blumenthal, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-570, adopted May 15, 1991, and released June 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding Channel 281A, Lafayette.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-13430 Filed 6-6-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF JUSTICE

48 CFR Parts 2801, 2803, 2804, 2805, 2806, 2815, 2819 and 2870

[Justice Acquisition Circular 91-1]

Amendments to the Justice Acquisition Regulations (JAR) Regarding: Selection, Appointment and Termination of Contracting Officers; Forecasts of Contract Opportunities for Small Businesses; Acquisition of Leasehold Interests in Real Property; and, Other Administrative Admendments

AGENCY: Office of the Procurement Executive, Justice Management Division, Justice.

ACTION: Final rule.

SUMMARY: Justice Acquisition Circular (JAC) 91-1 amends the JAR, 48 CFR, chapter 28, by: Amending § 2801.603, to add additional training hours required for authority to enter into lease agreements and to add training subject areas; amending the bureau certification in subsection 2804.903-70 pertaining to information returns under section 6050M of the Tax Reform Act of 1986; adding a new subpart 2806.3, Other Than Full And Open Competition, and new subsections 2806.302-7, Public interest, and 2806.302-70, Determination and findings, to establish agency procedures which implement determination and findings requirements under the public interest exception; changing the location of the Competition Advocate in § 2806.501; changing the office to which requests for audit assistance are made in subsection 2815.805-570; adding a new subpart 2819.70, Forecasts of Expected Contract Opportunities with Small Businesses; adding a new part 2870, Acquisition of Leasehold Interests in Real Property; and, by making administrative amendments.

EFFECTIVE DATE: June 7, 1991.

FOR FURTHER INFORMATION CONTACT: W.L. Vann, Procurement Executive, Justice Management Division (202) 514-6868.

SUPPLEMENTARY INFORMATION: The determination is hereby made that this amendment must be issued as a final rule. This amendment was not published for public comment because it does not have an effect beyond the internal operating procedures of the agency. The Director, Office of Management and Budget, by memorandum dated December 14, 1984, exempted agency procurement regulations from review under Executive Order 12291 except for selected areas. The exception applies to this rule. The Department of Justice

certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601-612).

List of Subjects in 48 CFR Part 2801, 2803, 2804, 2805, 2806, 2815, 2819, and 2870.

Government procurement.

Harry H. Flickinger, Assistant Attorney General for Administration.

For the reasons set out in the preamble, title 48 chapter 28 of the Code of Federal Regulations is amended as follows:

PART 2801-DEPARTMENT OF JUSTICE ACQUISITION REGULATIONS SYSTEM

1. The authority citation for parts 2801, 2803, 2804, 2805, 2806, 2815, and 2819 continues to read as follows:

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

2. Section 2801.603, is amended by revising the title of paragraph (c) to read as follows, and to remove the reference "2801.601(f)" which appears in paragraphs (c)(2)(ii), (c)(3)(ii) and (c)(4)(ii) and insert "2801.603(f)."

§ 2801.603 Selection, appointment and termination.

(c) Delegation of contracting authority requirements.

3. Section 2801.603 is further amended by redesignating existing paragraphs (d), (e), (f), (g) and (h) as (e), (f), (g), (h) and (i) and adding new paragraph (d) to read as follows:

(d) Delegation of leasing authority requirements. To be determined eligible for a delegation of authority as a DOJ contracting officer with the authority to enter into acquisitions of leasehold interests in real property the candidate must, in addition to the training requirements for contracting officers cited in § 2801.603, meet the following minimum standards:

(1) Level I Purchasing Agent— Signatory authority to enter into lease agreements not exceeding the small purchase threshold as set forth in FAR part 13.

(i) One year of procurement experience as a contract specialist, contract administrator or purchasing agent that demonstrated the ability to perform at this level I.

(ii) Completion of 160 hours of training from the subject areas listed in § 2801.603(f)(3).

(2) Level II Contracting Officer— Signatory authority to enter into lease agreements not exceeding \$100,000.

(i) Two years combination of procurement experience as a contract specialist, contract administrator or purchasing agent that demonstrated the ability to perform as a contracting officer at Level II.

(ii) Completion of 160 hours of training from the subject areas listed in § 2801.603(f)(3).

(3) Level III Contracting Officer— Signature authority to enter into lease agreements not exceeding \$500,000.

(i) Three years combination of procurement experience as a contract specialist or contract administrator, including six months as a contracting officer equivalent to Level II responsibilities, that demonstrated the ability to perform as a contracting officer at Level III.

(ii) Completion of 160 hours from the subject areas listed in § 2801.603(f)(3).

(4) Level IV Contracting Officer— Signature authority to enter into lease agreements exceeding \$500,000.

(i) Four years combination of procurement experience as a contracting officer or contract administrator including one year of experience as a contracting officer equivalent to Level III responsibilities that demonstrated the ability to perform at Level IV.

(ii) Completion of 160 hours from the subject areas listed in § 2801.603(f)(3)

4. Section 2801.603 further is amended in newly redesignated paragraph (f) by adding a new paragraph (f)(3) to read as follows:

(f) (3) It is understood that the following are meant to be general subject areas, which pertain to the authority to enter into acquisitions of leasehold interests in real property, not course titles. The bureau, in determining the acceptability of a particular course, will make a determination based on what is generally understood in the leasing field to be lease or lease related training. Training may be accomplished in-house or obtained from outside sources.

(i) Federal Real Property Leasing or Basic Lease Contracting (recommended 40 hours)

(ii) Real Estate Law or Federal Real Property Lease Law (recommended 40 hrs)

(iii) Pricing of Lease Proposal (Recommended 40 hrs)

(iv) Real Estate Appraisal Capitalization Theory and Techniques, Part A (AIREA or equivalent course recommended 40 hrs)

* * * * *

PART 2803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

5. The Table of Contents for part 2803 is amended by adding the titles for subparts § 2803.4 above § 2803.408 and 2803.5 above § 2803.502, to read as follows:

Table of Contents

* * * * *

Subpart 2803.4—Contingent Fees

* * * * *

Subpart 2803.5—Other Improper Business Practices

* * * * *

6. The text of part 2803 is amended by adding the titles for subparts 2803.4 above § 2803.408 and 2803.5 above § 2803.502, to read as follows:

* * * * *

Subpart 2803.4—Contingent fees

* * * * *

Subpart 2803.5—Other Improper Business Practices

* * * * *

PART 2804—ADMINISTRATIVE MATTERS

7. Section 2804.903—70, paragraph (c) is amended in the first sentence of the Certification by deleting the acronym "FPDC" and inserting the words "Procurement Executive."

PART 2805—PUBLICIZING CONTRACT ACTIONS

8. Section 2805.503—70, paragraph (d) is amended in the first sentence to remove the words "Standard Form 1143 Advertising Order" and substitute the words "Optional Form 347, Order for Supplies or Services, or an approved agency form."

PART 2806—COMPETITION REQUIREMENTS

9. A new subpart 2806.3 is added to read as follows:

Table of Contents

Subpart 2806.3—Other Than Full and Open Competition

Sec.
2806.302 Circumstances permitting other than full and open competition.
2806.302-7 Public interest.
2806.302-70 Determination and findings.

Subpart 2806.3—Other Than Full and Open Competition

2806.302 Circumstances permitting other than full and open competition.
2806.302-7 Public interest.

§ 2806.302-70 Determination and findings.

(a) Procedure. The determination and findings (D&F) required by FAR 6.302-7(c)(1) shall be prepared in the format provided in paragraph (b) below. The original and two copies of the D&F and documentation supporting the use of this exception to the requirement for full and open competition shall be submitted to the Office of the Procurement Executive for concurrence and coordination up to the Attorney General for signature.

(b) Format. The following format shall be used for the D&F:

Department of Justice, Washington, DC 20530.
Determination and Findings.

Authority To Use Other Than Full and Open Competition

Upon the basis of the following findings and determination, which I hereby make pursuant to the authority of 41 U.S.C. 253(c)(7) as implemented by FAR 6.302-7, it is in the public interest to provide for other than full and open competition in the contract action described below.

Findings

1. The (1) proposes to enter into a contract for the acquisition of (2).
2. Use of the authority cited above is necessary and in the public interest for the following reasons: (3).

Determination

For the reasons described above, it is necessary and in the public interest to use procedures other than competitive procedures in the proposed acquisition.

Date _____

Notes:

- (1) Name of contracting activity.
 - (2) Brief description of supplies or services.
 - (3) Explain the need for use of the authority.
10. Section 2806.501, paragraph (a) is amended by removing the words "Deputy Assistant Attorney General,

Office of Personnel and Administration," and substituting the words "Procurement Executive, Justice Management Division."

PART 2815—CONTRACTING BY NEGOTIATION

11. Section 2815.805-570, Field pricing support is revised to read as follows:

§ 2815.805-570 Field pricing support.

Field pricing support is available to the Department components through the Office of Inspector General. All requests for audit assistance shall be directed to the Assistant Inspector General for Audits, Suite 701, 4 Skyline Place, 5113 Leesburg Pike, Falls Church, VA 22041.

PART 2819—SMALL AND DISADVANTAGED BUSINESS CONCERNS

12. A new subpart 2819.70 is added to read as follows:

Table of Contents

Subpart 2819.70—Forecasts of Expected Contract Opportunities

Sec.

2819.701 General.
2819.702 Procedures.

Subpart 2819.70—Forecasts of Expected Contract Opportunities

§ 2819.701 General.

Section 501 of Public Law 100-656 the Business Opportunity Development Reform Act of 1988 requires executive agencies having contract actions in excess of \$50 million in Fiscal Year 1988 or later to prepare an annual forecast of expected contract opportunities, or classes of contract opportunities that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing.

§ 2819.702 Procedures.

The content and format of bureau annual forecasts of contract opportunities, as well as the updates to their contracting forecasts shall be as specified by the Director, OSDBU. Updates should be prepared and submitted at the same time the bureaus prepare their semiannual reviews of their advance procurement plans, in April and October.

13. A new subchapter I, Special Agency Regulations consisting of part 2870 is added as follows:

SUBCHAPTER I—SPECIAL AGENCY REGULATIONS

PART 2870—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY

Sec.

2870.000 Scope of part.

Subpart 2870.1—Definitions

2870.101 Definitions

Subpart 2870.2—Agency Acquisition Regulations for Leases of Real Property

2870.201 Authority to lease.

2870.202 Review by the Office of the Procurement Executive.

2870.203 Competition.

2870.204 Procedures for executing a lease.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(C); 28 CFR 0.75(j); and, 28 CFR 0.76(j).

§ 2870.000 Scope of part.

This part prescribes policies and procedures relating to the acquisition of real property whether the space is already in existence or must be constructed. It does not apply to the acquisition of leasehold interests in real property by the power of eminent domain or by donation. The use of GSA clauses is not mandatory for leases of 180 days or less but must include all statutorily required clauses.

Subpart 2870.1—Definitions

§ 2870.101 Definitions.

Throughout this regulation the following words and terms are used as defined in this subpart unless the context in which they appear clearly requires a different meaning.

(a) "Acquisition" means the acquiring, by lease with appropriated funds, of an interest in improved real property for use by the Federal Government whether the space is already in existence or must be constructed.

Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, market survey, solicitation, award of lease, lease performance, lease administration, and those technical and management functions directly related to the process of fulfilling agency space needs by contract.

(b) "Contract" means lease.

(c) "Contractor" means lessor.

(d) "Landlord" or "lessor" means any individual, firm, partnership, trust, association, State or local government, or other legal entity that leases real property to the Government.

(e) "Lease" or "leasehold interest in real property" means a conveyance to the Government of the right of exclusive possession of real property for a definite

period of time by a landlord. It may include services provided by the landlord such as heating, ventilation, air conditioning, utilities, custodial services, and other related services furnished by the landlord.

Subpart 2870.2—Agency Acquisition Regulations for Leases of Real Property

§ 2870.201 Authority to lease.

The authority for Federal agencies to enter leases is found in 41 CFR 101-18.104. Contracting officers exercising leases on behalf of the Department or of a bureau must assure that all necessary delegations have been obtained from the General Services Administration (GSA) and are within the authority of the Justice Property Management Regulations (JPMR), subpart 128-1.60.

§ 2870.202 Review by the Office of the Procurement Executive.

Leases are subject to the same review requirements as other types of acquisitions, in accordance with the JAR 2801.602-70. These leases which exceed the minimum dollar thresholds for contract review must be submitted to the Office of the Procurement Executive for review and approval prior to the signing of the lease agreement on behalf of the Government.

§ 2870.203 Competition.

The competition requirements of FAR part 6 apply to the acquisition of leasehold interests in real property. The acquisition of space through other than full and open competition must be held to the smallest number practicable and be justified in writing and approved in accordance with FAR 6.303 and 6.304.

§ 2870.204 Procedures for executing a lease.

(a) Pursuant to the requirements of the delegations issued by GSA, all lease acquisitions shall be performed in accordance with the guidance provided in the General Services Acquisition Regulation (GSAR) 48 CFR chapter 5, part 570, Acquisition of Leasehold Interests in Real Property, except for deviations approved by the Procurement Executive.

(b) The following FAR clauses are to be used in lease agreements as applicable. Special leasing clauses are found in GSA forms 3516, Solicitation Provisions, 3517, General Clauses and

3518 Representations and Certifications, which are located in subpart 553.370 of the GSAR.

1. Solicitation provisions.

- (i) 52.203-8 Requirement for Certification of Procurement Integrity
- (ii) 52.204-13 Taxpayer Identification
- (iii) 52.215-10 Late Submission, Modifications and Withdrawals of Offers
- (iv) 52.215-12 Restrictions on Disclosure and Use of Data
- (v) 52.215-13 Preparation of Offers
- (vi) 52.215-14 Explanation to Prospective Offerors
- (vii) 52.222-24 Preaward On-site Equal Opportunity Compliance Review
- (viii) 52.233-2 Service of Protest (Required clause)

2. Lease Clauses

- (i) 52.202-1 Definitions (Required Clause)
- (ii) 52.203-1 Officials Not to Benefit
- (iii) 52.203-3 Gratuities
- (iv) 52.203-5 Covenant Against Contingent Fees (Required Clause)
- (v) 52.203-7 Anti-Kickback Procedures (Required clause)
- (vi) 52.203-9 Requirement for Certification of Procurement Integrity—Modification
- (vii) 52.209-6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended or Proposed for Debarment
- (viii) 52.212-6 Time Extensions
- (ix) 52.215-1 Examination of Records by Comptroller General (Negotiated over \$10,000)
- (x) 52.215-22 Price Reduction for Defective Cost or Pricing Data
- (xi) 52.215-24 Subcontractor Cost or Pricing Data
- (xii) 52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (Applicable to leases which exceed \$10,000)

- | | | | |
|--|-----------|---|--|
| (xiii) | 52.219-9 | Small Business and Small Disadvantaged Business Subcontracting Plan (Applicable to leases which exceed \$500,000) | Debarment and Other Responsibility Matters (Applies to leases exceeding 25,000) |
| (xiv) | 52.219-13 | Utilization of Women-Owned Small Business (Applicable to leases which exceed \$25,000) | (iv) 52.219-2 Small Disadvantaged Business Concern Representation (Applies to leases exceeding \$25,000) |
| (xv) | 52.219-16 | Liquidated Damages—Small Business Subcontracting Plan | (v) 52.219-3 Women Owned Small Business Representation (Applies to leases exceeding \$25,000) |
| (xvi) | 52.222-26 | Equal Opportunity (Applicable to leases which exceed \$10,000) | (vi) 52.219-1 Small Business Concern Representation |
| (xvii) | 52.222-35 | Affirmative Action for Special Disabled and Vietnam Era Veterans (applicable to leases which exceed \$10,000) | (vii) 52.222-21 Certification of Nonsegregated Facilities (Applies to leases exceeding \$10,000) |
| (xviii) | 52.222-36 | Affirmative Action for Handicapped Workers (Applicable to leases which exceed \$2,500) | (viii) 52.222-22 Previous Contracts and Compliance Reports (Applies to leases exceeding \$10,000) |
| (xix) | 52.222-37 | Employment Reports on Special Disabled Veterans and Vietnam Era (Applicable to leases which exceed \$10,000) | (ix) 52.222-25 Affirmative Action Compliance (Applies to leases exceeding \$10,000) |
| (xx) | 52.223-2 | Clean Air and Water (Applicable to leases which exceed \$100,000) | (x) 52.223-1 Clean Air and Water Certification (Applicable to leases expected to exceed \$100,000) |
| (xxi) | 52.223-6 | Drug-Free Workplace | (xi) 52.223-5 Certification Regarding a Drug-Free Workplace |
| (xxii) | 52.232-23 | Assignment of claims | |
| (xxiii) | 52.232-25 | Prompt Payment | |
| (xxiv) | 52.233-1 | Disputes | |
| (xxv) | 52.249-2 | Termination for Convenience of the Government (Fixed Price) | |
| (xxvi) | 52.249-5 | Termination (Cost Reimbursement) | |
| (xxvii) | 52.249-8 | Default (Fixed Price Supply and Services) | |
| (xxviii) | 52.249-10 | Default (Fixed Price Construction) | |
| 3. Representations and Certifications | | | |
| (i) | 52.203-2 | Certification of Independent Price Determination | |
| (ii) | 52.203-4 | Contingent Fee Representation and Agreement | |
| (iii) | 52.209-5 | Certification Regarding Debarment, Suspension, Proposed | |

[PR Doc. 91-13344 Filed 6-6-91; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket 89-24; Notice 4]

RIN 2127-AC77

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Final rule.

SUMMARY: This notice responds to comments to a supplemental notice of proposed rulemaking published in November 1990. That notice proposed amending Standard No. 108 to adopt a

definition similar to the SAE definition of "optical combination". In response to comments received on the supplementary notice, NHTSA is not adopting the definition, but is amending Standard No. 108 simply to reference the SAE definition where appropriate.

DATES: The effective date of the amendment is July 8, 1991. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Rulemaking, NHTSA (202-366-5271).

SUPPLEMENTARY INFORMATION: On November 8, 1990, the agency issued a supplemental notice proposing to amend Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, to adopt a definition of the term "optical combination" similar to that of the Society of Automotive Engineers (SAE) (55 FR 46961). The supplemental notice contained a discussion of the agency's prior proposal that led to both a minor amendment and the supplemental notice. The reader is referred to the supplemental notice for further background information on this subject.

Motor Vehicle Safety Standard No. 108 allows two or more lamps, reflective devices, or items of associated equipment to be combined, if the requirements for each are met, provided that certain lamps specified in sections S5.1.1.26 and S5.4 are not "optically combined." The term is also contained in two SAE standards incorporated by reference.

Specifically, S5.4 provides that "no clearance lamp may be optically combined with any taillamp, and no high mounted stop lamp shall be combined with any other lamp or reflective device."

With respect to use of the term elsewhere in the Standard No. 108, paragraph 4.2 of SAE Standard J586c *Stop Lamps*, August 1970, and paragraph 4.4 of SAE Standard J588e *Turn Signal Lamps*, September 1970, both state "When a stop signal is optically combined with the turn signal, the circuit shall be such that stop signal cannot be turned on in the turn signal which is flashing". Finally, the second sentence of section S5.1.1.26 of Standard No. 108, states that "A stop lamp that is not optically combined with a turn signal lamp shall remain activated when the turn signal is flashing."

The agency has never adopted a definition of "optically combined," but over the years it has attempted to clarify the term by issuing a variety of interpretations. This led to some confusion, and on December 5, 1989, the agency proposed amendments with the intent of substituting clarifying phrases for the term "optical combination" (54 FR 50254).

Virtually all persons who commented on that notice recommended that NHTSA adopt the definition of "optically combined" as set forth in SAE Information Report J387 NOV 87 *Terminology—Motor Vehicle Lighting*. Under the SAE definition,

"A lamp shall be deemed to be 'optically combined' if both of the following conditions are met:

A. It has two or more separate light sources, or a single light source that operates in different ways (e.g., a two filament bulb).

B. Its optically functional lens area is wholly or partially common to two or more lamp functions."

NHTSA reviewed these comments and found them persuasive. Accordingly, in November 1990, it issued a supplemental notice proposing an amendment of S3 to add a definition quite similar to that of SAE. Although the notice gave the impression that the SAE definition used as a reference was that of the October 1988 Information Report, the text was based, in fact, upon the text of the November 1987 standard. Under NHTSA's proposed definition:

"'Optically combined' means a combination within a lamp of two or more separate light sources, or a single light source that operates in different ways, such as a dual-filament bulb, where its optically functional lens area is wholly or partially common to two or more lamp functions."

Six commenters responded to the new proposal: General Motors Corporation, Truck Safety Equipment Institute (TSEI), Freightliner Corporation, Grote Manufacturing Company, Ford Motor Company, and Chrysler Corporation. All commenters believed that a definition was desirable. In general, commenters believed that the proposed definition was still confusing and misleading. TSEI, for example, noted that the SAE language "Two or more separate light sources or a single light source that operates in different ways" differs from similar language proposed by NHTSA: "a combination within a lamp of two or more separate light sources or a single light source that operates in different ways." TSEI wondered whether "combination" referred to the two or more light sources which becomes

mutually exclusive when used with the word "separate" or to the light source(s) and the optically functional common lens area. Grote asked whether a lamp presently in use composed of a single light source with a single filament used as combination stop and turn signal lamps would be allowable under the proposed NHTSA definition. Commenters continued to recommend adoption of the SAE definition, noting the discrepancy between the preamble references to the 1988 version and the similarity of the proposed text to the 1987 version, and expressing a preference for the greater inclusiveness of the earlier one.

Upon review of these comments, NHTSA concluded that the meaning of the 1987 SAE definition was evidently clearer to regulated parties than the similar definition proposed in November 1990, and that it should be adopted. However, the phraseology used by the SAE did not prove adaptable to the structure of Standard No. 108's definition section, S3. Therefore, rather than adopting the SAE definition as its own, NHTSA is amending S5.1.1.26 and S5.4 to add the phrase "as defined in SAE Information Report J387 *Terminology—Motor Vehicle Lighting* Nov 87" after the phrase "Optical combination" in each of these sections. A new section is also added to clarify that the SAE definition of "optical combination" that applies to the two 1970 SAE standards incorporated by reference is the 1987 version.

Effective Date

Because the final rule clarifies existing prohibitions, and imposes no additional burden upon any regulated party, it is hereby found for good cause shown that an effective date earlier than 180 days after issuance of the rule is in the public interest. Accordingly, the amendment is effective July 8, 1991.

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action and has determined that the action is neither major within the meaning of Executive Order 12291 "Federal Regulation," nor significant under Department of Transportation regulatory policies and procedures. The primary effect of the final rule is to clarify existing requirements. In adopting this amendment, NHTSA has concluded that the savings in costs to manufacturers will be minimal, as it knows of no

existing lamp designs that are affected. Therefore, the agency has not prepared a full regulatory evaluation.

National Environmental Policy Act

NHTSA has analyzed this rule for purposes of the National Environmental Policy Act. The rule will not have a significant effect upon the environment because its effect is to clarify existing requirements.

Regulatory Flexibility Act

The agency has also considered the effects of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic effect upon a substantial number of small entities. Lamp and vehicle manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Furthermore, small organizations and governmental jurisdictions will not be significantly affected as the price of new vehicles will not be impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 "Federalism," and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Incorporation by reference.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571.108 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. The second sentence of S5.1.1.26 is revised to read:

S5.1.1.26. * * * A stop lamp that is not optically combined, as defined by SAE Information Report J387 *Terminology—Motor Vehicle Lighting* NOV 87, with a turn signal lamp shall remain activated when the turn signal lamp is flashing.

* * * * *

3. S5.4 is revised to read as follows:
S5.4. Two or more lamps, reflective devices, or items of associated equipment may be combined if the requirements for each lamp, reflective

device, and item of associated equipment are met, except that no clearance lamp may be combined optically, as defined by SAE Information Report J387 *Terminology—Motor Vehicle Lighting* NOV 87, with any taillamp, and no high-mounted stop lamp shall be combined with any other lamp or reflective device.

* * * * *

4. Section S6.1 is amended by adding the following sentence at the end thereof:

S6.1. * * * The definition of "optically combined" in SAE Information Report J387 *Terminology—Motor Vehicle Lighting* NOV 87, applies to that term as used in J586c and J588e.

* * * * *

Issued on: May 31, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-13546 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register

Vol. 56, No. 110

Friday, June 7, 1991

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 HOUSING FINANCE BOARD

12 CFR Part 936

[No. FHFB 91-184]

Community Support Requirements for Members of the Federal Home Loan Bank System

AGENCY: Federal Housing Finance Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Board ("Finance Board") is requesting public comment on proposed regulations to implement section 710(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 183, 418-419. This section requires the Finance Board to adopt regulations establishing standards of community investment or service for members of the Federal Home Loan Bank System ("FHL Bank System) to maintain continued access to long-term advances. FIRREA provides that the Finance Board adopt these regulations by August 8, 1991. The Finance Board requests public comment on the full range of policy issues and other considerations involved in establishing community support standards and regulations.

DATES: Comments must be received on or before July 22, 1991. No extension of the comment period will be possible, because the Finance Board seeks to meet a statutory deadline for promulgation of the final rule.

ADDRESSES: Comments should be sent to: Federal Housing Finance Board, Executive Secretary, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Sylvia C. Martinez, Director, Housing Finance Directorate, or Stephen D. Johnson, Attorney Advisor (202) 408-2847, Federal Housing Finance Board,

1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. General

FIRREA established the Finance Board as an independent agency in the executive branch of the federal government. It is the successor agency to the Federal Home Loan Bank Board with respect to oversight of the FHL Bank System. In supervising the 12 Federal Home Loan Banks ("FHL Banks"), the Finance Board is directed to ensure that they carry out their housing finance mission, remain adequately capitalized and able to raise funds in capital markets, and are operated in a safe and sound manner.

The FHL Banks are central banks for the provision of residential credit and provide their members with a wide range of services, including short- and long-term loans (called "advances"), check clearing, safekeeping of securities, demand and time accounts, technical assistance (particularly in community-oriented lending), economic analysis, and access to federal funds markets.

The FHL Banks are located in Boston, New York, Pittsburgh, Atlanta, Cincinnati, Indianapolis, Chicago, Des Moines, Dallas, Topeka, San Francisco, and Seattle. All savings institutions which are insured by the Savings Association Insurance Fund ("SAIF") of the Federal Deposit Insurance Corporation ("FDIC") are members of the FHL Bank System, as well as many savings banks insured by the FDIC's Bank Insurance Fund ("BIF"). FIRREA opened membership in the FHL Bank System to commercial banks and credit unions that make long-term home mortgage loans, subject to qualifications of financial soundness and home financing policies.

B. Community Support Requirements in FIRREA.

Section 710(c) of FIRREA added a new section 10(g) to the Federal Home Loan Bank Act of 1932, 12 USCA 1430(g), as follows:

(g) Community Support Requirements.
(1) In General.—Before the end of the 2-year period beginning on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Board shall adopt regulations establishing standards of community investment or service for members of Banks

to maintain continued access to long-term advances.

(2) Factors To Be Included.—The regulations promulgated pursuant to paragraph (1) shall take into account factors such as a member's performance under the Community Reinvestment Act of 1977 and the member's record of lending to first-time homebuyers.

C. FIRREA Changes to the Community Reinvestment Act and the Home Mortgage Disclosure Act

FIRREA contains two other important and related sections concerning community investment and the requirement that federally regulated depository institutions serve the credit needs of their communities.

1. *CRA*. Section 1212(b) of FIRREA amended the Community Reinvestment Act of 1977, 12 USC 2901 ("CRA"), by adding a new Section 807 requiring that, upon completion of each CRA compliance examination, the examining federal depository regulatory agency prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods. The written evaluations must have a public and a confidential section. The public section of the evaluation must discuss the agency's examination findings and conclusions, and must assign one of four CRA ratings to the institution. The FIRREA Conference Report confirms that the intent of the section was to promote enforcement of CRA by allowing the public to know what regulatory agencies are telling depository institutions and the community investment records of particular depository institutions. See H.R. Conf. Rep. No. 101-222, 101st Cong., 1st Sess., at 460-461 (1989). The Conference Report also places special emphasis on the insured depository institution's record of serving the housing credit needs of low- and moderate-income persons, small business credit needs, small farm credit needs, and rural economic development. *Id.* at 461. These changes to CRA became effective with examinations commencing on or after July 1, 1990, pursuant to uniform guidelines promulgated by the financial regulatory agencies. These guidelines, titled "Uniform Interagency Community Reinvestment Act Final Guidelines For Disclosures of Written Evaluations and Revised Assessment Rating System,"

were published in the Federal Register on May 1, 1990 (55 FR 18163).

2. *HMDA*. Section 1211 of FIRREA made several changes to the Home Mortgage Disclosure Act of 1975, 12 USC 2803 ("HMDA"), that relate to the issue of community support and fair lending practices. These changes require the collection of mortgage application data grouped by census tract, income level, race, and gender. The Conference Report explained that the primary purpose of HMDA reporting is to assist regulatory agencies in identifying possible discriminatory lending patterns that warrant closer scrutiny. Conf. Rep. at 459.

D. Advance Notice of Proposed Rulemaking

The Finance Board considers the development of community support regulations one of its most significant responsibilities. Therefore, the Finance Board has sought and continues to request the broadest possible public comment on all aspects of these regulations.

The Finance Board published an Advance Notice of Proposed Rulemaking on January 4, 1991 (56 FR 387-389—"Advance Notice"). In the Advance Notice, the Finance Board solicited the expertise and insight of all interested parties, including community groups, FHL Banks, lenders, public interest groups, present and prospective FHL Bank System members, trade associations, state and local government agencies, other financial service providers, and private citizens. The questions posed and the issues raised in the Advance Notice were intended to elicit comments on issues of importance, but the listing was not intended to be exclusive or to preclude consideration of other issues considered relevant or important by others.

E. Comments Received in Response to the Advance Notice

The Finance Board received 66 comment letters in response to the Advance Notice. Comments were submitted by 27 thrift and banking institutions (mostly members of the FHL Bank System), 10 FHL Banks, 9 community interest organizations and groups, 9 state and local agencies, 8 financial trade associations, and 3 private individuals and companies. All but a few of the letters commented on at least three of the issues identified in the Advance Notice. Even letters that were short statements of opposition to any new regulations presented reasons for opposition and sometimes raised additional issues, such as problems facing rural financial institutions and the

difficulty faced by institutions concentrating on meeting new or higher capital standards. Several comment letters expressed the intention of providing more detailed comments at the proposed rulemaking stage.

The comment letters are discussed below with the issues presented in the same order as they were in the Advance Notice.

1. *Community investment*. The Advance Notice requested comments on the best definition of "community investment" as used in FIRREA. The principal question posed was whether the Finance Board should consider CRA ratings to be the measure of community investment or should more broadly interpret the concept.

Fifty-four comment letters addressed this issue. Most FHL Banks and at least 20 other industry commenters from thrifts, banks, and financial trade associations stated that CRA was a sufficient measure of community investment and that using any other measure would create an additional burdensome layer of regulation. Many of these comments pointed out that the CRA assessment factors are very broad, applicable to a wide range of institutions, and used by all federal financial regulatory agencies. The letters urged the Finance Board to make use of the existing CRA examination program and not place additional paperwork burdens on members.

Other financial institutions and several state agencies took the position that the concept of "community investment" should be more broadly interpreted than CRA, *i.e.*, that other civic activities, such as charitable works, should be given significance that they do not receive in the CRA examination process. Others suggested that members should be provided with lists of examples of "good" community investment activities, including participation in state and local housing finance programs.

Other commenters, including most community groups, were less sanguine about the use of existing CRA procedures. Lack of enforcement in the past, limited scope, failure to include significant public participation, and the preponderance of high CRA ratings were all mentioned as reasons to regard the ratings with skepticism. Comments by community groups stated that the requirement for the Finance Board to develop community support requirements was broader than CRA and first-time homebuyer programs, as evidenced by the language of the provision.

2. *Service*. The Advance Notice sought comments on how to best define

"service." The vast majority of the comments were divided between those suggesting that CRA was a sufficient measure since it includes community service and those suggesting that the definition should be as broad as possible. These suggestions made with regard to "service" closely parallel those made concerning the definition of community investment.

The comment letters that supported the exclusive use of CRA as the measure of community investment or service generally opposed the idea that the Finance Board or the FHL Banks review the assets held by a member or propound any listing of "approved" or "recommended" assets. One thrift institution suggested that the best measure of community service could be a member's use of existing FHL Bank programs for community investment and affordable housing.

One comment letter from a community group urged limiting the measure to lending activity and avoiding the inclusion of "anything that could be considered charity." Actual loan production data was suggested as the best measure by two comment letters from community groups. Several comment letters from community groups did recommend a review of members' portfolios of local loans and investments.

3. *Possible conflict with other provisions of FIRREA*. The Advance Notice noted that section 303 of FIRREA expanded the Qualified Thrift Lender ("QTL") test and that section 301 of FIRREA required new capital rules for thrifts. Comments were requested as to the impact of these and other regulatory changes on the ability of members to make community investment loans.

Of the approximately 28 comment letters that addressed this issue, one-half stated that the new rules, particularly the QTL test and increased capital requirements, were adversely affecting members' ability to make community loans. Other comment letters from a broad range of sources cited problems with (1) loans-to-one-borrower rules limiting the ability of members to lend for large multifamily projects, (2) capital rules adverse to multifamily rental projects, and (3) general shortages of capital for community support or any other purpose. Several letters, however, noted that the new QTL test provides specific favorable treatment for loans on residences affordable by low-income families, loans in areas designated as in need of additional financial services, and loans for churches, schools, nursing homes, and hospitals.

4. *Effect on discretionary members.* In the Advance Notice, the Finance Board sought advice on structuring the regulations so that they maximize the attractiveness of the FHL Bank System while providing a meaningful standard of community investment and service. The Finance Board noted that section 704 of FIRREA expanded eligibility for membership in the FHL Bank System to commercial banks and credit unions, which have recently and substantially expanded their commitment to the provision of residential mortgage credit. The standards for community investment and service would apply only to those banks and credit unions that elected to become FHL Bank System members.

More than 40 comment letters addressed the effect that the community support regulations might have on both mandatory and voluntary members. Most of these letters suggested that the existing advantages of FHL Bank System membership in assisting members in meeting community credit needs would certainly outweigh any adverse effect of the new community support regulations, provided that the regulations are pro-active in helping members improve and expand community activities rather than punitive and burdensome. Several letters discussed the use of positive incentives to offset any negative perceptions of the new regulations, as discussed in the next section.

Comment letters from community groups expressed the view that the Finance Board should limit its consideration to increasing community investment and allow Congress to correct any inequities. A number of industry comment letters argued that expanding membership is critical, but did state that all financial institutions should have the same requirements for community support. One commenter expanded this "level playing field" concept to include government sponsored enterprises, particularly the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

5. *Providing incentives for community-oriented lending.* The Finance Board requested comments on positive concepts and provisions that would provide incentives for FHL Bank System members to meet the credit needs of their communities. The majority of the comment letters stated that FHL Bank membership already offers a number of incentives, such as subsidized advances (Affordable Housing Program), discounted advances (Community Investment Program and

other FHL Bank funds), and technical assistance programs in community investment. Most letters supported the expansion and increased promotion of these existing programs. A handful of comments, apparently less familiar with the FHL Bank System, suggested establishing such incentives.

Additional incentives were discussed in approximately 20 comments. These were 2 general suggestions of tax relief and tax credits for community activities. One comment letter suggested that FHL Bank membership, in and of itself, should be awarded CRA "points."

A number of comment letters proposed special discounts on advances to members with outstanding records of community support. Several letters suggested that the discounts apply only to existing Affordable Housing, Community Investment, and special FHL Bank housing and development programs, but a number suggested that the discounts apply to all advances taken by the member with an outstanding record in the community. Most letters suggested the use of a CRA rating as the most practical measure for determining eligibility for special discounts. Monetary awards were also suggested by several commenters.

6. *Community Reinvestment Act issues.* The CRA issues raised in the Advance Notice and in the comment letters are largely discussed above in the discussion on community investment definitions and other subsections. With regard to institutions without CRA ratings, FHL Bank and other industry commenters suggested that members without CRA ratings be required to file an annual or periodic statement documenting community support. Several community group comment letters suggested requiring such reports from all members, because of the inadequacy of CRA as a true measure of community support.

7. *Home Mortgage Disclosure Act issues.* The Advance Notice sought comments on the consideration that should be given to HMDA data. Four comment letters opposed any use of HMDA data. More than 20 comments generally supported the use of HMDA data, with several community group comments adding that HMDA data is the best measure of an institution's community support performance. Fourteen letters noted that HMDA data is reviewed during the CRA examination and suggested that such use was sufficient.

8. *First-time homebuyers.* More than 40 comments addressed this issue. Three possible definitions of "first-time homebuyer" were suggested: the tax

code definition, the state mortgage revenue bond definition, and the National Affordable Housing Act definition.

Views regarding measurement in this category were divided. A number of thrift institutions suggested using a broad review of both marketing efforts and lending performed. Community groups, on the other hand, favored limiting consideration to actual loans to first-time homebuyers in low-income and minority neighborhoods, with little credit given for loans to such upwardly mobile groups as recent college graduates.

F. Analysis of Proposed Rulemaking

In developing the regulatory structure for this proposed rule-making, the Finance Board has been guided, in varying degrees, by the plain language of the statute, the record of Congressional intent, the comments received in response to the Advance Notice, and the realities of the present state of the thrift industry and the FHL Bank System.

Although the specific record of Congressional intent in Section 710 of FIRREA is limited, the record on related issues provides guidance as to the intent of Congress with respect to the role of the FHL Bank System and the thrift industry. FIRREA reaffirms the mission of the thrift industry as providing residential housing finance with management and financial policies that are consistent with safe, sound, and economic housing finance. The creation of the Affordable Housing Program and the Community Investment Program to expand FHL Bank community-oriented lending activities, place an emphasis on housing finance affordable for a broader range of income levels and on community development lending. In amending the CRA and HMDA, Congress also stressed the requirement that all financial institutions meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, minority individuals and neighborhoods, and rural areas.

1. *Proposed regulatory structure.* The implementation of community support standards will rely heavily on the FHL Banks, where credit decisions are made and interaction with members is routine. The Finance Board directly regulates only the FHL Banks. Other federal financial regulatory agencies have the statutory authority to examine and supervise individual member institutions, but the Finance Board does not have equivalent direct authority over individual member institutions.

Recognizing that economic conditions, housing finance needs, and internal operations vary from FHL Bank to FHL Bank, the proposed regulations would leave discretion with the FHL Banks in the implementation of the community support requirements. However, the requirements to establish and oversee minimum standards of community support will be uniform throughout the FHL Bank System and enforced by the Finance Board. The Finance Board anticipates, and will encourage, variety and innovation by the FHL Banks in the development and implementation of the pro-active aspects of the proposal, such as monetary incentives and technical assistance for members.

2. *Role of the CRA.* Section 710 of FIRREA expressly requires that the CRA performance of a member be one of the factors considered in evaluating the member's record of community support. Thus, the community support regulations may not rely entirely on CRA performance, but must consider other factors, including a member's record of lending to first-time homebuyers, as directed by the statute.

Congress seems to have intended that the Finance Board build upon the CRA in crafting the community support regulations. As pointed out repeatedly in the comment letters, in the complete CRA examination and rating process most elements relevant to community support, including HMDA data, are examined and considered by the financial regulatory agencies for each institution. Therefore, for the Finance Board to prescribe some form of second examination and rating procedure would be highly duplicative and wasteful of resources.

However, the Finance Board is mindful that the enforcement of the CRA prior to FIRREA was inconsistent. Pre-FIRREA CRA ratings may not always have been reliable indicators of how well an institution was meeting the credit needs of its community and, in any event, the ratings were not disclosed to the public. Therefore, the Finance Board plans to place principal reliance on post-FIRREA CRA ratings that are descriptive and available to the public.

Many members will not have a post-FIRREA CRA rating, because the ratings only apply to examinations commencing on or after July 1, 1990. In addition, some members of the FHL Bank System, e.g., credit unions, are not subject to the CRA. Therefore, the proposed regulations require each member to submit to its FHL Bank an annual statement of community support. For members with a post-FIRREA CRA rating, this annual submission will only

require the member to forward to its FHL Bank a copy (or a summary) of its current CRA statement (required to be kept in a public file by the CRA) and a copy of the public portion of its latest CRA rating. Members are encouraged but not required to submit any additional information for the FHL Bank to consider. For members not subject to the CRA or without a post-FIRREA CRA rating, the annual community support statement proposed herein will require an annual filing equivalent to a CRA statement. Members that are subject to the CRA but that have not been examined after July 1, 1990 will submit their current CRA statement (or a summary) and other evidence of their CRA activities.

The proposed regulations permit the FHL Banks and the Finance Board to review and re-evaluate CRA ratings to ensure that the rating is an accurate measure of the member's community support activities and programs. This provision is necessary because the CRA ratings do not change between examinations and occasionally do not accurately describe an institution's current level of community support.

3. *Incentives.* Many comment letters supported the concept of providing additional incentives to members to promote increased performance in community support and investment. Therefore, the proposed regulations would require each FHL Bank to develop incentives, monetary and other, appropriate to their membership and operations. The Finance Board intent is to further institutionalize community support in the business plans and operations of members.

4. *Technical assistance to members.* In keeping with the overall intent of Congress in FIRREA and broad support in the comment letters, the proposed regulations contain a number of requirements for the FHL Banks and the Finance Board to support the community-oriented lending efforts of FHL Bank System members. The assistance will come primarily from the FHL Banks so that it can be appropriately focused on district and local needs. Technical assistance may include such activities as community lending and affordable housing newsletters, conferences and speaking engagements, "network" development and referrals, member CRA program support, and publications. FHL Bank officials and the Community Investment Officers will assist members in outreach programs to non-profit housing developers, minority neighborhoods, and other institutions engaged in community development and affordable housing activities. FHL Banks will

provide members with examples and models of community support, practical suggestions for expanding work with non-profit developers and community groups, and outreach opportunities in low- and moderate-income neighborhoods with particular emphasis on minority and non-English speaking communities.

G. Request for Comments

The Finance Board requests comments from the public, the FHL Banks, their Advisory Councils, community or public interest groups, members of the FHL Bank System, other financial regulatory and housing agencies, and all other interested parties. All comments received before the deadline will be reviewed and considered. However, the Finance Board urges all interested parties to submit their comments early in the comment period. No extension of the deadline will be possible, because the Finance Board is expediting action on these regulations in order to meet the deadline imposed by FIRREA.

H. Regulatory Flexibility Act

Pursuant to section 3 of the Regulatory Flexibility Act, 5 USC 630, the Finance Board is providing the following regulatory flexibility analysis.

1. *Need for an objective of the rules.* As explained in the **SUPPLEMENTARY INFORMATION**, these Finance Board regulations are mandatory under FIRREA.

2. *Issues raised by commenters and agency assessment and response.* These issues are discussed in the **SUPPLEMENTARY INFORMATION**.

3. *Significant alternatives minimizing small-entity impact and response.* There are no alternatives that would be less burdensome in meeting the objectives discussed in the **SUPPLEMENTARY INFORMATION**.

List of Subjects in 12 CFR Part 936

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends chapter IX, Title 12, *Code of Federal Regulations*, by adding a new part 936, to read as follows:

PART 936—COMMUNITY SUPPORT REQUIREMENTS

- Sec.
- 936.1 Definitions.
 - 936.2 Statement of policy.
 - 936.3 Bank community investment assistance to members.
 - 936.4 Finance Board support of Bank activities.

Sec.
936.5 Bank review of member community activities.

936.6 Community support standards.

936.7 Incentive programs.

936.8 Restrictions on access to long-term advances.

936.9 Finance Board review and reporting.

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*; sec. 10, 47 Stat. 731, as amended (12 U.S.C. 1430); sec. 21B, as added by sec. 511, 103 Stat. 394 (12 U.S.C. 1441b).

§ 936.1 Definitions.

(a) *Area* means a metropolitan statistical area, a county, or a non-metropolitan area, as established by the U.S. Office of Management and Budget.

(b) *Affordable Housing Program* means the program required by Section 10(j) of the Federal Home Loan Bank Act and defined in 12 CFR part 960.

(c) *Bank(s)* means a Federal Home Loan Bank established under the authority of the Federal Home Loan Bank Act.

(d) *Finance Board* means the Federal Housing Finance Board or an official duly authorized to act on its behalf.

(e) *Community Investment Program* means the program(s) established by the Banks pursuant to section 10(i) of the Federal Home Loan Bank Act.

(f) *Community-Oriented Lending* means providing loans:

(1) To finance home purchases by families whose income does not exceed 115 percent of the median income for the area;

(2) To finance purchase and rehabilitation of housing for occupancy by families whose income does not exceed 115 percent of median income for the area;

(3) To finance commercial and economic development activities that benefit low- and moderate-income neighborhoods; and

(4) To finance projects that further a combination of the purposes described in paragraphs (f)(1) through (3) of this section.

(g) *Community Reinvestment Act Examination Rating or CRA Rating* means a rating assigned utilizing the four-tiered descriptive rating system as provided by the Uniform Interagency Community Reinvestment Act Final guidelines For Disclosure of Written Evaluations and Revised Assessment Rating System, approved on April 25, 1990, and effective July 1, 1990, as they may be amended from time to time. Copies of the Final Guidelines may be obtained from Federal Housing Finance Board, Housing Finance Directorate, 1777 F Street, NW., Washington, DC 20006.

(h) *First-Time Homebuyer* means an individual and his or her spouse who

have not owned a home during the 3-year period prior to purchase of a home, except that:

(1) Any individual who is a displaced homemaker may not be excluded from consideration as a first-time homebuyer on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse; and

(2) Any individual who is a single parent may not be excluded from consideration as a first-time homebuyer on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse.

See Pub. L. No. 101-625, Nov. 28, 1990 (12 U.S.C. 1715).

(i) *Long-Term Advance* means, for purposes of this part, an advance for a term in excess of one year, or the extension of a shorter term advance that results in the total term of the advance being in excess of one year.

(j) *Low-Income* means families and households whose income does not exceed 80 percent of the median income for the area.

(k) *Median Income* means the median family income for an area as determined and published by the U.S. Department of Housing and Urban Development. The data is available from HUD USER, P.O. Box 6091, Rockville, MD 20850.

(l) *Member* means an institution admitted to membership in a Federal Home Loan Bank.

(m) *Moderate-Income* means families and households whose income does not exceed 115 percent of the median income for the area.

(n) *Rural* means any open country, or any place, town, village, or city which is not part of or associated with an urban area and which: has a population not in excess of 2,500 inhabitants, or has a population in excess of 2,500 but not in excess of 10,000 if it is rural in character, or has a population in excess of 20,000 and is not contained within a standard metropolitan statistical area, and has a serious lack of mortgage credit for low- and moderate-income families, as determined by the Secretary of Agriculture and the Secretary of Housing and Urban Development. Any area classified as rural as a result of data received from or after the 1990 decennial census shall continue to be so classified until the receipt of data from the decennial census in the year 2000, if such area has a population in excess of 20,000 but not in excess of 25,000, is rural in character, and has a serious lack of mortgage credit for low- and moderate-income families. See 12 CFR 960.1(e).

(o) *Very Low-Income* means families and households whose income does not exceed 50 percent of the median income for the area.

§ 936.2 Statement of policy.

In this part, it is the purpose and policy of the Banks to:

(a) Provide funds to members for residential housing finance;

(b) Assure that member management and home financing policies are consistent with sound and economical home financing;

(c) Assist members in meeting the credit needs of the entire community where they do business, including low- and moderate-income neighborhoods, minority neighborhoods, and rural communities, consistent with safe and sound operation;

(d) Operate special financial and credit programs, such as the Affordable Housing and Community Investment Programs, to enhance the ability of members to provide community-oriented lending and affordable housing finance;

(e) Encourage members to address critical community investment and affordable housing needs in all areas, urban and rural;

(f) Treat community investment and affordable housing activities with equal priority as is given other credit activities of the Banks;

(g) Work in partnership with community groups, public interest organizations, individual citizens, and others in delivering financial services to all communities; and

(h) Advance high standards of community investment and service for members of Banks to maintain continued access to long-term advances.

§ 936.3 Bank community investment assistance to members.

(a) Each Bank shall provide timely notice to all members of offerings and activities of the Bank's Affordable Housing Program, Community Investment Program, and equivalent Bank programs to help members meet community investment and affordable housing finance needs.

(b) Not less than quarterly, the Bank's Community Investment Officers shall provide to all members a summary of community-oriented lending and affordable housing finance projects being undertaken by members within the Bank District. Information concerning activities of others may also be included. The purposes of the summary are to provide members with specific practical examples of innovative community-oriented lending and affordable housing finance, to

facilitate the exchange of expertise and experience in meeting community credit needs, and to promote an expanded awareness of business opportunities inherent in community revitalization, development, and growth.

(c) Community Investment Officers and other appropriate Bank officials shall establish and maintain technical assistance programs to support community-oriented lending by members, promotional activities, and outreach programs to:

(1) Promote the use or expanded use of long-term advances, both special and regular, for community-oriented lending and affordable housing finance;

(2) Identify opportunities for members to expand financial and credit services in neighborhoods and communities that are underserved, particularly low- and moderate-income areas, minority neighborhoods, and rural communities;

(3) Increase community awareness of the resources of the Federal Home Loan Bank System; and

(4) Provide technical assistance to individual members.

(d) Community Investment Officers shall work in partnership with their Bank's Advisory Council in developing and implementing initiatives to increase the use of long-term advances for community-oriented lending and affordable housing finance.

§ 936.4 Finance Board support for Bank activities.

(a) The Finance Board shall provide the Banks with access to CRA examination reports of members that are received from financial regulatory agencies and other information required to carry out Bank responsibilities under this part.

(b) The Finance Board shall facilitate the prompt dissemination of data and information to and among the Banks.

(c) The Finance Board shall provide technical assistance, training, and promotional assistance to the Banks.

(d) The Finance Board will work with financial regulatory agencies to facilitate national, state, and local efforts to promote and monitor community-oriented lending, community reinvestment, affordable housing finance, and financial services for all communities.

§ 936.5 Bank review of member community activities.

(a) On an annual basis on a date set by the Bank, each Bank shall request and each member shall submit to the Bank, a statement of community support. This statement shall include a copy or summary of the member's most recent CRA statement, a copy of its

most recent CRA rating, and any additional evidence of community support activities and record that the member chooses to submit, such as a description of special credit products for, and loan origination to, minority and first-time homebuyers. Members without a CRA rating, as defined in § 936.1(g) of this part, shall be required to submit to the Bank an annual statement of community support explaining the ways in which the member meets the objectives of the Community Reinvestment Act and otherwise helps meet the credit needs of its community, members, or customers.

(b) The Bank shall provide notice of receipt of members' community support statements to its Advisory Council and nonprofit and public interest organizations in the District. The notice shall include the member's most recent CRA rating. The entire community support statement need only be made available to the public upon request. Notice of availability to the public and a description of the request procedure shall be provided in the public notice.

(c) The Banks shall develop procedures that, at a minimum, enable the Banks to:

(1) Review the member's annual statement of community support to assess the member's performance in accordance with the measurement criteria of § 936.6 of this part;

(2) Determine whether a member continues to be eligible for access to long-term advances;

(3) Review a member's eligibility for special discounts and incentives available from the Bank;

(4) Refer a member for technical assistance by the Bank's Community Investment Officer or other appropriate Bank officials and departments;

(5) Review additional evidence of community support activities, or lack thereof, from the member or the public;

(6) Establish an open and fair review process to evaluate a member in accordance with § 936.6 of this part;

(7) Refer complaints concerning a member's community support activities to the appropriate regulatory agencies;

(8) Notify complainants of the disposition of their complaints; and

(9) Forward the results of the Bank's review of the member's community support performance to the Finance Board.

(d) Bank procedures should be developed in consultation with the Bank's Advisory Council established and maintained pursuant to § 936.14 of this chapter.

(e) A description of Bank procedures, a summary of activity in the preceding year, and projections for the coming

year, shall be included in the community investment activities section in the Bank's annual budget plan submitted for Finance Board approval. For calendar year 1991, interim plans shall be submitted for Finance Board approval within 60 days of the effective date of this Part.

§ 936.6 Community support standards.

(a) Annual statements of community support shall be reviewed by the Bank to determine:

(1) That the member's credit policies and lending practices are consistent with the intent and purpose of CRA;

(2) That the member serves the convenience and needs of each of the communities in which it does business or, in the case of institutions not subject to CRA, the convenience and needs of its markets, customers, and members;

(3) That the member has a satisfactory record of lending to first-time homebuyers;

(4) That the member helps meet the credit needs of its entire community, market, customers, and members, including low- and moderate-income neighborhoods and individuals, minority neighborhoods and individuals, and urban and rural communities.

(b) The Bank may review the CRA rating of a member, using the same review standards as it uses for reviewing annual statements of community support, to determine if the rating continues to be an accurate assessment of the member's community support activities for purpose of this part. Such reviews may be undertaken in cooperation with the member's regulator. Bank determinations shall be supported by reasonable evidence and be subject to Finance Board review and approval.

§ 936.7 Incentive programs.

(a) Within the limits of safe and sound financial operation, each Bank shall adopt, subject to Finance Board review and approval, an incentive program for community support by members. The community support incentive program shall include discounts and/or preferred terms on long-term advances, except Affordable Housing Program advances, for members with outstanding records of community support. The Bank may in its discretion include such other incentives as it may adopt, subject to Finance Board review and approval.

(b) In designing and modifying the community support incentive programs, the Bank shall consult with its Advisory Council.

(c) A Bank's community support incentive program shall be in addition to

and in further support of its Affordable Housing Program, Community Investment Program, and other special lending programs.

§ 936.8 Restrictions on access to long-term advances.

(a) No restrictions shall be placed on access to long-term advances by members with CRA ratings of "Outstanding" or "Satisfactory" or by members who have filed an annual statement of community support acceptable to the Bank, except as provided by § 936.8(e) of this part.

(b) Members with a CRA rating of "Needs to improve" or "Substantial noncompliance" shall be required within 30 days of notice received to submit to the Bank a community support action plan stating specific efforts that the member will undertake in the succeeding year to improve its community support activities to meet the requirements of this part. The plan shall include specific goals that the member has chosen to measure its performance under the plan.

(c) Members with a CRA rating of "Needs to improve" that fail to show demonstrable progress in community support activities after six months of experience with a plan shall only be allowed access to long-term advances for Community Investment Program and community-oriented lending purposes specifically approved by the Bank until the Bank recommends pursuant to § 936.8(i) of this part to the Finance Board that the member has made demonstrable progress in meeting the goals of its community support action plan.

(d) Members with a CRA rating of "Substantial noncompliance" shall only be allowed access to long-term advances for Community Investment Program and community-oriented lending purposes specifically approved by the Bank until the Bank recommends to the Finance Board, pursuant to § 936.8(i) of this part, that the member has made demonstrable progress in meeting the goals of its community support action plan.

(e) Members without a CRA rating that have not filed an annual statement of community support acceptable to the Bank and those CRA-rated members whose community support statements are found by the Bank to be unacceptable, shall be treated in the same manner as a member with a CRA rating of "Needs to improve" for purposes of this part.

(f) All members shall, at all times, be eligible to compete for the Affordable Housing Program as provided by part 960 of this chapter.

(g) Plans submitted by a member to a Bank shall include, at a minimum, the following elements:

(1) A statement of new and expanded community support activities that the member intends to undertake in the succeeding year;

(2) An explanation of how the plan meets the credit needs of the member's community or, in the case of credit unions, members;

(3) A statement of goals to be achieved at the end of the first six months of the plan and by the end of the first year of the plan; and

(4) A description of how the goals included in the action plan will be quantified and measured by the member, the Bank, its Advisory Council, the Finance Board, and the targeted communities.

(h) The Bank receiving the community support action plan from the member shall:

(1) Review the plan for completeness and appropriateness with regard to the member's community, or, in the case of credit unions, members;

(2) Establish, on at least a quarterly basis, a schedule of consultations with the member to review progress being made under the plan and the results achieved under the plan;

(3) Assist the member in establishing goals to be achieved for the member to have unrestricted access to long-term advances; and

(4) Forward a copy of the completed community support action plan and the Bank's recommendations to the Housing Finance Directorate of the Finance Board for review. The Finance Board shall approve or disapprove the Bank's recommendation within ten working days following receipt.

(i) The decision to permit a member subject to an action plan unlimited access to long-term advances shall be upon recommendation of the Bank based on a review of the member's record of community support, including loan products and originations, subject to Finance Board review and approval. Members, individuals and organizations in the member's community or, in the case of credit unions, customers, may be contacted by the Bank or the Finance Board for additional information concerning the member's community support activities.

(j) Restrictions in this § 936.8 may be waived by the Bank for reasons of financial safety and soundness upon a request by the member's financial regulator or other documented request by the member.

§ 936.9 Finance Board review and reporting.

(a) The Finance Board shall conduct an ongoing review of Bank programs to support community-oriented lending, affordable housing finance, and community investment activities by members.

(b) Bank community support programs and results shall be subject to examination by the Finance Board pursuant to 12 U.S.C. 1440.

(c) The Banks shall submit such program plans, operational assessments, and reports as the Finance Board may require from time to time or on a regular schedule.

(d) Pursuant to 12 U.S.C. 1430(j)(12) and 12 CFR 960.14, the Finance Board provides an annual report to Congress presenting the evaluations of the Advisory Councils to the Banks concerning the affordable housing activity of the Banks during the preceding year. Beginning with reports filed in 1992 and continuing each year thereafter, each Advisory Council will be encouraged to include an analysis of its Bank's community support activities in its report to the Finance Board. Beginning in 1992 and continuing each year thereafter, the annual Finance Board report to Congress shall include an analysis of Bank and Finance Board activity pursuant to the community support requirements of this part.

By the Federal Housing Finance Board.

J. Stephen Britt,

Executive Director.

[FR Doc. 91-13560 Filed 6-6-91; 8:45 am]

BILLING CODE 8725-01-M

OVERSIGHT BOARD

12 CFR Part 1507

Minority and Women Contracting Outreach Program

AGENCY: Oversight Board.

ACTION: Proposed rule

SUMMARY: This rule is proposed to establish in regulatory form an outreach program to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in contracts entered into by the Oversight Board. Its purpose is to implement section 1216(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). This action should ensure the participation of firms owned or controlled by minorities and women in Oversight Board contracting.

DATES: Comments must be received on or before July 8, 1991.

ADDRESSES: Comments may be mailed to Natalie Krivan, Oversight Board, 1777 F Street, NW., Washington, DC 20232.

FOR FURTHER INFORMATION CONTACT: Lawrence Hayes, Deputy General Counsel, telephone (202) 786-9681.

SUPPLEMENTARY INFORMATION:

Background

The Oversight Board was established as a corporate instrumentality of the United States by section 21A(a) of the Federal Home Loan Bank Act, 12 U.S.C. 1441a(a), added by section 501(a) of FIRREA. The Oversight Board's principal duty is to oversee the Resolution Trust Corporation ("RTC"), which was established under FIRREA principally to manage and resolve cases involving failing and failed thrift institutions. The Oversight Board develops and establishes overall strategies, policies, and goals for the RTC's activities, but does not exercise prior review, approval, or disapproval of the RTC's determinations and actions in case-specific matters involving individual case resolutions, asset liquidations, or the RTC's day-to-day operations.

Section 1216(c) of FIRREA requires the Oversight Board and other listed agencies, including the RTC, to "prescribe regulations to establish and oversee a minority outreach program within each such agency to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the agency with such persons or entities, public and private, in order to manage the institutions and their assets for which the agency is responsible or to perform such other functions authorized under any law applicable to such agency."

The Oversight Board has established a minority and women outreach program for the Board's own contracting and has authorized its publication in regulatory form for public comment.

Scope

The proposed rule sets forth the Oversight Board's outreach program, which includes the following elements: identification of minority and women owned firms capable of providing goods and services to the Oversight Board; certification of identified firms; promotion of the program; guidelines for the solicitation and award of contracts

that promote the participation of minority and women owned firms in Oversight Board contracting; and oversight and monitoring of the program.

The Oversight Board's outreach program applies only to the contracting activities of the Board and does not apply to the contracting activities of the RTC, which is required by section 1216(c) of FIRREA to establish and oversee its own separate minority and women outreach contracting program.

The Oversight Board's contracting is for the acquisition of goods and services for its housekeeping functions, such as contracts for the purchase of office supplies and the maintenance of office equipment. Oversight Board contracts are normally small in cost, typically less than \$25,000, and the total cost of all Oversight Board contracts from the enactment of FIRREA through May 31, 1991, has been less than \$2.1 million, excluding expenditures for travel, space, utilities, and reimbursement of other agencies.

Executive Order 12291 and the Regulatory Flexibility Act

This proposed rule concerns agency management. It is not a regulation or rule for the purposes of Executive Order No. 12291. Although the Oversight Board is soliciting public comments, the Board is not required by section 553 of title 5, United States Code, or any other law to publish a general notice of proposed rulemaking for this rule, and the Oversight Board is not required to prepare a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

List of Subjects in 12 CFR Part 1507

Government contracts, Minority businesses, Women.

For the reasons set forth in the preamble, it is proposed to amend chapter XV of title 12 of the Code of Federal Regulations by adding new part 1507 to subchapter A to read as follows:

PART 1507—MINORITY AND WOMEN CONTRACTING OUTREACH PROGRAM

Sec.

1507.1 Purpose and scope.

1507.2 Definitions.

1507.3 Organizational responsibilities and staffing.

1507.4 Program components.

1507.5 Promotion.

1507.8 Solicitation and contract award guidelines.

1507.9 Oversight and monitoring.

Authority: 12 U.S.C. 1441a(a)(13); Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, sec. 1216(c), 103 Stat. 183, 529 (12 U.S.C. 1833e).

§ 1507.1 Purpose and scope.

(a) Pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101-73, sec. 1216(c), 103 Stat. 183, 529 (12 U.S.C. 1833e), this part establishes a minority outreach program to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in all contracts entered into by the Oversight Board.

(b) The outreach program established by this part applies only to the contracting activities of the Oversight Board. The Oversight Board and the Resolution Trust Corporation are separate and distinct entities with different legal characteristics, contracting needs, and programs to perform their respective missions. Accordingly, this program does not cover the Resolution Trust Corporation, which has a separate outreach program.

§ 1507.2 Definitions.

For the purposes of this part:

(a) A *Minority/women owned business* or *M/WOB* or *M/WOB firm* means a firm that is at least fifty-one percent (51%) owned and controlled by one or more minority groups members and/or women. In the case of a publicly owned company, a minority/women owned group must own and control at least fifty-one percent (51%) of the firm's voting stock. Additionally, the management and daily business operations of the firm must be controlled by one or more minority group members and/or women if the firm is to be considered an eligible participant.

(b) *Minority* means any Black American, Native American, Hispanic American, or Asian American.

§ 1507.3 Organizational responsibilities and staffing.

The President of the Oversight Board shall appoint an Outreach Director, who shall be a full time officer or employee of the Oversight Board performing other duties for the Oversight Board (including a contracting officer), to establish and implement the program.

§ 1507.4 Program components.

(a) *Identification.* The first component of the program involves identifying M/WOB companies capable of providing goods and services to the Oversight Board. Because of the relatively small size of Oversight Board contracting activity, this "outreach" will be area-wide in scope, covering the Washington, DC area. Accomplishment of this segment of the program will involve the

following activities by Oversight Board staff:

(1) Obtaining lists and directories of M/WOB firms maintained by other governmental agencies and instrumentalities;

(2) Participating in conventions, seminars, and professional meetings comprising or attended by M/WOB firms to explain Oversight Board contracting opportunities and obtain names of potential M/WOB contractors; and

(3) Publicizing that the Oversight Board wants to obtain names of potential M/WOB firms for contracting in newspapers, trade journals, and other communications media specifically directed to M/WOB firms.

(b) *Solicitation.* Once prospective contractors have been identified, they will be included in all Oversight Board education and information efforts concerning contracting opportunities and the operation of the Oversight Board's contracting database. The database will be used by Oversight Board staff to identify firms to be solicited for Oversight Board procurements.

(c) *Certification.* Immediately following the identification of minority and women owned businesses, such firms must certify their status as eligible participants in the outreach program. To preserve the integrity and foster the objectives of the program, the Oversight Board must satisfy itself that the ownership and control requirements for participation in the outreach program are fulfilled by M/WOB firms.

Accomplishment of this segment of the program will involve the following:

(1) Developing certification procedures, including procedures for certifying M/WOB firms which have previously certified their status to other government agencies under criteria equivalent to the criteria under this program;

(2) Sending certification documentation to M/WOB firms for submission to the Oversight Board; and

(3) Reviewing certification documents to assure that participants are qualified for participation in the outreach program.

§ 1507.5 Promotion.

(a) This part of the outreach program will include:

(1) Ongoing promotion of the outreach program within the minority/women owned business community; and

(2) Ongoing promotion of the outreach program to firms interested in contracting with the Oversight Board which are not M/WOB firms ("non-M/WOB firms") to make such firms aware

of the Oversight Board outreach program requirements.

(b) Ongoing promotional of this program within the M/WOB community is necessary to assure awareness of the outreach program by all eligible participants, including newly formed M/WOB firms, in order to maximize participation in the program. Promotion of this program among M/WOB firms will be achieved by:

(1) Developing a promotional campaign to inform the M/WOB community of the Oversight Board's contracting needs and the Oversight Board's commitment to involving M/WOB firms in Oversight Board contracting;

(2) Regularly participating in conferences attended by M/WOB firms to promote Oversight Board contracting opportunities;

(3) Cooperating with local agencies devoted to the promotion of minority and women owned businesses to promote Oversight Board contracting opportunities;

(4) Assisting eligible M/WOB firms in understanding and complying with Oversight Board contracting requirements;

(5) Assisting eligible M/WOB firms in understanding the with Oversight Board's contracting needs; and

(6) Assuring that all Oversight Board staff are knowledgeable about and promote this program.

(c) Promotion of the Oversight Board outreach program to non-M/WOB firms interested in contracting with the Oversight Board is necessary to make such firms aware that under the outreach program the Oversight Board will ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, an entities owned by minorities and women, in all Oversight Board contracts, including contracts with non-M/WOB firms. Under this aspect of the program, the Oversight Board will inform firms that Oversight Board contract provisions will require the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, during contract performance. This aspect of the outreach program will be achieved by:

(1) Developing a promotional campaign to inform non-M/WOB firms interested in contracting with the Oversight Board of the Oversight Board's policies and procedures to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in all Oversight Board contracts;

(2) Assisting non-M/WOB firms in understanding and complying with Oversight Board contracting requirements respecting inclusion of minorities and women, and entities owned by minorities and women, to the maximum extent possible; and

(3) Assuring that all Oversight Board staff are knowledgeable about this aspect of the program.

§ 1507.8 Solicitation and contract award guidelines.

Oversight Board contracting should be carried out so that Oversight Board contracts are awarded to M/WOB firms, and non-M/WOB firms which provide opportunities, to the maximum extent possible, for minorities and women, and entities owned by minorities and women, in Oversight Board contracts. Accomplishment of this objective will involve formulating guidelines directed to this objective which include:

(a) Considering the capabilities of M/WOB firms in formulating acquisition strategies, including, but not limited to, determining delivery schedules and the time for submission of offers or bids to facilitate offers from M/WOB firms;

(b) Including M/WOB firms interested in participating in the program, and which are certified as eligible to participate, in the Board's contracting database, which will identify eligible firms in each service category;

(c) Soliciting as many bids or quotes from eligible M/WOB firms in the area-wide database for each acquisition as is feasible under the circumstances; the contracting officer should solicit offers from non-M/WOB firms as well, but in any acquisition for which the contracting officer does not solicit bids from eligible M/WOB firms, the contracting officer must document the reasons therefore;

(d) Placing notices of upcoming Oversight Board acquisitions in newspapers and communications media direct to M/WOB firms, where feasible, in instances where solicitations are publicly advertised;

(e) Developing necessary contract provisions to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in the performance of all Oversight Board contracts;

(f) Devoting necessary staff time and resources to an internal education program to raise the awareness of Oversight Board staff about the outreach program and the Oversight Board's commitment to maximizing the full participation of M/WOB firms, and non-M/WOB firms which provide opportunities, to the maximum extent

possible, for the inclusion of minorities and women, and entities owned by minorities and women, in Oversight Board contracting; and

(g) Developing any additional procedures necessary to effectuate the goals of the outreach program.

§ 1507.9 Oversight and monitoring.

The Oversight Board recognizes that the success of this program involves commitment and leadership by senior management. The Oversight Board pledges the continuing involvement of Oversight Board staff, at all levels, to make this program a success. In order to achieve the program's objectives, all contracting staff will report the results of the program to the Outreach Director, including the number of M/WOB firms participating in the contracting process, the number of contracts awarded to M/WOB firms, and data concerning the inclusion of minorities and women, and entities owned by minorities and women, in M/WOB and non-M/WOB contracts. The Outreach Director, in turn, will regularly report to the President and the General Counsel of the Oversight Board regarding implementation of the program. The President and General Counsel of the Oversight Board, in turn, shall report to the members of the Oversight Board, annually or more frequently, regarding the implementation of the program.

Peter Monroe,
President.

[FR Doc. 91-13496 Filed 6-6-91; 8:45 am]

BILLING CODE 2222-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AGL-5]

Proposed Transition Area Establishment; Harbor Springs, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Harbor Springs, MI, transition area. A VOR-A Standard Instrument Approach Procedure (SIAP) has been developed to serve Harbor Springs Airport. The SIAP is predicted on the Pellston VORTAC. This proposed action would lower the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of the airport. The intended effect is to ensure segregation of the aircraft using approach procedures in instrument

conditions from other aircraft operating under visual weather conditions in controlled airspace. If approved, concurrent with the SIAP publication, the operating status of the airport will change from visual flight rules (VFR) to instrument flight rules (IFR).

DATES: Comments must be received on or before July 12, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Attn: Rules Docket No. 91-AGL-5, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Angeline Perri, Air Traffic Division, System Management Branch, Airspace Section, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7571.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-AGL-5". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available

for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel 2300 East Devon Avenue, Des Plaines, Illinois both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area airspace near Harbor Springs, MI. The transition area is being established to accommodate a new VOR-A SIAP to Harbor Springs Airport, Harbor Springs, MI. This action would lower the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of Harbor Springs Airport. If approved, the operating status of the airport would change from VFR to IFR concurrent with the SIAP publication.

The development of the procedure requires that the FAA establish the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated September 4, 1990.

The FAA had 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 the 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 Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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:

Harbor Springs, MI [New]

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Harbor Springs Airport (lat. 45°25'29" N., long. 84°54'34" W.); excluding that airspace within the Pellston, MI, control zone and transition area.

Issued in Des Plaines, Illinois on May 28, 1991.

Teddy W. Burcham,
Manager, Air Traffic Division.

[FR Doc. 91-13512 Filed 6-8-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 90-ANM-10]

Proposed Establishment of Temporary Restricted Area R-3203D Boise, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish temporary Restricted Area R-3203D Boise, ID, for the period August 3-17, 1991. The Idaho National Guard has requested the establishment of this temporary area to provide essential ground maneuvering space needed to meet increased annual training

requirements. This temporary area would be established adjacent to an existing Restricted Area R-3203A Boise, ID.

DATES: Comments must be received on or before July 8, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM-500 Docket No. 90-ANM-10, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055-4056.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 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:

Rob Bellamy, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9328.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposal. Send comments on environmental and land use aspects to: Deputy Chief of Staff Engineering, P.O. Box 45, Boise, ID 83707-4515. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ANM-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments

submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to establish temporary Restricted Area R-3203D Boise, ID, adjacent to the existing Restricted Area R-3203A, in order to provide additional ground maneuvering space needed by the Idaho Army National Guard in conducting its annual training program. The proposed restricted area would be in effect only for the period August 3-17, 1991. Expansion in the number of gun batteries assigned to Field Artillery units, along with requirements that each assigned battery accomplish several moves per day to different surface firing points has created the need to temporarily expand the available restricted airspace to provide for more effective training. All artillery firing will be directed into the existing Artillery Impact Area located approximately in the center of Restricted Area R-3203A. The temporary restricted area is needed to provide protected airspace to contain the projectiles during flight between the surface firing point and entry into the existing Restricted Area R-3203A. The proposed temporary area would be used for Idaho National Guard Field Artillery firing and would be released to the Federal Aviation Administration for public use during periods it is not required for military training. Section 73.32 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

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.

Environmental Review

The temporary restricted area proposed in this action would be in effect only from August 3 to August 17, 1991. The temporary restricted area, if established, would prohibit the flight of nonparticipating aircraft through the area, but would not direct nonparticipating aircraft to operate in any set or established route outside the restricted area. The National Guard Bureau and the Idaho National Guard (Guard) completed a Final Environmental Impact Statement on the Orchard Training Area Facilities and examined the environmental effects associated with the type of activity taking place within the restricted area. The Guard determined that none of the impacts of the actions occurring within the restricted area would significantly affect the environment. Finding that the proposed firing points in the proposed temporary restricted area would be farther from nesting areas, that the projectiles would be fired into existing artillery impact areas, and that noise impacts would be no greater than that currently caused by the existing firing points in the restricted area, the Guard determined that all of the possible environmental impacts of the proposed temporary restricted area were addressed in the Final Environmental Impact Statement. For more information concerning the Guard's finding, see the Airspace Docket.

Regulations of the Council of Environmental Quality provide for initiation of environmental review of agency actions at the earliest possible time in the agency decision-making process. Therefore, the FAA requests comments on the potential environmental effects, if any, of this proposed rule. These comments will be considered by the FAA in completing its environmental review of the proposal. This environmental review will be

completed prior to the FAA rendering a final decision on the proposed rule.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 73 of the Federal Aviation Regulations (14 CFR part 73) as follows:

PART 73—SPECIAL USE AIRSPACE

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

Authority: 49 U.S.C. 1348(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.32 [Amended]

2. § 73.32 is amended as follows:

R-3203D Boise, ID [New]

Boundaries. Beginning at lat. 43°14'00" N., long. 116°16'30" W.; to lat. 43°17'51" N., long. 116°16'25" W.; to lat. 43°19'02" N., long. 116°14'45" W.; to lat. 43°19'02" N., long. 116°06'36" W.; to lat. 43°15'39" N., long. 116°00'39" W.; to lat. 43°15'00" N., long. 116°01'00" W.; to lat. 43°17'00" N., long. 116°05'00" W.; to lat. 43°17'00" N., long. 116°12'00" W.; to the point of beginning.

Altitudes. Surface to 10,000 feet MSL.
Times of use. As scheduled by NOTAM 24 hours in advance for the period August 3-17, 1991, only. Restricted area void after 2359 hours local time on August 17, 1991.

Controlling agency. FAA, Salt Lake City ARTCC.

Using agency. Army National Guard, Orchard, ID.

Issued in Washington, DC, on May 30, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-13511 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 100

CGD7 91-52

Regatta: Tampa Powerboat Challenge, Tampa Bay, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering adopting special local regulations for the Tampa Powerboat Challenge. This event will be held on Saturday, October 12 and Sunday, October 13, 1991 between 10 a.m. EDT and 7 p.m. EDT. The proposal is necessary to provide for the safety of

life on navigable waters during the event.

EFFECTIVE DATES: Comments must be received on or before July 8, 1991.

FOR FURTHER INFORMATION CONTACT:

LT G.R. Johnson, Coast Guard Group St Petersburg, FL at (813) 824-7533

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD7 91-52) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comment received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LT G.R. Johnson, project officer for Group St. Petersburg and LT G.G. Tanos, project attorney, Seventh Coast Guard District.

Discussion of Proposed Regulations

There will be approximately 40 power boats, ranging from 13 to 16 feet in length, engaged in tunnel boat racing around a one mile rectangular course. Seddon Channel will be closed to all marine traffic not participating in the race from the southern end of Harbour Island to the Platt Street Bridge. Traffic will be permitted to transit under the Platt Street Bridge in a southbound direction for transit around Davis Island. These proposed regulations are needed to provide for the safety of life during the Tampa Powerboat Challenge.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 CFR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the Seddon Channel area is primarily residential there will be no substantial interference with commercial traffic. Since the impact of this proposal is expected to be

minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations, as follows:

PART 100 [AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.35—TO752 is added to read as follows:

§ 100.35—TO752 Tampa Powerboat Challenge, Tampa Bay, Florida.

(a) *Regulated Area:* Seddon Channel is closed to all marine traffic not involved in the race from the southern end of Harbour Island to the Platt Street Bridge during the Tampa Powerboat Challenge. Traffic will be permitted to transit under the Platt Street Bridge in a southbound direction for transit around Davis Island.

(b) *Effective Dates:* This regulation becomes effective on: Saturday, October 12, 1991, at 9:30 a.m. EDT and terminates at 7:30 p.m. EDT; Sunday, October 13, 1991, at 9:30 a.m. EDT and terminates at 7:30 p.m. EDT.

(c) After termination of the Tampa Powerboat Challenge for each day, all vessels may resume normal operations.

Dated: May 24, 1991.

N.T. Saunders,

*Captain, U.S. Coast Guard, Commander,
Seventh Coast Guard District Acting.*

[FR Doc. 91-13576 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR PART 117

[CGD8-91-11]

Drawbridge Operation Regulations; Falgout Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the swing span bridge on LA 315, across Falgout Canal, mile 3.1, near Theriot, Terrebonne Parish, Louisiana, by permitting the draw to remain closed to navigation from 7 a.m. to 8 a.m. and from 3 p.m. to 4 p.m. on weekdays only, except holidays, and only during the months when local schools are in session. The primary purpose of this regulation is to provide school bus traffic undelayed passage during the school year. Presently, the draw opens on signal at all times.

This action will accommodate the needs of local school bus traffic and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before July 22, 1991.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130-3396. The Comments and other materials referenced in this notice will be available for inspection and copying in room 1115 at this address. Normal office hours are between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT J.A. Wilson, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed to navigation position is 4.4 feet above high tide and 7.4 feet above low tide. Navigation through the bridge consists of tugs with tows, commercial fishing vessels and recreational craft. Data submitted by LDOTD show that from 7 a.m. to 8 a.m. and from 3 p.m. to 4 p.m., Monday through Friday, about 1.17 vessels pass the bridge per hour. During this same period, twelve school buses and approximately 200 vehicles cross the bridge. The few vessels that pass the bridge during the proposed regulated period should be able to plan their arrival at the bridge to avoid the scheduled closings with little or no inconvenience or added expense to them. This new regulation would become effective on August 15 and remain in effect through June 5. During summer months the regulation will not be in effect. This regulation will be of great benefit to the school bus operators, school children, motorists, and pedestrians in the community that use the bridge, and have no significant impact on navigation.

Federalism,

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that during the proposed regulated period there will be very little inconvenience to vessels using the waterway. In addition, mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrivals to avoid the proposed regulated periods should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.s.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking document.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.444 is added to read as follows:

§ 117.444 Falgout Canal.

The draw of the LA 315 bridge across Falgout Canal, mile 3.1, shall open on signal; except that from 15 August to 5 June, the draw need not be opened from 7 a.m. to 8 a.m. and from 3 p.m. to 4 p.m., Monday through Friday except holidays. The draw shall open on signal at any time for an emergency aboard a vessel.

Dated: May 24, 1991.

J.M. Loy,

Rear Admiral, U.S. Coast Guard Commander,
Eighth Coast Guard District.

[FR Doc. 91-13575 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3962-5]

40 CFR Part 52**Approval and Promulgation of Implementation Plans; Illinois**

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule (II 11-1-5124).

SUMMARY: USEPA is proposing to approve a request by Illinois to revise its State Implementation Plan (SIP) for ozone. This revision will reduce emissions of volatile organic compounds (VOC) from gasoline by requiring the reduction of its Reid Vapor Pressure

(RVP) from June 1 to September 15, 1991. The intended effect of this action is to make reasonable further progress towards attainment of the ozone National Ambient Air Quality Standard (NAAQS) as expeditiously as practicable, as required under the Clean Air Act.

DATES: Comments must be received by July 8, 1991.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano at (312) 886-6036, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Regulation Development Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to: Jay Bortzer, Chief, Regulation Development Section, Regulation Development Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano or Cheryl Newton at (312) 886-6036 or 886-6081.

SUPPLEMENTARY INFORMATION: On February 15, 1991, the Illinois Environmental Protection Agency (IEPA) submitted a revision to its SIP to USEPA that revises Subpart Y: Gasoline Distribution, title 35 of the Illinois Administrative Code (IAC). Subpart Y, § 215.585, entitled "Gasoline Volatility Standards," prohibits persons from selling, supplying, or transporting from a bulk plant or terminal for use in Illinois, gasoline having an RVP greater than 9.0 pounds per square inch (psi), from June 1 through September 15, 1991.¹

Background

On April 27, 1989, the Illinois Pollution Control Board (Board) accepted for hearing a proposed rule submitted by the Chicago Lung Association which limits the RVP of gasoline sold in Illinois during the applicable control period to 9.0 psi beginning in 1990. During the course of its rulemaking action, the Board split the gasoline volatility rule docket into two separate proposals, Docket (A) and Docket (B). In Docket (A) (R88-30(A)), the Board proposed a

¹ It should be noted that although the control period in the State's rule is from June 1 through September 15, 1991, under the preemption provisions of section 211(c)(4)(C) the State's rule will not be effective until its approval by USEPA.

9.5 psi volatility limitation statewide between July 1 and August 31 of each summer, beginning in 1990, and determined that an economic impact study need not be conducted. In Docket (B) (R88-30(B)), which proceeded on a separate track, the Board considered a 9.0 psi volatility limitation statewide; however, an economic impact study was required. On February 15, 1990, the Board adopted R88-30(A) as an amendment (§ 215.585) to Subpart Y: Gasoline Distribution, title 35 of the IAC through emergency rulemaking procedures. This regulation prohibited persons from selling, supplying, or transporting for use in Illinois gasoline from a bulk plant or terminal having an RVP greater than 9.5 pounds per square inch from July 1 through August 31, beginning in 1990. Illinois adopted revisions to the rule which were necessary for federal approval on March 22, 1990.² Illinois submitted these rules on April 6, 1990, and May 4, 1990, respectively.³ On July 18, 1990, (55 FR 29200) USEPA approved Board's rule, as revised, for the period in which it was in effect.

As a result of the provisions of the emergency rulemaking, the State of Illinois was in a position whereby gasoline volatility in the summer of 1991 was left unregulated with the exception of the Federal Phase I standard of 10.5 psi. Phase II of the Federal fuel volatility standard will require 9.0 psi gasoline throughout the State of Illinois beginning in 1992. Therefore, on July 19, 1990, the Board initiated proposal R88-30(B) requiring a summertime gasoline volatility of 9.0 psi beginning in 1991. On January 10, 1991, following public hearings and comment periods, the Board adopted R88-30(B) and it is this regulation upon which USEPA is proposing action today.

Federal Preemption

On March 22, 1989, USEPA published a notice (54 FR 11868) taking final action on Phase I of the national regulation of RVP, to take effect beginning in 1989.

² The revisions addressed two deficiencies noted by USEPA and corrected language in two other subsections where the February 15, 1990 rule, as published, inadvertently contained language from the first notice, rather than the final adopted rule.

³ Pursuant to section 27(c) of the (Illinois) Environmental Protection Act and section 5.02 of the Illinois Administrative Procedure Act, the Board adopted R88-30(A) as temporary emergency rule for 150 days without utilizing the usual rulemaking procedural steps. In this case, the 150 days encompassed the regulatory control period of July and August of 1990 and allowed time for further consideration of volatility regulations for implementation in 1991. An economic impact study was completed on R88-30(B) and it is this rule, applicable for 1991, that is being acted upon today.

The maximum allowable summertime RVP in Illinois under Phase I of the Federal regulation is 10.5 psi. (During July and August, the maximum allowable RVP in Illinois south of 40 degrees latitude is 9.5 psi.) Phase II of the Federal regulation was published on June 11, 1990, (55 FR 23657). Under Phase II of the Federal regulation, the maximum allowable summertime RVP in Illinois beginning in 1992 is 9.0 psi.

The USEPA regulation would normally preempt the State provision under section 211(c)(4) of the Clean Air Act (Act). However, section 211(c)(4)(C) of the Act provides for approval of State control of fuel or fuel additives if the control is part of the SIP and it is necessary to achieve the primary or secondary NAAQS for which the plan is in effect.

Criteria for Approval

Section 211(c)(4)(A) of the Act, in describing Federal preemption authority, states:

Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for the purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine—(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his findings in the Federal Register, or (ii) if the Administrator has prescribed under paragraph (1) a control or prohibition applicable to such fuel or fuel additive, unless (the) State prohibition or control is identical to the prohibition or control prescribed by the administrator.

Thus, in light of the Federal volatility rules, State control would normally be preempted. However, USEPA may still approve certain State provisions for limits on RVP of fuel where a finding under section 211(c)(4) is made which would authorize USEPA approval and, thus, eliminate the preemption problem. As set forth below, section 211(c)(4)(C) authorizes USEPA to approve into the SIP a State-adopted fuel control measure that would otherwise be preempted by USEPA national action if USEPA finds that the State control "is necessary to achieve" the standard that the SIP implements.

Section 211(c)(4)(C) of the Act, in setting forth the circumstances under which an exception to Federal preemption of State regulation may occur, states:

A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under

Section 110 so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements.

In the August 1, 1988, Federal Register (53 FR 30220) discussion of USEPA's approval of a State oxygenated fuels program in the Maricopa County, Arizona, SIP, USEPA interpreted this language as requiring the Agency to find that a fuel control requirement was essential to achieve timely attainment of the primary standard for carbon monoxide. USEPA said further that a fuel control measure may be "necessary" for timely attainment (1) if no other measures that would bring about timely attainment exist, or (2) if such other measures do exist and are technically possible to implement, but are unreasonable or impracticable.⁴ Otherwise, no fuel control would ever be "necessary," since for any area there is at least one measure—namely, required shutdowns and prohibitions on driving—that would result in timely attainment of the NAAQS. It is doubtful that Congress would have intended to bar USEPA from approving State fuel controls into a SIP based on the availability of such drastic alternatives.⁵

USEPA has since taken action on numerous State RVP control measures based on its findings in the Maricopa County, Arizona, rulemaking, including Massachusetts (May 4, 1989, 54 FR 19173), Rhode Island and Connecticut (June 2, 1989, 54 FR 23650), New Jersey (June 16, 1989, 54 FR 25572), New York (June 21, 1989, 54 FR 26030), and, as mentioned previously, Illinois (July 18, 1990, 55 FR 29200). The Illinois regulation being addressed today serves to strengthen and extend the previous rule.

Evaluation of How the Illinois Revision Satisfies the "Necessary" Criterion

As a result of a suit filed by the State of Wisconsin under Section 304 of the Act (See 55 FR 20606), on January 18, 1989, USEPA was ordered to develop a Federal Implementation Plan (FIP) for the northeastern Illinois and northwestern Indiana portions of the Chicago-Gary-Lake County (IL), IL-IN-

⁴ Although the 9th Circuit Court of Appeals vacated this SIP approval on other grounds, the Court did not comment adversely on USEPA's findings related to Federal preemption. (See *Delaney v. USEPA*, 9th Cir. No. 88-7368, Slip Op., March 1, 1990.)

⁵ The 1990 amendments to the Clean Air Act specifically incorporate these concepts into amended section 211(c)(4)(C).

WI Consolidated Metropolitan Statistical Area. During negotiations that eventually resulted in a settlement agreement, USEPA proceeded to initiate work on a FIP on a schedule to meet the Court's original deadline. On July 11, 1989, USEPA published a Federal Register notice (54 FR 29063) containing a 1988 emissions inventory for the Chicago area and an Empirical Kinetic Modeling Approach (EKMA) modeling analysis of the area which predicted the level of emission reductions needed to achieve the ozone NAAQS. The EKMA modeling analysis indicates a VOC emission reduction target of 71 percent of the 1988 base year inventory.⁶

According to the State's submittal which utilized USEPA's MOBILE4 emission factor model for motor vehicle emissions, the 1988 statewide VOC emissions from gasoline related point, area, and mobile sources were approximately 2,012 tons per summer day (TPD). In 1989, when USEPA's Phase I rule went into effect, VOC emissions dropped to 1,549, TPD. In 1990, under the State's emergency rule, emissions fell to 1,279 TPD. In 1991, without the Docket B proposal, USEPA Phase I RVP limits would be in effect and the emissions are estimated to be 1,432 TPD. If the Docket B proposal is enacted, however, reducing the volatility of gasoline from 10.5 to 9.0 from June 1 to September 15, 1991, VOC emissions would be approximately 1,129 TPD, a reduction of over 300 TPD, or 15 percent of the 1988 statewide VOC gasoline-related emissions inventory. For the Chicago area, gasoline-related emissions under the Board's rule would drop from 850 TPD to 630 TPD. This reduction estimate amounts to approximately 8.7 percent of the total 1988 VOC inventory in the Chicago area as determined during the preparation of the FIP.

The VOC strategies identified by USEPA during development of the ozone FIP for the Chicago CMSA as having the greatest potential for significant future VOC reductions are:

| Measure | Tons reduced (TPD) ^a | Percent of 1988 Chicago area inventory |
|---------------------------------------|---------------------------------|--|
| Reducing RVP from 10.5 to 9.0..... | 220.7 | 8.7 |
| Generic rule for non-CTG sources..... | 131.5 | 5.2 |

⁶ As part of the settlement agreement, a more sophisticated air quality modeling study is being conducted in the Chicago area over a four year period. However, USEPA is rulemaking on a State's volatility regulation using the best information currently available.

| Measure | Tons reduced (TPD) ⁷ | Percent of 1988 Chicago area inventory |
|---|---------------------------------|--|
| Motor vehicle and mobile equipment non-assembly coating operations..... | 47.1 | 1.8 |
| Automobile refueling (Stage II)..... | 37.7 | 1.5 |
| Architectural surface coatings..... | 38.9 | 1.5 |
| Volatile Organic Liquid Storage..... | 33.3 | 1.3 |
| Surface coating of miscellaneous metal parts and products..... | 29.8 | 1.2 |
| Surface coating of paper, fabric and film..... | 22.5 | 0.9 |
| Graphic Arts..... | 15.4 | 0.6 |
| Solvent metal cleaning..... | 8.2 | 0.3 |
| Petroleum refinery wastewater treatment..... | 3.2 | 0.1 |
| Total..... | 590.8 | 23.1 |

⁷ Reductions reflect the cumulative benefit of each measure in the near term (i.e., reductions achieved by the year 1995 relative to the 1988 base year levels.) The emission reductions are based on 100 percent rule effectiveness. Actual effectiveness for certain rules may vary between 80 and 100 percent, and the potential emission reductions would be lessened accordingly.

No other possible categories of available controls individually appear to yield reductions of more than one percent of the 1988 VOC inventory. Further, the cumulative total of: (1) The other control strategies, if found practicable, (2) the above controls, if all controls were 100 percent effective, and (3) existing control programs (i.e., USEPA's Federal Motor Vehicle Control Program, Phase I National RVP control, and the recently promulgated National Emission Standard for Hazardous Air Pollutants for benzene (54 FR 38044)) yield approximately a 47 percent reduction. This leaves at least a 24 percent shortfall from the reduction target of 71 percent noted above.

The State regulation to reduce RVP to 9.0 psi from the current Federal limit of 10.5 psi from June 1 to September 15, 1991 would obtain reductions of approximately 300 TPD Statewide and 220 TPD in the Chicago area. Therefore, even with USEPA's Phase II RVP regulation requiring control to 9.0 psi beginning in 1992, the State regulation will still have a significant impact. It will provide approximately an additional 15.0 percent reduction in gasoline-related VOC emissions Statewide during 1991 beyond the current Federal reduction, based on the 1988 emissions inventory.

Thus, Illinois' RVP program meets the appropriate test of being "necessary" to achieve attainment of the ozone NAAQS. The fact that the State RVP regulation might not by itself fill the

remaining shortfall, and hence, by itself achieve the standard, does not mean the rule would not be "necessary" to achieve the standard within the meaning of section 211(c)(4)(C).

USEPA believes that if Congress had intended USEPA to approve a State fuel-content rule only if it were necessary and sufficient to achieve the standard, then it would have used that language in section 211(c)(4)(C). USEPA believes that the "necessary to achieve" standard must be interpreted to apply to measures which are needed to reduce ambient levels (thus bringing the area closer to achieving the NAAQS) when no other reasonable measures are available to achieve this reduction. A contrary application of "necessary to achieve" in this situation would mean that measures which result in significantly improved air quality are nonetheless unacceptable (even though no other reasonable measures are available) just because they are insufficient to actually result in attainment.⁸

Necessity of State-wide Regulation

Illinois' submittal demonstrated that the State must apply the RVP rule on a state-wide basis for several reasons. Two urban areas of the State are now classified as nonattainment. Because the nonattainment areas are located geographically in different portions of the State, Illinois logistically had to make the rule apply on a state-wide basis in order to maximize the use of 9.0 RVP gasoline and insure compliance in the nonattainment area without producing supply and distribution problems throughout the State.

While the benefits associated with controlling VOC emissions in nonattainment areas are apparent, reducing these emissions in attainment areas are also beneficial. Ozone is a regional concern because VOC emissions originating in one area may be transported through the atmosphere and adversely affect air quality in another area. This phenomenon may cause VOC emissions in attainment areas to increase ozone levels in nonattainment areas—such as the Chicago area or the Metro-East area of the State near St. Louis, Missouri.

Thus, reducing VOC emissions in attainment areas may help reduce ozone levels in nonattainment areas. USEPA's evaluation of this SIP is presented in the Technical Support Document (TSD) that is available for public inspection at the

⁸ The 1990 Amendments to the Clean Air Act specifically state that USEPA can approve a SIP revision under section 211(c)(4)(C) even in the absence of an attainment demonstration.

Regional Office listed in the **ADDRESS** section of this document.

Enforceability

In its comments to the Board, the State has committed to perform RVP inspection at all the refineries, gasoline terminals and bulk storage facilities in the State and 15 percent (about 500) of the service stations in the Chicago and Metro-East St. Louis nonattainment counties. Depending upon how much of the analytical laboratory work is contracted out, the State estimates the cost of the enforcement program to be between \$450,000 and \$600,000. USEPA finds these commitments to be acceptable.

Proposed Rulemaking Action

USEPA is proposing to approve this revision to the Illinois SIP for ozone to control gasoline volatility. USEPA is also proposing to make a finding that this SIP revision meets the requirements of section 211(c)(4)(C) of the Act for an exception to Federal preemption.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

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

List of Subjects in 40 CFR Part 152

Air Pollution Control, Environmental Protection Agency, Hydrocarbons, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401-7642.

Identification of Action: Proposed Rule incorporating a seasonal Gasoline Volatility Restriction on the Illinois SIP IL 11-1-5124.

Dated: April 19, 1991.

Ralph Bauer,

Deputy Regional Adm.

[FR Doc. 91-13526 Filed 6-6-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 91-24]

Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade

AGENCY: Federal Maritime Commission.
ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission, in response to apparent unfavorable conditions in the foreign oceanborne trade between the United

States and Korea, proposes the imposition of fees on Korean-flag vessels calling at United States ports. Korean law and regulations preclude U.S. carriers operating in the U.S./Korea trade from engaging in trucking activities and directly contracting for rail services in Korea. The effect of the rule will be to adjust or meet unfavorable conditions created by those laws and regulations by imposing countervailing burdens on the Korean-flag carriers.

DATES: Comments due on or before August 2, 1991.

ADDRESSES: Send comments to:

Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION:

Background

Section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) ("section 19"), authorizes and directs the Federal Maritime Commission ("Commission" or "FMC") to—

make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitations, forwarding and agency services, non-vessel-operating common carrier operations, and other activities and services integral to transportation systems, and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country * * *.¹

The rules and regulations the Commission is authorized to make include limitation of sailings, suspension of carriers' tariffs or rights to use conference tariffs, suspension of carriers' rights to operate under FMC-filed terminal and other agreements, fees of up to \$1,000,000 per voyage, or

any other action deemed necessary and appropriate to adjust or meet the unfavorable condition. 46 U.S.C. app. 876(9).²

The Commission has been closely monitoring the commercial and inter-governmental negotiations over the concerns of U.S.-flag carriers in the oceanborne trade ("Trade") between the United States and the Republic of Korea ("ROK" and "Korea"), including U.S.-ROK discussions held in June 1990 and January 1991. The Commission has also inquired directly of U.S. and Korean carriers in the Trade, via the reporting mechanisms of section 10002(d) of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a ("FSPA"), and section 15 of the Shipping Act of 1984, 46 U.S.C. app. 1714 ("1984 Act") as to ROK restrictions on U.S. carrier operations in the Trade. Section 15 Orders were issued regarding Korean restrictions on April 14, 1987; notices requesting supplemental information were issued on March 28, 1988, and August 23, 1988; and information demand orders pursuant to the FSPA and the 1984 Act were issued on November 29, 1990 ("November 1990 Orders").³

Discussion

The Commission has concluded, on the basis of information reported and comments received,⁴ that despite the commercial and governmental efforts expended, assurances made, and time elapsed, it appears that restrictive practices continue to impede the Trade such that Commission action can no longer be postponed. The Commission has determined that rules to meet these conditions are therefore appropriate. Specifically, the Commission finds that by operation of Korean laws and regulations, U.S. carriers appear to be precluded from operating trucking activities in Korea and from directly contracting for rail services in Korea as part of intermodal movements in the Trade. To this end, the Commission is proposing herein ("Proposed Rule") that certain Korean-flag carriers pay a fee of \$100,000 per voyage, upon delivering cargo to or receiving cargo at U.S. ports.

² Paragraph 9 was also added by the 1990 section 19 Amendments.

³ The November 1990 Orders were issued to Hanjin Shipping Company, Ltd. ("Hanjin"), Hyundai Merchant Marine Co., Ltd. ("Hyundai"), American President Lines, Ltd. ("APL"), and Sea-Land Service, Inc. ("Sea-Land").

⁴ The Commission received reports from Hanjin, Hyundai, APL and Sea-Land, as well as comments from the Council of European and Japanese National Shipowners' Associations ("CENSA") and An-Mar International. The latter were in response to a Commission Notice published in the Federal Register on December 5, 1990.

Trucking

The information available to the Commission indicates that trucking rights of U.S. carriers continue to be impeded by the ROK through its Ministry of Transport ("MOT") and Ministry of Finance ("MOF"). It is the Commission's understanding that an MOT license to engage in trucking operations in Korea is not obtainable because of MOF guidelines, which list freight trucking among business categories in which foreign investment is prohibited.

The Korean-carrier responses to the November 1990 Orders confirm not only the existence of this restriction but also the fact that the MOT is empowered but has as yet failed to take action to resolve the matter. Hanjin explained that "trucking operations by U.S.-flag carriers have been restricted in Korean on grounds that the Korean trucking industry is in a weak condition." Hanjin Report at 2.⁵ Hanjin asserted there has been "gradual progress toward the opening of trucking operations in Korea," and that the ROK "intends to permit foreign carriers, including U.S. carriers, to participate in shuttle trucking between on-dock terminal and off-dock CY or rail ramp in the Port of Pusan * * *." Hanjin Report at 2. Hyundai stated that the MOT "has taken this matter under consideration" and that the ROK "has been trying to solve this problem" since the June 1990 maritime consultations. Hyundai Report at 4. Hyundai describes MOT's recent decision "in principle" to issue licenses to U.S. carriers for shuttle services as "the initial stage of MOT's measures in connection with its effort to resolve this matter." Hyundai Report at 5.⁶

Thus, it is uncontroverted that U.S. carriers in Korea are intentionally precluded by operation of Korean law and regulations from engaging in trucking operations—activities in which Korean carriers can and do engage in the United States. ROK actions to resolve this matter appear at this point to be limited to vague indications of future progress (the Agreed Minutes refer at 2 to the ROK's "intention to open trucking in Korea on a gradual basis")

⁵ This is consistent with the Agreed Minutes of the June 25 and 28, 1990, U.S.-ROK maritime consultations, which state: "The Korean side explained that in view of the weak and uncompetitive domestic trucking business, it is very difficult to allow foreign competition in the immediate future."

⁶ A related issue raised by CENSA concerns the alleged Korean prohibition on imports of foreign made chassis, forcing steamship companies to purchase Korean chassis which are already in short supply. CENSA Comment at 2.

¹ The references to intermodal services and other transportation system activities and services were added by Public Law 101-565, section 103 of the Federal Maritime Commission's Authorization Act of 1990, November 16, 1990 ("1990 section 19 Amendments"). The effect of these amendments was to codify the Commission's prior interpretations of section 19. H.R. Rep. No. 101-420; 101st Cong., 2nd Sess. 8 (1990); S. Rep. No. 101-420; 101st Cong., 2nd Sess. 7 (1990).

and assurances that shuttle services will be permitted within 1991. The latter concession, even if it materializes, would not appear to address the main concern, which is the right of U.S. carriers "to pick up and deliver containers at the premises of Korean shippers and consignees" as part of their intermodal operation in the Trade. Sea-Land Report at 2.

The Commission concludes that these circumstances suggest the existence of unfavorable conditions in the Trade generally and on intermodal movements in particular, within the meaning of section 19. The Commission recognizes that there may be justifiable, minor impositions or inconveniences imposed on foreign business operations in any given country due to legitimate national or local concerns and customs. The effect of the ROK restrictions of U.S. carrier trucking activities, however, is a total ban on an integral aspect of intermodal transportation which the Commission cannot dismiss as a mere way of "doing business."

Rail Access

The U.S. carriers advised that they continue to be precluded from contracting directly with the Korean National Railroads Administration ("KNRA"). Only rail forwarders are permitted direct contracting authority with the KNRA. There are conflicting reports as to whether this restriction applies to Korean as well as U.S. carriers. Hanjin and Hyundai, in their responses to the November 1990 Orders, asserted that the restrictions apply to all shipping companies, including Korean. Hanjin Report at 3; Hyundai Report at 5. Other reports indicated that Korean carriers are eligible to contract directly with the Korean railroads. Sea-land Report at 5; APL Report at 3-4; CENSA Comment at 2.⁷

In any event, it is uncontroverted that U.S. carriers are forced by operation of Korean law to engage the services of Korean middlemen to gain access to rail transportation. There is no apparent comparable restriction of Korean carriers operating in the United States. Sea-Land estimates that its inability to contract directly with KNRA costs it approximately \$220,000 annually. Sea-Land Report at 5. It is further understood that as a result of the January 1991 U.S.-Korea consultations, the KNRA has agreed to permit foreign carriers to

directly contract for rail services.⁸ Both Hanjin and Hyundai in their responses to the November 1990 Orders indicated that easing of restrictions in rail access will be tied to the trucking issue.⁹

The Commission's optimism over this most recent concession is tempered somewhat by its recollection of the Agreed Minutes of the May 1987 U.S.-Korea shipping discussions. Those Minutes contain Korean assurances that U.S. carriers would be permitted "at the earliest possible date in 1988" to operate branch offices in Korea which would control services then provided by Korean agents—services which specifically included "direct negotiation with railroads." Thus, while the Commission would like to rely on these most recent commitments by the ROK, we are dissuaded from doing so in light of the as yet unrealized previous assurances.

Other issues

While the rule proposed herein is premised on the existence of ROK laws and practices restricting trucking and rail activities, the Commission continues to be concerned about other Korean impediments to commerce in the Trade. U.S. carriers are precluded from owning and operating container terminals at the Port of Pusan. Prior commercial negotiations covering phased development at Pusan had led U.S. carriers to believe that future terminal ownership there was a possibility. Sea-Land Report at 7. The Korean carriers have since indicated that the ROK has determined to keep Pusan a "public sector" operation and that private terminal ownership—for both U.S. and Korean carriers—will be pursued in plans for the Port of Kwangyang.

This turn of events was confirmed in the January 1991 discussions and in Korea Maritime and Port Administration ("KMPA") Administrator Kong Hyuk, Ahn's December 1990 letter to FMC Chairman Christopher L. Koch. Mr. Ahn indicated that the Kwangyang project has been given renewed priority by the ROK.¹⁰ U.S. carriers, however, have

⁸ This would appear to support the contention that current ROK restrictions on rail contracting are tied, directly or indirectly, to nationality.

⁹ Hanjin stated that direct rail contracts will be permitted of "foreign carriers who are licensed to operate trucks in Korea." Hanjin Report at 3. Hyundai reported that the ROK "is now developing plans to enable American carriers to negotiate and contract directly with KNRA," and that "this will be coordinated with further liberalization in the trucking area." Hyundai Report at 6, emphasis in original.

¹⁰ Mr. Ahn's letter states that "adverse public opinion," a shortage of berth capacity, and the likelihood of Korean, U.S., and other carriers seeking terminal ownership, all "force us to

deem Kwangyang inadequate to their needs because of insufficient rail and highway facilities and the long-term nature of the project. APL Report at 4; Sea-land Report at 7. U.S. carriers are also barred from owning terminal equipment in Korea, a matter which the KMPA indicates will be resolved when the terminal ownership and trucking issues are resolved.

Despite its decision not to impose sanctions at this time with respect to these issues, the Commission remains concerned with the lack of action on these matters. The Commission is hopeful that progress will result from easing of rail and trucking restrictions, as well as from further efforts by the ROK to address its port congestion problems. To this end, the Commission will continue to monitor developments pertaining to container terminal and terminal equipment operation and ownership.

The Commission also wishes to acknowledge the progress that has been achieved in other areas. Discriminatory port charges have apparently been eliminated.¹¹ Branch offices for U.S. carriers have been established, with resulting savings for one U.S. carrier reported at \$3 million annually in sales agency commissions. Sea-Land Report at 3. However, the range of branch office activities continues to be curtailed by ROK law, particularly with respect to rail and trucking.

In proposing remedies, the Commission is desirous that a resolution of the rail and trucking issues will be achieved in short order so that the need for sanctions will be obviated. The Commission wishes to emphasize, however, that it is wary of changes in Korean law or policy which on their face appear corrective but which have no practical effect because of other ROK laws, policies, rules or regulations. The Commission is seeking to achieve the elimination of restrictive practices in the Trade, not to encourage empty administrative or legislative actions which are negated by other overriding factors. For example, a determination

conclude that Pusan Port must be run by public sector to optimize its efficiency. However, in the case of Kwangyang terminal, which is to take some of the increasing container freight traffic currently concentrated at Pusan Port, the possibilities for private investment and privately-leased terminal operations are under scrutiny."

¹¹ Mr. Sung-Soo Kim, Maritime Attache for the Embassy of the Republic of Korea, advised FMC Chairman Koch by fax message on April 3, 1991, that port service charge discounts extended to Korean carriers were eliminated as of April 1, 1991. Furthermore, equal treatment with regard to pilotage fee and pilot boat charge will be applied, effective on April 8, 1991.

⁷ It may be that Korean carrier contacts with the KNRA are facilitated because of carrier affiliations with the authorized forwarders. The Commission would particularly invite comment on this issue in comments to the Proposed Rule.

that foreign-flag status will no longer bar a carrier from direct rail contracting authority will not be deemed to resolve the rail issue, if trucking authority remains a criterion for rail contracting authority and if foreign companies remain unable to engage in trucking operations. Similarly, the Commission will not consider the trucking and rail restrictions to have been lifted if the purported resolutions are tied to future action on other issues, such as container terminal ownership, so that actual liberalization remains illusory.

After giving consideration to all available countervailing sanctions, including limitations of sailings and suspension of carrier tariffs or terminal or other agreements to which the carriers are party, the Commission has determined to propose a primary remedy of a \$100,000 per voyage fee. However, the Commission specifically solicits comment on the feasibility of additional or alternative potential sanctions. In the event that the presently prescribed fees are not paid, the Proposed Rule does provide for the suspension of tariffs and denial of clearance from or access to U.S. ports.

In order to provide proper notice and a fair opportunity to respond to the proposed action, the Commission is giving all interested parties until August 2, 1991, to file comments concerning the proposed sanctions and any recent developments affecting conditions in the Trade. This should provide adequate time for the reporting of any concrete progress resulting from U.S.-ROK maritime consultations currently scheduled for the week of July 8, 1991. Factual submissions relating to conditions in the Trade, where relevant, should include evidence or statistics showing commercial loss and to the extent possible be supported by sworn documents and affidavits.

The responses to the Commission's November 1990 Order and comments filed by Hanjin, Hyundai, APL and Sea-Land, and the responses to the simultaneous Federal Register notice filed by CENSA and An-Mar International, are made part of the record herein.

List of Subjects in 46 CFR Part 586

Cargo vessels; Exports; Foreign relations; Imports; Maritime carriers; Penalties; Rates and fares; Tariffs.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), as amended, Reorganization Plan No. 7 of 1961, 75 Stat. 840, and 46 CFR part 585, it is proposed to amend part 586 of title 46 of

the Code of Federal Regulations as follows:

PART 586—[AMENDED]

1. The authority citation for part 586 is revised to read as follows:

Authority: 46 C.F.R. app. 876(1)(b); 46 U.S.C. app. 876 (5) through (12); 46 U.S.C. app. 1710a; 46 CFR Part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

2. A new section is added to read as follows:

§ 586.5 Conditions unfavorable to shipping in the United States/Korea trade ("Trade")

(a) Conditions Unfavorable to Shipping in the Trade. (1) The Federal Maritime Commission ("Commission") has determined that the Government of the Republic of Korea ("ROK" or "Korea") has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws and regulations which unreasonably preclude U.S.-flag carriers from engaging in trucking operations in Korea and from directly contracting for rail service in Korea incidental to intermodal commerce in the Trade.

(2) Under Korean law, entities desiring to engage in trucking operations in Korea must obtain a license, but said license is not issued to foreign companies because foreign investment in freight trucking is prohibited. After considerable commercial and inter-governmental negotiation, ROK movement on this issue has been limited to a recent announcement that foreign carrier participation in shuttle trucking between terminal and container yard or rail ramp will soon be permitted. There has been no ROK concession as to the essential need of U.S. carriers to engage in trucking operations to and from inland origin and destination points. Korean carriers face no similar restrictions in their intermodal operations in the United States. In addition, this lack of trucking authority has been cited by the ROK as justification for barring U.S. carriers the right to contract directly with railroads for rail access and to own terminal operating equipment.

(3) ROK law also prevents U.S. carriers from contracting directly with the Korean National Railroads Administration. U.S. carriers are forced to contract with railroads through the intermediary services of licensed forwarders, at considerable expense to the U.S. carriers. Recent Korean assurances that these restrictions will be lifted have not as yet been carried out. No such restrictions on Korean

carriers exist in their operations in the United States.

(b) Korean-flag carriers—assessment of fees. (1) Generally, voyage means an inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States trade. Each inbound or outbound movement constitutes a separate voyage. For purposes of this section, the transportation of cargo by water aboard a vessel or vessels, inbound or outbound between ports in Korea and ports in the United States, including transshipment points, under one or more bills of lading issued by or on behalf of the Korean-flag carriers named in paragraph (b)(2) of this section, whether on board vessels owned or operated by the named carriers or in space chartered by the named carriers on vessels owned or operated by others, or carried for the account of the named carriers pursuant to agreements on file with the Federal Maritime Commission, under any of the tariffs enumerated in paragraph (b)(4) of this section, shall be deemed to constitute a voyage.

(2) For each voyage completed after the effective date of this section, the following carriers shall pay to the Federal Maritime Commission a fee in the amount of \$100,000: Hanjin Shipping Co., Ltd. and Hyundai Merchant Marine Co., Ltd. The fee for each voyage shall be paid by certified or cashiers check made payable to the Federal Maritime Commission within 7 calendar days of the completion of the voyage for which it is assessed.

(3) Each Korean-flag carrier named in paragraph (b)(2) of this section shall file with the Secretary of the Federal Maritime Commission a report setting forth the date of each voyage completed, amount of cargo carried, and amount of fees assessed pursuant to paragraph (b)(2) of this section during the preceding calendar quarter. Each such support report shall include a certification that all applicable fees assessed pursuant to paragraph (b)(2) of this section have been paid, and shall be executed by the Chief Executive Officer under oath. Such reports shall be filed within 15 days of the end of each calendar quarter.

(4) If any Korean-flag carrier shall fail to pay any fee assessed by paragraph (b)(2) of this section within the prescribed time for payment, or fail to file any quarterly report required by paragraph (b)(3) of this section within the prescribed period for filing, the tariffs identified below, as applicable to such carrier, shall be suspended

effective 30 calendar days after the expiration of the calendar quarter in which such fees or report were due:

- (i) Hanjin Shipping Company, Ltd.
- FMC No. 13—Canada/U.S.A. Freight Tariff No. 13, Applicable Between Ports in Canada and U.S. Pacific Coast Ports.
- FMC No. 15—Freight Tariff FMC No. 15, Applicable Between Ports in Japan and Ports and Points in the United States.
- FMC No. 16—Local and Intermodal Freight Tariff FMC No. 16, Applicable Between Ports/Points in the Far East and Ports and Points in the United States.
- FMC No 17—Equipment Interchange Tariff Naming Terms and Conditions Governing Use of Carrier Equipment.
- FMC No. 18—Westbound Local and Intermodal Freight Tariff FMC No. 18, Applicable Between Ports and Points in the United States and Ports and Points in the Far East.
- (ii) Hyundai Merchant Marine Co., Ltd.
- FMC No. 1—Freight Tariff FMC No. 1, Applicable Between Ports in the Far East and United States, Hawaii and Puerto Rico.
- FMC No. 2—Freight Tariff FMC No. 2, Applicable Between Ports in Australia and South Pacific Islands and Pacific Coast Ports of the United States, Canada and Hawaii.
- FMC No. 12—Southbound Intermodal Freight Tariff No. 12, Applicable Between U.S. Atlantic and Gulf Rail Terminals and Australia, New Zealand and South Pacific Islands.
- FMC No. 14—Service Contract Tariff No. 14, Naming Essential Terms and Services as Provided in Service Contracts on File with the Federal Maritime Commission.
- FMC No. 18—Eastbound Local/OCP and Intermodal Rules Tariff No. 18, Applicable Between Ports and Points in Korea, Taiwan, Hong Kong, Thailand, Singapore, Malaysia, Philippines and Indonesia and Ports and Points in the United States.
- FMC No. 19—Eastbound Local/OCP/and Intermodal Freight Tariff No. 19, Applicable Between Ports and Points in Korea and Ports and Points in the United States.
- FMC No. 20—Eastbound Local/OCP/ and Intermodal Freight Tariff No. 20, Applicable Between Ports and Points in Taiwan, Hong Kong and Ports and Points in the United States.
- FMC No. 21—Eastbound Local/OCP/and Intermodal Freight Tariff No. 21, Applicable Between Ports and Points in Thailand, Singapore, Malaysia, Philippines and Indonesia and Ports and Points in the United States.
- FMC No. 22—Eastbound Rules Tariff FMC No. 22, Applicable Between Ports and Points in Japan and Port and Points in the United States.
- FMC No. 23—Eastbound Tariff FMC No. 23, Applicable Between Ports and Points in Japan and Ports and Points in the United States.
- FMC No. 30—Ocean and Intermodal Freight Tariff No. 30, Applicable Between Ports and Points in the United States and Ports and Points in the Far East.

(iii) Any other tariff which may be filed by or on behalf of the carriers listed in paragraph (b) of this section.

(iv) In the event of suspension of tariffs pursuant to this paragraph, any affected conference or rate agreement tariffs shall be amended to reflect said suspensions. Operations by any carrier under suspended, cancelled or rejected tariffs shall subject said carrier to all applicable remedies and penalties provided by law.

(c) Source of fees. Any fees assessed by paragraph (b)(2) of this section against Korean-flag carriers operating pursuant to any agreement filed with the Federal Maritime Commission providing for revenue pooling, joint service, space-chartering or other joint operations shall be paid by such Korean-flag carriers without affecting the revenue shares or amount of revenue earned by other carriers operating pursuant to such agreements.

(d) Refusal of Clearance by the Collector of Customs. If a named Korean-flag carrier shall fail to pay any fee assessed by paragraph (b)(2) of this section, or fail to file any quarterly report required by paragraph (b)(3) of this section within the prescribed period for filing, the Secretary of the Commission shall request the Chief, Carrier Rulings Branch of the U.S. Customs Service to direct the collectors of customs at the affected U.S. port or ports, to refuse the clearance required by section 4197 of the Revised Statutes (46 U.S.C. app. 91) to any vessel owned or operated by such Korean-flag carrier.

(e) Denial of Entry to or Detention at United States Ports by the Secretary of Transportation. If a named Korean-flag carrier shall fail to pay any fee assessed by paragraph (b)(2) of this section, or fail to file any quarterly report required by paragraph (b)(3) of this section within the prescribed period for filing, the Secretary of the Commission shall request the Secretary, U.S. Department of Transportation, to direct the Coast Guard to:

(1) deny entry for purpose of oceanborne trade, of a vessel of a country that is named in paragraph (a) of this section, to any port or place in the United States or the navigable waters of the United States; or

(2) detain that vessel at the port or place in the United States from which it is about to depart for another port or place in the United States.

By the Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 91-13475 Filed 6-6-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-140; FCC 91-156]

Radio Broadcast Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This proceeding was initiated to review and modify, if necessary, the Commission's multiple ownership and other structural rules governing radio broadcasting in order to strengthen radio broadcasting service, particularly AM Service. The Commission adopts a notice of proposed rulemaking (notice) inviting comment on several proposals to modify the Commission's national and local radio ownership rules and the Commission's current policy regarding various types of joint ventures among radio stations. Specifically, the notice proposes to modify the current national ownership rule generally prohibiting common ownership of more than 12 AM and 12 FM stations. The notice also seeks comment on the impact any rule change may have on minority ownership. In addition, the notice proposes to modify the contour overlap rule, which prohibits ownership of more than one AM and one FM station in the same area (commonly known as the "duopoly" rule). The notice also proposes to adopt a policy encouraging joint ventures, with appropriate safeguards. Finally, the notice seeks comment on the nature and extent of time brokerage agreements, and questions whether such arrangements should be limited.

DATES: Comments are due by August 5, 1991, and reply comments are due by September 5, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION:

1. This is a synopsis of the Commission's notice of proposed rule making in MM Docket No. 91-140, FCC 91-156, adopted May 9, 1991, and released May 30, 1991.

2. The complete text of this notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor,

Downtown Copy Center, 1114 21st St., NW., Washington, DC ((202) 452-1422).

Synopsis of Notice of Proposed Rulemaking

3. The Commission's goal in initiating this proceeding is to explore changes in the structural and ownership regulations governing radio broadcasting with a view toward ensuring that the aural services can continue to compete in the communications marketplace and provide service to the public. The Commission notes that numerous outlets of communication in addition to broadcast radio are now available, providing consumers with a variety of choices. The Commission points out, however, that in some cases service to the public is diminished as radio stations fall silent, in part, it appears, because they have been constrained by regulation from adapting to quickly changing market realities. The Commission notes that these changes have particularly affected AM radio, and is concerned that outdated or inappropriate regulation not contribute to the decline of radio stations. The notice therefore proposes several options for modifying the Commission's rules and policies regarding ownership of commonly owned radio stations and regarding joint ventures among stations that are not commonly owned. The Commission reasons that a greater degree of flexibility may strengthen competitors in local radio markets because it would increase opportunities for group owners to achieve economies of scale. The Commission also notes that some of the modifications proposed could especially strengthen currently smaller and/or underachieving stations.

4. With respect to all of the proposed rule changes, the notice seeks comment on any potential effect on minority ownership, and on how any or all of the options presented could be modified to encourage it. The notice also requests comment regarding a petition jointly filed by four minority organizations to increase the national minority ownership limitation from 14 to 20 stations per service.

5. The current national ownership limitation prohibits ownership of more than 12 AM and 12 FM stations nationwide (unless two of the stations are minority-controlled, in which case a group owner may own up to 14 stations). The notice presents several options for modifying the national ownership rule. One numerically based option would be to raise or eliminate the limits for AM stations while retaining the current 12-station limitation for FM. Another alternative is to eliminate the restriction on the specific number of AM

stations that could be owned, but retain an absolute cap on the total number of stations (e.g., overall limit of 30 stations, of which no more than 12 may be FM). A third numerically based option is to exclude from consideration the numerical limit any AM station achieving a low rating in its local market, for example less than one percent.

6. Audience reach based options include adopting a rule that incorporates a national audience reach limitation or a local market share limitation. Such an approach would permit a single entity to own more than the numerical limit of stations if the combined audience reach of these stations does not exceed a specific percentage of the national radio audience, or if the stations' cumulative local audience shares, weighted by population, do not exceed a certain percentage of the national radio audience. The notice also proposes that the rule permit parties observing the numerical limit to exceed any national reach limitation established, and vice versa. A market rank based option, similar to the current radio-television cross-ownership rule, would exclude any AM station in a top market from the national ownership restriction if there are at least 30 other separately-owned broadcast licensees in the subject market.

7. The Commission also proposes to relax the contour overlap rule, which prohibits common ownership of AM stations whose 5 mV/m contours overlap, or FM stations whose 3.16 mV/m contours overlap. The notice proposes to permit a single owner to control any number of AM stations in the same area if the local market shares of those stations total a given percentage (e.g., 10%). Other options raised in the notice include imposing a numerical cap in addition to the audience share limitation, or adopting a higher percentage limitation for small markets. In addition, the notice proposes to permit simulcasting for a transitional period after acquisition of a new station to permit the new owner to promote its new dial position and redirect established listening patterns.

8. The notice also requests comment on whether any of the proposals presented should be extended to the FM service. The Commission noted that while AM radio has faced greater competitive hurdles due to its technical limitations, AM and FM radio in many respects constitute a single aural service that faces increasing competition from other outlets of communication. In addition, the Commission opined, the advent of digital audio broadcasting

could lessen the distinction between AM and FM radio.

9. In addition, the notice examines joint ventures and asks whether the Commission should adopt a policy encouraging broadcasters to participate in joint ventures. While joint venture arrangements permit separately owned stations to function cooperatively in terms of advertising sales, technical facilities and formats, each is required to maintain an independent editorial voice. The Commission believes that this practice strengthens the service received by the public while continuing to maximize, to the extent feasible, the number of voices in the market. To preserve competition and diversity, however, the Commission proposes safeguards that include (1) a provision that assures compliance with the antitrust laws; (2) a provision that such cooperative arrangements involve only a limited number of stations and be restricted to larger, more diverse markets; (3) a requirement that each licensee involved retain editorial control; and (4) mechanisms for termination of the arrangement by individual participants. The Commission also asks whether the Commission's present complaint and compliance procedures are adequate to assure that the licensees do not violate the Communications Act or Commission rules or policies, or whether those procedures should be augmented with, for example, reporting requirements.

10. Finally, the Commission seeks comment regarding the nature and extent of joint programming, or "time brokerage" arrangements between broadcasters in the same market. The Commission asks whether same-service agreements should be treated differently from cross-service agreements, whether there should be a limit on the number of stations involved and whether 24-hour time brokerage should be permitted. The Commission also seeks comment on the impact these arrangements may have at renewal time, and questions whether such arrangements circumvent its ownership restrictions.

Ex Parte Rules—Non-Restricted Proceeding

11. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Information

12. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 5, 1991, and reply comments on or before September 5, 1991. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, replay comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

Initial Regulatory Flexibility Analysis

13. *Reason for the Action:* This proceeding was initiated to review and update the Commission's national and local radio ownership rules.

14. *Objective of This Action:* The actions proposed in this notice are intended to relax some of the national and local ownership restrictions on radio broadcasters to enable them to adjust to the changing communications marketplace, and to better respond to the needs of the public.

15. *Legal Basis:* Authority for the actions proposed in this notice may be found in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303.

16. *Reporting, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Rule:* None.

17. *Federal Rules Which Overlap, Duplicate, or Conflict With the Proposed Rule:* None.

18. *Description, Potential Impact and Number of Small Entities Involved:* Approximately 10,000 existing radio broadcasters of all sizes may be affected by the proposals contained in this decision.

19. *Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent With the Stated Objectives:* The proposals contained in this notice are meant to simplify and ease the regulatory burden currently placed on commercial radio broadcasters.

20. As required by section 603 of the Regulatory Flexibility Act, the

Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the notice, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this notice of proposed rule-making, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981)).

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-13563 Filed 6-6-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-176; RM-7053]

Radio Broadcasting Services; Columbia, CA

AGENCY: Federal Communication Commission.

ACTION: Proposed Rule; dismissal of.

SUMMARY: This document denies a petition filed by Eric R. Hilding, seeking the allotment of FM Channel 255A to Columbia, California, for failure to establish Columbia's status as a community for allotment purposes. With this action, the proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-176, adopted May 22, 1991, and released June 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W. Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-13434 Filed 6-6-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-149, RM-7716]

Radio Broadcasting Services; Needles, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Calnevar Broadcasting, Inc., licensee of Station KWAZ(FM), Channel 250C2, Needles, California, seeking the substitution of Channel 250C1 for Channel 250C2 and modification of its license accordingly to specify operation on the higher powered channel. Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 250C1 at Needles or require the petitioner to demonstrate the availability of an additional equivalent class channel. Coordinates for this proposal are 35-02-06 and 114-22-09. Mexican concurrence will be requested for this allotment.

DATES: Comments must be filed on or before July 26, 1991, and reply comments on or before August 12, 1991.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Calnevar Broadcasting, Inc., Attn.: Jack Mathison, President, 8448 East Del Norte Court, Scottsdale, AZ 85258.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-149 adopted May 22, 1991, and released June 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also

be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st St., NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-13435 Filed 6-6-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-148, RM-7711]

Radio Broadcasting Services; Edisto Beach, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Toni T. Rinehart seeking the allotment of Channel 229A to Edisto Beach, South Carolina, as the community's first local FM service. Channel 229A can be allotted to Edisto Beach in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 32-29-00 and 80-19-30.

DATES: Comments must be filed on or before July 28, 1991, and reply comments on or before August 21, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Toni T. Rinehart, 2557-E Mountain Lodge Circle, Birmingham, Alabama 35216 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-148, adopted May 22, 1991, and released June 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-13433 Filed 6-6-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 245

[FRA Docket No. RSUF-1, Notice No. 2]

RIN 2130-AA62

Railroad User Fees; Change in Schedule for Public Hearing

AGENCY: Federal Railroad Administration (FRA); DOT.

ACTION: Change in schedule for public hearing.

SUMMARY: On May 7, 1991, FRA published in the Federal Register a notice of proposed rulemaking (NPRM) concerning the railroad user fee program mandated by section 10501 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-508, 104 Stat. 1388-399). In the NPRM, FRA announced that a public hearing would be held on the proposed rule in Washington, DC on

June 12, 1991 at 10 a.m. in the Nassif Building (DOT Headquarters), 400 Seventh Street, SW., room 2230. FRA has found it necessary to change the scheduled time of the hearing from 10 a.m. to 1 p.m. The date and location of the hearing remain unchanged.

FOR FURTHER INFORMATION CONTACT: Gail L. Payne, Senior Program Analyst, Industry Operations and Safety Analysis Division, Office of Policy (RRP-12), FRA, Washington, DC 20590 (telephone: 202-366-4930); or William R. Fashouer, Attorney-Advisor, Office of Chief Counsel (RCC-10), FRA, Washington, DC 20590 (Telephone: 202-366-0616).

SUPPLEMENTARY INFORMATION: FRA has determined that it is necessary to change the starting time of the public hearing on the railroad user fee NPRM on June 12, 1991 from 10 a.m. to 1 p.m. The Subcommittee on Transportation and Hazardous Materials of the House Energy and Commerce Committee has scheduled a railroad safety reauthorization hearing for the morning of June 12. Since some witnesses may wish to testify at or attend both hearings, FRA has determined that delaying the user fee hearing until 1 p.m. serves all interested parties.

Accordingly, the public hearing on the user fee NPRM will be held in Washington, DC on June 12, 1991 at 1 p.m. in the Nassif Building (DOT Headquarters), 400 Seventh Street, SW., room 2230. Persons desiring to make oral statements at the hearing are reminded that they should notify the Docket Clerk by telephone at (202) 366-2257 or by writing to the Docket Clerk (RCC-30), Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on June 4, 1991.
Perry A. Rivkind,
Acting Federal Railroad Administrator.
[FR Doc. 91-13583 Filed 6-6-91; 8:45 am]
BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91-26; Notice 1]

RIN 2127-AD88

Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration [NHTSA], DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Standard No. 209 currently specifies that emergency locking retractors (ELR) (retractors that use a locking mechanism that is activated by vehicle acceleration, webbing movement, or other automatic action during an emergency) shall be tested by performing 50,000 cycles of the retractor (a cycle is an extension and a retraction of safety belt webbing from its retractor) with at least 10,000 lockups (activation of the webbing locking mechanism of a retractor) during those cycles. Standard No. 209 also specifies that automatic locking retractors (ALR) (a retractor that uses a positive self-locking mechanism) shall be tested by performing 10,000 cycles of the retractor. However, the standard does not specify the rate at which to run the cycles, nor does it specify when the ELR lockups should occur. Absent any guidance in the standard, testing by manufacturers and the agency could be based on different cycling rates and lockup schedules. These test procedure differences may produce different test results.

To avoid such problems, this notice proposes a cycling test rate of between five and ten cycles per minute for ELR's and ALR's and that the required ELR lockup testing be performed every fifth cycle.

DATES: Comments on this proposal must be received by NHTSA no later than July 22, 1991. If adopted in a final rule, these amendments would take effect 180 days after publication of the final rule in the *Federal Register*.

ADDRESSES: Comments should refer to Docket No. [91-26]; Notice 1, and be submitted to: Docket Section, room 5109, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. The docket section is open from 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Clarke B. Harper, Crashworthiness Division, NRM-12, room 5320, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202-366-2264).

SUPPLEMENTARY INFORMATION:

Background

Standard No. 209, Seat Belt Assemblies [49 CFR 571.209], sets forth a series of tests for the webbing and hardware used in a seat belt assembly for motor vehicles, along with some additional tests of the seat belt assembly as a whole. These tests individually evaluate each of the aspects that NHTSA believes is necessary to ensure that the belt system will provide adequate occupant protection in a crash.

As part of the performance testing, the retractor is corrosion tested and then the

safety belt webbing is cycled to complete extension and retraction for 2,500 cycles. After a temperature test, the retractor is then cycled for another 2,500 cycles. Finally, after a dust resistance test, the performance cycling test is run for 5,000 cycles for an ALR and 45,000 cycles for an ELR. The 45,000 cycles of the ELR are run from a 50 percent to a 100 percent extension. Additionally, during the total 50,000 cycles on an ELR, 10,000 of the cycles have included a locking up of the retractor.

Currently, however, the standard does not list a specific cycling rate for these tests, nor does it provide any schedule for the lockups. The absence of specifications could result in different cycling rates and lockup schedules being chosen by manufacturers and the agency for testing. To avoid any potential differences in test results, NHTSA is proposing a specific cycling rate and lockup schedule for Standard No. 209 testing.

The agency has tentatively determined that the test cycling speed selected should be reasonably similar to the speed that occurs in actual use. The actual speed at which belt webbing is extended from the retractor during normal use appears to be equivalent to a test rate of approximately ten cycles per minute. However, since some webbing sensitive retractors may not be able to cycle at this speed, the agency is proposing a range of from five to ten cycles per minute.

This proposed cycling rate corresponds to the results of an agency survey to determine the cycling rates that are currently used by test laboratories for FMVSS No. 209 tests. It was the consensus of the labs that the tests should be run as fast as possible within the performance range of the retractor. U.S. Testing Company, Inc. cycles the retractors at ten cycles per minute, with a lockup every fifth cycle. Dayton T. Brown, Inc. runs the cycles at four to ten cycles per minute; when doing lockup testing, the rate is from 26 to 35 cycles per minute. Irvine Industries runs the test at three to seven cycles per minute, while Allied Chemical test at six to ten cycles per minute. TRW tests at twenty cycles per minute except for webbing sensitive retractors which are run from ten to twelve cycles per minute.

Additionally, the agency is proposing to modify the standard to specify when the required 10,000 lockups should occur during the testing of ELR's. The agency has tentatively concluded that the lockups should be evenly distributed over the entire 50,000 cycle test. Therefore, this notice proposes that the

required retractor lockup testing for emergency locking retractors be performed every fifth cycle.

NHTSA invites the public to comment on this proposal. Commenters are specifically asked to provide information on the effects of higher cycling rates on retractor performance and on the effects of the proposal on test repeatability and consistency. Commenters should expressly identify any assumptions made in preparing the comments and bolster their assertions and conclusions with whatever factual support is available.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The agency has analyzed the economic and other effects of this proposal and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the proposed amendments are so minimal that a full regulatory evaluation is not required. There may be some increased costs for compliance testing. The agency has determined that redesign of existing retractors in order to comply with the proposed test speed is unlikely. Commenters are specifically asked to provide information about the cost impacts of the proposed regulation on compliance testing.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this proposed action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. As stated above, the proposed action is unlikely to require the redesign of existing retractors and therefore should not result in any increase the equipment or vehicle costs. Accordingly, no regulatory flexibility analysis has been prepared.

Executive Order 12612 (Federalism)

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

The agency has also analyzed this rule for the purpose of the National Environmental Policy Act, and determined that it would not have any significant impact on the quality of the human environment. Procedures for Filing Comments.

Interested persons are invited to submit comments on the proposal. It is requested, but not required, that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.209 [Amended]

2. In § 571.209, S5.2(k) of Standard No. 209 would be revised to read as follows:

§ 571.209 Standard No. 209; Seat belt assemblies.

* * * * *

S5.2 Hardward

* * * * *

(k) Performance of retractor. After completion of the corrosion-resistance test described in paragraph (a) of this section, the webbing shall be fully extended and allowed to dry for at least 24 hours under standard laboratory conditions specified in S5.1(a). The retractor shall be examined for ferrous and nonferrous corrosion which may be transferred, either directly or by means of the webbing, to a person or his clothing during use of a seat belt assembly incorporating the retractor, and for ferrous corrosion on significant surfaces if the retractor is part of the attachment hardware. The webbing shall be withdrawn manually and allowed to retract for 25 cycles. The retractor shall be mounted in an apparatus capable of extending the webbing fully, applying a force of 20 pounds or 9 kilograms at full extension, and allowing the webbing to retract freely and completely. The webbing shall be withdrawn from the retractor and allowed to retract repeatedly in this apparatus at a rate between 5 and 10 cycles per minute, until 2,500 cycles are completed. The retractor and webbing shall then be subjected to the temperature resistance test prescribed in paragraph (b) of this section. The retractor shall be subjected to 2,500 additional cycles of webbing withdrawal and retraction at a rate between 5 and 10 cycles per minute. Then, the retractor and webbing shall be subjected to dust in a chamber similar to one illustrated in Figure 8 containing about 2 pounds or 0.9 kilogram of coarse grade dust conforming to the specification given in Society of Automotive Engineering Recommended Practice J726, "Air Cleaner Test Code" Sept. 1979. The dust shall be agitated

every 20 minutes for 5 seconds by compressed air, free of oil and moisture, at a gage pressure of 80 ± 8 pounds per square inch or 5.6 ± 0.6 kilograms per square centimeter entering through an orifice 0.060 ± 0.004 inch or 1.5 ± 0.1 millimeters in diameter. The webbing shall be extended to the top of the chamber and kept extended at all times except that the webbing shall be subjected to 10 cycles of complete retraction and extension within 1 to 2 minutes after each agitation of the dust. At the end of 5 hours, the assembly shall be removed from the chamber. The webbing shall be fully withdrawn from the retractor manually and allowed to retract completely for 25 cycles. An automatic-locking retractor or a nonlocking retractor attached to pelvic restraint shall be subjected to 5,000 additional cycles of webbing withdrawal and retraction at a rate between 5 and 10 cycles per minute. An emergency-locking retractor or a nonlocking retractor attached to upper torso restraint shall be subjected to 45,000 additional cycles of webbing withdrawal and retraction between 50 and 100 percent extension at a rate between 5 and 10 cycles per minute. The locking mechanism of an emergency locking retractor shall be actuated 10,000 times with 50 to 100 percent extension of webbing every fifth cycle during the 50,000 cycles. At the end of the test, compliance of the retractors with applicable requirements in S4.3 (h), (i), and (j) shall be determined. Three retractors shall be tested for performance.

* * * * *

Issued on June 3, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-13460 Filed 6-8-91; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1011, 1160, 1181, 1186

[Ex Parte No. 55 (Sub-No. 84)]¹

RIN 3120-AB68

Safety Fitness Policy

AGENCY: Interstate Commerce Commission.

¹ Embraces Ex Parte No. MC-111 (Sub-No. 1), Transfer Rules, and Ex Parte No. MC-179, Purchase, Merger, and Control of Motor Passenger and Water Carriers, interim policy and notice of proposed policy, 55 FR 42659 (October 22, 1990) (Finance Reopening).

ACTION: Notice of proposed rulemaking.

SUMMARY: In a notice of proposed policy revision published concurrently in the "Proposed Rules" section of this Federal Register issue, the Commission has announced significant revisions to its safety policy as applied in both the licensing and finance dockets. The proposed policy revisions have been precipitated by and are designed to conform with recent statutory changes in the safety fitness area, implemented by the Motor Carrier Safety Act of 1990 (Pub. L. 101-500). The proposal also reinforces refinements and improvements in the U.S. Department of Transportation (DOT) safety oversight mechanism designed to implement the recent legislation.

In order to ensure consistent and effective implementation of the proposed policy, we also propose corresponding amendments to the Commission's regulations governing delegation of authority, licensing procedures, authority transfer proceedings, and motor carrier finance exemptions at 49 CFR parts 1011, 1160, 1181, and 1186, respectively. Consistent with the proposed policy revisions, the recommended amendments ensure that barriers to acquisition of authority through either the licensing or finance docket are limited to those carriers that hold an "Unsatisfactory" safety rating from the DOT. The proposed regulatory revisions are set forth below.

DATES: Comments are due June 26, 1991.

ADDRESSES: Send comments (an original and 10 copies), referring to Ex Parte No. 55 (Sub-No. 84), to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

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

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423, telephone (202) 275-7428. (Assistance for the hearing impaired is available through TDD service (202) 275-1721.).

Environmental and Energy Considerations

We preliminarily conclude that the proposed action will not significantly affect the quality of the human environment or the conservation of

energy resources. We specifically encourage comments on these issues, however.

Initial Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603, the Commission is required to examine specifically the impact of a proposed action on small businesses and small organizations. We preliminarily conclude that this proposal will have a significant positive impact on such entities.

The licensing and finance policy revisions and corresponding rule changes recommended here are expected to result in an improved Federal safety oversight program, rendering the Commission's approach to safety more consistent with and responsive to recent legislative directives and DOT implementing measures. This integrated safety oversight effort should inure directly to the benefit of applicants for operating authority by streamlining the pre-licensing review process and by ensuring that grants of authority will not be subject to term conditions or service restrictions that no longer serve as inducements to operational safety. Small entities, in particular, that must commit a greater proportion of their resources to licensing and other regulatory compliance matters will benefit from those features of the proposed policy that expedite pre-licensing review. Finally, the proposed policy should ensure that unrated new entrants will be able to initiate service without any term limitations.

In developing the proposed policy, we have considered various alternative approaches to improve the Commission's safety docket management. We are persuaded that the changes to our safety policy proposed here will remedy any inconsistencies with recent statutory safety enforcement measures and with DOT's safety evaluation programs and standards.

We, therefore, conclude that the proposed policy revisions and the corresponding amendments to the Commission's regulations set forth below will have a significant positive impact upon a substantial number of small motor carrier entrants, as well as upon applicants generally. This proposal will not impose additional reporting, recordkeeping, or compliance requirements upon small entities. Nor will the rules proposed here duplicate, overlap, or conflict with any existing Federal rule. In fact, in the case of unrated applicants or applicants with "Conditional" safety ratings, the paperwork burden should be reduced as a result of this policy change.

Because the overall safety policy unification goals of this proposal speak directly to the potential impact on small businesses, we particularly invite the comments of interested parties on this matter.

List of Subjects**49 CFR Part 1011**

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

49 CFR Part 1160

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Maritime carriers, Motor carriers.

49 CFR Part 1181

Administrative practice and procedure, Brokers, Freight forwarders, Maritime carriers, Motor carriers.

49 CFR Part 1186

Administrative practice and procedure, Freight forwarders, Motor carriers.

Decided: May 15, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner Phillips commented with a separate expression. Commissioner Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1011, 1160, 1181 and 1186 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for part 1011 would continue to read as follows:

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

2. Section 1011.6 is proposed to be amended by revising paragraphs (h)(1) and (h)(2) to read as follows:

§ 1011.6 Employee Boards.

* * * * *

(h) * * *

(1) Pre-publication matters in operating rights applications of motor carriers, water carriers, household goods freight forwarders, and property brokers.

(2) Motor passenger carrier and water carrier finance applications under 49 U.S.C. 11343-11344, and small carrier

transfer applications under 49 U.S.C. 10926.

* * * * *

PART 1160—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

3. The authority citation for part 1160 would continue to read as follows:

Authority: 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, 10928, and 11102; 5 U.S.C. 553 and 559; 16 U.S.C. 1456.

4. Section 1160.5 is proposed to be amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 1160.5 Commission review of the application.

(a) * * *

(3) All motor carrier applications will be reviewed for consistency with the Commission's operational safety fitness policy as set forth in Ex Parte No. 55 (Sub-No. 84), Safety Fitness Policy, _____ I.C.C. 2d (1991). Applicants with "Unsatisfactory" safety ratings from DOT will have their applications rejected by letter notice and their filing fees returned upon request as explained in the rejection correspondence.

(4) An employee board of the Commission appointed under § 1011.6(h) of this chapter will review completed applications that conform with the Commission's safety fitness policy. The employee board determines whether there is adequate evidence to warrant publication of the authority applicant seeks in the ICC Register as a preliminary grant. If there is not, the application will be rejected in a letter notice to applicant, without prejudice to refiling once deficiencies have been corrected. Applicants that refile their applications within 1 year may refer to the docket number and fee stamp number assigned to the prior filing and no additional filing fee will be required. An applicant may appeal rejections as provided under § 1160.6.

* * * * *

PART 1181—TRANSFERS OF OPERATING RIGHTS UNDER 49 U.S.C. 10926

5. The authority citation for part 1181 would continue to read as follows:

Authority: 5 U.S.C. 553, and 49 U.S.C. 10321 and 10926.

6. Section 1181.4(c) is proposed to be revised to read as follows:

§ 1181.4 Commission action and criteria for approval.

* * * * *

(c) If the transferor or transferee has an "Unsatisfactory" safety rating from

DOT, the transfer may either be conditioned on improvement in that rating or denied. If an application is conditioned or denied, the Commission will set forth the basis for its action in a decision or letter notice. If parties with "Unsatisfactory" safety ratings consummate a transaction pursuant to the 10-day rule at § 1181.2 of this part prior to the notification of Commission action, they do so at their own risk and subject to any conditions we subsequently may impose. Transactions that have been consummated but are later denied by the Commission are null and void and must be rescinded. Similarly, if applications contain false or misleading information, they are void *ab initio*.

PART 1186—EXEMPTION OF CERTAIN TRANSACTIONS UNDER 49 U.S.C. 11343

7. The authority citation for part 1186 would continue to read as follows:

Authority: 49 U.S.C. 11321, 11343(e); 5 U.S.C. 553; and 21 U.S.C. 853a.

8. Section 1186.9 is proposed to be revised to read as follows:

§ 1186.9 Safety fitness.

The Commission will consider the DOT safety rating of the parties in transactions where operating authority is purchased or merged. All parties to the transaction must certify their current safety ratings in their notice of exemption. If either party has an "Unsatisfactory" safety fitness rating from DOT, the exemption may be either conditioned on improvement in that rating or disapproved. If parties with "Unsatisfactory" safety ratings consummate a transaction 60 days after publication of the notice of exemption but prior to notification of Commission action, they do so at their own risk and subject to any conditions we subsequently may impose. If a notice of exemption contains false or misleading information, the exemption is void *ab initio*.

[FR Doc. 91-13390 Filed 6-6-91; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Parts 1011, 1160, 1181, 1186

[Ex Parte No. 55 (Sub-No. 84)]¹

Safety Fitness Policy

AGENCY: Interstate Commerce Commission.

¹ Embraces Ex Parte No. MC-111 (Sub-No. 1), Transfer Rules, and Ex Parte No. MC-179, Purchase, Merger, and Control of Motor Passenger and Water Carriers, interim policy and notice of proposed

ACTION: Proposed policy revision.

SUMMARY: The Commission is proposing to revise its policy governing the safety fitness of motor carrier licensing and finance applicants. Essentially, the proposed policy revision would restrict only carriers holding "Unsatisfactory" safety ratings from the U.S. Department of Transportation (DOT) from receiving grants of operating authority in the Commission's licensing and finance dockets. Unrated carriers and those holding "Conditional" safety fitness ratings would no longer be precluded from receiving passenger or hazardous materials authority and would no longer have their authorities restricted to 1-year terms.

Corresponding amendments to the regulations at 49 CFR parts 1011, 1160, 1181, and 1186 are proposed to reflect this policy change. These revisions are summarized in a concurrently published notice of proposed rulemaking that appears in the "Proposed Rules" section of this *Federal Register* issue.

This proposed revision to the Commission's licensing and finance policy has been precipitated by and is designed to comport with recent statutory changes in the safety fitness area, implemented by the Motor Carrier Safety Act of 1990 (Pub. L. 101-500). The revisions also reinforce refinements in the DOT safety oversight program designed to implement recent legislation. The Commission anticipates that the responsive adjustments in the safety policy recommended here would meet the expectations of Congress, conform with the regulatory agenda established with our sister agency, and enhance our safety oversight role to induce safe, yet competitively sound, operating conditions in the motor carrier industry.

DATES: Comments are due June 26, 1991.

ADDRESSES: Send comments (an original and 10 copies), referring to EX Parte No. 55 (Sub-No. 84), to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

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

SUPPLEMENTARY INFORMATION: To ensure that existing operating authorities allow for service consistent with that authorized under the policy proposed here, we further propose to

policy, 55 FR 42859 (October 22, 1990) (Finance Reopening).

initiate a program to remove all 1-year term limitations previously imposed on authorities granted to unrated or "Conditional"-rated applicants. Pending our implementation of a final policy statement in this proceeding and our development of procedures for re-issuance of unrestricted authorities under this proposed program, we will order as an interim measure that all such authorities will continue in effect (i.e., that expiration of term limitations will be suspended). Our final decision in this proceeding will announce specific procedures for reissuing existing authorities without the restrictions imposed under the current safety policy.

Finally, under the revised policy, we propose to place a two-part safety compliance condition in all authorities providing that:

1. This authority will remain in effect only as long as the carrier is not issued a safety rating of "unsatisfactory" from DOT.

2. Willful and persistent noncompliance with applicable safety regulations could result in a proceeding requiring the holder of this certificate or permit to show cause why this authority should not be suspended or revoked.

These proposed adjustments to the safety policy extend to safety oversight issues in the Commission's finance docket and, consequently, fully embrace issues raised in our prior notice of proposed policy in Financing Reopening, supra. Accordingly, that proposed policy statement is embraced by this proceeding and the Finance Reopening docket is proposed to be discontinued concurrently with final disposition of this matter.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423, telephone (202) 275-7428. (Assistance for the hearing impaired is available through TDD service (202) 275-1221).

Environmental and Energy Considerations

We preliminarily conclude that the proposed action will not significantly affect the quality of the human environment or the conservation of energy resources. We specifically encourage comments on these issues, however.

Initial Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603, the Commission is required to examine specifically the impact of a proposed action on small businesses and small

organizations. We preliminarily conclude that this proposal will have a significant positive impact on such entities.

The licensing and finance policy revisions and corresponding rule changes recommended here are expected to result in an improved Federal safety oversight program, rendering the Commission's approach to safety more consistent with and responsive to recent legislative directives and DOT implementing measures. This integrated safety oversight effort should inure directly to the benefit of applicants for operating authority by streamlining the pre-licensing review process and by ensuring that grants of authority will not be subject to term conditions or service restrictions that no longer serve as inducements to operational safety. Small entities, in particular, that must commit a greater proportion of their resources to licensing and other regulatory compliance matters will benefit from those features of the proposed policy that expedite pre-licensing review. Finally, the proposed policy should ensure that unrated new entrants will be able to initiate service without any term limitations.

In developing the proposed policy, we have considered various alternative approaches to improve the Commission's management of its safety docket. We are persuaded that the changes to our safety policy proposed here will remedy any inconsistencies with recent statutory safety enforcement measures and with DOT's safety evaluation program and standards.

We believe that the proposed policy revisions and corresponding amendments to Commission regulations will have a significant positive impact upon a substantial number of small motor carrier entrants, as well as upon applicants generally. This proposal will not impose additional reporting, recordkeeping, or compliance requirements upon small entities. In fact, in the case of unrated applicants or applicants with "Conditional" safety ratings, the paperwork burden should be reduced as a result of this policy change.

Because the overall safety policy unification goals of this proposal speak directly to the potential impact on small businesses, we particularly invite the comments of interested parties on this matter.

Decided: May 15, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner Phillips commented with a separate

expression. Commissioner Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 91-13391 Filed 6-6-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB56

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Plant *Sidalcea nelsoniana* (Nelson's Checker-mallow)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine the plant *Sidalcea nelsoniana* Piper (Nelson's Checker-mallow) to be a threatened species under the authority contained in the Endangered Species Act of 1973, as amended (Act). *Sidalcea nelsoniana* is known from restricted areas of the Willamette Valley and adjacent Coast Range of Oregon. Mowing, plowing, recreational use, and roadside spraying threaten the remaining populations of this plant in the Willamette Valley. In the Coast Range, plans for the construction of a reservoir threaten the largest population of this species. If the reservoir is constructed, all plants at the site would be inundated. A determination that *Sidalcea nelsoniana* is a threatened species would implement the protection provided by the Act. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by August 6, 1991. Public hearing requests must be received by July 22, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Portland Field Station, U.S. Fish and Wildlife Service, 2600 SE. 98th Ave., suite 100, Portland, Oregon 97266. (Fax: 503/231-6195 or FTS 429-6195). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Robert L. Parenti, Botanist, Boise Field Station, U.S. Fish and Wildlife

Service, 4696 Overland Road, room 576, Boise, Idaho 83705 (208/334-1816).

SUPPLEMENTARY INFORMATION:

Background

Sidalcea nelsoniana is endemic to the Willamette Valley and adjacent Coast Range of Oregon. Hitchcock's monograph suggests that *S. nelsoniana* was very occasional in the Willamette Valley, Oregon, from Linn and Benton Counties north to near Portland and westward to eastern Tillamook County, but mainly occurred in Marion County, on more or less gravelly, well drained soils (Hitchcock 1957).

Sidalcea nelsoniana, in the Mallow family (Malvaceae), is a perennial herb with pinkish-lavender to pinkish-purple flowers borne in clusters at the end of 1 to 2½ feet tall stems. Inflorescence of plants from the Willamette Valley are usually somewhat spikelike, usually elongate and somewhat open (Hitchcock 1957). Inflorescence of plants from the Coast Range are shorter and not as open (Chambers, botanist and professor emeritus, Oregon State University, pers. comm.). *Sidalcea nelsoniana* is a gynodioecious species, which means that plants have either perfect flowers (male and female) or pistillate flowers (female). The plant can reproduce vegetatively by rhizomes and produces seed that drop next to the parent plant. Flowering occurs from mid-June to early August, with fruit dehiscence by September. *Sidalcea nelsoniana* was first described by Charles Piper in 1919 based on material collected by J.C. Nelson at Salem, Oregon.

Sidalcea nelsoniana may have historically occurred at six population centers with one in the Coast Range and five in the Valley. The plant has been extirpated from one Valley population center and reduced to relic remnant populations in the four remaining Valley centers, because of agricultural land conversion. Since 1985, *S. nelsoniana* has been extirpated from three localities within the Willamette Valley at two population centers (City of McMinnville Water and Light Department (McMinnville Water and Light) 1989 and 1990).

Today, within the Valley, *Sidalcea nelsoniana* most frequently occurs in *Fraxinus* (ash) swales and meadows with wet depressions, or along streams. *Sidalcea nelsoniana* grows in wetlands within remnant prairie grasslands (Mishaga et al 1985). Several sites occur along roadsides at stream crossings where exotics such as blackberry (*Rubus* spp.) and Queen Anne's lace (*Dacus Carrota*) also occur. *Sidalcea nelsoniana* seems to need open areas

with little or no shade to grow and may not tolerate encroachment of woody species. Prior to European colonization of the Willamette Valley, naturally occurring fires and fires set by Indians maintained suitable *S. nelsoniana* habitat. Current fire control and prevention practices allow succession of introduced and native species which may gradually replace habitat for *S. nelsoniana* (Mishaga et al. 1985). No natural prairie remains in the Willamette Valley without the obvious effects of livestock grazing, fire suppression, and agricultural activities (Moir and Mika 1972).

Two localities are at least partially under Federal management. Those are Finley National Wildlife Refuge in the Valley, which is managed by the Service, and portions of Walker Flat in the Coast Range which is under the jurisdiction of the Bureau of Land Management. McMinnville Water and Light has recently acquired part of the Walker Flat site and plans to construct a reservoir that would inundate this entire population, the largest and most vigorous population of *Sidalcea nelsoniana*. Eight sites occur partially or entirely on State owned land; the remainder occur on county, city or private land.

Over half of the Valley locales have fewer than 100 plants and appear to be remnants of once more extensive populations. Many of the plants at these locales appear to be in poor condition, having been adversely affected by weevils, encroachment of woody species, and road management (i.e. spraying and mowing). Currently, 13 out of 44 locales (11 in the Valley and 2 in the Coast Range) have 25 or fewer plants; one site, Philomath North, has only one plant (McMinnville Water and Light 1990).

Within the Coast Range population center, logging has adversely affected this species at the Nelson's Golden Valley locale (McMinnville Water and Light 1989). Another Coast Range site, Devils Lake Fork, has been used by motorcyclists, causing a fair amount of disturbance.

Federal involvement with *Sidalcea nelsoniana* began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of this report as a petition within the context of section 4(c)(2) (now section

4(b)(3)) of the Act and of its intent thereby to review the status of the plant taxa named therein. In this and subsequent notices, *S. nelsoniana* was treated as under petition for listing as endangered. The Service published a proposed rule in the June 16, 1976, **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. This list, which included *S. nelsoniana*, was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, **Federal Register** publication. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

Sidalcea nelsoniana was included as a Category 1 candidate in the December 15, 1980, notice of review for plants (45 FR 82537), indicating that sufficient information was available to the Service to support a proposal to list the species at that time. This status was changed to Category 2 in the November 28, 1983, supplement (48 FR 53659) and remained as such in the September 27, 1985, notice of review (50 FR 39527). A Category 2 candidate is a species for which listing may be appropriate but additional biological information is needed to support a listing proposal. In the February 21, 1990 notice of review (55 FR 6184) this status was changed to Category 1. This proposed rule is based on data provided to the Service concerning the status of *Sidalcea nelsoniana* and subsequent comments and recommendations from knowledgeable individuals.

Section 4(b)(3)(B) of the Endangered Species Act, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Sidalcea nelsoniana* because of the acceptance of the 1975 Smithsonian Report as a petition. In October of 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990, the Service found that the petition to list *S. nelsoniana* was warranted but precluded by listing actions of higher priority and that additional data on

vulnerability and threats were still being gathered. Publication of this proposal constitutes the final finding for the petitioned action.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their applications to *Sidalcea nelsoniana* Piper (Nelson's checker-mallow) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Five population centers of *Sidalcea nelsoniana* remain in the Willamette Valley and adjacent Coast Range of Oregon, made up of approximately 44 total sites. Four population centers occur in the Valley and one in the Coast Range. Two sites in two population centers have plants located on Federal lands. Eight sites in four population centers occur on State land. All other plants are growing on county, city, or private lands, which for the most part, are unprotected from development and habitat conversion. Mowing, conversion of habitat to agricultural lands, logging, recreational activities, and water impoundment further threaten portions of all remaining population centers of *S. nelsoniana*.

Since 1985, habitat loss (resulting in plant destruction or extirpation) has occurred at six Valley sites: Lewisburg, Philomath North, Mount Jefferson Farm, Dallas South, Starker Park, and the Salem Municipal Airport.

Mowing adversely impacts the plants if it takes place before the plants set seed. Mowing activities have adversely affected 11 sites in all 4 population centers in the Valley: Panther Creek, Salem Municipal Airport, Walnut Park, Fletcher Road, Dallas South, McTimmonds Valley, State Highway 22, Monmouth, Decker Road, Starker Park, and State Highway 99W (McMinnville Water and Light 1989).

Continued logging at the Nelson's Golden Valley site in the Coast Range may affect the hydrological regime at the site as well as directly destroy plants. McMinnville Water and Light plans to construct a reservoir that would inundate the Walker Flat population in the Coast Range, the largest and most

vigorous population of *Sidalcea nelsoniana*. Walker Flat is the only federally owned site in the Coast Range. Recreational motorcyclists use the area at the Devils Lake Fork site in the Coast Range and have disturbed the site.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Although the species may not currently be vulnerable to any of these threats, publicity associated with listing could render *Sidalcea nelsoniana* significantly vulnerable to collection and vandalism, especially at the Walker Flat site. Several sites in the Willamette Valley are readily accessible by road and could also be threatened by vandalism or collection.

C. Disease or Predation

A species of weevil within the family Curculionidae utilizes *Sidalcea nelsoniana* plants at several sites. The adult female insect bores a hole through the seed coat and deposits her eggs inside. When the larvae hatch, they feed on the developing seed (Mishaga et al. 1985). Damage to the seed reduces the reproductive potential of the species.

D. The Inadequacy of Existing Regulatory Mechanisms

Under the Oregon Endangered Species Act (ORS 564.100—564.135) and pursuant regulations (OAR 603, Division 73), the Oregon Department of Agriculture has listed Endangered Species Act as threatened (OAR 603-73-070). This statute prohibits the "take" of State-listed plants on state owned or state leased lands only. *Sidalcea nelsoniana* occurs on many county, city, or privately-owned sites where the plant is not protected from actions the landowner may take which would adversely affect the species.

Because *Sidalcea nelsoniana* occurs in both isolated wetlands and wetlands adjacent to waterways, regulatory mechanisms under the Clean Water Act apply to this species. Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulated the discharge of fill into the waters of the United States, including wetlands. To be in compliance with the Clean Water Act, potential applicants are required to notify the Corps prior to undertaking any activity (grading, discharge of soil or other fill material, etc.) that would result in the fill of wetlands under the Corps' jurisdiction. Nationwide Permit Number 26 (see 33 CFR 330.5) has been issued to regulate the fill of wetlands that are relatively small, not more than 10 acres. Where fill would occur in a wetland of one to ten acres in size, the

Corps circulates for comment a pre-discharge notification to the Service and other interested parties prior to determining whether or not the proposed fill activity qualifies under Nationwide Permit 26. Individual permits are required for the discharge of fill into wetlands that are greater than 10 acres in size. The review process for the issuance of individual permits is more extensive, and conditions may be included that require the avoidance or mitigation of environmental impacts. The Corps has discretionary authority and can require an applicant to seek an individual permit if the Corps believes that the resources are sufficiently important, regardless of the wetland's size. In practice, the Corps rarely requires an individual permit when a project would qualify for a Nationwide permit, unless a threatened or endangered species occurs on the site. If a federally listed threatened or endangered species may be affected by a proposed project, the Corps must insure that it does not authorize, fund, or carry out any action that is likely to jeopardize the species' continued existence (see discussion below under "Available Conservation Measures").

E. Other Natural or Manmade Factors Affecting its Continued Existence

Encroachment of woody species is eliminating *Sidalcea nelsoniana* habitat throughout the Willamette Valley. In the past, occasional fires created openings facilitating the growth of the plant. Fires still regularly occur at the sites that currently have vigorous *S. nelsoniana* populations. Management efforts to control invading *Fraxinus*, which competes with *S. nelsoniana* at Finley National Wildlife Refuge, have benefited *S. nelsoniana*. Management efforts include cutting, spraying, and burning encroaching vegetation. *Sidalcea nelsoniana* appears vigorous at Refuge locations where management efforts have been employed, compared to those plants in another location, the *Fraxinus* forest surrounding Muddy Creek. Since 1985, *S. nelsoniana* has also increased in vigor at the university turkey farm site, one of the largest populations in the valley, in areas where *Fraxinus* has been controlled for several years (McMinnville Water and Light 1989).

Many populations occur along roadsides. Routine maintenance of the road shoulders may adversely affect the plant through grading or application of herbicides.

The Oregon State University turkey farm is regularly trampled by turkeys.

Continuous heavy trampling may limit seedling establishment.

An additional concern for the species is the small number of plants (<25) in many of the locales. Within smaller populations the sex ratios—number of plants with perfect flowers to number of pistillate flowered plants—may be the controlling factor in seed production. Thus small isolated *Sidalcea nelsoniana* populations are more vulnerable to extirpation due to demographics. Any further reduction of the breeding population (gene pool) may have adverse effects on the reproductive capacity and survival of this taxon.

The Service has carefully assessed the best scientific information available concerning the past abundance and subsequent decline of this taxon, as well as the threats faced by its remnant populations. Based on this evaluation, the preferred course of action is to list *Sidalcea nelsoniana* as threatened. Agricultural land conversion, invasion of competitive plant species, adverse roadside management activities, and parasitism by a species of weevil have reduced this plant to remnant populations. In addition, a potential reservoir project, if constructed, would inundate the largest population of this species. While still occurring in five population centers consisting of approximately 44 sites, vulnerability to the above threats indicate that *S. nelsoniana* is likely to become endangered in the foreseeable future throughout all or a significant portion of its range, and therefore fits the Act's definition of a "threatened" species. For the reasons discussed below, the Service is not proposing to designate critical habitat for this species at this time.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is listed as endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor B above in the "Summary of Factors Affecting the Species," *Sidalcea nelsoniana* is vulnerable to taking and vandalism. Landowners can be alerted to the presence of the plant without the publication of critical habitat descriptions and maps. The publication of such descriptions and maps would potentially increase the risk of vandalism and taking and increase enforcement problems. Protection of the species' habitat will be addressed through the recovery process and

through section 7 consultation. Therefore, it would not now be prudent to determine critical habitat for *Sidalcea nelsoniana*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions would be initiated by the Service following listing. The protection required by Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or destroy or adversely modify proposed critical habitat. When a species is listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Bureau of Land Management would be required to consult with the Service, if this plant is listed, over any permitting action. A permitting action would be subject to review by the Service under section 7 of the Act. The U.S. Army Corps of Engineers would become involved with this plant through its permitting authority as described under section 404 of the Clean Water Act. By regulation, nationwide permits may not be issued where a federally listed endangered or threatened species would be affected by the proposed project without first completing formal consultation pursuant to section 7 of the Act.

The Act and implementing regulations found at 50 CFR 17.71 and 17.72 for threatened plant species set forth a series of general prohibitions and exceptions that apply to all threatened plants. With respect to *Sidalcea nelsoniana*, the trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 17.71, would generally apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; or to engage in certain activities involving "taking" of the species. Certain exceptions would apply to agents of the Service and State conservation agencies. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plant species under certain circumstances. No trade in this species is known. It is anticipated that few trade permits involving *Sidalcea nelsoniana* would ever be sought or issued since the species is not common in cultivation or in the wild.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203-3507 (703/358-2093 or FTS 921-2093; FAX 703/358-2281).

If *Sidalcea nelsoniana* is listed under the Act, the Service would also determine whether it should be placed upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8a(e) of the Act. It would also be determined whether the species should be considered for other appropriate international agreements.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Sidalcea nelsoniana*;

(2) The location of any additional populations of *Sidalcea nelsoniana* and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Sidalcea nelsoniana*.

The final decision on this proposal will take into consideration any comments and any additional information received by the Service. Such communications may lead to the adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Portland Field Station, U.S. Fish and Wildlife Service, 2600 SE. 98th Ave, suite 100, Portland, Oregon 97266 (FAX: 503/231-6195 or FTS 429-6195).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined pursuant to the

National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

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Piper, C.V. 1919. New Pacific Coast plants. Proc. Biol. Soc. Wash. 32:41.

Author

The primary author of this proposed rule is Dr. Robert Parenti, U.S. Fish and Wildlife Service, 4696 Overland Road, Boise, Idaho 83705 (208/334-1816).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17--[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Malvaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

| Species | | Historic range | Status | When listed | Critical habitat | Special rules |
|----------------------------|-------------------------|----------------|--------|-------------|------------------|---------------|
| Scientific name | Common name | | | | | |
| Malvaceae—Mallow family | | | | | | |
| <i>Sidalcea nelsoniana</i> | Nelson's Checker-mallow | U.S.A. (OR) | T | | NA | NA |

Dated: May 7, 1991.

Richard N. Smith,
Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-13519 Filed 6-6-91; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 56, No. 110

Friday, June 7, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Lake of the Sky Interpretive or Information Facility; Lake Tahoe Basin Management Unit; Placer County, CA

Intent to Prepare a Supplement to the Lake of the Sky Interpretive Center Draft Environment Impact Statement

The Department of Agriculture, Forest Service, will prepare a supplement to the draft environmental impact statement (DSEIS) for its proposal to construct either an interpretive or information facility on the site commonly known as the "Sixty-four Acre Tract." This site is located adjacent to the northwest corner of Lake Tahoe in Tahoe City, California. The facility would be constructed in cooperation with the State of California, Department of Parks and Recreation.

Construction of either an interpretive or information facility on the Sixty-four Acre site would implement direction in the Lake Tahoe Basin Management Unit's Land and Resource Management Plan. The Record of Decision for the Lake Tahoe Basin Land and Resource Management Plan Final Environmental Impact Statement was signed by the Pacific Southwest Regional Forester on December 2, 1988.

This DSEIS is being prepared because the Forest Supervisor determined there is new information relevant to environmental concerns about the proposed action (40 CFR part 1502.9(c)(1)(ii)). The original notice of intent to prepare the draft environmental impact statement (DEIS) was published in the May 2, 1989, **Federal Register** (Vol. 54, No. 83). The notice of availability for the Lake of the Sky Interpretive Center DEIS was published in the **Federal Register** on March 16, 1990. The comment period closed on April 30, 1990.

Since 1987, considerable scoping, public workshops, and analyses were completed in response to this proposal. Specific public meetings were held in March, 1990, which were designed to explain and receive comments on the DEIS. Both the DEIS and the public meetings precipitated a large number of comments from the public, Federal, State and local agencies. The DSEIS will document this public involvement, and address the issues raised by both the public and the agencies.

Due to the extensive scoping and public participation that has already occurred, the Forest Supervisor determined there is no need for additional scoping prior to the release of this DSEIS. Regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA), specifically 40 CFR 1502.9(c)(4), allow agencies to exclude scoping when preparing supplements to environmental impact statements. The Forest Supervisor has, however, decided to accept written comments and suggestions concerning the re-analysis and proposed DSEIS.

The public will be informed of the availability of the DSEIS by a notice of availability in the **Federal Register**, notification through the California State Clearinghouse, and news releases issued to the media. Those individuals who commented on the DEIS will be contacted to determine if they would like a copy of the DSEIS.

The results of the scoping and the comments received on the DEIS indicate that there are significant issues to be analyzed in depth and documented in the DSEIS. These are: Social and economic effects on the nearby parcels of land; effects of additional traffic (including noise, air quality, and traffic flow) created by the proposal on the existing highways; the size and purpose; i.e., interpretation or information, of the proposed facility; availability and impacts of parking; effects of construction and use of the proposed pier; and public safety and sanitation.

The DSEIS will document variations of the original alternatives presented in the DEIS. The four alternatives that were formulated and discussed in detail in the DEIS were: (1) The "Lakeshore Site," located on the east side of State Highway 89 near the shoreline of Lake Tahoe; (2) the "Riverside Site," located on the west side of State Highway 89

near the Truckee River; and (3) the Regional/Urban Design Assistance Team (R/UDAT) recommendation. The R/UDAT was retained by the North Tahoe Community to study and make planning recommendations for the area. The fourth alternative was not to develop the facility at all, which is referred to as the "No Action Alternative".

The Forest Service expects that the DSEIS will be filed with Council on Environmental Quality and made available to the public and other commenting entities in November, 1991. Following public comment, a final environmental impact statement (FEIS) will be prepared. The Forest Service expects the FEIS will be issued in June 1992.

Comments are invited from the public, and from State and local agencies which are authorized to develop and enforce environmental standards. In addition, Federal agencies having jurisdiction by law or special expertise with respect to any environmental effects for which comments have not been specifically requested are also invited to respond.

The Forest Service believes it is important to provide reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements, which also applies to this DSEIS, must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period on the DSEIS so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. Comments on the

DSEIS should be specific and should address the adequacy of the statement or the merits of the alternatives discussed (40 CFR 1503.3).

FOR FURTHER INFORMATION CONTACT:

Written comments and suggestions concerning the re-analysis and the proposed DSEIS should be sent to the responsible official, Robert E. Harris, Forest Supervisor, Lake Tahoe Basin Management Unit, 870 Emerald Bay Road, Suite 1, South Lake Tahoe, California, 96150, by July 8, 1991.

Questions concerning the proposed action and the proposed DSEIS should be directed to Robert A. McDowell, Recreation Staff Officer, or Jackie L. Faike, Interpretive Program Services Manager (916) 573-2600.

Dated: May 24, 1991.

Robert E. Harris,
Forest Supervisor.

[FR Doc. 91-13448 Filed 6-6-91; 8:45 am]
BILLING CODE 3410-11-M

Rocky Mountain Region; Exemption of Horse Creek Fire Recovery Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notice; exemption of certain fire recovery projects from administrative appeals.

SUMMARY: Pursuant to 36 CFR 217.4(a)(11), the Regional Forester for the Rocky Mountain Region has determined there is good cause to exempt from administrative appeal salvage sales related to the Horse Creek Fire on the Black Hills National Forest.

EFFECTIVE DATE: June 3, 1991.

FOR FURTHER INFORMATION CONTACT:

John P. Halligan, Rocky Mountain Region, USDA Forest Service, 11177 West 8th Avenue, P.O. Box 25127, Lakewood, CO 80255 (303) 236-9430, or Darrel Kenops, Forest Supervisor, Black Hills National Forest, RR 2, Box 200, Custer, SD 57730 (605) 673-2251.

SUPPLEMENTARY INFORMATION: The Forest Service has an obligation to rehabilitate National Forest System lands and resources damaged by wildfires. With full consideration given to environmental values, specific management objectives for resource recovery and rehabilitation are to:

1. Allow regeneration of burned-over areas to ensure watershed and soil quality and to provide for future timber needs;
2. Salvage burned timber and;
3. Remove trees highly susceptible to bark beetle attack.

Environmental analysis of proposed action related to the rehabilitation are

currently underway. Pursuant to 40 CFR 1501.7, scoping is now in progress. Scoping is being conducted by the Pactola District Ranger to determine the issues to be addressed in the environmental analysis.

The Pactola Ranger District is expected to complete the environmental analysis and documentation in June 1991. Decisions are expected at that time. The environmental documents will be available for public review at the Supervisor's Office located at Highway 385 North, Custer, SD 57730 and at the Pactola Ranger District Office, 803 Soo San Drive, Rapid City, SD 57702.

Background

In April 1991, the Horse Creek Fire burned approximately 1,500 acres on the Black Hills National Forest. Within that area, about 300 acres were subject to high intensity burns which caused severe damage to vegetation, soil and water resources, and to visual quality. Much of the burned area is adjacent to, or visible from, a Federal highway. This area receives heavy visitation by tourists and the local public.

The area within which rehabilitation activities would occur is located in Pennington County, approximately twelve miles southwest of Rapid City, South Dakota, and is within the P6 Diversity Unit. The area, which according to the Forest Plan is to be managed primarily for wildlife winter range in nonforested areas, has been intensively managed for many years. The fire has changed the area considerably.

Planned Actions

The Pactola Ranger District interdisciplinary team surveyed the burned area and concluded that a substantial loss of timber values would occur if the timber was not removed soon. The risk of insect and disease infestations in both the short and long term are possible and were noted by the team. Because of the extensive damage to the timber resources here, there is a need to commence salvage harvesting as quickly as possible. The total estimated volume of dead and dying timber to be offered for sale is approximately 300 to 400 thousand board feet (MBF) on approximately 100 acres of National Forest System land. No road construction would be needed to accomplish the salvage.

If salvage operations are not completed before the end of Summer 1991, insects will attack both the damaged and the healthy trees in the area. Salvage harvest of useable wood fiber, following guidelines set forth in the goals, policies, and direction found

in the Forest Plan will prevent an insect infestation while at the same time providing funds and opportunities to accomplish additional Plan objectives. Avoiding an insect infestation will serve to facilitate the long-term goals provided for in the Forest Plan.

A detailed inventory of the timber has not been completed to date; however, all of the trees to be salvaged are ponderosa pine with an average diameter of 10 inches. Volume losses currently are less than 10 percent. Volume loss due to rot, insects, and drying weather will accelerate beginning in July 1991, and by September 1991, it is expected that salvage would no longer be practical. Without salvage there would be no money available from timber sale collections to move the area toward the desired future condition specified in the Forest Plan.

Also, standing dead timber is currently located within falling distance of several existing roads. These roads are used by the public for recreation and access to private land. A delay in removing this timber will create a hazardous situation.

Therefore, rehabilitation salvage sales which are designed to reduce the potential for immediate catastrophic insect infestation, to reduce hazardous situations, and to offer salvage timber for sale must be undertaken as quickly as possible. Therefore, I am exempting the sales from appeal under provisions of 36 CFR part 217 if, through environmental analysis, it is found these actions are feasible.

The salvage sale to which this exemption applies will be identified in any documentation as part of the Horse Creek Fire Recovery Project.

Dated: May 30, 1991.

Tom L. Thompson,
Acting Regional Forester.

[FR Doc. 91-13447 Filed 6-6-91; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-301-602]

Certain Fresh Cut Flowers from Colombia; Preliminary Results and Termination in Part of Antidumping Duty Administrative Review; Intent to Revoke in Part the Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results and termination in part of antidumping duty administrative review; intent to revoke in part the antidumping duty order.

SUMMARY: In response to requests by the petitioner and 93 respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain fresh cut flowers from Colombia. The review covers 186 producers and/or exporters of this merchandise to the United States and the period March 1, 1989 through February 28, 1990. The review indicates the existence of dumping margins for certain firms during the review period. Reviews of two producers and/or exporters are being terminated following withdrawal of requests for their review. Provided that prior to the final results of this review, the Floramerica group is able to demonstrate that it has not sold at less than fair value for a period of at least three consecutive years and that it is not likely to sell the subject merchandise at less than fair value in the future, the Department intends to revoke the antidumping duty order with respect to the Floramerica group upon publication of these final results. We invite interested parties to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: June 7, 1991.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 1990, the Department of Commerce (the Department) published in the *Federal Register* a notice of "Opportunity to Request Administrative Review" (55 FR 11417) of the antidumping duty order on certain fresh cut flowers from Colombia for the period March 1, 1989 through February 28, 1990. In March of 1990, the petitioner and 93 respondents requested an administrative review covering the period March 1, 1989 through February 28, 1990. We initiated the review on May 9, 1990 (55 FR 19287). A timely request for revocation from the antidumping duty order, accompanied by the required certification, was submitted by the Floramerica group of companies. Requests for review of two producers and/or exporters, that were not also requested by the petitioner, were timely withdrawn. The Department has now conducted the administrative review in

accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of certain fresh cut flowers from Colombia (standard carnations, miniature (spray) carnations, standard chrysanthemums and pompon chrysanthemums). These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 of the *Harmonized Tariff Schedule* (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers those 186 Colombian producers and/or exporters requested to be reviewed and who shipped subject merchandise to the United States during the period March 1, 1989 through February 28, 1990. We are terminating the reviews of Floricola La Ramada and Florval because these companies withdrew their requests for review on a timely basis and the petitioner did not request reviews of them.

For those seven producers and/or exporters that did not respond to the Department's questionnaire, El Timbul, Flores Aguila, Flores Al Faya, Flores De Nemocon, Flores La Cabanuela, Flores Mountgar, and Invernavas, we used best information available (BIA) for assessment of antidumping duties and cash deposit purposes. BIA is the highest margin for a responding firm during the reviewed period, or 66.04 percent.

The Department intends to revoke the antidumping duty order with respect to the Floramerica group of companies if, at the time the Department publishes its final results of this review, the group has demonstrated three consecutive years of sales at not less than fair value and that it is not likely to sell subject merchandise at less than fair value in the future. The other companies who have submitted revocation requests, Exportaciones Bochica/Floral, Flores Colombianas, and companies within the Agrodex group, did not submit their requests in a timely manner as provided in § 353.25(b) of the Department's regulations. More importantly, the Agrodex companies and Exportaciones Bochica/Floral have failed to meet the eligibility requirement of having sold the subject merchandise at not less than fair value for three consecutive years. Flores Colombianas submitted their revocation request nine months after initiation of the review which was too late to include the company in verification plans.

United States Price

Pursuant to section 777A of the Tariff Act, we determined that it was appropriate to average U.S. prices on a monthly basis in order to use actual price information which is often available only on a monthly basis, to take account of the large volume of sales, and to accommodate the pricing practices associated with a perishable product.

In calculating United States Price (USP), the Department used purchase price (PP) when sales were made to unrelated purchasers in the United States prior to the date of importation, and exporter's sales price (ESP) when sales were made to unrelated purchasers in the United States after the date of importation, both pursuant to section 772 of the Tariff Act.

We calculated purchase price based on the packed price to the first unrelated purchaser in the United States. The terms of purchase price sales were f.o.b. Bogota and c.i.f. Miami. We made deductions, where appropriate, for foreign inland freight, air freight, brokerage and handling, U.S. customs duties, and return credits.

Exporter's sales price, for sales made on consignment, was calculated based on the packed price to the first unrelated customer in the United States. We made adjustments, where appropriate, for foreign inland freight, brokerage and handling, air freight, box charges, credit expenses, returned merchandise credits, royalties, U.S. duty, and either commissions paid to unrelated U.S. consignees or indirect U.S. selling expenses of related consignees.

Foreign Market Value

Section 733(a)(1)(A) of the Tariff Act requires the Department to compare sales in the United States with viable home market sales of such or similar merchandise sold in the home market in the ordinary course of trade. Although thirteen companies acknowledged a viable home market for sales of particular flower types, nine admitted to having made these sales at prices below the cost of production and failed to report them. Only four companies, Florandia Herrera Camacho, Floralex, Flores Condor de Colombia, and Pompones, actually reported their viable home market sales. However, consistent with the final results of administrative review for the March 1, 1988 through February 28, 1989 period (Final Results of Antidumping Duty Review; Certain Fresh Cut Flowers from Colombia (55 FR 20491; May 17, 1990), hereafter Final Results), we have concluded that sales

of export quality flowers in Colombia are not in the ordinary course of trade for domestic consumption and have, therefore, rejected these sales as the basis for foreign market value.

The cut flower industry in Colombia is primarily an export industry. Domestic sales of most companies consist exclusively of culls (non-export quality) or defective flowers, which are not such or similar merchandise to the export quality flowers under review. As evidence of the fact that the ordinary course of trade in Colombia is sales of culls or defective merchandise, we note that in this review 173 of the 186 companies do not report domestic sales of such or similar merchandise sufficient to meet the viability standard described in the Final Results. Because we have determined that sales of such or similar merchandise in the home market are not in the ordinary course of trade, we have rejected the home market sales of export quality flowers reported by Florandia Herrera Camacho, Floralex, Flores Condor de Colombia, and Pompones as a basis for foreign market value.

Since we have rejected home market sales as the basis of foreign market value for the reasons stated above, pursuant to section 773(a) of the Tariff Act, we must compute foreign market value either by use of third country prices or by use of constructed value. The Department is rejecting third country sales as an appropriate basis for foreign market value in favor of constructed value because third country prices have been determined to be an inappropriate basis for comparison, for the reasons set forth in the Final Results.

Accordingly, in calculating foreign market value, the Department used constructed value as defined in section 773(e) of the Tariff Act for all companies. The constructed value represents the average per-flower cost for each type of flower, based on the costs incurred to produce that type of flower over the review period.

The Department used the materials, fabrication, and general expenses reported by respondents. The per-unit average constructed value has based on the quantity of export quality flowers actually sold by the grower/exporter in all markets. The non-export quality flowers (culls) which are produced in conjunction with export quality flowers are considered by-products. Therefore, revenue from the sales of culls was used as an offset against the cost of producing the export quality flowers.

Actual general expenses were used in all, but two, cases because they exceeded the statutory minimum of 10 percent of the cost of materials and fabrication. For Flores Cigarral/Flores

Tairona and for Plantas Ornamentales, we used the statutory minimum of 10 percent of the cost of materials and fabrication since their actual general expenses were less than this amount. When imputed credit was included in constructed value, the actual interest expense was reduced to prevent double counting.

When respondents indicated that the actual profit for merchandise of the same general class or kind could not be calculated or was less than eight percent of the sum of the cost of production and general expenses, the Department used the eight percent statutory minimum for profit. For Pompones/Las Amalias, because the company's profit was greater than the statutory minimum, we used the company's actual profit experience. We added U.S. packing to constructed value. Adjustments to constructed value were made for credit and indirect selling expenses.

Adjustments to the respondents' data were made when certain costs necessary for the production of the flowers under review were not included or were not quantified or valued appropriately. Such adjustments included the elimination of exchange rate gains as an offset to respondents' financing expenses, the inclusion of U.S. distress sale in the total volume of flowers sold (as well as in the U.S. sales tables for the calculation of U.S. price), the elimination of U.S. distress sales value as an offset to the costs of cultivation, and an adjustment necessary to reflect actual sales quantity of export quality flowers during the review period.

The Department verified the responses submitted by the Agrodex group of companies, Exportaciones Bochica/Floral, Flores del Cauca, and the Floramerica group of companies. At verification, Flores del Cauca was unable to substantiate their submitted constructed value information. Accordingly, in these preliminary results, the Department used best information for the company's constructed value. As best information available, the Department used the highest constructed value from a responding firm for the two flower types produced by the company. The consolidated constructed value of the Agrodex group was adjusted to reflect current cost information. Exportaciones Bochica/Floral's financing expense was changed to reflect the company specific experience. For the Floramerica group of companies, indirect selling expenses were increased to include all such expenses incurred by its related Panamanian sales subsidiary.

Preliminary Results of the Review

As a result of our comparison of United States price with foreign market value, we preliminarily determine the margins to be:

| Producer/exporter | Margin (percent) |
|--|------------------|
| Agricola Bojaca..... | 2.59 |
| Agricola De La Fontana..... | 4.98 |
| Agricola De Los Alisos..... | 3.17 |
| Agricola El Cactus..... | 1.80 |
| Agricola El Redil..... | 0.26 |
| Agricola Guacatay..... | 0.42 |
| Agricola La Corsaria Ltd..... | 4.05 |
| Agricola Las Cuadras..... | 1.49 |
| Agricola Los Arboles..... | 4.12 |
| Agricola Malqui..... | 1.33 |
| Agricola Papagayo..... | 4.79 |
| Agro Koralia Ltda..... | 12.74 |
| Agrodex Group..... | 2.17 |
| Agricola El Retiro..... | |
| Agricola Los Gaques..... | |
| Agrodex..... | |
| Degaflores..... | |
| Flores Camino Real..... | |
| Flores Colon..... | |
| Flores De La Comuna..... | |
| Flores De La Maria..... | |
| Flores De Las Mercedes..... | |
| Flores De Los Amigos..... | |
| Flores De Los Arrayanes..... | |
| Flores De Pueblo Viejo..... | |
| Flores Del Gallinero..... | |
| Flores Del Potrero..... | |
| Flores Dos Hectareas..... | |
| Flores El Lobo..... | |
| Flores El Puente..... | |
| Flores El Trentino..... | |
| Flores El Zorro..... | |
| Flores Juanambu..... | |
| Flores La Conejera..... | |
| Flores Tibati..... | |
| Florinda..... | |
| Inverflores..... | |
| Inverpalmas..... | |
| Inversiones Santa Rosa..... | |
| Agroindustria Del Riofrio..... | 0.29 |
| Agromonte..... | 2.37 |
| Agropecuaria Cuernavaca..... | 2.64 |
| Arawac..... | 0 |
| Becerra Castellanos..... | 7.83 |
| Cienfuegos..... | 4.79 |
| Clavecol Group..... | 0.41 |
| Claveles Colombianos..... | |
| Fantasia Flowers..... | |
| Splendid Flowers..... | |
| Sun Flowers..... | |
| Claveles De Los Alpes..... | 0.72 |
| Cofflores..... | 1.68 |
| Crop S.A..... | 3.84 |
| Cultivos El Lago..... | 5.00 |
| Cultivos Medellin..... | 3.98 |
| Cultivos Miramonte..... | 0.14 |
| Cultivos Tahami..... | 2.23 |
| Daflo..... | 14.21 |
| Del Tropico Ltda..... | 2.96 |
| Dianticola Colombiana..... | 2.96 |
| El Timbul..... | 66.04 |
| Exportaciones Bochica/Floral Ltda..... | 0 |
| Flora Bellisima..... | 2.99 |
| Floralex..... | 1.15 |
| Floramerica Group..... | 0.26 |
| Cultivos del Caribe..... | |
| Floramerica..... | |
| Flores Las Palmas..... | |
| Jardines de Colombia..... | |
| Florandia Herrera Camacho..... | 0.15 |
| Flores Aguilas..... | 66.04 |
| Flores Alborada..... | 0.63 |
| Flores Al Faya..... | 66.04 |

| Producer/exporter | Margin (percent) | Producer/exporter | Margin (percent) |
|-----------------------------------|------------------|---|------------------|
| Flores Altamira..... | 1.97 | Inversiones La Serena..... | 2.12 |
| Flores Arco Iris..... | 5.01 | Inversiones Miraflores..... | 3.39 |
| Flores Aurora Ltda..... | 0 | Inversiones Oro Verde..... | 3.39 |
| Flores Cajibío..... | 2.85 | Inversiones Santa Rita..... | 3.06 |
| Flores Cigarral..... | 6.12 | Inversiones Targa..... | 4.80 |
| Flores Colombianas Group..... | 0.22 | Iturrama..... | 9.51 |
| Agrosuba..... | | Jardines Bacata..... | 0.42 |
| Flores Colombianas..... | | Jardines Carolina..... | 3.81 |
| Jardines de los Andes..... | | Jardines De Choconta..... | 66.04 |
| Productos El Cartucho..... | | Jardines De Chia..... | 0.58 |
| Flores Condor De Colombia..... | 0 | Jardines Del Muna..... | 8.18 |
| Flores De Exportacion S.A..... | 1.97 | Jardines Fredonia..... | 0 |
| Flores De Funza..... | 0.63 | Jardines Natalia..... | 2.71 |
| Flores De Hacaritania..... | 0.69 | Las Amalias/Pompones..... | 0.18 |
| Flores De Hunza..... | 6.12 | Linda Colombiana..... | 0.54 |
| Flores De La Montana..... | 3.79 | Los Geranios..... | 2.61 |
| Flores De La Pradera..... | 0 | Mg Consultores..... | 1.68 |
| Flores De La Sabana..... | 6.87 | Monteverde..... | 6.06 |
| Flores De La Vega..... | 4.69 | Plantaciones Delta..... | 2.96 |
| Flores De Nemocon..... | 66.04 | Plantas Ornamentales..... | 1.88 |
| Flores De Serrezuela..... | 1.43 | Rosas Colombianas..... | 1.09 |
| Flores De Suba..... | 11.09 | Rosas Sabinilla..... | 2.12 |
| Flores De Suesca..... | 6.62 | Rosas Y Flores..... | 1.68 |
| Flores Del Bosque..... | 0.63 | Santa Helena..... | 3.43 |
| Flores Del Campo..... | 3.63 | Santana Group..... | 0.65 |
| Flores Del Cauca..... | 26.19 | Hacienda Curubital..... | |
| Flores Del Lago..... | 4.11 | Inversiones Istra..... | |
| Flores Del Río..... | 0 | Santana Flowers..... | |
| Flores Del Tambo..... | 3.15 | Shasta Flowers..... | 4.49 |
| Flores Depina..... | 9.73 | Sunset Farms..... | 2.64 |
| Flores El Arenal (Florenal)..... | 0.29 | Tag Ltda (Technica Agricola Ganadera..... | |
| Flores El Rosal..... | 3.66 | Tag Ltda)..... | 3.83 |
| Flores Estrella..... | 0.39 | Toto Flowers..... | 3.26 |
| Flores Generales..... | 2.63 | Tuchany..... | 0.75 |
| Flores Gicró..... | 2.87 | Uniflor..... | 5.94 |
| Flores Gualcata..... | 36.47 | Universal Flowers..... | 1.17 |
| Flores Hana Ichi De Colombia..... | 15.06 | Velez De Monchaux (Flores Suasuque)..... | 2.36 |
| Flores Juncalito..... | 14.22 | Villa Diana..... | 6.72 |
| Flores La Cabanuela..... | 66.04 | | |
| Flores La Conchita..... | 4.79 | | |
| Flores La Fragancia..... | 10.72 | | |
| Flores La Unión..... | 2.84 | | |
| Flores Las Caicas..... | 1.17 | | |
| Flores Mocari..... | 15.06 | | |
| Flores Monserrate..... | 8.95 | | |
| Flores Mountgar..... | 66.04 | | |
| Flores Petaluma..... | 29.65 | | |
| Flores Sagaro Ltda..... | 0 | | |
| Flores Santa Fe..... | 2.86 | | |
| Flores Santa Rosa..... | 4.25 | | |
| Flores Tairona..... | 6.12 | | |
| Flores Tiba..... | 7.13 | | |
| Flores Tocarinda..... | 0.77 | | |
| Flores Tokay Hisa..... | 15.06 | | |
| Flores Tomine..... | 2.61 | | |
| Flores Tropicales..... | 1.09 | | |
| Flores Urimaco..... | 4.90 | | |
| Florexpo..... | 15.80 | | |
| Floricola La Gaitana..... | 12.64 | | |
| Groex..... | 5.97 | | |
| Grupo Andes..... | 0.88 | | |
| Agricola Arenales..... | | | |
| Cultivos Buenavista..... | | | |
| Flores De Los Andes..... | | | |
| Flores Horizonte..... | | | |
| Inversiones Penas Blancas..... | | | |
| Grupo Soagro..... | 5.13 | | |
| Agricola El Mortino..... | | | |
| Flores Aguacilara..... | | | |
| Flores Del Monte..... | | | |
| Flores La Estancia..... | | | |
| Jaramillo Y Daza..... | | | |
| Happy Candy..... | 1.09 | | |
| Horticultura De La Sabana..... | 1.07 | | |
| Industrial Agricola..... | 0.02 | | |
| Ingro..... | 4.02 | | |
| Innovacion Andina..... | 1.07 | | |
| Inpar..... | 5.32 | | |
| Invamavas Ltda..... | 66.04 | | |
| Inversiones Calypso..... | 4.97 | | |
| Inversiones Cubivan..... | 2.28 | | |

shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisal instructions on each exporter directly to the Customs Service.

As provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins will be required for reviewed firms. For companies with zero or *de minimis* margins (*i.e.*, less than 0.5 percent), no cash deposit will be required. For shipments from known producers and/or exporters not covered by this review, the cash deposit will continue to be at the latest rate applicable to the firm. For all other producers and/or exporters of this merchandise, the cash deposit rate shall be 2.43 percent, the weighted-average margin for all reviewed firms in this review. Because this review covers an unusually large number of companies (186 respondents), the potential for a single outlier company with enormously disparate results is significantly increased. Accordingly, for purposes of this review, we are using a weighted-average margin for all reviewed firms, instead of the highest non-BIA margin, to determine the rate for all other companies not reviewed. This approach is consistent with the Department's Final Results. These deposit requirements will be effective for all shipments of Colombian fresh cut flowers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 and 353.25.

Dated: May 31, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-13553 Filed 6-6-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-803]

Final Results of Antidumping Duty Administrative Review; Light-Walled Welded Rectangular Carbon Steel Tubing from Taiwan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

Parties to the proceeding may request disclosure within 5 days and interested parties may request a hearing not later than 10 days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than 7 days after the time limit for filing case briefs. Any hearing, if requested, will be held 7 days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 353.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service

SUMMARY: In response to a request by petitioners, the Department of Commerce is conducting an administrative review of the antidumping duty order on light-walled welded rectangular carbon steel tubing ("LWRT") from Taiwan. The review covers shipments of this merchandise to the United States from one exporter during the period from November 21, 1988 through February 28, 1990. As a result of this review, the Department has determined that the weighted-average margin for the company under review is *de minimis*.

We gave interested parties an opportunity to comment on the preliminary results of the review. We received comments from both petitioners and respondent.

EFFECTIVE DATE: June 7, 1991.

FOR FURTHER INFORMATION CONTACT: James Rice or Alain Letort, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793 or telefax (202) 377-1388.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 1991, the Department of Commerce ("the Department") published in the *Federal Register* the preliminary results of its administrative review of the antidumping duty order on LWRT from Taiwan (56 FR 8741). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Act").

Scope of the Review

Imports covered by this review are shipments of light-walled welded carbon steel pipes and tubes of rectangular (including square) cross-section having a wall thickness of less than 0.156 inch. Until January 1, 1989, this merchandise was classifiable under item number 610.4928 of the *Tariff Schedules of the United States, Annotated* ("TSUSA"). Since that date, these products have been classifiable under item number 7306.60.5000 of the *Harmonized Tariff Schedule* ("HTS"). As with the TSUSA number, the HTS number is provided for convenience and customs purposes. The written product description remains dispositive.

The review covers one manufacturer/exporter of certain light-walled rectangular carbon steel pipes and tubes during the period November 21, 1988 through February 28, 1990. To determine whether sales in the United States of LWRT from Taiwan were made at less than fair value, we compared the United

States price with the foreign market value.

United States price

In accordance with section 772(b) of the Act (19 U.S.C. 1677a), we based United States price on purchase price, because the merchandise was sold to unrelated purchasers in the United States prior to its importation. We calculated purchase price based on c. & f., c.i.f., or f.o.b., packed prices to U.S. customers.

We made deductions from purchase price, where appropriate, for foreign inland freight, ocean freight, ocean insurance, brokerage and handling charges, export taxes, and bank charges. We made an addition to purchase price for duty drawback.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act (19 U.S.C. 1677b), we calculated foreign market value ("FMV") based on delivered or ex-factory packed prices to unrelated purchasers in Taiwan. We made deductions to foreign market value, as appropriate for foreign inland freight, brokerage and handling charges, and bank charges, and adjusted FMV for differences between Taiwanese packing costs and U.S. packing costs. We also adjusted FMV to account for commissions in the U.S. market. We limited this adjustment to the amount of indirect selling expenses incurred in the home market, in accordance with § 353.56(b) of our regulations, because commissions were paid in the U.S. market but not in the home market.

The Department selected the most similar product for fair value comparisons where there was no identical product in the home market with which to compare a product sold in the U.S. market. Ornatube did not claim any adjustments for differences in the physical characteristics of the merchandise being compared.

Interested Party Comments

Comment 1

Petitioners argue that the Department should not grant a circumstance-of-sale adjustment for the rebate Ornatube receives from China Steel for the steel coil it consumes to produce LWRT. Respondent contends that such an adjustment is warranted because the rebate is contingent upon exportation of the LWRT and because the rebate has the same economic effect as duty drawback, for which the Department makes an adjustment.

DOC Position

As we gave notice in the preliminary results of this review, the Department has now reexamined its policy and has decided not to allow a circumstance-of-sale adjustment for this type of rebate.

The China Steel rebate, although paid on export, is a delayed price adjustment on raw materials used in the production of the exported tube. As such, it results in a difference in production costs between exported and domestically consumed tube.

Section 773(a)(4)(B) of the Act authorizes the Department to adjust for "differences in circumstances of sales", which include such things as differences in commissions, credit terms, guarantees, warranties, technical assistance, and servicing. (See 19 CFR 353.56) Since the type of adjustment at issue here relates to differences in production costs, as opposed to differences in sales, it is not an allowable adjustment under the circumstance of sale provision.

We note that while the regulations do provide for adjustments to production cost differences in two instances—where quantity discounts reflect savings in production of different quantities (19 CFR 353.55(b)(2)), and where differences in physical characteristics are due to production cost differences (19 CFR 353.57(b))—neither of these provisions is applicable here.

The rebate is merely the result of the raw material supplier's decision to price differently for steel used in domestic and international sales of his customer. Such a practice has sometimes been referred to as "input dumping." While current U.S. law does not allow a direct remedy for input dumping when the input is sold to unrelated parties, it would be perverse to allow input dumping to excuse price differences between domestic and export sales of merchandise incorporating the differently priced inputs. In view of the fact that the proposed adjustment can not be deemed a sales-related expense and the policy implications of excusing downstream dumping with input dumping, we have decided not to adjust for the rebate as a circumstance of sale.

Furthermore, the Department disagrees with respondent's statement that because the rebate program has the same economic effect as a duty drawback, the Department should treat it as such. Under § 353.41(d)(1)(ii) of the Department's regulations, U.S. price may be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by

reason of exportation of the merchandise". This language is in conformity with paragraph (i) of the Annex to the "Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreements on Tariffs and Trade," which defines duty drawbacks very specifically as "the [non-excessive] remission (* * *) of import charges (* * *) on imported goods that are physically incorporated in the exported product." The China Steel rebate is clearly not a "remission of import charges;" in fact, it is essentially dissimilar to duty drawback because the amount of rebate is related to the differences in the price of the raw material produced in Taiwan as compared to the prevailing world market price. No import duties are involved in this case because the raw material subject to the rebate is produced domestically.

Comment 2

Petitioners request that the Department adopt their proposed model matching program. Petitioners argue that their program has the ability to match products more closely; therefore, it is improper and an abuse of discretion for the Department to fail to employ it in this review. Respondent counters that petitioners' suggested model matching program would increase the likelihood of clerical error, require an inordinate number of passes through the data to find model matches, and would not improve the current results. Therefore, respondent requests that the Department continue to use the existing program.

DOC Position

We agree with respondent. The present model matching program is essentially the same program the Department adopted in the original investigation of this product. In the Department's view, this program matches the U.S. products to the specific types of material sold in the home market that possess the same or most similar characteristics. The Department believes no substantial gains in the accuracy of the margin calculations would be achieved by adopting petitioners' suggestion.

Comment 3

Petitioners argue that because the preliminary determination in the original investigation was published on November 21, 1988 (53 FR 46900), the period of review should be November 21, 1988 through February 28, 1990. Respondent counters that the period of review should begin on November 14,

1988, the date the preliminary notice was signed by the Assistant Secretary for Import Administration.

DOC Position

We agree with petitioner, and determine that the correct period of review is November 21, 1988 through February 28, 1990.

Results of the Review

As a result of our comparison of United States price to foreign market value, we determine that the weighted-average dumping margin for Ornatube is 0.1975 percent, which is *de minimis*.

The Customs Service, therefore, shall not require a cash deposit for entries of the subject merchandise by Ornatube during the review period. For any shipments of this merchandise produced or exported by the remaining known producers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the antidumping duty order for these firms. For any future entries of this merchandise from a new producer and/or exporter not covered in the original investigation or this administrative review, whose first shipment occurred after February 28, 1990, and which is unrelated to the reviewed firm or any previously investigated firm, the Customs Service will not require a cash deposit.

These deposit requirements are effective for all shipments of LWRT from Taiwan which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the final results of this administrative review. This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act [19 U.S.C. 1675(a)(1)] and § 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: May 31, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-13554 Filed 6-6-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-559-802]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts thereof from Singapore Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On March 7, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore. We have now completed that review and determine the total bounty or grant to be 9.11 percent *ad valorem* for Sundstrand Pacific (Pte.) Ltd. (Sundstrand) and zero for all other companies during the period September 6, 1988 through December 31, 1988, and 9.11 percent *ad valorem* for Sundstrand and 2.97 percent *ad valorem* for all other companies during the period January 1, 1989 through December 31, 1989.

EFFECTIVE DATE: June 7, 1991.

FOR FURTHER INFORMATION CONTACT: William Marsteller or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1989, the Department of Commerce (the Department) published in the *Federal Register* (56 FR 9681) the preliminary results of its administrative review of the countervailing duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore (54 FR 19125; May 3, 1989). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of Singaporean antifriction bearings (other than tapered roller bearings) and parts thereof. Such merchandise is described in detail in appendix A to this notice. The Tariff Schedules of the United States Annotated and the Harmonized Tariff Schedule item numbers listed in appendix A are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the periods September 6, 1988 through December 31, 1988, and January 1, 1989 through December 31, 1989, and twelve programs: (1) Production for Export under part VI of the Economic Expansion Incentives Act (EELA); (2) Monetary Authority of Singapore (MAS) Rediscount Facility; (3) Expansion of

Established Enterprises under part IV of the EEIA; (4) International Trade Incentives under part VII of the EEIA; (5) Foreign Loans for Productive Equipment under part VIII of the EEIA; (6) Warehousing and Servicing Incentives under part XI of the EEIA; (7) Double Deduction of Export Promotion Expenses—sections 14B and 14C of the Income Tax Act (ITA); (8) Double Deduction for Research and Development—section 14E of the ITA; (9) Write-offs of Payments for "Know-How", Patents and Manufacturing Licenses—section 19B of the ITA; (10) Capital Assistance Scheme; (11) Productive Development Assistance Scheme; and (12) Initiatives in New Technology Program.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the respondents: The Government of Singapore, NMB Singapore Ltd. (NMB), Pelmec Industries (Pte.) Ltd. (Pelmec), and Minebea Co. Ltd. Singapore Branch (MSB).

Comment 1: The respondents claim that, in calculating the benefit for calendar year 1989, the Department used an estimate of the MSB mark-up on exports of the subject merchandise to the United States when actual, verified figures were available. Respondents maintain that the Department should use these actual, verified figures.

Department's Position: We agree and have adjusted our calculations accordingly. As a result of this adjustment, the total bounty or grant for NMB, Pelmec, and MSB is 2.97 percent *ad valorem* for the period January 1, 1989 through December 31, 1989.

Comment 2: The respondents claim that in calculating NMB's 1989 benefit from part VI of the EEIA, the Department should include as exports the value of certain NMB sales to an unrelated domestic party that were later exported by MSB. The respondents maintain that a letter from the Economic Development Board (EDB), provided to the Department during verification, proved that these unrelated domestic transactions are considered exports by the EDB for purposes of determining benefits under part VI of the EEIA. Since all corporate income tax returns are audited by the Government of Singapore, the respondents further claim that the audit process confirms that these unrelated domestic transactions are export sales for purposes of part VI of the EEIA.

Department's Position: We disagree. The respondents did not provide the Department with adequate information

to specifically determine which components, such as the subject transactions, comprise total exports used in the 1988 tax deduction claim. Without such information, the Department is in no position to determine whether additional types of "exports" were considered. In addition, the letter referred to by the respondents indicated only that the EDB "may" consider these unrelated domestic sales to be exports. Finally, Department officials requested from the Government of Singapore, but did not receive, confirmation that these sales are considered exports for purposes of determining benefits under part VI of the EEIA.

Comment 3: The respondents contend that the "best information available" (BIA) rate selected for Sundstrand is too high. The respondents believe the combined benefit of 2.97 percent for NMB, Pelmec, and MSB should be used as the BIA rate for Sundstrand. Alternatively, the respondents recommend using the BIA rate of 4.95 percent selected for Sundstrand in the countervailing duty investigation as the BIA rate for this review.

Department's Position: We disagree. In our calculation of the benefit for NMB, Pelmec, and MSB, the Department first calculated individual company rates for each respondent. The individual company rate calculated for NMB was 9.03 percent, and the individual company rates calculated for Pelmec and MSB were zero. Following this calculation, the Department made adjustments for any markups and then combined the individual rates for these companies because they are related parties. See Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Singapore (54 FR 19125; May 3, 1989).

Because Sundstrand did not respond to our questionnaire or participate in this administrative review, the Department had no information to determine the exact benefits received by Sundstrand under the countervailing programs subject to review. Therefore, in accordance with well-established Department practice, we drew a reasonable adverse inference and assumed that Sundstrand received the highest company benefit determined for each program in this administrative review or, if the program was not used during this review period, the rate found for that program in the investigation. See, e.g., *Bricks From Mexico*; Final Results of Countervailing Duty Administrative Review (51 FR 43419; December 2, 1986) (discussion of

administrative practice found in *Bricks From Mexico*; Preliminary Results of Countervailing Duty Administrative Review (51 FR 25077; July 10, 1986)). This results in a BIA rate for Sundstrand of 9.11 percent *ad valorem*.

If the Department had selected a BIA rate of 2.97 percent—a rate which is the same as the benefit for the three companies that fully complied with the Department's information requests in this review, and a rate which is lower than the BIA rate of 4.95 percent selected for Sundstrand in the countervailing duty investigation—the Department clearly would have rewarded Sundstrand for its failure to supply the Department with needed information in this administrative review. Such a result would have encouraged Sundstrand to ignore information requests by the Department in future administrative reviews and, thereby, would have conflicted with a fundamental purpose of the BIA rule. See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185 (Fed. Cir. 1990); *Flores v. United States*, 705 F. Supp. 582 (CIT 1989).

If the Department had selected the 4.95 percent BIA rate chosen for Sundstrand during the investigation as BIA in this review, the Department similarly would have encouraged further noncompliance by Sundstrand in subsequent reviews; that rate obviously was not high enough to induce Sundstrand to respond to the Department's requests for information during this administrative review. Thus, to induce Sundstrand to provide the Department with sales and program information during subsequent reviews and to enable the Department to calculate benefits "as accurately as possible," *Rhone Poulenc*, 899 F.2d at 1191, we reasonably selected a rate—9.11 percent—which was higher than the initial BIA rate of 4.95 percent and was strictly in accordance with well-established Department practice. See, e.g., *Bricks From Mexico*, *supra*.

Comment 4: The respondents contend that, if the Department calculates a BIA rate for Sundstrand based on NMB's benefit, the Department should include in its calculations both the MSB mark-up on NMB exports and the domestic sales which the respondents claim the EDB considers exports. The respondents further contend that the 0.08 percent rate for MAS rediscounting should not be applied to Sundstrand since NMB did not use this program.

Department's Position: We disagree. As explained in our Position to Comment 3, our selection of BIA in this review was strictly in accordance with

our administrative practice of selecting the highest company benefit calculated for each countervailing program during an administrative review or investigation.

Comment 5: The respondents maintain that the cash deposit rate for NMB, Pelmec, and MSB should be set at zero because NMB was the sole beneficiary of the sole program which conferred benefits during the review period, and because NMB's final benefits from this program were claimed in 1989. The respondents maintain that the Department should, at a minimum, adjust the deposit rate to reflect a verified reduction in the corporate tax rate from 33 percent in 1989 to 32 percent in 1990, and to 31 percent in 1991.

Department's Position: We disagree. To warrant a cash deposit rate of zero, respondents must demonstrate that there were no countervailing benefits conferred by the Government of Singapore during the review period or that there was a program-wide change. According to section 355.50 of the Proposed Countervailing Duty Rules (54 FR 23385; May 31, 1988), a program-wide change is not limited to an individual firm, and the change must be measurable. NMB's non-use of a program in a subsequent review period does not constitute a program-wide change within the meaning of our proposed regulations and can only be addressed in an administrative review covering that period.

Regarding the reduction in the corporate tax rate, there are a number of factors other than the corporate tax rate which affect the benefit calculation (i.e., total sales, total exports, adjusted profits, and investment allowances). Since changes in these factors can offset one another, a one percent reduction in the tax rate does not warrant a reduction in the cash deposit rate.

Final Results of Review

After considering the comments received, we determine the total bounty or grant to be 9.11 percent *ad valorem* for Sundstrand and zero for all other companies during the period September 6, 1988 through December 31, 1988, and 9.11 percent *ad valorem* for Sundstrand and 2.97 percent *ad valorem* for all other companies during the period January 1, 1989 through December 31, 1989.

Section 707 of the Tariff Act provides that the difference between the amount of a cash deposit, or the amount of any bond or security, required as security for an estimated countervailing duty and the duty determined under a countervailing duty order shall be disregarded to the extent that the

estimated duty deposited is lower than the duty determined under the order for entries made before the publication date of the countervailing duty order (i.e., May 3, 1989). Section 707 further provides, however, that the difference between the amount of the cash deposit required as a security for an estimated countervailing duty and the duty determined under a countervailing duty order shall be collected to the extent that the estimated duty deposited is lower than the duty determined under the order for entries made on or after the publication date of the order. The rate in our preliminary determination in the countervailing duty investigation (53 FR 34329; September 6, 1988) was 4.95 percent *ad valorem* for Sundstrand and 2.01 percent *ad valorem* for all other companies.

Furthermore, pursuant to section 705(a)(1) of the Tariff Act, the final determination in the countervailing duty investigation was extended to coincide with the final antidumping determination on the same products from Singapore. Because, pursuant to article 5, paragraph 3, of the Agreement on Interpretation and Application of articles VI, XVI, and XXIII of the General Agreements on Tariffs and Trade (the Subsidies Code), we cannot suspend liquidation for more than 120 days in the absence of a countervailing duty order, we terminated the suspension of liquidation of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 4, 1989. We reinstated the suspension of liquidation and required the collection of cash deposits of estimated countervailing duties for the subject merchandise entered, or withdrawn from warehouse, for consumption on or after May 3, 1989, the date of publication of the countervailing duty order.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 4.95 percent of the f.o.b. invoice price on all shipments from Sundstrand of this merchandise and to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from all other companies entered, or withdrawn from warehouse, for consumption, on or after September 6, 1988 and on or before January 3, 1989. Entries or withdrawals made on or after January 4, 1989 and on or before May 2, 1989 are not subject to countervailing duties. Further, the Department will instruct the Customs Service to assess countervailing duties of 9.11 percent of the f.o.b. invoice prices on all shipments from Sundstrand of the subject merchandise and 2.97 percent of the f.o.b. invoice price on all shipments

of the subject merchandise from all other companies entered, or withdrawn from warehouse, for consumption on or after May 3, 1989 and exported on or before December 31, 1989.

The full value of the countervailing duties to be assessed is attributable to the receipt of export subsidies. Therefore, consistent with section 772(d)(1)(D) of the Tariff Act, this amount will be used to adjust the assessment rate for applicable entries of merchandise covered by the antidumping order on ball bearings and parts thereof from Singapore.

The Department will also instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 9.11 percent of the f.o.b. invoice price on all shipments from Sundstrand of the subject merchandise and 2.97 percent of the f.o.b. invoice price on shipments of the subject merchandise from all other companies entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 31, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Appendix A

Scope of The Review

The products covered by this review, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) Ball Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ balls as the rolling element. During 1988, imports of these products were classifiable under the following categories: Antifriction balls (Tariff Schedules of the United States Annotated (TSUSA) items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to the review; all other products

entering under this TSUSA item are not subject to the review. Finished but unground or semiground balls are not included in the scope of this review.

Imports of these products are currently classified under the following Harmonized Tariff Schedule (HTS) item numbers:

8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(2) Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ spherical rollers as the rolling element. During 1988, imports of these products were classifiable under the following categories: Antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3958); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0450); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3295 are subject to the review; all other products entering under this TSUSA item are not subject to the review.

Imports of these products are currently classifiable under the following HTS item numbers: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(3) Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ cylindrical rollers as the rolling element. During 1988, imports of these products were classifiable under the following categories: Antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ cylindrical rollers as the rolling element entering under TSUSA item 692.3295 are subject to the review; all other products entering under this TSUSA item are not subject to the review.

Imports of these products are currently classifiable under the following HTS item numbers: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(4) Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ needle rollers as the rolling element. During 1988, imports of these products were classifiable under the following categories: Antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger

units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ needle rollers as the rolling element entering under TSUSA item 692.3295 are subject to the review; all other products entering under this TSUSA item are not subject to the review.

Imports of these products are currently classifiable under the following HTS item numbers: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(5) Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof: These products include all spherical plain bearings which do not employ rolling elements and include spherical plain rod ends. Spherical plain bearings entering under TSUSA items 681.3900 and 692.3295 are subject to the review; all other products entering under these TSUSA items are not subject to the review.

Imports of these products are currently classifiable under the following HTS item numbers: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, 8708.99.50.

This review covers all of the subject bearings and parts thereof outlined above with certain limitations. With regard to finished parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts are included in the scope of this review. For unfinished parts (inner race, outer race, rollers, balls, etc.), such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by this review are those where the part will be subject to heat treatment after importation.

[C-357-004]

Carbon Steel Wire Rod from Argentina; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on carbon steel wire rod from Argentina. The review covers the period January 1, 1989 through December 31, 1989 and three programs. We preliminarily determine that the Government of Argentina and the exporter of carbon steel wire rod have complied with the terms of the suspension agreement. We invite interested parties to comment on these results.

EFFECTIVE DATE: June 7, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1990, the Department of Commerce ("the Department") published a notice of "Intent to Terminate the Suspended Investigation" (55 FR 35704) of the revised agreement suspending the countervailing duty investigation on carbon steel wire rod from Argentina (51 FR 44649; December 11, 1986). On September 13, 1990, the petitioners, Atlantic Steel Co., Bethlehem Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Company, objected to termination. On September 28, 1990, the petitioners requested an administrative review of the suspension agreement. We initiated the review on October 26, 1991, covering the period January 1, 1989 through December 31, 1989 (55 FR 43153). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of carbon steel wire rod from Argentina. During the period of review, such merchandise was classifiable under items 7213.20.00, 7213.31.30, 7213.39.00, 7213.41.30, 7213.50.00, and 7313.49.00 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Acindar Industria Argentina de Aceros, S.A. ("Acindar"), is the only known exporter of Argentina carbon steel wire rod to the United States. The review covers the period January 1, 1989 through December 31, 1989 and three programs: (1) The Reembolso; (2) Pre-Export Financing; and (3) Post-Export Financing.

Analysis of Programs

(1) Reembolso

The reembolso is a rebate of indirect taxes on the production of exported goods, the amount of which may reflect total or partial repayment of those taxes. Under the terms of the suspension agreement, the Argentine government agreed not to provide any reembolso overrebates on exports of carbon steel

wire rod to the United States. In the suspension agreement, the Department determined that the portion of the reembolso that constituted an allowable rebate of indirect taxes was 7.6 percent of the f.o.b. invoice price for carbon steel wire rod. During that period, rebate rates were calculated by the Argentine government for each product or industry sector. On October 16, 1986, Decree 1555/86 modified the reembolso program by grouping industries into three categories and setting new rebate levels for each category. Decree 1555 set the levels at 10 percent for Level I, 12.5 percent for Level II, and 15 percent for Level III. Based on this decree, carbon steel wire rod is included in Level I and, therefore, was eligible to receive a rebate of 10 percent in the review period.

In its questionnaire response, Acindar provided a study of indirect tax incidence on inputs that are physically incorporated into the exported product. While eligible for a 10.0 percent rebate, during verification we examined the tax incidence study and found that Acindar did not exceed the 7.6 percent of allowable tax incidence stated in the suspension agreement.

Therefore, we preliminarily determine that no overrebate of indirect taxes occurred and that this program did not provide any counteravailable benefit to the carbon steel wire rod exporter during the review period. Accordingly, we preliminarily determine that the Government of Argentina and the exporter of carbon steel wire rod have complied with the terms of the agreement.

(2) Pre-Export Financing

Prior to this review period, Circular RF-153 authorized pre-export financing for short-term loans to the exporters of the subject merchandise. The funds were provided by the Central Bank of Argentina and distributed through commercial banks.

On June 3, 1988, the Central Bank of Argentina issued Communique A-1205, which combined past financing programs—pre-export financing, financing, and post-export financing. Under Communique A-1205 pre-export financing loans are for 150 days and the funds are distributed in the same manner as under RF-153. In its questionnaire response, the Argentine government stated that Communique A-1205 excluded from the pre-export financing program exports of wire rod to the United States by excluding tariff item number 73.10.01.00. On January 1, 1990, the financing system under Communique A-1205 was partially suspended, and on March 8, 1991,

Communique A-1807 totally suspended pre-export financing.

During verification, we found that exports of wire rod during the review period were registered under the Argentine tariff item number 73.15.10.00.00. Central Bank of Argentina officials stated that Communique A-1205 was intended to disqualify all carbon steel wire rod exports destined for the United States from eligibility for the pre-export financing program and that tariff item number 73.15.10.00.00 was inadvertently left off of the Communique. In addition, we examined a letter from the Secretary of Trade to the President of the Central Bank, which was written when the suspension agreement was published, requesting that all carbon steel wire rod exports to the United States be excluded from export financing programs.

During verification, we examined Acindar's accounting records that found that the Government of Argentina did not provide and Acindar did not receive pre-export financing for exports of wire rod to the United States during the review period. Therefore, we preliminarily determine that the Government of Argentina and the exporter of carbon steel wire rod have complied with the terms of the agreement.

(3) Post-Export Financing

Communique A-228 authorized post-export financing for short-term loans to exporters of the subject merchandise. The funds were provided by the Central Bank of Argentina and distributed through commercial banks.

On June 3, 1988, the Central Bank of Argentina issued Communique A-1205, which combined past financing programs—pre-export financing, financing, and post-export financing. Under Communique A-1205, post-export financing loans are for 180 days and the funds are distributed in the same manner as under A-228. In its questionnaire response, the Argentine government stated that Communique A-1205 excluded from the post-export financing program exports of wire rod to the United States by excluding tariff item numbers 73.10.01.00 and 73.15.07.00. On January 1, 1990, the financing system under Communique A-1205 was partially suspended, and on March 8, 1991, Communique A-1807 totally suspended post-export financing.

As explained in the pre-export financing section, during verification we found that exports of wire rod during the review period were registered under the Argentine tariff item number 73.15.10.00.00. When we requested information on why tariff item number

73.15.07.00 was included in Communique A-1205 for post-export financing, the Argentine government explained that the Central Bank's Communique for this tariff item number was an administrative error and the correct tariff item number should be 73.15.10.00.00. Central Bank officials stated, again, that the intent of Communique A-1205 was to exclude from financing program eligibility all carbon steel wire rod exports destined for the United States.

During verification, we examined Acindar's accounting records and found that the Government of Argentina did not provide and Acindar did not receive post-export financing for exports of wire rod to the United States during the review period. Therefore, we preliminarily determine that the Government of Argentina and the exporter of carbon steel wire rod have complied with the terms of the agreement.

Other Programs

Although not covered by the suspension agreement, we examined the following programs and preliminarily determined that Acindar did not use them or did not receive a benefit during the review period:

- Exemption from Stamp Taxes;
- Incentives for Southern Ports;
- Incentives for Northern Ports;
- Low-Cost Financing for Trading Companies;
- Tax Deduction Under Decree 173/85;
- Regional Tax Incentives;
- Industrial Parks;
- Capital Tax Exemption;
- Grants for Increased Exports Under the Program Especial de Exportaciones ("PEEX"); and
- Foreign Exchange Insurance (Debt Restructuring).

Preliminary Results of Review

As a result of our review, we preliminarily determine that the Government of Argentina and Acindar, the only exporter of wire rod to the United States during the period January 1, 1989 through December 31, 1989, complied with the terms of the suspension agreement.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 14 days after the date of publication or the first workday thereafter. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments,

must be filed not later than 37 days after the date of publication. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 31, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-13556 Filed 6-6-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-605]

Industrial Phosphoric Acid from Israel Preliminary Results of Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce has conducted two administrative reviews of the countervailing duty order on industrial phosphoric acid from Israel. We preliminarily determine the net subsidy to be 19.46 percent *ad valorem* for Haifa Chemicals, Ltd. and 9.18 percent *ad valorem* for all other firms during the period January 1, 1988 through December 31, 1988. We preliminarily determine the net subsidy to be 11.26 percent *ad valorem* for all firms during the period January 1, 1989 through December 31, 1989. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 7, 1991.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo, Britt Doughtie, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 1989 and August 8, 1990, the Department of Commerce (the Department) published in the *Federal Register* notices of "Opportunity to Request Administrative Review" (54 FR 32364 and 55 FR 32279) of the countervailing duty order on industrial phosphoric acid from Israel. On August

24, 1989, the petitioners, FMC Corporation and the Monsanto Company, requested that we conduct an administrative review of the order for the period January 1, 1988 through December 31, 1988. On August 29, 1990, the same petitioners requested that we conduct an administrative review of the order for the period January 1, 1989 through December 31, 1989. We initiated the reviews on September 20, 1989 (54 FR 38712) and September 24, 1990 (55 FR 39032), respectively. The Department has now conducted these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The final results of the last administrative review of this order were published in the *Federal Register* on January 24, 1991 (56 FR 2751).

Scope of Review

Imports covered by these reviews are shipments of Israeli industrial phosphoric acid. During the 1988 review period, this merchandise was classifiable under item number 416.30 of the Tariff Schedules of the United States (TSUS). During the 1989 review period, this merchandise was classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule (HTS). The TSUS and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the periods January 1, 1988 through December 31, 1988, and January 1, 1989 through December 31, 1989, and ten programs. Negev Phosphates, Ltd. (NPL) and Haifa Chemicals, Ltd. (Haifa) are the only known exporters of the subject merchandise from Israel to the United States during the review periods.

Analysis of Programs

(1) Encouragement of Capital Investments Law (ECIL) Grants

The ECIL grants program was established to attract capital to Israel. In order to be eligible to receive various benefits under the ECIL, including investment grants, drawback grants, capital grants, accelerated depreciation, and reduced tax rates, the applicant must obtain approved enterprise status.

Approved enterprise status is obtained after review of information submitted to the Israeli Ministry of Industry and Trade, Investment Center Division. The amount of the grant benefits received by approved enterprises depends on the geographic location of the eligible enterprise. For purposes of the ECIL program, Israel is divided into three zones—Development Zone A, Development Zone B, and the

Central Zone—each with a different funding level.

Since 1978, only investment projects outside the Central Zone have been eligible to receive grants. The Central Zone comprises the geographic center of Israel, including its largest and most developed population centers. Because the grants are limited to enterprises located in specific regions, we determine that they constitute subsidies within the meaning of the Tariff Act.

NPL is located in Development Zone A, and received ECIL investment, drawback, and capital grants in disbursements over a period of years for several projects. All but three of the funded projects were located at its Oron and Zin plants and were unrelated to IPA production. We did not include ECIL grants to these locations in our calculations. There were three projects related to IPA production, two of which applied directly to NPL's IPA production facility and one of which applied to the phosphate rock processing plant in Arad, which produces an input for IPA. Grants for these projects made from 1980 through 1989 resulted in benefits during the periods under review. To determine the amount of the Arad grants applicable to IPA production, the Department first calculated the subsidy to the Arad facility per unit of output of rock (by volume) and multiplied this amount by the number of metric tons of rock needed to produce one metric ton of IPA. We then multiplied the subsidy on one ton of IPA by the total quantity of IPA sales to get a total subsidy, which we divided by the total value of all sales of IPA. The Department used only the grant value related to IPA production in the calculation of the benefit.

To calculate the benefit, we allocated these grants over ten years (the average useful life of assets in the chemical manufacturing industry, as determined under the U.S. Internal Revenue Service Asset Depreciation Range System). To allocate benefits over time, we typically use as our discount rate the cost of the firm's long-term fixed-rate debt for the year in which the terms of the grant were approved. However, because NPL had no significant fixed-rate long-term debt, we used the rate for long-term industrial development loans, adjusted for inflation, as the discount rate for grants received in the years 1980-1987. Because these rates were unavailable for 1988-1989, we used the rate for government indexed five-year bonds in Israel, adjusted for inflation, from the Bank of Israel's Annual Reports for 1988 and 1989, as the discount rate for grants received in 1988 and 1989. We used a declining balance formula to determine

the benefit stream for the relevant grants.

We allocated the benefits attributable to each review period over the value of NPL's total IPA sales during each review period. On this basis, we preliminarily determine the benefit from this program to be 2.44 percent *ad valorem* during the 1988 review period, and 2.80 percent *ad valorem* during the 1989 review period.

(2) Long-term Industrial Development Loans

Prior to July 1985, approved enterprises were eligible to receive long-term industrial development loans funded by the Government of Israel. During our investigation, we verified that these loans, like the ECIL grants, were project-specific. They were disbursed through the Industrial Development Bank of Israel (IDBI) and other industrial development banks which no longer exist.

The long-term industrial development loans were provided to a diverse number of industries, including agricultural, chemical, mining, machine, and others. However, the interest rates on loans vary depending on the Development Zone location of the borrower. The interest rates on loans to borrowers in Development Zone A are lowest, while those on loans to borrowers in the Central Zone are highest. Therefore, loans to companies in Zones A and B are at preferential terms relative to loans received by companies in the heavily populated and developed Central Zone. Because preferential terms are limited to companies located in certain regions, we determine that these loans are countervailable.

NPL had loans outstanding under this program during the review periods for projects at two of its plants, one of which is unrelated to IPA production and one of which is the phosphate rock processing facility in Arad which produces an input for IPA. The loans provided for the rock processing facility carry the Zone A interest rates because of NPL's location. Therefore, we determine that NPL received countervailable benefits under this program because the interest rates charged NPL are less than those which would apply in the Central Zone.

The loans under this program have variable interest rates linked to changes in the dollar-shekel exchange rate. Therefore, we cannot calculate the present value of the interest savings, nor is there a single discount rate for allocating the benefits over time, as under our normal long-term loan methodology. Accordingly, we have compared the interest that would have

been paid on a variable-rate benchmark loan (i.e., a loan available to firms in the Central Zone) to the interest paid on the preferential loan during the review period. We multiplied the subsidy by the percentage of phosphate rock production used to make IPA, then divided this amount over the total value of all sales of IPA. On this basis, we preliminarily determine the benefit from this program to be 0.01 percent *ad valorem* during the 1988 review period, and 0.01 percent *ad valorem* during the 1989 review period.

(3) Exchange Rate Risk Insurance Scheme

The Exchange Rate Risk Insurance Scheme (EIS), operated by the Israel Foreign Trade Risk Insurance Corporation Ltd. (IFTRIC), is aimed at insuring exporters against losses which result when the rate of inflation exceeds the rate of devaluation and the new Israeli Shekel (NIS) value of an exporter's foreign currency receivable does not rise enough to cover increases in local costs.

The EIS scheme is optional and open to any exporter willing to pay a premium to IFTRIC. Compensation is based on a comparison of the change in the rate of devaluation of the NIS against a basket of foreign currencies with the change in the consumer price index. If the rate of inflation is greater than the rate of devaluation, the exporter is compensated by an amount equal to the difference between these two rates multiplied by the value-added of the exports. If the rate of devaluation is higher than the change in the domestic price index, however, the exporter must compensate IFTRIC. The premium is calculated for all participants as a percentage of the value-added sales value of exports. IFTRIC changes this percentage rate periodically, but at any given time it is the same for all exporters.

In determining whether an export insurance program provides a countervailable benefit, we examine whether the premiums and other changes are adequate to cover the programs's long-term operating costs and losses. In our Final Results of Countervailing Duty Administrative Review; Oil Country Tubular Goods from Israel (55 FR 46703; November 6, 1990) and Final Affirmative Countervailing Duty Determination; Certain Fresh Cut Flowers from Israel (52 FR 3316; February 3, 1987), we found that this program conferred a countervailable benefit on manufacturers, producers, or exporters in Israel of oil country tubular goods and flowers. In both those cases, we

reviewed EIS data which showed that EIS operated at a loss from 1981 through 1987. We believe that seven years, in this case, is a sufficiently long period to establish that the premiums and other changes are manifestly inadequate to cover the long term operating costs and losses of the program. Therefore, despite periodic increases in the premium rate, we determine that this program confers an export subsidy on exports of IPA from Israel.

In calculating the benefit, we have taken into account the special features of this program. Under a typical insurance scheme, the users pay premiums and then receive a payment if the event being insured against occurs. Under the Exchange Rate Risk Insurance Scheme, on the other hand, the user receives a payment if the inflation rate exceeds the depreciation rate or makes an additional payment if the depreciation rate exceeds the inflation rate. Since the program has been in place, payments received by users have exceeded the payment they have made to the scheme. Thus, users of the scheme have virtually no risk of incurring additional payment costs, and the "premiums" serve only as a fee to obtain payment from the scheme. Therefore, we have calculated the benefit by allocating the amount of compensation NPL received from IFTRIC expressly for IPA exported to the United States, after deducting premiums paid, over the value of the company's exports of IPA to the United States during the review periods. On this basis, we preliminarily determine the benefit from this program to be 6.73 percent *ad valorem* during the 1988 review period, and 8.45 percent *ad valorem* during the 1989 review period.

(4) Other Programs

We also examined the following programs and preliminarily determine that exporters of industrial phosphoric acid did not use them during the 1988 and 1989 review periods:

- (A) Reduced tax rates under ECIL;
- (B) BCIL section 24 loans;
- (C) Preferential accelerated depreciation under ECIL;
- (D) Labor training grants;
- (E) Encouragement of Industrial Research and Development Grants;
- (F) Dividends and Interest Tax Benefits under section 46 of the ECIL; and
- (G) Property tax exemptions on buildings and equipment.

(5) Best Information Available

Haifa Chemicals, Ltd., which exported the subject merchandise to the United

States during the 1988 review period, did not respond to the Department's questionnaire. Therefore, as best information available, we have selected the highest rate determined for Haifa in this proceeding, the 19.46 percent *ad valorem* rate found in the Department's Final Affirmative Countervailing Duty Determination; Industrial Phosphoric Acid from Israel (52 FR 25447; July 7, 1987).

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 19.46 percent *ad valorem* for Haifa Chemicals, Ltd., and 9.18 percent *ad valorem* for all other companies during the period January 1, 1988 through December 31, 1988. We preliminarily determine the net subsidy to be 11.26 percent *ad valorem* for all companies during the period January 1, 1989 through December 31, 1989.

The Department intends to instruct the Customs Service to assess countervailing duties of 19.46 percent of the f.o.b. invoice price on shipments from Haifa Chemicals, Ltd., and 9.18 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1988 and on or before December 31, 1988, and 11.26 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1989 and on or before December 31, 1989.

Further, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 11.26 percent of the f.o.b. invoice price on all shipments of the subject merchandise from Israel entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

Parties to the proceeding may request disclosure of the calculations methodology and interested parties may request a hearing not later than 10 days after date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under

administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of these administrative reviews including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 31, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-13557 Filed 6-6-91; 8:45 am]

BILLING CODE 3510-05-M

Minority Business Development Agency

Business Development Center Applications: Columbia, SC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with the provisions of Executive Order 11625, the Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at \$194,118 for the project performance of 10/1/91 to 09/30/92. The MBDC will operate in the Columbia, South Carolina, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of \$165,000 in Federal funds and a minimum of \$29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes, and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority business owners that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector

resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority owned businesses.

Applications will be judged initially by the regional staff on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations (50 points); the resources available to the firm in providing management and technical assistance (10 points); the firm's proposed approach to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). It is advisable that applicants have an existing office in the geographic region for which they are applying.

An applicant must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive.

The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the MBDC program. The application will then be forwarded to the Department for final processing and approval if appropriate. The Director will consider past performance of the applicant on previous Federal Awards.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Federal Government are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal Departmental regulations, policies, and procedures applicable to Federal assistance awards.

A false statement on an application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Section 319 of Public Law 101-121 generally prohibits recipients of appropriated funds from lobbying the Executive or Legislative Branches of Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants, Loan, and Cooperative Agreements" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), is required. Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs", is not applicable to this program.

CLOSING DATE: The closing date for applications is July 12, 1991.

Applications must be postmarked on or before July 12, 1991.

ADDRESSES: Proposals will be reviewed by the Dallas Regional Office. The mailing address for submission is: Dallas Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, 214/767-8001.

To order a Request For Application (RFA) and to receive additional information contact: Carlton L. Eccles, Regional Director of the Atlanta Regional Office on (404) 730-3300 or U.S. Department of Commerce, Minority Business Development Agency, 401 W. Peachtree Street, room 1930, Atlanta, Georgia 30308-3516.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits, and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Note: A pre-application conference, to assist all interested applicants, will be held at the U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree St., NW., room 1930, Atlanta, Georgia, June 26, 1991, at 9 a.m.

Dated: June 3, 1991.

Carlton L. Eccles,
Regional Director, Atlanta Regional Office.
[FR Doc. 91-13549 Filed 6-6-91; 8:45 am]
BILLING CODE 3510-21-M

National Technical Information Service

Advisory Board; Open Meeting

AGENCY: National Technical Information Service, Commerce.

SUMMARY: The Advisory Board was established by statute (Public Law 100-519) on October 24, 1988, and received its charter on September 15, 1989. Its function is to advise the Secretary of Commerce and the Director of the National Technical Information Service on the general policies and operations of the National Technical Information Service (NTIS), including policies in connection with fees and charges for its services.

TIME AND PLACE: June 20, 1991 from 9 a.m. to 5:30 p.m. and June 21, 1991 from 9 a.m. to 2:30 p.m. The meeting will take place at NTIS, 5285 Port Royal Road, room 2029, Springfield, Virginia 22161.

Agenda

| Time | Item |
|--------------------------|---|
| Thursday, June 20 | |
| 9-9:30 | 1. Opening. 1.1 Welcome by the Director of NTIS. 1.2 Chairman's Introduction to the Meeting. 1.3 Adoption of the Agenda. |
| 9:30-12 | 2. Strategic Issues. 2.1 Trends in NTIS Products and Services. 2.2 Resource Requirements. 2.3 Mission and Scope of NTIS. |
| 1:30-5:30 | 3. Role of NTIS among Government Information Agencies. 3.1 Dialog with Representatives of Federal Agencies. 3.2 Public Participation. 3.3 Summary of the Day's Findings. |
| Friday, June 21 | |
| 9-12 | 4. Strategic Issues. 4.1 Development of a Customer-Responsive Document Service. 4.2 Pricing Policies and Sources of Investment and Working Capital. |
| 1:30-2:30 | 5. Closing. 5.1 Public Participation. 5.2 Chairman's Summary. 5.3 Planning for Future Meetings. 5.4 Adjournment. |

PUBLIC PARTICIPATION: The meeting will be open to public participation. Approximately thirty minutes each day will be set aside for oral comments or questions as indicated in the agenda. Approximately twenty seats will be available for the public including five seats reserved for the media. Seats will be available on a first-come first-served basis. Any member of the public may submit written comments concerning the committee's affairs at any time before and after the meeting. Copies of the minutes of the meeting will be available

within thirty days from the address given below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Freeman, Information Technology Manager, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Telephone: (703) 487-4778. Fax: (703) 487-5009.

Dated: May 31, 1991.

Joseph F. Caponio,
Director, National Technical Information Service.

[FR Doc. 91-13449 Filed 6-6-91; 8:45 am]
BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

June 4, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9480. 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 Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated September 25 and October 3, 1985, as amended, between the Governments of the United States and Indonesia establishes limits for the period beginning on July 1, 1991 and extending through June 30, 1992.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647-3889.

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** (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

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.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 4, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated September 25 and October 3, 1985, as amended, between the Governments of the United States and Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Indonesia and exported during the twelve-month period beginning on July 1, 1991 and extending through June 30, 1992, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|--------------------------|---|
| 219 | 6,062,443 square meters. |
| 313 | 11,000,242 square meters. |
| 314 | 38,410,090 square meters. |
| 315 | 17,898,371 square meters. |
| 317/617/326..... | 17,069,181 square meters of which not more than 2,490,792 square meters shall be in Category 326. |
| 331 | 567,408 dozen pairs. |
| 334/335 | 141,852 dozen. |
| 338/339 | 766,001 dozen. |
| 340 | 524,852 dozen. |
| 341 | 567,408 dozen. |
| 347/348 | 992,963 dozen. |
| 351/651 | 293,874 dozen. |
| 369-S ¹ | 579,096 kilograms. |
| 445/446 | 53,076 dozen. |
| 604-A ² | 450,405 kilograms. |
| 613/614/615..... | 15,169,195 square meters. |

| Category | Twelve-month restraint limit |
|--|--------------------------------------|
| 625/626/627/628/629..... | 17,921,420 square meters. |
| 635 | 106,389 dozen. |
| 638/639 | 978,778 dozen. |
| 640 | 519,158 dozen. |
| 641 | 1,438,398 dozen. |
| 645/646 | 496,482 dozen. |
| 647 | 620,304 dozen. |
| 648 | 1,436,550 dozen. |
| Group II | |
| 200, 201, 218, 220, 222-227, 229, 237, 239, 300, 301, 330, 332, 333, 336/636, 342/642, 345, 349, 350, 352-354, 359, 360-363, 369-D ³ , 369-O ⁴ , 400-444, 447-469, 600, 603, 604-O ⁵ , 606, 607, 611, 618, 619/620, 621, 622, 624, 630, 631-634, 643, 644, 649, 650, 652-654, 659, 665, 666, 669, 670, 831-836, 838, 839, 840, 842-847, 850-852, 858 and 859, as a group. | 78,670,596 square meters equivalent. |
| Sublevels within Group II | |
| 237..... | 280,358 dozen. |
| 336/636 | 373,230 dozen. |
| 342/642 | 214,117 dozen. |
| 345..... | 274,336 dozen. |
| 350..... | 77,617 dozen. |
| 369-D | 515,963 kilograms. |
| 611..... | 4,000,279 square meters. |
| 619/620 | 5,056,200 square meters. |
| 631 | 980,576 dozen pairs. |
| 634..... | 50,735 dozen. |
| 847..... | 259,878 dozen. |
| Subgroup of Group II | |
| 400-444 and 447-469, as a group. | 2,662,698 square meters equivalent. |

¹ Category 369-S: only HTS number 6307.10.2005.
² Category 604-A: only HTS number 5509.32.0000.
³ Category 369-D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.
⁴ Category 369-O: all HTS numbers except 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369-D); and 6307.10.2005 (Category 369-S).
⁵ Category 604-O: all HTS numbers except 5509.32.0000 (Category 604-A).

Imports charged to these category limits for the period July 1, 1990 through June 30, 1991 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Indonesia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-13550 Filed 6-6-91; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

June 4, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 11, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9480. 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 limit for Category 315 is being increased by application of swing, reducing the limit for Category 604-A to account for the swing being applied.

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** (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 25860, published on June 25, 1990.

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.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 4, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC
20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 19, 1990, 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 Indonesia and exported during the twelve-month period which began on July 1, 1990 and extends through June 30, 1991.

Effective on June 11, 1991, you are directed to amend further the directive dated June 19, 1990 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Indonesia:

| Category | Adjusted twelve-month limit ¹ |
|--------------------------|--|
| 315 | 17,051,485 square meters. |
| 604-A ² | 157,951 kilograms. |

¹ The limits have not been adjusted to account for any imports exported after June 30, 1990.

² Category 604-A: only HTS number 5509.32.0000.

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,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-13551 Filed 6-6-91; 8:45 am]

BILLING CODE 3510-DR-F

Participation in the Special Access and Special Regime Programs

June 4, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Republishing a previous notice.

FOR FURTHER INFORMATION: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-3400.

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).

On December 6, 1989 a notice was published in the *Federal Register* (54 FR 50425) announcing amendments to the requirements for participating in the Special Access and Special Regime Programs.

Unfortunately, a number of firms have expressed confusion to Customs over the required documentation during their compliance review and subsequently are in jeopardy of being prohibited from participation in the Special Access and Special Regime Programs.

In an effort to clear up any questions concerning what documentation is needed to present to Customs officials at the time of the compliance review, CITA is republishing the December 6, 1989 notice below.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Amendment to the Requirements for Participating in the Special Access and Special Regime Programs

November 30, 1989.

AGENCY: Committee for the Implementation of Textile Agreements

ACTION: Amendment of requirements and procedures for participation in the Special Access Program for Caribbean Basin Countries and the Mexico Special Regime Program.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Brian F. Fennessy, Commodity Industry Specialist, the Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-3400.

SUPPLEMENTARY INFORMATION: This notice identifies new implementation and enforcement procedures for the Special Access Program under the CBI and the Mexico Special Regime Program.

Background

On February 20, 1986, the President announced a special program to guarantee access to the U.S. market for Caribbean-produced textile products assembled from fabric formed and cut in the United States. Since the 1986 announcement, Caribbean countries have entered into bilateral agreements with the United States under which guaranteed levels of access are permitted for their exports of qualifying assembled textile products. These guaranteed access levels are separate from the quota or designated consultation levels applicable to textile products not assembled solely from U.S. formed and cut fabric.

Pursuant to authority delegated by Executive Order No. 11651 of March 3, 1972, as amended, and in accordance with the President's Announcement of February 20, 1986, the Committee for the Implementation of Textile Agreements (CITA), announced the Special Access Program, published on June 11, 1986 (51 FR 21208) and (July 10, 1987 (52 FR 26057)), the requirements for participation

in the Special Access Program. Under the Special Access Program, the United States has established Guaranteed Access Levels, or GALS, assuring access to the U.S. market for textile products which fulfill the requirements of the Special Access Program.

A June 11, 1986 *Federal Register* notice announced that firms participating in the program must complete a Special Access Program CBI Export Declaration, Form ITA-370P (available from the U.S. Government Printing Office), for each qualifying shipment (See 52 FR 18414 (May 15, 1987)). That notice also explained the three-part form ITA-370P and the procedures for presenting the form to the U.S. Customs Service.

On February 13, 1988, the Government of the United States and the Government of Mexico entered into a textile agreement, effective January 1, 1988. Under the terms of that agreement, a Special Regime was established under which a number of categories were placed under quotas which distinguish between Mexican products produced from foreign fabric and Mexican products assembled from U.S. formed and cut fabric. In essence, each category has a sublimit for products that are not assembled from U.S. formed and cut fabrics.

On May 3, 1988 and August 25, 1988, notices were published in the *Federal Register* (53 FR 15723 and 53 FR 32421), announcing requirements for firms participating in the Special Regime Program. The notices explained that merchandise qualifying for entry under the Special Regime Program must be accompanied by a form ITA-370P.

Effective January 1, 1990 new implementation and enforcement procedures will be in place for the Special Access and Special Regime Programs.

New Implementation Procedures

Revised ITA-370P Form

As announced in the *Federal Register* on November 9, 1989, effective January 1, 1990 all goods exported under these programs must be accompanied by the new revised ITA-370P form. The form is available from the U.S. Government Printing Office.

The principal revisions to the form are:

- A pre-inscribed certification number
- The inclusion of the importer of record number on the Shipper's Declaration and the Importer's Declaration (the importer of record number in the Shipper's and Importer's sections must match)
- A reference stating "Also identify foreign findings, trimmings, & elastic strips of less than one inch in width. (Such foreign findings, trimmings & elastic strips may not exceed 25 percent of the cost of the components of the assembled article.)". This specific reference to trim and findings is not intended as a change in practice or policy but as a reminder that the records pertaining to foreign components must be retained by the importer.
- The elimination in the Shipper's Declaration of specific references to weight, yarn size, thread count, pattern, and color.

Entry Procedure

The new entry procedure is designed to ease the administrative burden on importers by establishing a streamlined system similar to a checking account. An account consists of the importer's ID number, textile category, and country of exportation. On exportation from the United States the quantity as reported on the 370P will be credited to the importer's account. Upon importation the amount imported will be debited against the importer's account, if there is a credit balance the shipment may be released.

Automated Commercial System (ACS)

The inventory system for the Special Access Program and Special Regime will be incorporated into the ACS, thus eliminating the use of personal computers for record keeping and clearing procedures. The requirement of exporting and importing for the Special Regime at ports within the same districts of San Diego, Nogales, El Paso and Laredo will be eliminated.

Reconciliation

The U.S. Customs Service (Customs) will maintain the balance for each account. Should an importer's records differ from those of Customs, the importer should provide Customs with a complete accounting of all exportations and importations. Customs will verify the importer's records against its own. Until the discrepancy is resolved, Customs will implement the Program using its figures.

Enforcement Procedures

In order to determine if the cut components were of U.S. origin and the imported apparel was made from U.S. formed fabric, Customs will conduct a series of Post Entry Compliance Reviews. These reviews will be conducted by Customs beginning April 1, 1990 for entries made in the first quarter of 1990 and shall continue for each successive quarter.

Record keeping for Compliance Reviews

The importer must provide Customs officials conducting the review with documented proof that all goods entered under the Programs were made from U.S. cut and formed fabric. Customs officials will request documents for goods in one textile category, from one country, entered in the prior calendar quarter. Documents should be organized and filed to facilitate a request for this information. It is recommended that the documents be kept in a single location to expedite the review. The following documents are required to be made available for the Compliance Reviews conducted by Customs.

Records—by calendar quarter, by country, by category:

- Entry documents made during the quarter
- Documents covering the involved entries: —ITA-370P
- Cutting ticket including name and location of facility
- Mill invoice (the name of the mill where the fabric was formed, if the fabric was purchased from a third party the importer is responsible for obtaining the mill

invoice. Also required is a signed statement from a principal at the mill that the fabric is of U.S. origin. This can be stated directly on the invoice or in a separate document that relates to each specific shipment of fabric).

- Transportation documents (mill to cutting facility; cutting facility to border/ assembler).
- Export documentation

Penalties

19 U.S.C. 1592 authorizes the imposition of civil penalties against any person who by fraud, gross negligence, or negligence enters or attempts to enter goods into the United States by means of a false document, statement, or act.

Companies must maintain full and complete records and provide access to them upon request, and penalties may be imposed if companies are found to have misrepresented significant information such as the origin, quantity, or nature of the component parts or the country of assembly. Importers found to be violating the terms of the Program or intent of the Program may be prohibited from further participation in the Program.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-13552 Filed 6-6-91; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities, military resale commodity and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 8, 1991.

ADDRESSES: 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: 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 (except as otherwise indicated) will be required to procure the commodities, military resale commodity and services listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following commodities, military resale commodity and services to the Procurement List:

Commodities

Strap, Webbing

5340-00-784-0118

Bandage, Elastic

6510-00-935-5823 (Remaining 30 percent of Government Requirement)

Water Bay, Nylon Duck

8465-00-02D-9160

Military Resale Item No. and Name

701—Bag, Canvas

Services

Commissary Shelf Stocking, Custodial and Warehousing, Partick Air Force Base, Florida

Grounds Maintenance, Naval Air Station, Airfields, Corpus Christi, Texas

Janitorial/Custodial, Federal Building, 130 East Main Street, Carthage, Tennessee

Janitorial/Custodial, Federal Building, 118 East Locust Street, Lafayette, Tennessee

Janitorial/Custodial, Building 50004, Post Exchange, Fort Hood, Texas

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91-13540 Filed 6-6-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: July 8, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On March 1, 22 and April 19 and 26, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 8750, 12193, 16075 and 19352) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services at a fair market price and impact of the addition 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:

- The actions will not result in any additional reporting, recordkeeping or other compliance requirements.
- The actions will not have a serious economic impact on any contractors for the commodities and services listed.
- 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 the Procurement List:

Commodities

Frame, Picture
7105-00-052-8684
7105-00-052-8690
Paper, Tabulating Machine
7530-00-138-9919

Services

Commissary Warehousing, Kirtland Air Force Base, New Mexico
Food Service Attendant, Altus Air Force Base, Oklahoma
Grounds Maintenance, FAA Airway Facilities Sector, Field Office/Tower, Daytona Beach, Florida
Janitorial/Custodial, Federal Building, 650 S. Missouri, East St. Louis, Illinois

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91-13539 Filed 6-6-91; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35.)

Title, Applicable Form, and Applicable OMB Control Number

Application for the Review of Discharge or Dismissal from the Armed Forces of the United States, DD Form 293, OMB Number 0704-0004.

Type of Request: Reinstatement.
Average Burden Hours/Minutes per Response: .5 hours.

Responses per Respondent: 1.
Number of Respondents: 13,500.
Annual Burden Hours: 6,750.
Annual Responses: 13,500.

Needs and Uses: The DD Form 293 is used by former members of the military services to request a change in the type of discharge or the reason for their separation from the Armed Forces of the United States.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22204-4302.

Dated: June 3, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13442 Filed 6-6-91; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of

information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number

Lock Performance Monitoring System (PMS) Waterway Traffic Report; ENG Forms 3102C and 3102D; OMB Control Number 0710-0008.

Type of Request: Revision.
Average Burden Hours/Minutes per Response: .0416 minutes.

Responses per Respondent: 1.
Number of Respondents: 3,000.
Annual Burden Hours: 31,350.
Annual Responses: 753,600.

Needs and Uses: Title 33, CFR, part 207, (26 Stat 766) requires that statistics be gathered from users of navigable waters. Statistics gathered relate to vessels, passengers, freight and tonnage. The data are used to conduct systems-wide planning and management of navigable waterways.

Affected Public: Businesses or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Mandatory.
OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: June 3, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13443 Filed 6-6-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Space and Electronic Combat Standing Task Force will meet 26 June 1991 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to continue discussions on the space and electronic warfare implementation strategy, receive a report on baseline systems status, and review related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact:

Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, phone (703) 756-1205.

Dated: 3 June 1991.

Wayne T. Baucino

Lieutenant, JAGC, U.S. Naval Reserve,
Alternate Federal Register Liaison Officer.

[FR Doc. 91-13439; Filed 6-6-91; 8:45 am]

BILLING CODE 3810-AE-F

DELAWARE RIVER BASIN COMMISSION

Proposed Amendment to Comprehensive Plan and Water Code of the Delaware River Basin; Proposed Rule and Public Hearing

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rule and public hearing.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold a public hearing to receive comments on a proposed amendment to its Comprehensive Plan and Water Code in relation to retail water pricing to encourage conservation. The hearing will be part of the Commission's regular business meeting which is open to the public.

DATES: The public hearing is scheduled for Wednesday, August 14, 1991 beginning at 1:30 p.m. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing. The hearing record will remain open for submission of written comments received by September 9, 1991.

ADDRESSES: The hearing will be held in the Struble Room of the Chester County Library, 400 Exton Square Parkway,

Exton, Pennsylvania. Written comments should be submitted to Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Secretary, Delaware River Basin Commission: Telephone (609) 883-9500.

SUPPLEMENTARY INFORMATION:

Background and Rationale

The Delaware River Basin Commission, through its policies, rules and regulations, has undertaken a long-range program to reduce water use throughout the Basin. Continuing this effort, the Commission, through its Water Conservation Advisory Committee, has concluded that water conservation pricing offers significant potential for reducing both average and peak water use and has sought the advice of numerous experts in the field of water rates and pricing structures, including representatives of the four Basin state public utility commissions. Based on these deliberations, the Committee has recommended that the Commission consider proposed policy and regulations dealing with retail water pricing to encourage conservation.

The subject of the hearing will be as follows:

Amendment to the Comprehensive Plan and Water Code of the Delaware River Basin Relating to Retail Water Pricing to Encourage Conservation.

Article 2 of the Water Code of the Delaware River Basin includes Commission policy relating to conservation, development and utilization of Basin water resources. It is proposed to:

Amend the Comprehensive Plan and Article 2 of the Water Code of the Delaware River Basin, which is referenced in 18 CFR part 410, by the addition of a new section 2.1.7 to read as follows:

2.1.7 Retail Water Pricing to Encourage Conservation

A. Policy.—It shall be the policy of the Delaware River Basin Commission to promote and support retail water pricing that encourage conservation.

B. Definitions

1. A water conserving pricing structure is an important demand management tool that provides incentives to consumers to reduce average or peak water use, or both. Conservation pricing reflects the fact that water is a precious resource that should be used in an economically efficient manner. Such pricing includes:

a. Rates designed to recover the full cost of providing service, including a reasonable rate of return on investment; and

b. Billing based on metered usage.

Such pricing is also characterized by one or more of the following components:

c. Rates in which the unit price of water per class of customer (residential, industrial, etc.) is constant within each class regardless of the quantity of water used (uniform rates) or increases as the quantity of water used increases (increasing block rates);

d. Seasonal rates or excess-use surcharges to reduce peak water demands during summer months; or

e. Rates based on the long-run marginal cost or the cost of adding the next unit of water supply to the system.

2. A nonconserving pricing structure is one that provides no incentives or disincentives to consumers to reduce water use. Such pricing may be characterized by one or more of the following components:

a. Rates in which the unit price of water within any one class of customer decreases as the quantity of water used increases (decreasing block rates);

b. Rates that involve charging customers a set fee per unit of time regardless of the quantity of water used (flat rates);

c. Pricing that does not reflect the full cost of providing service; or

d. Pricing in which the typical bill is determined mainly by a minimum charge and metered usage has little impact on the total bill.

C. Criteria

1. All purveyors are encouraged to evaluate alternative pricing structures with the objective of adopting a water conserving pricing structure.

2. A purveyor seeking approval under section 3.8 of the Compact for a new or an expanded water withdrawal and whose total proposed withdrawal would equal or exceed an average of one million gallons of water per day shall, as a condition of Commission docket approval, either: a. document that it has adopted a water conserving pricing structure; b. adopt a water conserving pricing structure within one year of docket approval or in accordance with a schedule established by the appropriate state public utility commission; or c. investigate the feasibility of implementing a water conserving pricing structure and submit a report of its findings to the Executive Director within one year of docket approval. The Executive Director shall review the pricing structure or feasibility study and

submit a report of findings to the purveyor.

3. The Executive Director shall annually review the definitions and criteria set forth herein to determine their adequacy in promoting and supporting water pricing that encourages water conservation.

Delaware River Basin Compact, 75 Stat. 688.

Dated: May 31, 1991.

Susan M. Weisman,
Secretary.

[FR Doc. 91-13451 Filed 6-6-91; 8:45 am]
BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Office of Administrative Law Judges; Intent To Compromise a Claim, Pennsylvania Department of Education

AGENCY: Department of Education.

ACTION: Notice of intent to compromise a claim.

SUMMARY: The Department intends to compromise a claim against the Pennsylvania Department of Education now pending before the Office of Administrative Law Judges (OALJ), Docket No. 90-81-R (20 U.S.C. 1234(j)).

DATES: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before July 22, 1991.

ADDRESSES: All comments concerning this notice should be addressed to Mr. Jeffrey B. Rosen, Office of the General Counsel, Department of Education, 400 Maryland Avenue, SW., (Room 4099, FOB-6), Washington, DC 20202-2242.

FOR FURTHER INFORMATION CONTACT: Additional information may be obtained by writing to Mr. Jeffrey B. Rosen.

SUPPLEMENTARY INFORMATION: Pursuant to Office of Management and Budget (OMB) Circular A-128, Ernst & Whinney conducted an audit on behalf of the State Auditor General of the State of Pennsylvania for the period July 1, 1985 through June 30, 1986. On August 18, 1989, the Office of the Inspector General (OIG) of the U.S. Department of Education (ED) issued an audit report (ACN: 03-83228) based on this audit. Among the results included in the audit report were the findings that the PDE did not have time distribution and attendance records to support payroll charges for some of its employees.

On September 30, 1990, the Assistant Secretaries for Special Education and Rehabilitative Services (OSERS) and for

Vocational and Adult Education (OVAE) issued a program determination letter (PDL) in which they disallowed a total of \$247,712 in Federal funds received by the PDE in fiscal year (FY) 1986 under both part B of the Education of the Handicapped Act (EHA-B), 20 U.S.C. 1411-1420, and the Carl D. Perkins Act (Perkins Act), 20 U.S.C. 2301 *et seq.* A total of \$246,563 of EHA-B funds was disallowed, based upon the finding that the State did not maintain time distribution records for seven PDE employees charged 100 percent and one PDE employee charged 50 percent to the EHA-B program. In addition, \$1,149 of Perkins Act funds were disallowed, based upon the finding that six PDE employees worked on non-vocational education activities although their salaries were paid 100 percent from the Perkins Act grant.

On October 30, 1990, the PDE filed a timely application for review with the Office of Administrative Law Judges. The appeal pertained only to the EHA-B finding. The PDE has agreed to repay the entire \$1,149 claim under the Perkins Act.

Subsequent to the filing of its appeal, the PDE submitted additional documentation to OSERS in order to rebut the EHA-B finding. On April 25, 1991, the Assistant Secretary for OSERS determined that two of the employees previously referenced, whose salaries totalled \$73,921, actually worked 100 percent of their time on the EHA-B and related programs and thus there was no need to keep time distribution records. The Assistant Secretary also determined that \$41,958 of the claim was barred from recovery by the statute of limitations in section 452(k) of the General Education Provisions Act (GEPA), 20 U.S.C. 1234(k). These were expenditures incurred by the PDE for the period July 1, 1985 through October 1, 1985, which was more than five years before October 2, 1990—the date the PDE received the PDL. Based upon the foregoing, the Assistant Secretary agreed that the claim should be reduced to \$130,684.

No question exists that the remaining five PDE employees who were charged 100 percent to the EHA-B program and the one employee charged 50% to the EHA-B program did at least some work in the EHA-B program within the PDE. The Federal interest involved in this case is that of ensuring that the amount of time spent by each employee is proportionate to the salary costs charged to the program. (34 CFR part 74, appendix C, part II, section B, paragraph 10.b.) The evidence indicates that three of these employees spent 40 percent or more of their time on the EHA-B

program. Also, the PDE has taken the necessary corrective action to prevent this violation from recurring. Based upon the foregoing, the PDE has agreed to return \$71,359.

Given these factors, the percentage of the claim to be repaid, and the risk and cost of litigating the claim through the appeal process, the Department has determined that it would not be practical or in the public interest to continue this proceeding. Therefore, the Department proposes to compromise the full amount of the \$130,684 claim for \$71,359.

The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by writing to Mr. Jeffrey B. Rosen at the address given at the beginning of this notice.

(20 U.S.C. 1234a(j) (1990).)

Dated: June 3, 1991.

Neal Peden,

Acting Deputy Under Secretary for
Management.

[FR Doc. 91-13467 Filed 6-6-91; 8:45 am]

BILLING CODE 4000-01-M

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive/ Search Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: June 17, 1991, 9 a.m. until 2 p.m.

ADDRESSES: U.S. Department of Education, 400 Maryland Avenue SW., room 3000, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: John Cheek, Office Manager, National Advisory Council on Indian Education, 330 C Street SW., room 4072, Switzer Building, Washington, DC 20202-7556. Telephone: 202/732-1353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (part C, title V, Pub. L. 100-297) and to advise

Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit. The Council is authorized to appoint, without regard to the provisions of title 5 United States Code governing appointments in the competitive service, or otherwise obtain the services of such professional, technical, and clerical personnel as may be necessary to enable it to carry out its functions as prescribed by law. The Council is currently undergoing a search process to appoint a permanent Executive Director as chief staff member of the Council.

On June 17, 1991 the Executive/Search Committee will meet in closed session beginning at 9 a.m. until the conclusion of business at approximately 2 p.m. to review resumes and applications for the position of Executive Director of the Council. The agenda will consist of a review of the search process, review of the applications of candidates and their qualifications for the position, and preparation of questions and guidelines to be used in the interviews of the candidates. The Committee's recommendations regarding the candidates, and questions and guidelines to be used in the interviews shall be submitted to the full Council for review and approval.

The closed meeting of the Executive/Search Committee will involve discussions which relate solely to the internal personnel rules and practices of the Council and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94-409; 5 U.S.C. 552b(c)).

The public is being given less than 15 days notice due to difficulties in scheduling this meeting.

A summary of the activities of the closed meeting and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

Dated: May 24, 1991. Signed at Washington, DC.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 91-13522 Filed 6-4-91; 1:24 pm]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center Financial Assistance Award (Grant)

AGENCY: Morgantown Energy Technology Center (METC), U.S. Department of Energy (DOE).

ACTION: Notice of acceptance of an unsolicited financial assistance application for Grant award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i) (B) and (D), the DOE, Morgantown Energy Technology Center, gives notice of its plans to award a 24-month cost-shared Grant to the University of Kentucky, Lexington, Kentucky, in the amount of \$24,000.

FOR FURTHER INFORMATION CONTACT: Crystal A. Sharp, I07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone: (304) 291-4386, Procurement Request No. 21-91MC28203.000.

SUPPLEMENTARY INFORMATION: The University of Kentucky will cost share 17 percent of the effort or \$4,000. The pending award is based on an unsolicited application for assistance with the publication of proceedings from the Eastern Oil Shale Symposia held each year in Lexington, KY. The University of Kentucky annually hosts the Eastern Oil Shale Symposium in Lexington, Kentucky, to provide a forum for individuals conducting research in eastern oil shale to meet, to present, and discuss the results of their work. DOE's support of this activity will enable the University to publish and circulate the symposium results to the general public.

Louie L. Calaway,

*Acquisition and Assistance Division,
Morgantown Energy Technology Center.*
[FR Doc. 91-13547 Filed 6-8-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Docket Nos. ER91-350-000, et al.]

Southern California Edison Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Company

[Docket No. ER91-350-000]

May 30, 1991.

Take notice that on May 20, 1991, Southern California Edison Company

(Edison) tendered for filing additional explanatory materials in support of its Edison-PG&E Lebec Area Standby Agreement. The original filing was made on March 29, 1991.

The Agreement establishes the terms and conditions whereby Edison will provide PG&E emergency standby electrical service for its use in serving Lebec area customers.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: June 13, 1991 in accordance with Standard Paragraph E at the end of this notice.

2. Northeast Empire Limited Partnership

[Docket No. ER91-440-000]

May 30, 1991.

Take notice that on May 14, 1991, Northeast Empire Limited Partnership tendered for filing an initial rate schedule, a petition for acceptance of initial rate schedule and request for waivers for a qualifying facility to be located in Livermore Falls, Maine.

Comment date: June 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Municipal Electric Utilities Association v. Long Island Lighting Company

[Docket No. EL91-34-000]

May 30, 1991.

Take notice that on May 21, 1991, the Municipal Electric Utilities Association tendered for filing a complaint against Long Lighting Company (LILCO) alleging that LILCO has breached its contractual obligations, as set forth in LILCO Rate Schedule FERC No. 32 under which LILCO provides firm transmission service to the Power Authority of the State of New York.

Comment date: July 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Empire Limited Partnership

[Docket Nos. EL91-33-000, EC91-14-000, and ES91-30-000]

May 30, 1991.

Take notice that on May 17, 1991, Northeast Empire Limited Partnership #1 and Northeast Empire Limited Partnership #2 (collectively referred to as "Partnerships") tendered for filing a petition for Declaratory order under sections 203 and 204 of the Federal Power Act requesting the Commission issue an order to do the following:

(1) Authorize the sale and leaseback financing, in separate transactions, of two qualifying small power production

facilities (described in the May 17, 1991 petition;

(2) Disclaim Commission jurisdiction over General Electric Capital Corporation or any affiliate of General Electric Capital Corporation;

(3) Grant blanket prior approval of issuances of securities and assumptions of liability by the Partnerships;

(4) Confirm the applicability of the initial rate schedule for the facility located in Livermore Falls pending before the Commission in Docket No. ER91-440-000 to sales by Partnership #1 to Central Maine Power Company of electric generated by such facility after the propose sale and leaseback transactions are consummated; and

(5) Certify that the change in ownership of the Facilities effected by the proposed sale and leaseback transactions will not result in loss of qualifying facility status for the Facilities.

Comment date: June 17, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Citizens Utilities Company

[Docket No. ES91-32-000]

May 31, 1991.

Take notice that on May 24, 1991, Citizens Utilities Company (Applicant") filed an application with the Federal Energy Regulatory Commission pursuant to § 204 of the Federal Power Act for authorization to issue not more 2.2 million share of its common stock pursuant to the provisions of Applicant's Management Equity Incentive Plan.

Comment date: June 21, 1991, in accordance with Standard Paragraph E end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-13458 Filed 6-6-91, 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2108-000, et al.]

United Gas Pipe Line Company, et al.; Natural Gas Certificate Filings

May 31, 1991.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP91-2108-000]

Take notice that on May 24, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP91-2108-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a 2-inch delivery tap and related facilities, located in Tangipahoa Parish, Louisiana, to transport natural gas for Southern Industrial Gas Corporation (SIGCO), under United's blanket certificate issued in Docket No. CP82-430-000 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.

United states that the proposed delivery tap and related facilities would enable United to transport up to 1430 Mcf of natural gas per day for SIGCO to serve T.L. James and Company under United's ITS rate schedule.

United states further that it would construct and operate the proposed delivery tap and related facilities in compliance with 18 CFR part 157, subpart F, and that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Comment date: July 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corporation

[Docket No. CP91-2030-001]

Take notice that on May 29, 1991, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP91-2030-001 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and

284.223) for authorization to perform interruptible transportation service for Citizens Gas Supply Corporation (Citizens) under the authorization issued in Docket No. CP88-328-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco proposes to provide interruptible transportation service for Citizens pursuant to a transportation agreement dated August 17, 1987 and as amended on September 7, 1990 (System Contract No. 01514). Transco states that it would receive the gas at various existing receipt points in onshore and offshore Texas, onshore and offshore Louisiana, Mississippi and Pennsylvania. Transco indicates that it would deliver the gas to existing delivery points in New York and offshore Texas. Transco alleges that the total volume of gas to be transported on a peak day is 250,000 dt; on an average day is 60,000 dt; and on an annual basis is 21,900,000 dt. Transco contends that it commenced 120-day transportation service for Citizens on January 1, 1991, as reported in Docket No. ST91-3570-000.

Transco states that no new facilities would be required to implement the proposed transportation service. Transco further states it would charge Citizens the maximum rate or rates set forth in Sheet No. 19 of Transco's FERC Gas tariff, Second Revised Volume No. 1. In addition to such rate or rates, Citizens shall pay Transco any other applicable charge resulting from the subject transportation, including but not limited to, the currently effective Gas Research Institute charge. It is agreed that Transco, at its sole discretion, may charge Citizens a discounted transportation rate or rates for such periods of time as Transco elects. The parties agree that Transco's transportation rate or rates may be amended or superseded by an appropriate filing the FERC or any successor regulatory authority with or without notice to Citizens by Transco; provided however, that nothing in the gas transportation agreement shall prejudice the right of Citizens to protest any such changes before the FERC or any successor regulatory authority.

COMMENT DATE: July 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Company, Williston Basin Interstate Pipeline Company, Northern Natural Gas Company

[Docket Nos. CP91-2120-000¹, CP91-2124-000, CP91-2125-000]

Take notice that the above referenced companies (Applicants) filed in the above referenced dockets, prior notice requests pursuant to sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act

¹ These prior notices requests are not consolidated.

for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of

the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

COMMENT DATE: July 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

| Docket number related dockets | Applicant (date filed) | Shipper name | Peak day ² | Points of ³ avg. annual | Start up date | | Rate schedule |
|-------------------------------|---|---------------------------------------|--------------------------------|------------------------------------|-----------------|------------------|-------------------------------|
| | | | | | Receipt | Delivery rate | |
| CP91-2120-000 (5-29-91) | Northern Natural Gas Co., 1400 Smith St., P.O. Box 1188, Houston, TX 77251-1188. | Brooklyn Interstate Natural Gas Corp. | 88,457 68,343 32,286,805 | OTX, TX, OLA, LA, OMS. | TX..... | 05-01-91 IT-1 | ST91-8732-000, CP86-435-000. |
| CP91-2124-000 (5-29-91) | Williston Basin Interstate Pipeline Co., Suite 200, 304 East Rosser Ave., Bismarck, ND 58501. | Hiland Partners..... | 5,000 5,000 1,825,000 | WY, MT, ND, SD. | WY, MT, SD, ND. | 05-03-91 IT-1 | ST91-8691-000, CP89-1118-000. |
| CP91-2125-000 (5-29-91) | Northern Natural Gas Co., 1400 Smith St., P.O. Box 1188, Houston, TX 77251-1188. | Citizens Gas Supply Corp. | 22,000 16,500 8,030,000 | TX, KS, OK, MN, NM. | IA..... | 04-11-91 IT-1 | ST91-8623-000, CP86-435-000. |

¹ The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.
² Quantities are shown in MMBtu for Northern and dt for Williston Basin.
³ Offshore Louisiana, offshore Texas and offshore Mississippi are shown as OLA, OTX and OMS, respectively.

4. Columbia Gas Transmission Corporation

[Docket No. CP91-2106-000]

Take notice that on May 23, 1991, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP91-2106-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the interruptible transportation service it provides for UGI Corporation (UGI) effective June 1, 1991, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gas states that by order issued November 17, 1983, as amended on April 6, 1984, in Docket No. CP77-363-006 Columbia Gas was authorized to transport up, on an interruptible basis, up to 5,000 Mcf of natural gas per day (Mcf/d) which is received by National Fuel Gas Supply Corporation for the account of UGI in Forest and Warren Counties, Pennsylvania. Columbia Gas States that the volumes are then delivered to Columbia Gas for ultimate delivery to UGI. It is further

stated that by letter dated December 12, 1990, UGI notified Columbia Gas that it has agreed to sell its gathering system in Forest and Warren Counties and no longer requires the transportation service that Columbia Gas has been providing.

COMMENT DATE: June 21, 1991, in accordance with Standard Paragraph F at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP91-2107-000]

Take notice that on May 24, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-2107-000 a request pursuant to § 157.205, 157.211 and 284.223 of Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Pittsburgh Corning Corporation (Pittsburgh Corning), and end-user, under its blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act and for additional authorization, prior to commencement of the transportation service, to operate sales tap facilities

constructed under its blanket certificate issued in Docket No. CP82-413-000, pursuant to section 7 of the Natural Gas Act, to effectuate the delivery of the natural gas, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that the sales tap facilities were constructed to provide service to Pittsburgh Corning as reported in Docket No. ST90-4696 on September 10, 1990. Tennessee explains that it proposes to transport natural gas for Pittsburgh Corning from receipt points located in Pennsylvania and Mississippi, and to deliver the gas to Pittsburgh Corning in McKean County, Pennsylvania. The transportation service would be provided to Pittsburgh Corning under Tennessee's Rate Schedule IT. Pittsburgh Corning has informed Tennessee that peak and average day deliveries are both expected to be 4,775 Dth and, based thereon, annual deliveries are expected to be 1,742,875 Dth.

Comment date: July 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. Columbia Gulf Transmission Company

[Docket Nos. CP91-2104-000, CP91-2105-000]

Take notice that on May 23, 1991, Columbia Gulf Transmission Company, P.O. Box 683, Houston, Texas 77001, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural

gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-239-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.²

A summary of each transportation service which includes the shippers

² These prior notice requests are not consolidated.

identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: July 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

| Docket No. (date filed) | Applicant | Shipper name | Peak day, ¹ Avg., annual | Points of— | | Start up date, rate schedule | Related ² Dockets |
|-------------------------|--------------------------------|--------------------------|-------------------------------------|------------------|----------|------------------------------|------------------------------|
| | | | | Receipt | Delivery | | |
| CP91-2104-000 (5-23-91) | Columbia Gulf Transmission Co. | NGC Transportation, Inc. | 30,000 10,000 10,950,000 | Offshore LA..... | LA..... | 4-12-91, ITS-2 | CP86-239-000, ST91-8461-000. |
| CP91-2105-000 (5-23-91) | Columbia Gulf Transmission Co. | Elf Exploration, Inc. | 20,000 10,000 7,300,000 | Offshore LA..... | LA..... | 4-12-91, ITS-2 | CP86-239-000, ST91-8462-000. |

¹ Quantities are shown in MMBtu unless otherwise indicated.

² The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

7. Transwestern Pipeline Company

[Docket Nos. CP91-2121-000,³ CP91-2122-000, CP91-2123-000]

Take notice that on May 28, 1991, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to

transport natural gas on behalf of various shippers under Transwestern's blanket certificate issued in Docket No. CP88-133-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the

docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Transwestern and is included in the attached appendix.

Transwestern also states that it would provide the service for each shipper under an executed transportation agreement, and that Transwestern would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

³ These prior notice requests are not consolidated.

| Docket No. | Shipper name | Peak day, ¹ avg., annual | Points of— | | Start up date, rate schedule | Related ² dockets |
|---------------|------------------------------|-------------------------------------|---------------------|-----------------|------------------------------|------------------------------|
| | | | Receipt | Delivery | | |
| CP91-2121-000 | Hadson Gas Systems, Inc..... | 50,000 37,500 18,250,000 | AZ, NM, OK, TX..... | NM, TX..... | 4-1-91, ITS-1 | ST91-8295-000 |
| CP91-2122-000 | TranAm Energy, Inc..... | 50,000 37,500 18,250,000 | AZ, NM, OK, TX..... | NM, TX, OK..... | 5-8-91, ITS-1 | ST91-8730-000 |
| CP91-2123-000 | NGC Transportation Inc..... | 50,000 37,500 18,250,000 | AZ, NM, OK, TX..... | NM, TX, OK..... | 5-16-91, ITS-1 | ST91-8731-000 |

¹ Quantities are shown in MMBtu unless otherwise indicated.

² The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

8. Questar Pipeline Company

[Docket No. CP91-2067-000]

Take notice that on May 16, 1991, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Questar to

construct and operate a 10,350 horsepower compressor station, to be known as the Piceance Creek Compressor Station, and related facilities adjacent to Questar's Main Line (M.L.) No. 68 in Rio Blanco County, Colorado, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Questar indicates that the proposed facilities are designed to improve the flexibility and increase the capacity of Questar's transmission system to receive, compress and deliver natural gas destined for a variety of interstate pipeline companies, including TransColorado Gas Transmission Company (TransColorado), Northwest Pipeline Corporation, Colorado

Interstate Gas Company, Wyoming Interstate Company, Ltd. and Kern River Gas Transmission Company. Questar states that the receipt of the requested authority will allow it to: (1) Consolidate compression service required by Questar, TransColorado and, potentially, other pipeline companies, (2) alleviate many of the transportation system capacity constraints that presently prevent producers in the Piceance Basin of western Colorado from marketing their gas supplies, (3) broaden the marketing opportunities for producers and pipeline companies alike that are connected to Questar's pipeline system, (4) improve the quality of existing open-access and certified sales and transportation services, and (5) expand its open-access transportation program, through the receipt of increased natural gas volumes from and delivery of those volumes to an expanded number of interconnections with interstate and intrastate pipeline companies.

Questar states that the Piceance Creek Compressor Station will comprise (1) three turbine compressors, 3,450 hp (site rated) each, (2) a non-jurisdictional carbon dioxide (CO₂) removal plant, (3) two taps to facilitate the delivery of unprocessed gas to and the receipt of processed gas from the CO₂ treatment plant, (4) gas coolers, (5) a slug catcher, (6) a condensate storage tank and (7) a standby generator. Questar states that it also intends to uprate the maximum allowable operating pressure of a 27.3-mile segment of M.L. No. 63 from 860 pounds per square inch gauge (psig) to 1257 psig. In addition, Questar states that approximately 1,000 feet of 20-inch pipe will be installed to connect the compressor station with Questar's M.L. No. 68 and an estimated 500 feet of 20-inch pipeline will be constructed to connect the station with TransColorado's proposed Big Hole Meter Station. Questar states that the Piceance Creek Compressor Station will be capable of compressing up to 162.9 MDth of gas per day. The total estimated cost of the proposed compressor facility, interconnecting pipe and related facilities, excluding the CO₂ plant, is \$14,624,420.

Comment date: June 21, 1991, in accordance with Standard Paragraph F at the end of the notice.

9. Colorado Interstate Gas Company

[Docket No. CP91-2119-000]

Take notice that on May 28, 1991, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed a request with the Commission in Docket No.

CP91-2119-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to change a delivery point for service to Western Gas Supply Company (Western), an existing CIG customer, under CIG's blanket certificate issued in Docket No. CP83-21-000, all as more fully set forth in the request which is open to public inspection.

CIG proposes to alter the Roundup Delivery Point in Morgan County, Colorado, by switching its natural gas deliveries to Western from the inlet side of the metering facilities to the outlet side. CIG states that the proposed changes to the Roundup Delivery Point would not affect its Service Agreement, as certificated in Docket No. CP90-495-000 (52 FERC 62,117). CIG also states that it would pay Western \$35,533 to acquire the Roundup Delivery Point, which was originally certificated in Docket No. CP81-260-000 (19 FERC ¶ 61,283). CIG's tariff does not prohibit this delivery point change.

Comment date: July 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion

for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, 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. 91-13459 Filed 6-6-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-33006; FRL 3929-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for expedited review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M St., SW., Washington, DC 20460, (202) 382-2740.

SUPPLEMENTARY INFORMATION: EPA has submitted the following abstracted ICR to OMB for expedited review and comment.

Title: Letter to Certain Pesticide Registrants Requesting Alternate, Non-

Craven Data for Existing Tolerances or Registrations which are Based on Craven Data (EPA ICR No:1588.01). This is a new collection.

Abstract: Under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., the Agency is required to review existing and pending pesticide registrations to determine that their use will not cause unreasonable adverse effects. For this purpose, FIFRA grants the Agency extensive authority under section 3(c) to require applicants and registrants to provide scientific data to demonstrate the safety of any registered product or application for registration.

Recently, the Environmental Protection Agency (EPA) has received allegations concerning the reliability of certain residue and environmental fate studies conducted by Craven Laboratories Inc. of Austin, Texas. To follow up on information already gathered and also to continue its examination of this problem, EPA now needs additional information as requested in this ICR. EPA is requesting this information because some existing tolerances and registrations are based on data generated from Craven Laboratories and alternate non-Craven data are needed to determine if those tolerances and registrations can continue. EPA wants to have available for the public accurate information regarding supportive, alternate, non-Craven data. Information subject to the ICR is essential for public understanding of the potential impact of the problem.

This review request has been expedited because serious public harm may result if normal procedures are followed for this ICR. The delay which would be occasioned by following normal procedures would force a concomitant delay in the Agency's identification of suspect data. Because the allegations include the possibility that residue values were allegedly falsified in the reported data, it is possible that Agency decisions based on such data may reflect inaccurate and understated risk. The unnecessary continuance or grant of a registration or tolerance based on a flawed assessment of risk could cause serious public harm.

Burden Statement: The burden for this collection of information is estimated to average 24 hours per response for reporting. This estimate includes the time needed to review instructions, gather the data needed, and review the collection of information.

Respondents: Pesticide Registrants.

Estimated No. of Respondents: 14.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondent: 3,600 hours.

Frequency of Collection: Once.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y) 401 M St., SW., Washington, DC 20460, and Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20530.

Request Letter to Registrant:

Re: Craven Laboratory generated data; Request for alternate sources of non-Craven data.

Dear:

The Environmental Protection Agency (EPA) has received allegations concerning the reliability of certain residue and environmental fate studies conducted by Craven Laboratories Inc. of Austin, Texas. EPA considers these allegations serious and believes that reasonable steps must be taken to protect the credibility of registrations and tolerances while this issue is being resolved. As part of this process EPA is requesting that you voluntarily supply EPA with alternate sources of non-Craven data.

EPA is requesting this information for two purposes. First, some existing tolerances or registrations are based in part on data generated at Craven Laboratories. Since the validity of data generated at Craven Laboratories is now in question, decisions need to be made as to whether existing registrations and tolerances can continue until replacement data can be generated. These decisions will be made by reevaluating each pesticide/crop combination for which data generated at Craven Laboratories were submitted. This reevaluation will consist of determining whether alternate, non-Craven data are available to support the continued use of the pesticide. Examples of alternate sources of data are FDA/USDA monitoring data, data submitted to CODEX in support of maximum residue limits, data on related crops, and data on crops grown outside the United States. This list is not all inclusive and other types of data may be considered if they are from reliable, non-Craven sources that are adequate to support a regulatory decision. Second, should the Agency initiate regulatory action, EPA wants to have available for the public accurate information regarding alternate data sources for crop tolerances and registrations that are based on Craven data. Thus your timely response is critical.

EPA requests that you submit alternate data from non-Craven sources to EPA by July 15, 1991. Three (3) copies of the data should be submitted by mail to the following address:

Document Processing Desk (CRAVEN/
ALTERNATE DATA)

Program Management Support Division
(H7504C)

Office of Pesticide Programs
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

or by courier to:

Document Processing Desk (CRAVEN/
ALTERNATE DATA)
Office of Pesticide Programs
U.S. Environmental Protection Agency
Crystal Mall 2, Room 266A
1921 Jefferson Davis Highway
Arlington, VA 22202

Your immediate attention to this request is appreciated.

Sincerely,
Linda Fisher,

Assistant Administrator For Pesticides and
Toxic Substances.

The Agency is requesting that OMB approve this ICR no later than June 13, 1991.

Dated: June 5, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-13689 Filed 6-6-91; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3962-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NESHAP for Benzene Equipment Leaks (Subpart J)—Information Requirements (ICR #1153.04; OMB #2060-0068). This is a revision of a currently approved collection.

Abstract: Owners or operators of process units operating in benzene service (those containing or contacting fluids consisting by weight of at least 10

percent benzene) must submit an application for approval of construction or modification, and notice of anticipated and actual startup. They must monitor for fugitive benzene emissions, and must keep records of this monitoring and of any leaks detected from valves, pumps, and compressor, as well as the steps taken to make repairs. This includes a weekly visual inspection and reporting of leaks from pumps to detect outer seal failure from those pumps containing dual mechanical seals. Owners or operators must submit semiannual reports of any emissions, leaks or repairs. EPA uses this information to determine the compliance status of sources.

Burden Statement: The public burden for this collection of information is estimated to average 30.2 hours per response for reporting, and 57.3 hours annually for recordkeeping. The estimated reporting burden includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of process units operating in benzene service (those containing or contacting fluids consisting by weight of at least 10 percent benzene).

Estimated no. of Respondents: 200.

Estimated no. of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 23,539 hours.

Frequency of Collection: For initial compliance and semiannually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: May 31, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-13527 Filed 6-6-91; 8:45 am]

BILLING CODE 6560-50-M

Agency Information Collection Activities Under OMB Review

[FRL-3961-5]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Requirements for the use of 1080 Collars for Livestock Protection (EPA ICR No. 1249.03; OMB # 2070-0074). This is an extension of the expiration date of a currently approved collection.

Abstract: Sodium monofluoroacetate (Compound 1080), a previously banned pesticide, was re-approved for use in a new delivery mechanism, the toxic collar. The EPA requires certified applicators, States, and registrants to monitor the use and effectiveness of the collar. The respondents are required to submit to the EPA an annual report containing the monitoring data. In addition, certified applicators must report to the States or the EPA all incidents of accidental poisoning of humans and domestic animals, as well as non-target species, and they must keep records of any hazards caused by the collar. The Agency uses these data to monitor the use of the collar, and to ensure the safety of livestock.

Burden Statement: The burden for this collection of information is estimated to average 74.7 hours per response for reporting, and 2.9 hours per recordkeeper annually. This estimate includes the time needed to review instructions, gather the data needed, and review the collection of information.

Respondents: Toxic collar applicators.

Estimated No. of Respondents: 175 certified applicators, 5 States, and 6 registrants.

Estimated No. of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 14,439 hours.

Frequency of Collection: Annually and on occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW.,

Washington, DC 20460.
and

Matthew Mitchell,
Office of Management and Budget,
Office of Information and Regulatory
Affairs,
725 17th Street, NW., Washington, DC
20530.

Dated: May 24, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-13468 Filed 6-6-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3962-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Health and Safety Data Reporting; Submission of Lists and Copies of Health and Safety Studies (EPA ICR No. 0575.05; OMB #2070-0004). This is an extension of the expiration date of a currently approved collection.

Abstract: Under this collection, chemical manufacturers and processors must submit health and safety studies pertaining to specified chemicals, accompanied by a list of those studies and the studies in progress. EPA will use the studies to assess the need for testing the chemicals under section 4(a) of TSCA or to weigh their effects on human health and the environment.

Burden Statement: The public burden for this collection of information is estimated to average 16.8 hours per response. This estimate includes the time needed to review instructions, search data sources, gather the data needed, and review the collection of information.

Respondents: Manufacturers and Processors of Chemical Substances.

Estimated No. of Respondents: 741.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12,478 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: May 31, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-13530 Filed 6-6-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3961-8]

Proposed Settlement; Benzene NESHAP Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed settlement concerning litigation instituted against the Environmental Protection Agency ("EPA") challenging regulations issued pursuant to section 112 of the Clean Air Act for benzene emissions from certain source categories (the "Benzene regulations"). EPA published the Benzene regulations on September 14, 1989 (54 FR 38044).

For a period of thirty [30] days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the settlement are available from Patricia A. Embrey, Air and Radiation Division (LE-132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-7625.

Written comments should be sent to Patricia A. Embrey at the above address and must be submitted on or before July 8, 1991.

Dated: May 7, 1991.

E. Donald Elliott,

Assistant Administrator and General Counsel.

[FR Doc. 91-13471 Filed 6-6-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3961-2]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intended transfer of confidential business information to contractors.

SUMMARY: The Environmental Protection Agency (EPA) intends to transfer confidential business information (CBI) collected from the pesticide chemicals industry to EPA contractors and subcontractors. Transfer of the information will allow the contractors and subcontractors to assist EPA in developing effluent limitations guidelines and standards under the Clean Water Act (CWA) for the pesticide formulating, packaging, or repackaging industry. Information will also be transferred to allow the contractor to assist EPA in performing industry studies of the pesticide manufacturing industry under the Resource Conservation and Recovery Act (RCRA). The information being transferred was collected or will be collected under the authority of section 308 of the Clean Water Act. Interested persons may submit comments on this intended transfer of information to the address noted below.

DATES: Comments on the transfer of data are due June 17, 1991.

ADDRESSES: Comments may be sent to Dr. Thomas E. Fielding, Engineering and Analysis Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas E. Fielding, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-7156.

SUPPLEMENTARY INFORMATION: EPA has previously transferred to its contractor, Radian Corporation of Herndon, Virginia (and subcontractors) information, including confidential business information (CBI), concerning the pesticides industry collected under the authority of the Clean Water Act section 308.

The information transferred included: Questionnaire data collected for the manufacturers segment of the pesticide chemicals industry in 1988, sampling data collected in 1988, 1989, and 1990, from pesticide manufacturing facilities, and questionnaire data collected for the formulator/packager segment of the pesticide chemicals industry in 1990. EPA determined that this transfer was necessary to enable the contractor and subcontractors to perform their work under EPA Contract No. 68-C8-0008 and the subcontracts by assisting EPA in developing effluent limitations guidelines and standards for the pesticide chemicals industry. Notice to this effect was provided to the affected companies.

Today, EPA is giving notice that it has entered into an additional contract, No. 68-C0-0081, with Radian Corporation of Herndon, Virginia and Radian has entered into additional contracts with its subcontractors (Science Applications International Corporation (SAIC); Westat Inc.; ViGYAN, Inc.; and Versar, Inc., John M. Wise Associates and Dr. Robert G. Haines), to develop effluent limitations guidelines and standards for the pesticide formulating/packaging industry. The reason for this second contract with Radian is to secure additional contractor support for the pesticide formulating/packaging rulemaking effort. Radian Corporation will provide technical support such as reviewing and analyzing questionnaire data, recommending facilities for sampling, conducting plant visits and sampling visits, evaluating data on existing wastewater treatment at formulating/packaging plants and estimating costs for the installation of treatment and the effectiveness of the treatment on reducing pollutant loadings. Radian's subcontractor SAIC will provide support on the review of questionnaires, sampling and other engineering support functions.

Westat will provide support on the development of computer data bases and statistical analysis. Versar will provide support in sampling and evaluating the toxicity and environmental impacts associated with discharges from pesticide formulating/packaging wastewater. ViGYAN will provide statistical support and the consultants Dr. Robert Haines and John M. Wise Associates will offer their knowledge of the pesticide formulating/packaging processes, water reuse and recycle practices and the pesticide product registration process. In accordance with 40 CFR part 2, subpart B, the previously collected information described above, as well as information

to be collected in the future to support development of the pesticides effluent guidelines and standards, (including CBI data) will be transferred to Radian Corporation of Herndon, Virginia (if not already transferred for use by Radian under the previous contract) and its subcontractors and consultants as listed above. Each of the contractors, subcontractors and consultants is given access only to the data that they need to perform their given assignments under their contracts. EPA has determined that this transfer is necessary to enable the contractor, subcontractors and consultants to perform their work under EPA Contract No. 68-C0-0081 and the subcontracts.

EPA is also giving notice that it has entered into a contract No. 68-WO-0027, with Science Applications International Corporation (SAIC) of McLean, Virginia to perform an industry study of the pesticide manufacturing industry under the Resource Conservation and Recovery Act (RCRA). SAIC will assist the EPA in the review and compilation of current and recent pesticide production activities. This data will serve as the basis for determining whether or not the wastes generated by the pesticide manufacturing industry warrant listing as hazardous under RCRA.

EPA will transfer to its contractor SAIC, McLean, Virginia information including confidential business information (CBI) concerning the pesticide industry collected under the authority of the Clean Water Act section 308. The information transferred will include: Questionnaire data collected for the manufacturers segment of the pesticide chemicals industry in 1988, sampling data collected in 1988, 1989, and 1990 from pesticide manufacturing facilities, and questionnaire data collected for the formulator/package segment of the pesticide chemical industry in 1990. SAIC will provide EPA with technical support by performing an industry study of the pesticide manufacturing industry. This will include reviewing and analyzing questionnaires, recommending facilities for sampling, and conducting plant visits and sampling visits. By transferring this information, EPA hopes to minimize the burden on the pesticide manufacturing industry by preventing duplicative requests for information.

In accordance with 40 CFR part 2, subpart B, the previously collected information described above, (including CBI data) will be transferred to Science Applications International Corporation. SAIC will be given access only to the data that they will need to perform their

given assignments under their contract. EPA has determined that this transfer is necessary to enable the contractor to perform their work under EPA Contract No. 68-WO-0027.

Anyone wishing to comment on the above matters must submit comments to the address given above by June 17, 1991.

Dated: May 24, 1991.
Lajuana S. Wilcher,
Assistant Administrator for Water.
Martha Prothro,
Deputy Assistant Administrator for Water.
[FR Doc. 91-13472 Filed 6-6-91; 8:45 am]
BILLING CODE 6560-50-M

[FRL-3962-4]

National Air Pollution Control Techniques Advisory Committee; Request for Suggestions for List of Candidates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of preparation of list of candidates.

SUMMARY: The EPA is preparing a list of candidates from which nominees will be selected for the National Air Pollution Control Techniques Advisory Committee (NAPCTAC). The EPA invites all interested persons to suggest qualified individuals whose names may be added to this list of candidates. The NAPCTAC was established to advise the Agency on the latest available technology and economic feasibility of alternative methods to prevent and control air pollution. This advice is used both in establishing national emission standards and preparing support documentation. It also advises on information documents regarding air pollution control techniques and testing and monitoring methodology for stationary source categories and air pollutants subject to the provisions of sections 111 and 112 of the Clean Air Act, as amended.

DATES: Submit suggestions for the list of candidates no later than July 8, 1991.

ADDRESSES: Submit suggestions for the list of candidates to: Bruce C. Jordan, Acting Director, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, NC. 27711.

FOR FURTHER INFORMATION CONTACT: Bruce C. Jordan, Acting Director, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, NC. 27711 (919) 541-5572.

SUPPLEMENTARY INFORMATION: The Charter for the NAPCTAC which describes the authority, organization, and functions of the Committee is available upon request. Individuals whose names are offered should have education or experience in the scientific, engineering, or economic aspects associated with the source of air pollution and the control of emissions from such sources. Past members have come from universities, State and local governments, research institutions, public interest organizations, and industry.

Any interested person or organization may submit the names of qualified persons. Suggestions for the list of candidates should be identified by name, occupation, position, address, and telephone number; a resume of the individual's background, experience, and qualifications relevant to NAPCTAC membership should be included.

Persons selected for membership on the NAPCTAC will receive per diem compensation for travel and nominal daily compensation while attending meetings.

Suggestions for the list of candidates should be submitted no later than July 8, 1991. The Agency will not formally acknowledge or respond to suggestions.

Dated: May 31, 1991.
Michael Shapiro,
Deputy Asst. Adm. for Air and Radiation.
[FR Doc. 91-1352 Filed 6-6-91; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-3963-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 20, 1991 through May 24, 1991 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) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in Federal Register dated April 05, 1991 (56 FR 14096).

Draft EISs

ERP No. D-AFS-J65175-MT Rating LO, Price Wise Timber Sale,

Implementation, Beaverhead National Forest, Wise River Ranger District, Beaverhead County, MT.

Summary:

EPA has no objection to the preferred alternative.

ERP No. D-CDB-C80011-NY Rating LO, Rochester City School District's Carthage School #8 Replacement Project, Construction and Operation CDB Grant, City of Rochester, Monroe County, NY.

Summary:

EPA believes that the proposed project will not result in any significant adverse environmental impacts.

ERP No. D-FRC-G03017-00 Rating LO, Oklahoma-Arkansas Natural Gas Pipeline Project, Construction, Operation and Transportation, section 10 and 404 Permits, NPDES Permit, Several Counties in MS, OK and AR.

Summary:

EPA has no objection to the proposed action that provided the mitigation measures, best management practices, and federally-approved operation and maintenance procedures and fully incorporated.

ERP No. D-UAF-K11046-CA Rating EC1, March Air Force Base Realignment, Implementation, 445th Air Force Reserve Military Airlift Wing, Riverside County, CA.

Summary:

EPA expressed environmental concerns because the proposed realignment action may have adverse impacts without a firm commitment to adopt mitigation to protect public health and the environment. EPA urged hazardous waste minimization, recycling solid wastes, and reduction of emissions from mobile and stationary sources of air pollution. EPA requested a discussion of any potential conflicts in schedules concerning accelerated realignment construction and hazardous waste cleanup activities at March Air Base.

ERP No. DR-COE-E32066-00 Rating LO, Savannah Harbor Comprehensive Study and Harbor Deepening, Updated and New Information, Implementation, Chatham County, GA and Jasper County, SC.

Summary:

EPA has no objections to the proposed deepening of Savannah Harbor.

Final EISs

ERP No. F-AFS-F61016-IN, Hoosier National Forest Land and Resource

Management Plan Amendment, Implementation, Several Counties, IN.

Summary:

EPA believes that the selected alternative will provide more ecological benefits than the current forest plan provides. EPA requests that mitigation for erosion, sedimentation and bottomland hardwoods be implemented and that reintroduction of extinct species be pursued.

ERP No. F-AFS-F65018-WI, Sunken Camp Area—Management Area 351, Management Plan, Implementation, Chequamegon National Forest, Washburn Ranger District, Bayfield County, WI.

Summary:

EPA supports the alternative selected by the Forest Service in the Record of Decision, but is concerned that management constraints in the 1986 Land Management Plan preclude optimization of biological diversity and ecological processes in the Forest.

ERP No. F-AFS-G65051-NM, Ward Timber Sale, Implementation, Gila National Forest, Luna Ranger District, Catron County, NM.

Summary:

EPA has no objection to the selection of the "no action" alternative.

Dated: June 4, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-13559 Filed 6-6-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3963-1]

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 May 27, 1991 Through May 31, 1991 Pursuant to 40 CFR 1506.9

EIS No. 910176, Draft EIS, SFW, CA, Stone Lakes National Wildlife Refuge Management Plan, Land Acquisition and Easement, Possible COE Section 10 and 404 Permits, Central Valley, Sacramento County, CA, Due: August 01, 1991, Contact: Peter Jerome (916) 978-4420.

EIS No. 910177, Draft EIS, BLM, NM, Albuquerque District Resource Management Plan (RMP) Amendment, Oil and Gas Leasing and Development, Farmington, Rio Puerco and Taos Resource Areas, Implementation, Several Counties,

NM, Due: September 07, 1991, Contact: Robert Dale (505) 761-8712.

EIS No. 910178, Draft EIS, UMT, MD, Baltimore-Washington International Airport Extension, Central Light Rail Line (CLRL), Funding, Anne Arundel, Baltimore and Howard Counties, MD, Due: July 26, 1991, Contact: John Garrity (215) 597-4179.

EIS No. 910179, Draft EIS, EPA, CA, International Wastewater Treatment Plant and Outfall Facilities, Construction, Operation and Maintenance, Construction Grant, CA and MX, Due: July 22, 1991, Contact: Brad Tarr (619) 542-1611.

EIS No. 910180, Draft EIS, AFS, WY, Medicine Wheel National Historic Landmark Protection Project, Implementation, Bighorn National Forest, Medicine Wheel Ranger District, Big Horn County, WY, Due: August 31, 1991, Contact: Lloyd Todd (307) 672-0751.

EIS No. 910181, Final EIS, COE, KS, Cross Creek Flood Protection Plan, section 205 Small Flood Control Project, Implementation, City of Rossville, Shawnee County, KS, Due: July 08, 1991, Contact: Martin R. Schueltpelz (816) 426-5063.

EIS No. 910182, Draft EIS, COE, KY, Lower Cumberland and Tennessee Rivers Navigation Improvements, Kentucky Lock Addition, Implementation, Nashville District, Marshall and Livingston Counties, KY, Due: July 22, 1991, Contact: Richard Tippit (615) 736-2020.

EIS No. 910183, Final EIS, AFS, ID, Beartrack Open Pit Heap Leach Gold Mine Project, Construction and Operation, NPDES Permit and section 404 Permit, Salmon National Forest, Lemhi County, ID, Due: July 22, 1991, Contact: Tom Buchta (208) 756-2215.

EIS No. 910184, Draft EIS, AFS, CA, Rock Creek-Cresta Reservoirs Dredging Project, Dredging and Disposal of Sediments, Section 404 Permit, Plumas National Forest, Plumas County, CA, Due: July 22, 1991, Contact: Court Bennett (916) 283-2050.

Dated: June 4, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-13558 Filed 6-6-91; 8:45 am]

BILLING CODE 6560-60-M

[FRI-3961-6]

Reallotment of Funds Under Municipal Wastewater Treatment Works Construction Grants Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of distribution of funds for reallocation under Municipal Wastewater Treatment Works Construction Grants Program (40 CFR part 35, subpart I).

SUMMARY: This notice announces the distribution of unobligated fiscal year (FY) 1989 funds subject to reallocation after September 30, 1990, under the Clean Water Act, 33 U.S.C. 1285 et seq. and explains the reallocation and distribution procedures.

The construction grants program operates under authority of the Clean Water Act (the Act) Public Law 92-500, as amended. Section 205(d) of the Act requires that funds allotted to a State which have not been obligated by the end of the second year of availability " * * * shall be immediately reallocated by the Administrator * * * ." section 104(q)(4) of the Act requires that "Notwithstanding section 205(d) * * * the Administrator shall make available \$1,000,000 or such unobligated amount, whichever is less, to support a national clearinghouse * * * " to disseminate information on innovative and alternative wastewater treatment processes for communities.

DATES: June 7, 1991.

FOR FURTHER INFORMATION CONTACT:

Mr. Leonard Fitch, Program Management Branch, Municipal Support Division, Office of Wastewater Enforcement and Compliance, (202) 382-5858.

SUPPLEMENTARY INFORMATION: Section 104(q)(4) requires the Administrator to make available to the National Small Flows Clearinghouse, notwithstanding the reallocation provisions of section 205(d), from unobligated funds reserved for innovative and alternative projects under section 205(i), an amount equal to those unobligated funds or \$1,000,000, whichever is less. At the close of the availability period for the FY 1989 allotment (September 30, 1990), six territories had not obligated their available funds. The total amount of \$762,735 is comprised of American Samoa (\$33,512); Guam (\$24,248); Trust Territory (\$3,402); Puerto Rico (\$60,857); Virgin Islands (\$2,431); and the Northern Mariana Islands (\$638,285).

Unavailability of Funds for Reallocation to States

The balance of the unobligated funds remaining after the period of availability and subject to reallocation under section 205(d) and that is, covered by the requirements of section 104(q)(4), is \$762,735 leaving less than \$1,000,000 available to fund the National Small Flows Clearinghouse. This is the first

year in which funds will only be available for distribution to the National Small Flows Clearinghouse and no funds are available for reallocation to the States. As discussed below, only a portion of the unobligated funds remaining after the period of availability are subject to reallocation. Due to the following exception the total amount to be reallocated to the Small Flows Clearinghouse is \$124,450.

Northern Mariana Islands

Section 3(b)(2) of Public Law 95-348 provides that any funds made available to the Northern Mariana Islands (NMI) by the Congress after March 24, 1978 " * * * are hereby authorized to remain available until expended." Accordingly, construction grants funds allotted to the Northern Mariana Islands which remain unobligated at the close of the period of availability prescribed by section 205(d) of the Act are not subject to reallocation. Thus, funds allotted to the Northern Mariana Islands are not subject to the reallocation provisions of section 205(d).

Dated: May 28, 1991.

William K. Reilly,
Administrator.

Summary of Notice of Funds Availability

• Section 205(d) of the Act requires that funds allotted to a State which are not obligated by the end of the second year of availability " * * * shall be immediately reallocated by the Administrator * * * ." Section 104(q)(4) of the Act requires that "Notwithstanding section 205(d) * * * the Administrator shall make available \$1,000,000 or such unobligated amount, whichever is less, to support a national clearinghouse * * * ."

• This year, the amount of unobligated funds is less than \$1,000,000; and the entire amount is to be distributed to the National Small Flows Clearinghouse.

• Funds from five territories totalling \$124,450 which were set aside for construction of innovative and alternative wastewater treatment facilities will be available.

[FR Doc. 91-13469 Filed 6-6-91; 8:45 am]

BILLING CODE 6560-50-M

Open Meeting of the Policy Dialogue Committee on Mining Wastes

[FRL-3961-7]

AGENCY: U.S. Environmental Protection Agency.

ACTION: Open meeting of Federal Advisory Committee on Mining Wastes.

SUMMARY: As required by section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the second meeting of the Policy Dialogue Committee. The committee was formed to provide a forum to refine and further develop issues related to managing mining waste and to facilitate the exchange of ideas and information among the interested parties. We have determined that this is in the public interest and will assist EPA in performing its duties prescribed in the Resource Conservation and Recovery Act.

Copies of the Committee Charter are filed with the appropriate committees of Congress and the Library of Congress.

DATES: The Committee will meet on the following dates:

June 17, 1991 from 1 p.m.—5 p.m.

continuing on

June 18, 1991 from 9 a.m.—3 p.m.

July 25, 1991 from 9 a.m.—3 p.m.

continuing on

July 26, 1991 from 8 a.m.—12 p.m.

LOCATIONS: The June 17-18 meeting will be held at the Embassy Suites Hotel, 1881 Curtis Street, Denver, Co. The July 25-26 meeting will be held at the Sir Francis Drake Hotel, Union Square, 450 Powell Street, San Francisco, CA. Committee meetings are open to the public without need for advance registration.

The committee's facilitator has notified interested parties of the meeting dates. The purpose of the meeting is to continue discussion of issues related to the development of EPA's mining program.

FOR FURTHER INFORMATION CONTACT:

Persons needing further information on the substantive matters of the Committee should call Stephen Hoffman, Office of Solid Waste, at (703) 308-8413. Summaries of previous meetings will be made available upon written request to Patricia Whiting, Office of Solid Waste, Environmental Protection Agency, 401 M Street, SW., (OS-323W), Washington, DC 20460. Persons needing further information on Committee procedural matters should call Deborah Dalton, Regulatory Negotiation Project, at (202) 382-5495.

SUPPLEMENTARY INFORMATION

Background

The Policy Dialogue Committee was created to provide a forum to refine and further develop issues raised during the strawman development and comment process, and to facilitate the exchange of new ideas and information among the interested parties. It is hoped that consensus may be possible on some

issues but, at a minimum, we would like to ensure that issues are thoroughly defined and that differing positions, as well as the reasons for those differences, are identified. The output of the Policy Dialogue Committee will be made available to various EPA decision-makers in the mining waste program development process.

The first meeting of the Committee was held in Washington, DC on May 15 and May 16, 1991.

Participants

Seven representatives from each of the interested parties (States, the mining industry, and public interest groups) serve as representatives on the Committee. Representatives from EPA and other Federal agencies also serve as members of the Committee. The following is a listing of representatives for the interested parties: States—Mr. Ken Alkema, Director, Division of Environmental Health, Utah Department of Health; Mr. Fred Banta, Director, Mine Land Reclamation Division, Colorado Department of Natural Resources; Mr. Tom Fronapfel, Bureau Chief, Bureau of Mining Regulation and Reclamation, Nevada Department of Conservation and Natural Resources; Mr. Charles Gardner, State Geologist, Director of Land Resources, North Carolina Department of Health, Environment and Natural Resources; Ms. Charlene Herbst, Chief Land Disposal Branch, California Water Resources Control Board; Mr. Jim Joy, Chief, Air Quality Control, South Carolina Department of Health and Environmental Control; Mr. Steve Priner, Director, Division of Environmental Regulation, South Dakota Department of Water and Natural Resources.

Mining Industry—Mr. Steven Barringer, Esq., Holland & Hart; Mr. David Crouch, Corporate Manager, Environmental Affairs, Homestake Mining Company; Mr. Norman Greenwald, Norman Greenwald Associates; Mr. Thomas Janeck, Vice President, Environmental Affairs, Zinc Corporation of America; Dr. Krishna Parameswaren, Senior Analyst, Government Relations, ASARCO Incorporated; Mr. William Schimming, Manager, Environmental Affairs, Texas Gulf, Inc.; Mr. Ivan Urnovitz, Manager, Government Relations, Northwest Mining Association.

Public Interest Groups—Mr. Thomas Galloway, Esq., Friends of the Earth; Mr. Philip Hocker, Mineral Policy Center; Mr. David Lennett, Esq., National Audubon Society; Dr. Glenn Miller, Sierra Club; Mr. James Jensen, Montana Environmental Information Center; Mr. Wm. Paul Robinson, Southwest

Research & Information Center; and Tony Mazzochi, Oil, Chemical and Atomic Workers International Union.

Federal Agency Representatives—Mr. David S. Brown, Associate Director, Information and Analysis, Bureau of Mines; Lynn Sprague, Director of Minerals and Geology Staff, U.S. Forest Service; Matthew A. Straus, Deputy Director, Waste Management Division, Office of Solid Waste, U.S. Environmental Protection Agency; Russell H. Wyer, Director, Waste Management Division, Office of Solid Waste, U.S. Environmental Protection Agency; Robert E. Walline, Mining Waste National Expert, Region 8, U.S. Environmental Protection Agency.

Dated: May 28, 1991.

Paul Lapsley,

Director, Regulation Management Division.

[FR Doc. 91-13470 Filed 6-6-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3963-5]

Expert Panel on the Role of Science at EPA; Open Meeting

Under Public Law 92-463, notice is hereby given that the Expert Panel on the Role of Science at EPA will hold a public meeting on June 24, 1991, in the LaSalle Room of the Loew's L'Enfant Plaza Hotel, 480 L'Enfant Plaza SW., Washington, DC. The meeting will begin at 8:30 a.m. and will end at 10:30 a.m.

This is the initial meeting of the Expert Panel. The purpose of the meeting will be to identify issues which the Panel will consider during its review of science at EPA.

This meeting will be open to the public. Any member of the public wishing to attend the meeting, present an oral statement, or submit a written statement should contact Ms. Gail Robarge, U.S. Environmental Protection Agency, Office of Research and Development (H-8105), 401 M St., SW., Washington, DC 20460 (202) 382-7891. For further information concerning the Panel or its activities, please contact Ms. Wendy Cleland-Hamnett, Designated Federal Official to the Panel, Office of the Administrator (A-101), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 (202) 382-4724. Seating is limited due to the size of the room and will be on a first come basis.

Dated: June 4, 1991.

Wendy Cleland-Hamnett,

Special Assistant to the Administrator.

[FR Doc. 91-13694 Filed 6-6-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59299; FRL 3929-5]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of 2 applications for exemption, provides a summary, and requests comments on the appropriateness of granting these exemptions.

DATES:

Written comments by:

T 91-19, 91-20, June 20, 1991.

ADDRESSES: Written comments, identified by the document control number "(OPTS-59299)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., rm. L-100, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT:

David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

T 91-19

Close of Review Period, July 5, 1991.

Manufacturer, Mycogen Corporation.

Chemical, (G) *Pseudomonas fluorescens* engineered to contain a gene for production of delta endotoxin from

bacillus thuringiensis variety *kurstaki*, (MYX-7275).

Use/Production. (S) The TME substances are agricultural pesticide intermediates. The engineered microorganisms produce the delta endotoxin during growth in a fermenter under controlled conditions, and are killed and fixed. Encapsulation of the *b.t.* delta endotoxin within the killed, fixed *p. fluorescens* cell provides protection from the elements, and extends the residual activity of the toxin to 5-7 days. Prod. range: 45 batches max.

T 91-20

Close of Review Period. July 5, 1991.

Manufacturer. Mycogen Corporation.

Chemical. (G) *Pseudomonas fluorescens* engineered to contain a gene for production of delta endotoxin from *bacillus thuringiensis* variety *san diego*, (MYX-1806).

Use/Production. (S) The TME substances are agricultural pesticide intermediates. The engineered microorganisms produce the delta endotoxin during growth in a fermenter under controlled conditions, and are killed and fixed. Encapsulation of the *b.t.* delta endotoxin within the killed, fixed *p. fluorescens* cell provides protection from the elements, and extends the residual activity of the toxin to 5-7 days. Prod. range: 18 batches max.

Dated: June 4, 1991.

Douglas W. Sellers,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-13520 Filed 6-6-91 8:45 am]

BILLING CODE 6560-50-F

[OW-FRL-3962-6]

Assessment and Control of Bioconcentratable Contaminants in Surface Waters: Draft Guidance

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of public comment period.

SUMMARY: This notice announces an extension of the public comment period on the draft guidance document entitled "Assessment and Control of Bioconcentratable Contaminants in Surface Waters." The draft guidance document was made available on March 29, 1991 (56 FR 13150).

DATES: All comments must be received by EPA on or before July 26, 1991.

ADDRESSES: Interested persons should submit written comments to William J. Morrow, Office of Wastewater Enforcement and Compliance, EN-336, U.S. Environmental Protection Agency,

401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: William J. Morrow at (202) 475-9531.

SUPPLEMENTARY INFORMATION: On March 29, 1991, EPA made available a draft guidance document entitled "Assessment and Control of Bioconcentratable Contaminants in Surface Waters." The purpose of this draft guidance document is to provide guidance to State and Federal regulators on assessing and, where necessary, controlling the release of pollutants which, due to their chemical properties, accumulate in the tissues of aquatic organisms. The Environmental Protection Agency solicits comments from the public on all aspects of this draft guidance document. The March 29 notice sets a period of 60 days for the receipt of public comments. Since publication of that notice, EPA has received several requests to lengthen the comment period. In response to these requests, EPA has decided to extend the comment period to July 26, 1991.

Dated: May 28, 1991.

Michael B. Cook,

Director, Office of Wastewater Enforcement and Compliance.

[FR Doc. 91-13533 Filed 6-6-91; 8:45 am]

BILLING CODE 6560-50-M

[FRC-3951-9]

Availability and Review of New Financial Assistance Program; NPDES Related State Program Support—State Grants

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability and review.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of \$16,500,000, under section 104(b)(3) of the Clean Water Act, to support new requirements related to National Pollutant Discharge Elimination System (NPDES) program implementation. Funding will be available for unique investigations, special one time studies, pilots and demonstrations so as to implement NPDES related activities. These activities include: (1) The development of NPDES permits and other administrative activities (including enforcement) for combined sewer overflow (CSO) and storm water discharges, and (2) the implementation of municipal water pollution prevention pilot programs. Eligible applicants include: State water pollution control agencies; interstate water pollution

control agencies; and other public agencies. Grant funds must lead to implementation with tangible results; they can not be used to support ongoing State water quality programs. Our schedule is to review and approve all project proposals by July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Applicants should request appropriate grant application forms from their Regional Grants Administration Office. For programmatic or technical information, applicants should work closely with their Regional water program contacts. Applicants should work with the Regions to develop informal grant proposals for Headquarters review and concurrence before completing formal grant applications. For further assistance and to apply for funds, applicants should contact the following EPA Regional staff:

EPA Region I (Maine, Vermont, Connecticut, New Hampshire, Massachusetts and Rhode Island): William Nuzzo, Water Management Division, John F. Kennedy Federal Building, room 2203, Boston, MA, 02203 (617) 565-3480;

EPA Region II (New York, New Jersey, Puerto Rico, Virgin Islands): Patrick Harvey, Water Management Division, Jacob K. Javitz Federal Building, 26 Federal Plaza, New York, NY, 10278, (212) 264-8958;

EPA Region III (Pennsylvania, Delaware, Maryland, Virginia, West Virginia, District of Columbia): Ken Cox, Water Management Division, 841 Chestnut Building, Philadelphia, PA, 19107, (215) 597-8211;

EPA Region IV (North Carolina, South Carolina, Tennessee, Kentucky, Georgia, Alabama, Mississippi and Florida): James Patrick, Water Management Division, 345 Courtland Street, NE., Atlanta, GA, 30365, (404) 347-3012;

EPA Region V (Illinois, Wisconsin, Michigan, Ohio, Indiana): Barry DeGraff, Water Management Division, 230 South Dearborn Street, Chicago, IL, 60640, (312) 353-0147;

EPA Region VI (Texas, Arkansas, New Mexico, Oklahoma, Louisiana): Jack Ferguson, Water Management Division, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, 12th floor suite 1200, Dallas, TX, 75202-2733, (214) 655-7170;

EPA Region VII (Missouri, Kansas, Nebraska, Iowa): Larry Ferguson, Water Management Division, 726 Minnesota Avenue, Kansas City, KS, 66101, (913) 551-7447;

EPA Region VIII (Colorado, North Dakota, South Dakota, Utah, Wyoming,

Montana); Janet LaCombe, Water Management Division, 999 18th Street, Denver, CO, 80202, (303) 293-1654;

EPA Region IX (California, Arizona, Hawaii, Nevada, Trust Territories): William Pierce, Water Management Division, 75 Hawthorne Street, San Francisco, CA, 94015, (415) 744-1878;

EPA Region X (Washington, Oregon, Alaska, Idaho): Harold Geren, Water Management Division, 1200 Sixth Avenue, Seattle, WA, 98101, (206) 442-1256.

For information at EPA Headquarters, Office of Water: Rita Smith, Office of Wastewater Enforcement and Compliance (EN-335), U.S. EPA, 401 M. Street, SW., Washington, DC, 20460, (202) 475-8488.

SUPPLEMENTARY INFORMATION: EPA will award \$16,500,000 in grants, under authority of the Clean Water Act (CWA) section 104(b)(3), to State and interstate water pollution control agencies and other public agencies which commit to undertake specific, targeted activities to strengthen NPDES related program implementation. Assistance will be targeted to agencies for special studies, demonstrations, unique one time investigations or pilot programs that will enable the NPDES program to effectively implement CSO and storm water control programs. Eligible activities must be relatively short time frames (one or two years) and produce concrete results.

First priority for the use of grants will focus on the establishment of schedules and requirements for controlling CSOs. Second priority will involve implementing storm water discharge control strategies. Eligible activities include: Addressing unique requirements (permits and/or enforcement orders) relating to CSO controls; controlling CSO and storm water discharges in targeted watersheds; demonstrating successful implementation of State CSO strategies; developing model general permits for storm water and CSOs; evaluating toxicity data and toxicity testing for storm water discharges; and demonstrating municipal wastewater pollution prevention pilot programs. All grants will require specific outputs which will be negotiated at time of grant award; for example, monitoring and planning work must lead to implementation, such as permit issuance.

This program is eligible for intergovernmental review under Executive Order 12732 and is subject to the review requirements of section 204 of the Demonstration Cities and Metropolitan Development Act. States

choosing to review applications in this program must notify the following office within thirty days of this publication: Grants Administration Division (PM-216F, U.S. Environmental Protection Agency, 401 M. Street, SW., Washington DC, 20460, ATTN: Corinne Allison).

Applicants must contact their State's Single Point of Contact (SPOC) for intergovernmental review as early as possible to find out if the program is subject to the State's official E.O. 12732 review process and what material must be submitted to the SPOC for review. In addition, applications for projects within a metropolitan area must be sent to the areawide/ Regional/local planning agency designated to perform metropolitan or regional planning for the area for their review. SPOCs and other reviewers should send their comments on an application to the appropriate EPA Regional Grants Management Office, no later than sixty days after receipt of the application and other required material for review.

States are encouraged to work closely with their Regional water programs to develop project proposals that will effectively address the critical goals of this new grant program.

Dated: June 3, 1991.

Michael B. Cook,

Director, Office of Wastewater Enforcement and Compliance.

[FR Doc. 91-13531 Filed 6-6-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[GEN Docket No. 91-59; DA 91-622]

Wyoming Region Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The FCC is accepting Wyoming's (Region 46's) plan for public safety. By accepting this plan, the FCC enables the licensing of 821-824/866-869 MHz spectrum for public safety to begin.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, Washington, DC 20554, (202) 632-6497.

SUPPLEMENTARY INFORMATION:

1. On October 26, 1990, Region 46 (Wyoming) submitted its public safety plan to the Commission for review. The plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in its region. On

March 1, 1991, Wyoming filed revisions to the plan, based on conversations with the Commission's staff.

2. The Wyoming plan was placed on Public Notice for comments on March 12, 1991, 56 FR 11555 (3-19-91). The Commission received no comments in this proceeding.

3. We have reviewed the plan submitted for Wyoming and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87-112, 3 FCC Rcd 905 (1987) 53 FR 1022, January 15, 1988, and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Wyoming.

4. Accordingly, *it is ordered that the Public Safety Radio Plan for Wyoming is accepted.* Furthermore, licensing of the 821-824/866-869 MHz band in Wyoming may commence immediately.

Federal Communications Commission.

Beverly G. Baker,

Deputy Chief, Private Radio Bureau.

[FR Doc. 91-13436 Filed 6-6-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-909-DR]

Major Disaster and Related Determinations, AK

AGENCY: Federal Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA-909-DR), dated May 30, 1991, and related determinations.

DATES: May 30, 1991.

FOR FURTHER INFORMATION CONTACT:

Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated May 30, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Alaska, resulting from heavy snow, flooding, and ice jams beginning on April 30, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T.

Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Joan F. Hodgins of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster: Fairbanks-North Star Borough, and the communities of Aniak, Anvik, Grayling, Holy Cross, McGrath, and Red Devil for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,
Director, Federal Emergency Management Agency.

[FR Doc. 91-13501 Filed 6-6-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-907-DR]

Major Disaster and Related Determinations, AR

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA-907-DR), dated May 30, 1991, and related determinations.

DATES: May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated May 30, 1991, the President

declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Arkansas, resulting from severe storms and flooding beginning on April 12, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Leland R. Wilson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arkansas to have been affected adversely by this declared major disaster: The counties of Ashley, Bradley, Chicot, Cleveland, Columbia, Dallas, Desha, Izard, Lee, Little River, Nevada, Ouachita, Polk, Stone, and Union for Public Assistance.

The incident period for this disaster shall be established in the FEMA-State Agreement as April 12, 1991, through and including May 11, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,
Director, Federal Emergency Management Agency.

[FR Doc. 91-13502 Filed 6-6-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-904-DR]

Amendment to Notice of a Major Disaster Declaration; Louisiana

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-904-DR), dated May 3, 1991, and related determinations.

DATES: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective May 31, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,
Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-13498 Filed 6-6-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-904-DR]

Amendment to Notice of a Major Disaster Declaration; Louisiana

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-904-DR), dated May 3, 1991, and related determinations.

DATED: May 28, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated May 3, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 3, 1991.

The parishes of St. James and St. Tammany for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-13499 Filed 6-6-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-904-DR]

Amendment to Notice of a Major Disaster Declaration; Louisiana

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-904-DR), dated May 3, 1991, and related determinations.

DATED: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated May 3, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 3, 1991:

The parishes of Livingston and St. Charles for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-13500 Filed 6-6-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-906-DR]

Mississippi; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA-906-DR), dated May 17, 1991, and related determinations.

DATES: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective May 31, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-13503 Filed 6-6-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-908-DR]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA-908-DR), dated May 28, 1991, and related determinations.

DATES: May 28, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated May 28, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93-288, as amended by Public Law 100-707), as follows:

I have determined that the damage in certain areas of the State of Nebraska, resulting from severe storms and flooding beginning on May 10, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint S. Richard Mellinger of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Nebraska to have been affected adversely by this declared major disaster:

The counties of Dawes and Sioux for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91-13504 Filed 6-6-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-906-DR]

Amendment to Notice of a Major Disaster Declaration; MS

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA-906-DR), dated May 17, 1991, and related determinations.

DATES: May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Mississippi, dated May 17, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 17, 1991: Madison and Yazoo Counties for Individual Assistance.

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

[FR Doc. 91-13518 Filed 6-6-91; 8:45 am]

BILLING CODE 6718-02-M

Privacy Act of 1974; Proposed New Routine Use of Existing Systems of Records

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of Proposed new routine use to existing system of records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Federal Emergency Management Agency gives notice of a proposed new routine use to be added to an existing system of records entitled FEMA/FIA-2, National Flood Insurance Application and Related Documents Files.

EFFECTIVE DATE: The proposed routine use shall become effective, without further notice, on 30 days from the date of this notice in the *Federal Register* (July 8, 1991), unless comments necessitate otherwise.

ADDRESS: Address comments to the Federal Emergency Management Agency, Attn: Docket Clerk, Office of General Counsel, Room 840, 500 C Street, SW., Washington, DC 20472. Comments received will be available for public inspection at the above address from 9 a.m. to 4 p.m., Monday through Friday (except for legal holidays).

FOR FURTHER INFORMATION CONTACT: Sandra B. Jackson, FOIA/Privacy Specialist, at (202) 646-3480.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) last published its notice of systems of records on January 5, 1987 (52 FR 324); February 3, 1987 (52 FR 3344); March 5, 1987 (52 FR 6875); and September 7, 1990 (55 FR 37182).

The system identified as FEMA/FIA-2, National Flood Insurance Application and Related Documents Files was previously published on November 26, 1982, 47 FR 53492; amended on October 25, 1983, 48 FR 49376; February 17, 1984, 49 FR 6168; May 13, 1985, 50 FR 20007; January 5, 1987, 52 FR 324; July 28, 1988, 53 FR 28437; and August 9, 1988, 53 FR 29947. A new routine use is proposed to permit release of policy numbers of National Flood Insurance Program (NFIP) policyholders to lending institutions, mortgage servicing companies and others servicing mortgage loan portfolios, whether on behalf of lenders or their mortgage servicing companies, for the purpose of securing flood insurance protection for those properties that are a part of a lending institution's mortgage portfolio in aid of assuring lender compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973. Under the 1973 Act, it is required that a federally

related lending institution obtain flood insurance in an amount equal to the loan when making, extending or renewing a mortgage loan in connection with improved real property located in a special flood hazard area of a community participating in the NFIP.

Release of flood insurance policy numbers will provide a mechanism whereby lending institutions, mortgage servicing companies, and others servicing mortgage loan portfolios, can bring their portfolios into compliance with the flood insurance purchase requirements of the 1973 Act. This is so because, by the lender comparing flood insurance policy numbers of its mortgagors with the NFIP record of policies in force, the lender can learn whether any of its flood insurance policies are no longer in effect. As to those policies which have lapsed, the lender can require the mortgagors to maintain flood insurance in effect provided the insurance was initially purchased pursuant to the 1973 Act.

Similarly, and for the same purpose, we are amending the routine use whereby data is released to private companies engaged in the marketing of flood insurance policies.

This will also result in a greater number of NFIP standard flood insurance policies being written, and, ultimately, will benefit all NFIP policyholders inasmuch as a greater number of policies-in-force will result in a greater spread of the risk. Thus, the overall cost of the insurance will hold steady, or even possibly be lowered depending upon the magnitude of the insurance reserves.

For the convenience of the reader, the entire text of the system of records affected by this notice is being printed in its entirety.

Dated: May 29, 1991.

Kathryn L. Newman,
Deputy General Counsel, Office of General Counsel, Federal Emergency Management Agency.

FEMA/FIA-2

SYSTEM NAME:

National Flood Insurance Application and Related Documents Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Various offices of a servicing agent under contract to the Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472. Copies of some of the files are also provided to the FEMA Regional offices when additional information is requested from their respective offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for individual flood insurance and individuals insured.

CATEGORIES OF RECORDS IN THE SYSTEM:

Flood insurance, policy issuances and administration records and claims adjustment records, including HUD Form 1650 and FEMA Form 81-64, Applications for Participation in the National Flood Insurance Program; FEMA Form 81-16, Flood Insurance Application; FEMA Form 81-18, Flood Insurance General Change Endorsements; FEMA Form 81-23, Request for Policy Processing and Renewal Information; FEMA Form 81-17, Flood Insurance Cancellation/Nullification Request Form; policy questionnaires; FEMA Form 81-67, Flood Insurance Preferred Risk Policy Application; FEMA Form 81-31, National Flood Insurance Program Elevation Certificate; FEMA Form 81-65, National Flood Insurance Program Floodproofing Certificate; FEMA Form 81-25, V Zone Risk Factor Rating Form; FEMA Form 81-40, National Flood Insurance Program Worksheet—Contents; FEMA Form 81-41, National Flood Insurance Program Worksheet—Building; FEMA Form 41a, National Flood Insurance Program Worksheet—Building (Continuation); FEMA Form 81-42, National Flood Insurance Proof of Loss; FEMA Form 81-43, National Flood Insurance Program Notice of Loss; FEMA Form 81-44, Statement as to full cost of repair or replacement under the replacement cost coverage, subject to the terms and conditions of the Standard Flood Insurance Policy; FEMA Form 81-45, Adjuster's Short Form Report; FEMA Form 81-57, National Flood Insurance Program Preliminary Report; FEMA Form 81-58, National Flood Insurance Program Final Report; FEMA Form 81-59, National Flood Insurance Program Narrative Report; and FEMA Form 81-63, National Flood Insurance Program Cause of Loss/Subrogation Report. This system may also contain information regarding the name of the bank/lender, date of mortgage, address of bank/lender and if available, information on every loan placed on the property during the current owner's tenure. This system contains the taxpayer's identification number (which may be the social security number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, 42 U.S.C. 4001, et seq.; 5 U.S.C. 301,

Reorganization Plan No. 3 of 1978, and E.O. 12127.

PURPOSE(S):

For the purpose of carrying out the National Flood Insurance Program and verifying nonduplication of benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To property loss reporting bureaus, State insurance departments, and insurance companies investigating fraud or potential fraud in connection with claims, subject to the approval of the Office of Inspector General, FEMA; to insurance agents, brokers, adjusters, and lending institutions for carrying out the purposes of the National Flood Insurance Program; to the Small Business Administration, the American Red Cross, the Farmers Home Administration, State and local government individual and family grant and assistance agencies, including but not limited to the State of Ohio Disaster Services Agency and the Johnstown, Pennsylvania Redevelopment Authority for determining eligibility for benefits and for verification of nonduplication of benefits following a flooding event or disaster; to Write-Your-Own companies as authorized in 44 CFR 62.23 to avoid duplication of benefits following a flooding event or disaster and for carrying out the purposes of the National Flood Insurance Program; to State and local government individual and family grant agencies so as to permit such agencies to assess the degree of financial burdens toward residents such as States and local government might reasonably expect to assume in the event of a flooding disaster, and to further the flood insurance marketing activities of the National Flood Insurance Program; to State and local government individual and family grant and assistance agencies which furnish to the Federal Insurance Administration the names and addresses of policyholders for purposes consistent with the relocation projects of the Federal Insurance Administration and acquisition projects under the National Flood Insurance Program carried out pursuant to section 1362 of the National Flood Insurance Act of 1968, as amended, and to State and local government agencies who provide the names and addresses of policyholders and a brief general description of their plan for acquiring and relocating their flood prone properties for review by the Federal Insurance Administrator to ensure that their State and/or local government agency is engaged in flood plain

management improved real property acquisitions and relocation projects consistent with the National Flood Insurance Program; and, upon the approval by the Federal Insurance Administrator, that the use is in furtherance of the flood plain management and hazard mitigation goals of the Agency; to State and local government agencies and municipalities to review National Flood Insurance Program policy and claim files to assist them in hazard mitigation and flood plain management activities and in monitoring compliance with the flood plain management measures duly adopted by the community; to State governments, federal agencies, and federal financial instrumentalities responsible for the supervision, approval, regulation or insuring of banks, savings and loan associations or similar institutions, all for carrying out the purpose of the National Flood Insurance Program; the property address, flood zone identifier, date of policy issue, and value of policy, solely for the purpose of geocoding the flood insurance policy addresses, may be released to private companies engaged in or planning to engage in activities to market or assist lenders and mortgage servicing companies in aid of their efforts aimed at complying with the requirement of the Flood Disaster Protection Act of 1973 and in marketing the sale of flood insurance policies under the National Flood Insurance Program; and, the policy numbers of NFIP policy-holders may be released to lending institutions, mortgage servicing companies and others servicing mortgage loan portfolios for the purpose of securing flood insurance protection for those properties that are a part of a lending institution's mortgage portfolio in aid of assuring lender compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973.

Routine uses may include Nos. 1, 5, 6, and 8 of Appendix A.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Magnetic Tape/disc/drum and paper files.

RETRIEVABILITY:

By name of the policyholders and policy number.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; paper records are maintained in locked containers and/or room. All records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Policy records are kept as long as insurance is desired and premiums paid, and for an appropriate time thereafter and claim records are kept for 6 years and 3 months after final action, unless litigation exists. Disposition of records shall be in accordance with FEMA Records Schedule N1-311-86-1, 2A12 and 2A13.

SYSTEM MANAGER(S) AND ADDRESS:

Federal Insurance Administrator, Federal Emergency Management Agency, Washington, DC 20472.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the system manager identified above. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Requests should include full name of the individual, some type of appropriate personal identification, and current address. For personal visits, the individuals should be able to provide some acceptable identification, that is, driver's license, employing organization's identification card, or other identification card.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR part 6.

RECORD SOURCE CATEGORIES:

Individuals who apply for flood insurance under the National Flood Insurance Program and individuals who are insured under the program.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A

Introduction to Routine Uses: Certain routine uses have been identified as being applicable to many of the FEMA systems of record notices. The specific routine uses applicable to an individual system of record notice will be listed under the "Routine Use" section of the notice itself and will correspond to the numbering of the routine uses published below. These uses are published only once in the interest of simplicity, economy and to avoid redundancy, rather than repeating them in every individual system notice.

1. Routine Use—Law Enforcement: A record from any FEMA system of records, which indicates either by itself or in combination with other information within FEMA's possession, a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, may be disclosed, as a routine use, to the appropriate agency whether Federal, State, territorial, local or foreign, or foreign agency or professional organization, charged with the responsibility of enforcing, or implementing, or investigating, or prosecuting such violation or charged with implementing the statute, rule, regulation or order issued pursuant thereto.

2. Routine Use—Disclosure When Requesting Information: A record from a FEMA system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, regulatory, licensing or other enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. Routine Use—Disclosure of Requested Information: A record from a FEMA system of records may be disclosed to a Federal agency, in response to a written request in connection with the hiring or retention of an employee, the issuance of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. Routine Use—Grievance, Complaint, Appeal: A record from a FEMA system of records may be disclosed to an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the Office of Personnel Management in accordance with that agency's responsibility for evaluation of Federal personnel management.

To the extent that official personnel records in the custody of FEMA are covered

within systems of records published by the Office of Personnel Management as governmentwide records, those records will be considered as a part of that governmentwide system. Other official personnel records covered by notices published by FEMA and considered to be separate systems of records may be transferred to the Office of Personnel Management in accordance with official personnel programs and activities as a routine use.

5. Routine Use—Congressional Inquiries: A record from a FEMA system of records may be disclosed as a routine use to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the request of the individual about whom the record is maintained.

6. Routine Use—Private Relief Legislation: The information contained in a FEMA system of records may be disclosed as a routine use to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that circular.

7. Routine Use—Disclosure to the Office of Personnel Management: A record from a FEMA system of records may be disclosed to the Office of Personnel Management concerning information on pay and leave benefits, retirement deductions, and any other information concerning personnel actions.

8. Routine Use—Disclosure to National Archives and Records Administration: A record from a FEMA system of records may be disclosed as a routine use to the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 12906.

9. Routine Use—Grand Jury: A record from any system of records may be disclosed, as a routine use, to a grand jury agent pursuant to a Federal or State grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

[FR Doc. 91-13497 Filed 6-6-91; 8:45 am]

BILLING CODE 6718-01

FEDERAL MARITIME COMMISSION**[Docket No. 91-23]****Tropical Shipping & Construction Co., Ltd. v. Network 807; Filing of Complaint and Assignment**

Notice is given that a complaint filed by Tropical Shipping & Construction Co., Ltd. ("Complainant") against Network 807 ("Respondent") was served May 31, 1991. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by not paying freight and other charges on shipments from Puerto Plata, Dominican Republic to Miami, Florida.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by June 1, 1992, and the final decision of the Commission shall be issued by September 29, 1992.

Joseph C. Polking,
Secretary.

[FR Doc. 91-13474 Filed 6-6-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM**Banca Commerciale Italiana S.P.A.; Notice of Application to Engage de novo in Permissible Nonbanking Activities****CORRECTION**

This notice corrects a previous Federal Register notice (FR Doc. 91-12867) published at page 24818 of the issue for Friday, May 31, 1991.

Under the Federal Reserve Bank of New York, the entry for Banca Commerciale Italiana S.P.A. is amended to read as follows:

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Banca Commerciale Italiana S.P.A., Milan, Italy; to engage *de novo* through its subsidiary, BCI Capital Corporation, New York, New York, in dealing in bank-eligible securities pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Comments on this application must be received by June 19, 1991.

Board of Governors of the Federal Reserve System, June 3, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13476 Filed 6-6-91; 8:45 am]

BILLING CODE 6210-01-F

F.N.B. Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 26, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *F.N.B. Corporation*, Hermitage, Pennsylvania; to acquire Regency Consumer Discount Company, Inc., Scranton, Pennsylvania, and thereby engage in making and acquiring consumer finance loans pursuant to § 225.25(b)(1); and in the sale of credit life, accident, and health insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Evergreen Bancshares, Inc.*, Tallahassee, Florida; to establish Evergreen Federal Interim Savings Bank, Tallahassee, Florida (Interim Bank), to acquire certain assets and assume certain liabilities of the Tallahassee, Florida branch office of Anchor Savings Bank, FSB, Hewlett, New York, pursuant to section 4(c)(8) of the Bank Holding Company Act and the Oakar Amendment of FIRREA, and to facilitate the merger of Interim Bank with and into Evergreen's subsidiary bank, Guaranty National Bank of Tallahassee, Tallahassee, Florida.

2. *First State Corporation*, Albany, Georgia; to acquire Randolph Federal Savings & Loan Association, Cuthbert, Georgia (Randolph Federal), pursuant to section 4(c)(8) of the Bank Holding Company Act. Applicant also proposes to merger Randolph Federal with and into its bank subsidiary, First State Bank & Trust Company, Albany, Georgia, pursuant to the Oakar Amendment of FIRREA.

Board of Governors of the Federal Reserve System, June 3, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13477 Filed 6-6-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the General Counsel; Statement of Organization, Functions and Delegations of Authority

Part A, chapter AG (Office of the General Counsel, Office of the Secretary) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (38 FR 17033, June 28, 1973, as amended most recently in pertinent part at 55 FR 17500, April 25, 1990), and part H, chapter HN (National Institutes of Health, Public Health Service) (40 FR 22859, May 27, 1975, as amended most recently in pertinent part at 55 FR 35366, August 29, 1990), are amended to:

(1) Delete the Department Patent Officer (AG.35) and transfer patent administration and prosecution responsibilities from this Officer to the Office of Technology Transfer (HNA432), Office of Intramural Affairs (HNA43), Office of Intramural Research (HNA4), Office of the Director (HNA),

National Institutes of Health (HN), Public Health Service (H). Patent administration and prosecution activities will be consolidated with patent licensing functions within a single NIH organizational entity in order to improve program and resource management; and

(2) Retain patent legal services of the Department Patent Officer (AG.35) in the Public Health Division (AG.22.6), Office of the General Counsel, Office of the Secretary, and update the functional statement for the Public Health Division to reflect its responsibilities more accurately.

Office of the Secretary

Under Chapter AG, Office of the General Counsel, Sections AG.35 (Department Patent Officer) and AG.22.6 (Public Health Division), delete the titles and statements in their entirety and substitute the following:

Public Health Division (AG.22.6). The Public Health Division shall provide legal services, including patent legal services, for programs administered by the Public Health Service (except the Food and Drug Administration, e.g., the Office of the Assistant Secretary for Health, and the agencies and offices of the Public Health Service (other than FDA), including the Office of Technology Transfer and the Patent Policy Board.

Public Health Service

Under Chapter HN, National Institutes of Health, Section HNA, Office of the Director, Office of Intramural Affairs (HNA43), add the following title and statement:

Office of Technology Transfer (HNA432). (1) Develops policy and procedures for NIH, ADAMHA, and CDC to follow for the implementation of Cooperative Research and Development Agreements (CRADAs), patent licenses, and other technology transfers; (2) implements Patent Policy Board decisions and policies; (3) drafts, negotiates, and periodically revises model forms and agreements; (4) provides advice to ICDs on problem licenses and agreements; (5) develops policy statements on various technology transfer issues such as conflicts of interest; (6) tracks the OTT budget and prepares an annual status report to the NIH Office of the Director; (7) provides coordination and management of goals, functions, and operations of the Technology Management Branch, Technology Licensing Branch, and the Technology Transfer Coordination Branch; (8) coordinates and provides planning and liaison support for

international CRADAs and technology transfers; (9) creates and implements special programs relating to technology transfer by State and local governments and universities; (10) drafts and presents Congressional testimony, and drafts technology transfer-related responses to other Congressional inquiries; (11) provides operational management activities; (12) assists the Office of the General Counsel (OGC) in evaluating patent-related litigation matters; (13) in consultation with OGC and the involved agency component, as appropriate, negotiates settlements on contested matters with licensees or other parties involved with NIH, ADAMHA, and CDC in technology transfer or utilization matters; (14) represents the NIH, ADAMHA, and CDC in technology transfer or utilization matters; (15) represents the above agencies at a variety of professional conferences and other public fora; (16) investigates special issues; (17) evaluates the need for and develops new programs in technology management and technology transfer for the above agencies; (18) develops licensing strategies for NIH/ADAMHA/CDC intramural and CRADA inventions; (19) negotiates licenses and other technology transfers; (20) works with scientist inventors, contract attorneys and others in preparing patent applications and prosecuting these applications at the Patent Office level; (21) handles infringements in consultation with the OGC at the Patent Office level; and (22) makes recommendations to the OGC for referral of matters to the Department of Justice.

Dated: May 21, 1991.

Louis W. Sullivan,
Secretary.

[FR Doc. 91-13483 Filed 6-6-91; 8:45 am]
BILLING CODE 4150-04-M

Agency for Health Care Policy and Research; Establishment

Pursuant to the Federal Advisory Committee Act, Public Law 92-463 (5 U.S.C. appendix 2), the Administrator, Agency for Health Care Policy and Research (AHCPR), announces the establishment of the following review committee.

Designation: Employer-Based Health Insurance Advisory Committee.

Purpose: The purpose of the Committee is to advise and make recommendations to the Secretary, HHS, and the Administrator, AHCPR, with regard to the awarding of a proposed contract designed to provide AHCPR with a comprehensive policy-oriented

report that describes the current status and problems of employer-based health insurance and evaluates options for improving, reforming or replacing this system.

Function: The Committee shall review and make recommendations to the Administrator on the scientific and technical merit of proposals received in response to the Request for Proposal entitled Employer-Based Health Insurance.

Structure: The Committee shall consist of up to three members, including the Chair, who will serve for the duration of the Committee. No member may be an officer or employee of the Federal Government. Members and Chair shall be selected by the Administrator, AHCPR, from individuals with appropriate expertise and experience in health services research, including but not limited to the areas of health economics, utilization and costs of health insurance, research evaluation and dissemination, and assessment of the impact of the dissemination of research.

Notwithstanding section 14(a) of the Federal Advisory Committee Act, the Committee shall continue in existence until otherwise provided by law or upon a determination by the Administrator, AHCPR, or his delegate, that the purpose of the Committee has been accomplished.

Dated: May 31, 1991.

J. Jarrett Clinton,

Administrator, Agency for Health Care Policy and Research.

[FR Doc. 91-13564 Filed 6-6-91; 8:45 am]
BILLING CODE 4160-90-M

Administration for Children and Families

Forms Submitted to the Office of Management and Budget for Clearance

The Administration for Children and Families will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). This collection package is being submitted for expedited review in compliance with 5 CFR 1320.18.

(For a copy of a package, call the FSA, Report Clearance Officer 202-401-5604)

Plans for the Child Care and Development Block Grant, Form ACF-118-NEW—The information contained in the Block grant plan is to determine whether the plan can be approved for

Block Grant funding, as required in section 658E(d) of the Budget Reconciliation Act; and to determine if the lead agency is operating in accordance with its plan where issues of compliance arise. **Respondents:** States or local governments; **Number of Respondents:** 255; **Frequency of Response:** Biennially (after initial submittal); **Average Burden per Response:** 50 hours; **Estimated Annual Burden:** 12,750 hours.

OMB Desk Clearance Officer: Laura Oliven.

Consideration will be given to comments and suggestions received within 10 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the appropriate OMB Desk Officers designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, room 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: May 31, 1991.

Naomi B. Marr,

Associate Administrator, Office of Management and Information Systems.

Draft Plan For The Child Care & Development Block Grant

(Grantee)
for the period _____
through _____

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| 658E(a) 98.16(a)(1) | Section 1 Assurances: As a condition of receipt of Federal funds under the Child Care and Development Block Grant Act of 1990, the |
| | <p style="text-align: center;">(name of lead agency)</p> As designated, by the Chief Executive Officer of the State (or by the appropriate Tribal Leader or Applicant), to represent the Grantee as the lead agency, herewith submits a plan for the implementation of the Child Care and Development program and hereby agrees to administer the program in accordance with the Child Care and Development Block Grant Act of 1990, and all other applicable Federal laws and regulations and provisions of the plan printed herein. The official text of said laws and regulations govern, and the lead agency acknowledges its responsibility to adhere to them regardless of the fact that, for purposes of simplicity and clarity, the specific provisions printed herein are sometimes paraphrases of or excerpts and incomplete quotations from the full text. The lead agency assures that: |
| 658D(b) 98.15(a) | (1) Upon approval, the Grantee will have in effect a program which complies with the provisions of the Plan; |
| 658E(c)(2)(A) 98.15(b) 98.30(a) | (2) The parent(s) of each eligible child, within the Grantee's service area, who receives or is offered child care services for which financial assistance is provided is given the option either: |
| | (a) To enroll such child with a child care provider that has a grant or contract for the provision of the service; or (b) To receive a child care certificate; |
| 658E(c)(2)(A) 98.15(c) 98.30(b) | (3) In cases in which the parent(s) elects to enroll the child with a provider that has a grant or contract with the lead agency, the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable; |
| 658E(c)(2)(A) 98.15(d) 98.30(c)(2) | (4) The child care certificate offered to parents shall be of a value commensurate with the subsidy value of child care services provided under a grant or contract; |
| 658E(c)(2)(B) 98.15(e) 98.31 | (5) The Grantee has procedures in place to ensure that child care providers, funded under the Block Grant, afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operations or whenever such children are in the care of such providers; |
| 658E(c)(2)(C) 98.15(f) 98.32 | (6) The Grantee maintains a record of substantiated parental complaints and makes information regarding such complaints available to the public on request; |
| 658E(c)(2)(D) 98.15(g) 98.33 | (7) Consumer education information will be made available to parents and the general public concerning licensing and regulatory requirements, complaint procedures, and policies and practices relative to child care services within the areas served by the Grantee; |
| 658E(c)(2)(E) 98.15(h) 98.40(a) | (8) All providers of child care services for which assistance is provided under the Block Grant comply with all licensing and regulatory requirements applicable under State or local law; |
| 658E(c)(2)(E) 98.15(i) 98.40(a)(2) 98.45(a) | (9) Providers that are not required to be licensed or regulated, under State or local law, are required to be registered with the Grantee prior to payment being made, and that such providers shall be permitted to register with the Grantee after being selected by the parents of eligible children and before such payment is made; |
| 658E(c)(2)(F) 98.15(j) 98.41(a) | (10) There are in effect in the Grantee's service area, under State or local law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under the Block Grant; |
| 658E(c)(2)(G) 98.15(k) 98.41(f) | (11) Procedures are in effect to ensure that child care providers, that provide services for which assistance is provided under the Block Grant, comply with all applicable State or local health and safety requirements; |
| 658E(c)(2)(H) 98.15(l) 98.41(c) 98.71(e) | (12) If there is a reduction in the level of the Grantee's standards applicable to providing child care services after November 5, 1990, the Grantee shall inform the Secretary of the rationale for such reduction in the annual report; |
| 658E(c)(2)(I) 98.15(m) 98.41(d) | (13) Not later than 18 months after submission of the first Application, the Grantee will complete a full review of the law applicable to, and the licensing and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the Grantee's service area, unless the Grantee has reviewed such law, requirements, and policies in the three year period ending on November 5, 1990; |
| 658E(c)(2)(J) 98.15(n) 98.53(a) | (14) Funds received under the Block Grant will be used only to supplement, not to supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs within the Grantee's service area; |
| 658E(c)(4)(A) 98.15(o) 98.43(a) | (15) Payment rates under the Block Grant for the provision of child care services will be sufficient to ensure equal access for eligible children to comparable child care services in the State that are provided to children whose parents are not eligible to receive assistance under this program or under any other Federal or State programs. |
| | Section 2 Lead Agency Responsibilities: |
| | Section 2.1 Administration: |
| 658D(b)(1)(A) 98.10(a) 98.16(a)(3) | The lead agency will directly administer and implement all programs funded under the Block Grant. |
| | () Yes () No |

| Citations | |
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| 658D(b)(1)(A) 98.10(a) 98.11 98.16(a)(3) | If no, a description follows showing the operational aspects of how the lead agency will administer and implement the Block Grant program through other agencies: (1) to provide child care services and reimburse providers; (2) to implement activities to improve the quality of child care; (3) to increase the availability of early childhood development programs; and (4) to increase the availability of before- and after-school care services: <i>Section 2.2 Consultation:</i> |
| 658D(b)(2)..... 98.12(b) 98.14(b) 98.16(a)(4) | A description follows of consultations the lead agency held, in developing the Plan, with appropriate representatives of local governments to consider: local child care needs and resources, the effectiveness of existing child care and early childhood development services, and the methods by which the Block Grant funds can be used to effectively address local child care shortages: <i>Section 2.3 Coordination of Services:</i> |
| 658D(b)(1)(D) 98.10(e) 98.12(a) 98.12(c) 98.14(a) 98.16(a)(4) | A description follows of how the lead agency is coordinating the delivery of child care services to be funded under the Block Grant, with other Federal, State, and local child care, early childhood development, and before- and after-school care programs, and with any Indian Tribes and Tribal organizations in the State submitting Block Grant Applications: <i>Section 2.4 Public Hearing Process:</i> |
| 658D(b)(1)(C) 98.10(d) 98.14(c) 98.16(a)(5) | A description of the public hearing process, held to provide the public an opportunity to comment on the provision of child care services under the Plan, follows: <i>Section 2.5 Public-Private Partnerships:</i> |
| 658D(b)(1)(C) 98.16(a)(15) 98.71(b)(4) | A description follows of the activities that are planned to encourage public-private partnerships which promote business involvement in meeting child care needs: <i>Section 3 Child Care Services (75% of Block Grant Funds):</i> <i>Section 3.1 Description of Services and Process to Receive Such Services:</i> |
| 658E(c)(3)(B) 98.16(a)(7)(i) 98.50(a)(1) | The following describes the child care services and the process involved for a family to receive such services funded under the Block Grant: <i>Section 3.2 Description of Activities to Improve the Availability and Quality of Child Care:</i> |
| 658(c)(3)(B) 98.16(a)(7)(i) 98.50(a)(2) 98.50(c) | The following describes the activities to improve the availability and quality of child care (in addition to such activities listed in Section 4), to be funded under the Block Grant: <i>Section 3.3 Localities:</i> |
| 658E(a) 98.16(a)(7)(ii) | These child care services and improvement activities are available throughout the Grantee's service area: () Yes () No |
| 658E(c)(3)(B) 98.16(a)(7)(iii) 98.50(a) | If no, the following is a list of the localities (political subdivisions) in which these services and activities are offered: <i>Section 3.4 Basis for Allocating Funds for Such Services and Activities:</i> The following describes the basis for the allocation and distribution of funding under the Block Grant to each of the localities where the services and improvement activities are offered: |
| 658E(c)(3)(B) 98.16(a)(7) 98.44 98.50(b) | <i>Section 3.5 Eligibility Criteria and Priority Rules for Children:</i> (1) A description follows of how children of families with very low income (considering family size), and children with special needs, will be given priority: |
| 658E(c)(3)(B) 98.16(a)(7)(iv) 98.44 98.20(b) | (2) The following describes any additional eligibility criteria and/or priority rules established by the Grantee and applicable throughout the Grantee's service area for such services and activities: <i>Section 3.6 Criteria for Awarding Grants and Contracts:</i> |
| 658E(c)(3)(B) 98.16(a)(7)(v) | The following describes any eligibility criteria or priority rules for the receipt of grants and contracts by providers: <i>Section 3.7 Eligibility Terminology:</i> |
| 658E(a) 98.16(a)(6) 98.16(a)(7)(iv) | For purposes of determining eligibility for such child care services, we have defined the following terms as: (1) Special needs child— (2) Physical or mental incapacity (if applicable)— (3) Attending (a job training or educational program)— (4) Job training and educational program— (5) Residing with— (6) Working— (7) Protective services— (8) Very low income— (9) Additional terminology related to conditions of eligibility imposed by the Grantee pursuant to § 3.4— |
| 6580(c) 658P(4)(b) 98.16(a)(17) 98.80(f) | <i>Section 3.8 Tribal Eligibility Criteria:</i> In determining eligibility for services pursuant to 98.50(a)(1), the Tribal Grantee will use: () 75 percent of the State median income for a family of the same size; or () 75 percent of the median income for a family of the same size residing in the area served by the Tribal Grantee. <i>Section 4 Activities to Improve the Quality of Child Care and to Increase the Availability of Early Childhood Development Programs and Before- and After-School Care Services (25% of Block Grant Funds):</i> <i>Section 4.1 Description of Activities:</i> |

| Citations | |
|--|---|
| 658E(c)(3)(C)..... 98.16(a)(8)(i) 98.51(b) | <p>The following is a listing and description of planned activities, to be funded using 25 percent of Block Grant funds reserved for such activities,</p> <p>(1) to improve the quality of child care (through resource and referral programs; grants or loans to assist in meeting State and local standards; monitoring of compliance with licensing and regulatory requirements; training and technical assistance; and/or compensation for child care services); and</p> <p>(2) to establish or expand and conduct, through the provision of grants or contracts, early childhood development and/or before- and after-school care programs:</p> <p>Section 4.2 Localities:</p> |
| 658E(a)..... 98.16(a)(8)(ii) 98.51 | <p>These activities are available throughout the Grantee's service area.</p> <p>() Yes () No</p> <p>If no, the following is a list of the localities (political subdivisions) in which the activities are offered:</p> <p>Section 4.3 Criteria for Awarding Grants and Contracts:</p> |
| 658H(c)..... 98.16(a)(8)(v) 98.51(c) | <p>A description follows of the eligibility criteria or priority rules for the receipt of grants and contracts by providers:</p> |
| 658E(a)(3)(C)..... 98.16(a)(8)(iii) 98.51(c)(2) | <p>Section 4.4 Allocation of Funds for Such Activities:</p> <p>(1) The following describes how grants or contracts are to be awarded to assure that the highest priority is given to geographic areas with concentrations of poverty, and to areas with very high or very low population density:</p> |
| 658E(a)(3)(C)..... 98.36(a)(8)(iii) 98.51(c)(2) | <p>(2) For purposes of awarding grants and contracts for such activities, we have defined prioritization terms as follows:</p> |
| 658E(a)(3)(C)..... 98.16(a)(8)(iii) 98.51(a) | <p>(a) geographic areas with concentrations of poverty— (b) areas with very high population density— (c) areas with very low population density—</p> <p>(3) There are additional priorities and/or bases for allocation and distribution of funds for such activities, which are different from the criteria described in Section 4.3.</p> <p>() No () Yes</p> |
| 658E(a)..... 98.16(a)(8)(iv) 98.21(b) | <p>If yes, the following describes the additional priorities and/or bases for allocation and distribution of funds for such activities:</p> <p>Section 4.5 Eligibility Criteria and Priority Rules for Children:</p> <p>A description follows of any additional eligibility criteria and any priority rules established by the Grantee for children receiving such services, and includes appropriate definitions of terminology used:</p> |
| 658E(c)(5)..... 658E(c)(3)(B)(i) 98.16(a)(9) 98.42(a) 98.42(b) | <p>Section 5 Program Operations:</p> <p>Section 5.1 Sliding Fee Scale for Child Care Services:</p> <p>(1) To provide for cost sharing by the families that receive child care services provided under the Block Grant, factors, other than income and family size, are used to determine the amounts families must pay, based on the sliding fee scale(s).</p> <p>() No () Yes</p> <p>If yes, a description of these factors follows:</p> |
| 658E(a)..... 98.16(a)(9) 98.42(c) | <p>(2) Families whose incomes are at or below the poverty level, for families of the same size, are required to pay a fee for child care services.</p> <p>() Yes () No</p> |
| 658E(c)(5)..... 658E(c)(3)(B)(i) 98.16(a)(9) 98.42(c) | <p>(3) A copy of the Grantee's sliding fee scale for child care services is provided as Attachment _____</p> |
| 658E(a)..... 98.16(a)(9) 98.42(d) | <p>Section 5.2 Sliding Fee Scale for Early Childhood Development Programs and Before- and After-School Care Services:</p> <p>(1) The same sliding fee scale(s) is also applicable to families who receive services under early childhood development programs and before- and after-school care services.</p> <p>() No () Yes</p> |
| 658E(c)(5)..... 658E(c)(3)(B)(i) 98.16(a)(9) 98.42(a) | <p>(2) If no, the following is a description of the factors used in establishing the fee scale(s) for families who receive services under early childhood development programs and before- and after-school care services:</p> <p>(3) If different, a copy of the Grantee's sliding fee scale(s) for early childhood development programs and for before- and after-school care services is provided as Attachment _____</p> |
| 658E(c)(2)(F)..... 98.16(a)(10) 98.41(a) | <p>Section 5.3 Health and Safety Requirements:</p> <p>(1) The following lists the minimum health and safety requirements established by the Grantee, and applicable throughout the Grantee's service area, for child care services provided under the Block Grant, including any differing requirements for different provider settings (i.e. center-based, group home, family, and in-home child care), for:</p> <p>(a) Prevention and control of infectious diseases (including immunization)— (b) Building and physical premises— (c) Health and safety training—</p> |
| 658E(c)(2)(G)..... 98.16(a)(10) 98.41(f) | <p>(2) The following describes how the Grantee will ensure that child care providers, within the area served by the Grantee and receiving assistance under the Block Grant, comply with all applicable State or local health and safety requirements:</p> |
| | <p>Section 5.4—Provider Registration Process:</p> |

| Citations | |
|--|---|
| 658E(c)(2)(E) 98.16(a)(13) 98.45 | The following lists the registration requirements and describes the registration process (including the timeframes from the date of providers' requests for registration to the date payments will begin to be sent out), for child care providers, not subject to licensing or regulatory requirements under State or local law, to receive assistance under the Block Grant: Section 5.5—Certificate Payment System: |
| 658E(c)(2)(A) 98.16(a)(11) 98.30 | The following describes the Grantee's overall child care certificate payment process which meets the statutory requirements, including, at a minimum: (1) The effective date of the system; (2) What form (or forms) the child care certificate takes; (3) An explanation of how parents will be permitted to choose from a variety of child care settings (i.e., center-based, group home, family, and in-home child care) under this system; (4) An explanation of how the Grantee will ensure that parents may obtain child care certificates throughout the program year, or as long as Block Grant funds are otherwise available for child care services; and (5) The process and timeframes for issuing certificates and processing payments to providers: Section 5.6—Payment Rates for Provision of Child Care: |
| 658E(c)(4) 98.16(a)(12) 98.43(a) 98.43(b) 98.43(e) | The following is a description of the methodology used to establish payment rates for reimbursement of child care services, including: (1) How variations in the costs of providing child care in different settings, to children of different age groups, and to special needs children were taken into account in establishing the rates; and (2) How equal access has been ensured for eligible children to comparable child care services provided to children whose parents are not eligible to receive child care assistance under other governmental programs: Section 5.7—Requirements for Expenditure of Grantee's Funds: |
| 658E(c)(2)(J) 98.16(a)(14) | There are certain requirements which a provider must meet in order for the Grantee's funds to be used to pay the provider for child care services. () No () Yes If yes, the following is a description of, and the timeframes involved, for the entire process: Section 5.8 Non-supplantation of Funds: |
| 658E(c)(2)(J) 98.16(a)(16) 98.53(b) | The base level of effort was established using an aggregate basis. () Yes () No If no, the following is a description of the methodology used to establish the base level of effort: Section 6 Anticipated Changes: |
| 658E(a) 98.16(b) | The following describes any currently anticipated changes in child care services, activities, or other provisions that are expected to change over the period covered by the Plan: |

TN# _____
Supersedes TN# _____
Approval Date _____
Effective Date _____
[FR Doc. 91-13481 Filed 6-6-91; 8:45 am]
BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 91N-0164]

Hattiesburg Plasma Center, Inc.; Revocation of U.S. License No. 667

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 667) and product license issued to Hattiesburg Plasma Center, Inc. (HPC), for the manufacture of Source Plasma. HPC has permanently ceased operations and, by letter dated November 28, 1990, requested that its establishment and product licenses be revoked.

DATES: The revocation of the establishment and product licenses became effective on January 29, 1991.

FOR FURTHER INFORMATION CONTACT:
Ann Reed Gaines, Center for Biologics Evaluation and Research (HFB-132), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8188.

SUPPLEMENTARY INFORMATION: FDA has revoked the establishment license (U.S. license No. 667) and the product license issued to HPC for the manufacture of Source Plasma. HPC is located at 2906 Hardy St., Hattiesburg, MS 39401.

FDA suspended HPC's licenses by letter dated November 19, 1990, pursuant to 21 CFR 601.6(a), because existing deviations from the biologics regulations and the establishment license standards constituted a danger to health. The suspensions were based on the results of an FDA inspection of HPC and on the results of an FDA investigation of HPC.

The inspection was conducted from November 5 through 13, 1990. During the inspection, the following deviations were found: (1) Failure to perform donor hematocrit and serum protein determinations, even though results for such determinations were entered in the donor record files; (2) inaccurate determination of serum protein results using a refractometer not in proper

working condition due to a cracked and scratched prism; (3) acceptance of a donor with unacceptable serum protein electrophoresis results on 2 occasions; (4) failure to provide donors with acquired immunodeficiency syndrome (AIDS) educational material; (5) failure to prevent overbleeding of donors, having allowed 9 donors to donate more frequently than is permitted within a 7-day period of time; (6) failure to maintain records of adverse donor reactions; (7) failure to maintain adequate records to ensure that duplicate records were not created on donors; and (8) failure to maintain adequate records to ensure positive donor identification, in that photographs were lacking for at least 18 donors.

The investigation, conducted concurrently with the inspection, included interviews with former and current employees and former donors. These interviews indicated that significant deficiencies routinely occurred in the operation of HPC, particularly with respect to the determination of donor suitability. The investigation revealed that: (1) The manager instructed employees not to perform hematocrit and serum protein

determinations on repeat donors but to enter results for such determinations in the donor record files; (2) the manager instructed employees to keep inaccurate records of whole blood weights to conceal overbleeding of donors; and (3) hematocrit results had not been obtained for three repeat donors who were hospitalized for anemia within a few days of donation.

The results of the inspection and the investigation were further determined to constitute grounds for license revocations, as provided in 21 CFR 601.5(b)(4), in that the continued safety, purity, and potency of the Source Plasma, as well as the assurance of a continuous and healthy donor population, were compromised. Accordingly, in the letter dated November 19, 1990, in which FDA suspended the licenses, FDA further advised HPC that proceedings for license revocations would be initiated, under 21 CFR 601.6(b)(1), unless HPC: (1) Requested, subject to evaluation and approval by FDA, that the revocations be held in abeyance pending resolution of the suspensions, as provided in 21 CFR 601.6(b)(2); and (2) detailed the corrective actions taken to remedy all deviations noted in the November 1990 inspection report.

In a letter dated November 28, 1990, HPC reported that they had discontinued the manufacture of Source Plasma and that all operations had ceased. In that same letter, HPC surrendered the licenses and requested that the licenses be revoked. By letter dated January 29, 1991, and issued under 21 CFR 601.5(a), FDA revoked the licenses.

FDA has placed copies of letters relevant to the license revocations on file with the Dockets Management Branch (address below). These letters, which are filed under the docket number found in brackets in the heading of this notice, include: (1) The letter from FDA dated November 19, 1990, suspending the licenses and initiating proceedings for license revocations; (2) the letter from HPC dated November 28, 1990, requesting revocation of the licenses; (3) and the letter from FDA dated January 29, 1991, revoking the licenses. These documents are available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Accordingly, under 21 CFR 12.36(a)(1) and under section 351 of the Public Health Service Act (42 U.S.C. 262) and under authority delegated to the Commissioner of Food and Drugs (21

CFR 5.10) and redelegated under 21 CFR 5.68, the establishment (U.S. License No. 667) and the product licenses issued to HPC for the manufacture of Source Plasma were revoked, effective January 29, 1991.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67.

Dated: May 28, 1991.

Gerald V. Quinnan, Jr.,

Acting Director, Center for Biologics Evaluation and Research.

[FR Doc. 91-13426 Filed 6-6-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91M-0167]

Pharmacia Deltec, Inc.; Premarket Approval of the PORT-A-CATH® Epidural Implantable Access System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Pharmacia Deltec, Inc., St. Paul, MN, for premarket approval, under the Medical Device Amendments of 1976, of the PORT-A-CATH® Epidural Implantable Access System for long-term, repeated access to the epidural space for the delivery of preservative-free morphine sulfate to relieve intractable pain in cancer patients. After reviewing the recommendation of the General Hospital and Personal Use Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of April 22, 1991, of the approval of the application.

DATES: Petitions for administrative review by July 8, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Amalie Mattan, Center for Devices and Radiological Health (HFZ-420), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1225.

SUPPLEMENTARY INFORMATION: On July 19, 1990, Pharmacia Deltec Inc., 1265 Grey Fox Rd., St. Paul, MN 55112, submitted to CDRH an application for premarket approval of PORT-A-CATH® Epidural Implantable Access System. This device is indicated for long-term, repeated access to the epidural space for the delivery of preservative-free

morphine sulfate to relieve intractable pain in cancer patients.

On November 30, 1990, the General Hospital and Personal Use Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 22, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Amalie Mattan (HFZ-420), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 8, 1991, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be

seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sections 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 30, 1991.

Elizabeth D. Jacobson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 91-13427 Filed 6-6-91; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Availability of Funds for Nursing Education Loan Repayment Agreements for Service in Certain Health Facilities

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately \$1,300,000 will be available in fiscal year (FY) 1991 for awards under section 836(h) of the Public Health Service Act (PHS Act) to repay 85 percent of the nursing education loans of registered nurses who agree to serve for 3 years or repay 60 percent of the loans of registered nurses who agree to serve for 2 years in certain health facilities in the United States with a critical shortage of nurses.

The HRSA, through this notice, invites registered nurses to apply for these Nursing Education Loan Repayment Agreements (NELRA). With the funds available, the HRSA estimates that approximately 130 3-year loan repayment awards may be made to registered nurses under this program.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This program of service-obligated repayments of nursing education loans is related to the priority areas of improving access to primary care services for medically underserved populations in both rural and urban areas. Potential applicants may obtain a copy of Healthy People 2000 (Full report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary report; Stock no. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office,

Washington, DC 20402-9325 (telephone 202-783-3238).

DATES: To receive consideration for funding, individuals must submit their applications by July 15, 1991.

Applications shall be considered as meeting the deadline if they are either:

- (1) Received by the program on or before the deadline date; or
- (2) Sent on or before the deadline and received in time for submission to the reviewing program official. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications will not be considered for funding and will be returned to the applicant.

ADDRESSES: Application materials with a list of counties (parishes) with the greatest shortage of nurses may be obtained from, and completed applications sent to, NELRA, c/o Norris S. Lewis, M.D., Director, Division of Health Services Scholarships, Bureau of Health Care Delivery and Assistance, HRSA, room 7-18, 5600 Fishers Lane, Rockville, MD 20857; or from outside Maryland call the 24-hour toll-free phone: 1-800-638-0824, requesting the NELRA application packet and leaving your name and address. (From inside Maryland, call 1-301-443-1650 during office hours.) The application form has been approved under Office of Management and Budget (OMB) Number 0915-0140.

FOR FURTHER INFORMATION CONTACT:

For general program information and technical assistance, please contact Mr. Clarke Gordon or the NELRA staff at the above address or by telephone at 301-443-1650 (Office hours: 8:30 a.m. to 5 p.m., Eastern Time).

SUPPLEMENTARY INFORMATION: Section 836(h) of the PHS Act provides that the Secretary will repay a portion of an individual's educational loans incurred for nursing education costs if that individual enters into an agreement with the Secretary to serve as a registered nurse for 2 or 3 years in a variety of eligible health facilities or in a health facility determined by the Secretary to have a critical shortage of nurses. For an individual who is selected to participate in this program and serve in an approved facility as determined by the Secretary, repayment shall occur on the following schedule:

- (1) Upon completion of the first year of agreed upon service, the Secretary will pay 30 percent of the principal of, and interest on, each loan which was

unpaid as of the beginning date of service;

- (2) Upon completion of the second year of agreed upon service, the Secretary will pay another 30 percent of the principal of, and interest on, each loan which was unpaid as of the beginning date of service;

- (3) Upon completion of a third year of agreed upon service, the Secretary will pay another 25 percent of the principal of, and interest on, each loan which was unpaid as of the beginning date of service. *Provided, that*

- (4) No more than 85 percent of the principal of any loan which was unpaid as of the beginning date of service will be paid under this program.

Notwithstanding the requirement of completion of practice each year, the Secretary will, on or before the due date, pay any loan or loan installment which may fall due within the period of service for which the borrower may receive payments under this program, if the borrower is providing service as agreed to and will continue to do so for the period required.

Prior to entering an agreement for repayment of loans, other than Nursing Student Loans authorized under section 836 of the PHS Act, the Secretary will require that satisfactory evidence be provided of the existence and reasonable level of the educational loans (as stated in school student budget estimates).

These loan repayment amounts are unrelated to any salary paid to the nursing education loan repayment recipient by the health facility by which he or she has been employed.

The Secretary will make available with the application package a list of the geographic areas determined to have a critical shortage of registered nurses.

Eligibility Criteria

To be eligible to participate in this program, an individual must:

- (1) Have received a baccalaureate or associate degree in nursing, a diploma in nursing, or a graduate degree in nursing prior to initiation of service;

- (2) Have outstanding educational loans for nursing education costs;

- (3) Agree to serve full-time for not less than 2 years in the following eligible health facilities: an Indian Health Service health center; a Native Hawaiian health center; a public hospital (operated by a State, county, or local government); a community or migrant health center; a nursing facility as defined in section 1905 or 1919(a) of the Social Security Act; a rural health clinic; or in a health facility determined

by the Secretary to have a critical shortage of nurses; and

(4) Plan to begin employment as a registered nurse no later than September 30, 1991.

Funding Preferences

In entering into agreements, as required under section 836(h) of the PHS Act, the Secretary will give priority to applicants:

(1) With the greatest financial need; and

(2) Who agree to serve in health facilities described in paragraph (3) above that are located in geographic areas with a shortage of, and need for, registered nurses, as determined by the Secretary.

After applying the priorities listed above, the Secretary will give preference to applicants (1) who seek repayment of loans from loan funds established under subpart II of part B of title VIII of the PHS Act ("Nursing Student Loan Program") or made by educational or financial institutions; (2) who agree to serve for 3 years; and (3) whose employment will result in a net increase in the number of nurses at the employing facility.

Breach of Agreement:

Participants in this program who fail to fulfill an agreement with the Secretary under this statute shall be liable to reimburse the Secretary for any payments made during the service period pursuant to such agreement.

Other Award Information:

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, since payments to individuals are not covered.

The OMB Catalog of Federal Domestic Assistance number for this program is 93.908.

Dated: April 29, 1991.

Robert G. Harmon,
Administrator.

[FR Doc. 91-13565 Filed 6-8-91; 8:45 am]

BILLING CODE 4180-15-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests 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 requests have been submitted to OMB since the list

was last published on Friday, May 17, 1991.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. Evaluation of Physician Adherence to Tuberculosis Prevention and Treatment Recommendations—New—CDC will conduct a mail survey of a sample of private, primary health care providers concerning their screening, treatment, and management practices for patients with tuberculosis infection or tuberculosis. The data will assist in explaining why some physicians fail to comply with current TB recommendations that are essential to assuring necessary prevention and control practices. Respondents: Individual or households; Number of Respondents: 2520; Number of Responses per Respondent: 1; Average Burden per Response: .30 hours; Estimated Annual Burden: 756 hours.

2. IHS Survey of CHR Training Needs and Employment Characteristics—New—As required by Sec. 107 of the Indian Health Care Improvement Act Amendments (Pub.L. 100713), information will be collected concerning training received by Community Health Representatives (CHRs) during the past two years. Courses include: Basic CHR, diabetes, maternal and child health, mental health, environmental health, cancer, hypertension, AIDS, other communicable diseases, alcoholism/substance abuse, injury control, health promotion, dental, gerontology, community development and communication skills. Respondents: State or local governments. Number of Respondents: 1,400; Number of Responses per Respondent: 1; Average Burden per Response: 0.25 hours; Estimated Annual Burden: 350 hours.

3. Research and Research Training Grant Application and Related Forms: PHS 398, 2271, 2590, 3734, HHS 568—New—The PHS 398 and 2590 are used to apply for new, renewal, noncompeting continuation and supplemental support for research. The PHS 2271 is used to activate trainees receiving funds under an NRSA training grant. The PHS 3734 is used when a research project is transferring from one institution to another. The HHS 568 is used to report inventions developed in the course of work thus supported. State or local governments; businesses or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations.

| | No. of respondents | No. of hours per response | No. of responses per respondent |
|---|--------------------|---------------------------|---------------------------------|
| Application for Public Health Service Grants (PHS 398)..... | 56,097 | 37.75 | 1 |
| Continuation of a Public Health Service Grant (PHS 2590)..... | 26,094 | 20 | 1 |
| Statement of Appointment PHS 2271)..... | 16,607 | .25 | 1 |
| Relinquishing Rights to a Research Grant (PHS 3734)..... | 756 | .50 | 1 |
| Final Invention Statement (HHS 568)..... | 6,706 | .09 | 1 |

Estimated Annual Burden.....2,644,777 hours

4. Prescription Drug Marketing Act of 1987; Guidelines for State Licensing of Wholesale Drug Distributors—Final Rule—0910-0251—The regulation sets forth guidelines for State Licensing of Wholesale Distributors that would prescribe minimum requirements for the storage and handling of prescription drugs and for the establishment and maintenance of records of distributions of such drugs. Respondents: Businesses or other for-profit; Federal agencies or employees, small businesses or organizations

| | No. of respondents | No. of hours per response | No. of responses per respondent |
|--|--------------------|---------------------------|---------------------------------|
| 21 CFR 205.5 (a)—Reporting..... | 5,300 | .25 | 1 |
| 21 CFR 205.50 (f) and (h)—Recordkeeping..... | 5,300 | .33 | 1 |

Estimated Annual Burden.....3,092

5. Dissemination of Clinical Trials Results: Physicians' Survey—New—Data will be collected on a representative sample of internists, cardiologists, and general family practitioners to evaluate the effectiveness of the dissemination of clinical trial results in the cardiovascular field and the impact of the trial findings in their practice. Respondents: Individuals or households, small businesses.

| | No. of respondents | No. of hours per response | No. of responses per respondent |
|----------------|--------------------|---------------------------|---------------------------------|
| Survey I..... | 4,027 | .19 | 1 |
| Survey II..... | 4,259 | .185 | 1 |

Estimated Annual Burden.....1,552 Hours

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: May 3, 1991.

Sandra K. Mahkorn,

Deputy Assistant Secretary for Public Health Policy.

[FR Doc. 91-13438 Filed 6-6-91; 8:45 am]

BILLING CODE 4160-17-MF

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-29]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: June 7, 1991.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were

reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for application by representatives of the homeless for a period of 60 days from the date of this notice. Representatives of the homeless interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be made available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this notice. Representatives of the homeless interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this notice. Included in the request for review should be the property address (including zip code), the date of publication in the *Federal Register*, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Dept. of Agriculture: Marsha Pruitt, Realty Officer, USDA, South Bldg. rm. 1566, 14th and Independence Ave. SW., Washington, DC 20250; (202) 447-3338. Dept. of Energy: Tom Knox, Realty Specialist, AD223.1, 1000 Independence Ave. SW., Washington, DC 20585; (202) 586-1191. Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512-MIB, Washington, DC 20240; (202) 208-4080. U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332-2300; (202) 325-0474. Dept. of Transportation: Angelo Picillo, Deputy Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10317, Washington, DC 20590; (202) 366-5601. Dept. of Veterans Affairs: Linda Tribby, Management Analyst, Dept. of Veterans Affairs, room 717, 810 Vermont Ave. NW., Washington, DC 20420; (202) 233-5026. (These are not toll-free numbers.)

Dated: May 31, 1991.

Russell K. Paul,

Deputy Assistant Secretary for Grant Programs.

SUITABLE/AVAILABLE PROPERTIES

Alabama

Suitable Land (by Agency)

VA

VA Medical Center

VAMC

Tuskegee, AL, Co: Macon 36083-

Federal Register Notice Date: 06/07/91

Property Number: 979010053

Status: Underutilized

Base Closure: No

Comment: 40 acres; buffer to VA Medical Center; potential utilities; undeveloped.

California*Suitable Buildings (by Agency)***VA**

Bldg. 116
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles, CA, Co: Los Angeles 90073-
Federal Register Notice Date: 06/07/91
Property Number: 979110009
Status: Underutilized
Base Closure: No
Comment: 60309 sq. ft., 3 story brick frame, seismic reinforcement defics., underutil. port. of bldg. used intermitly., needs rehab, poss. asbestos on pipes/floor tiles, site access lim.

Bldg. 263

VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles, CA, Co: Los Angeles 90073-
Federal Register Notice Date: 06/07/91
Property Number: 979110010
Status: Unutilized
Base Closure: No
Comment: 1600 sq.ft., 1 story wood frame w/ stucco exterior, needs rehab, poss. asbestos on pipes/floor tiles, site access limitations, no operating utilities.

*Suitable Land (by Agency)***DOT**

Remote Transmitter
Section 35
Red Bluff, CA, Co: Tehema 96080-
Federal Register Notice Date: 06/07/91
Property Number: 879010010
Status: Unutilized
Base Closure: No
Comment: 4 acres; paved road, current use—storage.

Colorado*Suitable Land (by Agency)***VA**

VA Medical Center
Fort Lyon, CO, Co: Bent 81038-
Location: 6 miles east of Las Animas, Co. and then 1 mile south on Colorado highway 183.
Federal Register Notice Date: 06/07/91
Property Number: 979010021
Status: Underutilized
Base Closure: No
Comment: 163.5 acres; most recent use—potable water well and static area; no utilities; secured area with alternative access.

Idaho*Suitable Buildings (by Agency)***Energy**

Storage and Training Facility
INEL DOE-ID
Idaho Falls, ID, Co: Bonneville
Federal Register Notice Date: 06/07/91
Property Number: 419040001
Status: Excess
Base Closure: No
Comment: 2072 sq. ft.; 1 story wood frame; needs major rehab; off-site use only.

Louisiana*Suitable Land (by Agency)***VA**

Land—8.27 acres
VA Medical Center
2501 Shreveport Highway
Alexandria, LA Co: Rapides 71301-
Federal Register Notice Date: 06/07/91
Property Number: 979010009
Status: Unutilized
Base Closure: No
Comment: 8.27 acres; heavily wooded with natural drainage ravine across property; most recent use—recreation/buffer area.

Maryland*Suitable Land (by Agency)***VA**

VA Medical Center
9500 North Point Road
Fort Howard, MD Co: Baltimore 21052
Federal Register Notice Date: 06/07/91
Property Number: 979010020
Status: Underutilized
Base Closure: No
Comment: Approximately 10 acres; wetland and periodically floods; most recent use—dump site for leaves.

Maine*Suitable Buildings (by Agency)***Agriculture**

White Mountain National Forest
Stoneham, ME
Location: From Bethel, ME: 20 mi. SW on State Hwy 35—10 mi. west on Hwy 5 to Virginia Lake Access Rd.—4 mi. north to property
Federal Register Notice Date: 06/07/91
Property Number: 159040061
Status: Unutilized
Base Closure: No
Comment: 2256 sq. ft.; 2 story wood frame; needs major rehab; structurally unsound.

Minnesota*Suitable Land (by Agency)***VA**

Land around Bldg. 240-249,253
VA Medical Center
Fort Snelling
St. Paul, MN Co: Hennepin 55111-
Federal Register Notice Date: 06/07/91
Property Number: 979010007
Status: Unutilized
Base Closure: No
Comment: 3.76 acres; potential utilities.

New Mexico*Suitable Buildings (by Agency)***Interior**

Old Helium Plant
Gallup, NM Co: McKinley 87301-
Location: ¼ mile north of Gallup, adjacent to Old US Highway 666.
Federal Register Notice Date: 06/07/91
Property Number: 619010002
Status: Excess
Base Closure: No
Comment: 7653 sq. ft.; 1 story office and warehouse space; possible asbestos; on

4.65 acres; secured area with alternate access.

Texas*Suitable Land (by Agency)***VA****Land**

Olin E. Teague Veterans Center
1901 South 1st Street
Temple, TX Co: Bell 76504-
Federal Register Notice Date: 06/07/91
Property Number: 979010079
Status: Underutilized
Base Closure: No
Comment: 13 acres; portion formerly landfill; portion near flammable materials; railroad crosses property; potential utilities.
VA Medical Center
4800 Memorial Drive
Waco, TX Co: McLennan 76711-
Federal Register Notice Date: 06/07/91
Property Number: 979010081
Status: Underutilized
Base Closure: No
Comment: 2.3 acres; leased to Owens-Illinois Glass Plant; expiration date 10/31/90; most recent use—parking lot.

Washington*Suitable Buildings (by Agency)***Interior**

Thompson Main Residence
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362-
Federal Register Notice Date: 06/07/91
Property Number: 619030001
Status: Unutilized
Base Closure: No
Comment: 2 story residence; no utilities; needs rehab; off-site use only.
Thompson Older Residence
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362-
Federal Register Notice Date: 06/07/91
Property Number: 619030002
Status: Unutilized
Base Closure: No
Comment: 888 sq. ft.; 1 story residence; no utilities; needs rehab; off-site use only.
Thompson Garage
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362-
Federal Register Notice Date: 06/07/91
Property Number: 619030003
Status: Unutilized
Base Closure: No
Comment: 240 sq. ft.; 1 story garage; no utilities; needs rehab; off-site use only.
Thompson Shop
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362-
Federal Register Notice Date: 06/07/91
Property Number: 619030009
Status: Unutilized
Base Closure: No
Comment: 300 sq. ft.; 1 story shop; no utilities; needs rehab; off site use only.
Thompson Powerhouse
Lake Crescent Ranger Station

HC 62, Box 10
Port Angeles, WA 98362-
Federal Register Notice Date: 06/07/91
Property Number: 619030010
Status: Unutilized
Base Closure: No
Comment: 160 sq. ft.; 1 story powerhouse; no utilities; needs rehab; off-site use only.

Spracklen Utility Shed
Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA 98526-
Federal Register Notice Date: 06/07/91
Property Number: 619030012
Status: Unutilized
Base Closure: No
Comment: 150 sq. ft.; frame utility shed; limited utilities; off-site use only.

Dahinden Storage Building
Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA 98526-
Federal Register Notice Date: 06/07/91
Property Number: 619030013
Status: Unutilized
Base Closure: No
Comment: 240 sq. ft.; frame storage building; no utilities; needs rehab; off-site use only.

Bldg. 1185
Lake Crescent Ranger Station HC 62, Box 10
Carter Storage Building
Port Angeles, WA 98362-
Federal Register Notice Date: 06/07/91
Property Number: 619030016
Status: Unutilized
Base Closure: No
Comment: 92 sq. ft.; 1 story storage building; no utilities; off-site use only.

Haas Barn
c/o Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA Co: Grays Harbor 98526-
Federal Register Notice Date: 06/07/91
Property Number: 619040001
Status: Excess
Base Closure: No
Comment: 1408 sq. ft.; 1 story wood frame barn; potential utilities; poor condition; off-site use only.

Haas Shed
c/o Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA Co: Grays Harbor 98526-
Federal Register Notice Date: 06/07/91
Property Number: 619040002
Status: Excess
Base Closure: No
Comment: 480 sq. ft.; wood frame shed; poor condition; off-site use only.

Haas Shed
c/o Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA Co: Grays Harbor 98526-
Federal Register Notice Date: 06/07/91
Property Number: 619040003
Status: Excess
Base Closure: No
Comment: 64 sq. ft.; wood frame shed; poor condition; off-site use only.

Haas Residence
c/o Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA Co: Grays Harbor 98526-
Federal Register Notice Date: 06/07/91
Property Number: 619040006

Status: Excess
Base Closure: No
Comment: 624 sq. ft.; 1 story wood frame residence; potential utilities; poor condition; off-site use only.
Bldg. 1323
Jensen Barn
c/o Quinault Ranger Station, Route 2, Box 76
Amanda Park, WA Co: Grays Harbor 98526-
Federal Register Notice Date: 06/07/91
Property Number: 619040007
Status: Excess
Base Closure: No
Comment: 4,200 sq. ft.; wood frame barn; most recent use—storage; no utilities; off-site use only.

Wisconsin

Suitable Land (by Agency)

VA
VA Medical Center
County Highway E
Tomah, WI Co: Monroe 54660-
Federal Register Notice Date: 06/07/91
Property Number: 979010054
Status: Underutilized
Base Closure: No
Comment: 12.4 acres; serves as buffer between center and private property; no utilities.

Suitable Buildings (by Agency)

Bldg. 2
VA Medical Center
County Highway E
Tomah, WI Co: Monroe 54660-
Federal Register Notice Date: 06/07/91
Property Number: 979010055
Status: Underutilized
Base Closure: No
Comment: 18,000 sq. ft.; 3 story masonry; needs rehab.; possible asbestos; potential utilities.
Bldg. 8
VA Medical Center
County Highway E
Tomah, WI Co: Monroe 54660-
Federal Register Notice Date: 06/07/91
Property Number: 979010056
Status: Underutilized
Base Closure: No
Comment: 2,200 sq. ft.; 2 story wood frame; possible asbestos; potential utilities; structural deficiencies; needs rehab.

Wyoming

Suitable Land (by Agency)

Energy
Wind Site A
Medicine Bow, WY Co: Carbon 82329-
Location: 3 miles south and 2 miles west of
Medicine Bow
Federal Register Notice Date: 06/07/91
Property Number: 419030010
Status: Excess
Base Closure: No
Comment: 46.75 acres; limitation—easement restrictions.

Suitable Buildings (by Agency)

Interior
Administration Bldg.
Fontenelle Camp
Fontenelle, WY Co: Lincoln

Location: Approximately 24 miles southeast of Labarge, off State Road 372 and on County Road 316.
Federal Register Notice Date: 06/07/91
Property Number: 619030017
Status: Excess
Base Closure: No
Comment: 4464 sq. ft.; 2 story brick structure with a 2880 sq. ft. wood frame addition; needs rehab; possible asbestos; offsite use only.

Residential House
Fontenelle Camp
Fontenelle, WY Co: Lincoln
Location: Approximately 24 miles southeast of Labarge, off State Road 372 and on County Road 316.
Federal Register Notice Date: 06/07/91
Property Number: 619030018
Status: Excess
Base Closure: No
Comment: 1200 sq. ft.; 1 story with basement; needs rehab; possible asbestos; off-site use only.

VA

Bldg. 30
Medical Center
N.W. of town at the end of Fort Road
Sheridan, WY Co: Sheridan 82801-
Federal Register Notice Date: 06/07/91
Property Number: 979110002
Status: Unutilized
Base Closure: No
Comment: 1336 sq. ft.; 1 story concrete frame earth covered; potential utilities; most recent use—root cellar.

SUITABLE/TO BE EXCESS PROPERTIES

Alaska

Suitable Land (by Agency)

DOT
Wrangell Narrows Reservation
Wrangell, AK Co: Wrangell
Location: Approximately 6 miles south of Petersburg, Alaska along Mitkof highway.
Federal Register Notice Date: 06/07/91
Property Number: 879010008
Status: Excess
Base Closure: No
Comment: 42.15 acres.

Louisiana

Suitable Land (by Agency)

DOT
Land
USCG Station Calcasieu
Calcasieu, LA Co: Cameron Parish 71433-
Federal Register Notice Date: 06/07/91
Property Number: 879120093
Status: Unutilized
Base Closure: No
Comment: 2.7 acres, potential utilities, possible flooding.

Suitable Buildings (by Agency)

Dwellings #1, #2
USCG Station Calcasieu
Calcasieu, LA Co: Cameron Parish 71433-
Federal Register Notice Date: 06/07/91
Property Numbers: 879120091-879120092
Status: Unutilized
Base Closure: No

Comment: 2716 sq. ft. each, need rehab, potential utilities, most recent use—residence, possible flooding

Equipment Building
USCG Station Calcasieu
Calcasieu, LA Co: Cameron Parish 71433—
Federal Register Notice Date: 06/07/91
Property Number: 879120094

Status: Unutilized
Base Closure: No

Comment: 1380 sq. ft., potential utilities, most recent use—equipment storage, possible flooding.

North Carolina

Suitable Buildings (by Agency)

DOT

Dwellings 1, 2, 3

USCG Coinjock Housing
Coinjock, NC Co: Currituck 27923—
Federal Register Notice Date: 06/07/91
Property Numbers: 879120083–879120085

Status: Unutilized

Base Closure: No

Comment: one story wood residences, periodic flooding in garage and utility room occurs in heavy rainfall.

Suitable Land (by Agency)

USCG Station—Land

Oregon Inlet Coast Guard Station
Rodanthe, NC Co: Dare 27968—
Federal Register Notice Date: 06/07/91
Property Number: 879120087

Status: Unutilized

Base Closure: No

Comment: 10 acres, potential utilities.

Suitable Buildings (by Agency)

USCG Station—Building

Oregon Inlet Coast Guard Station
Rodanthe, NC Co: Dare 27968—
Federal Register Notice Date: 06/07/91
Property Number: 879120086

Status: Unutilized

Base Closure: No

Comment: 1207 sq. ft., two story wood frame, most recent use—office, storage, shops, communications, dining, etc.

USCG Station—Building

Oregon Inlet Coast Guard Station
Rodanthe, NC Co: Dare 27968—
Federal Register Notice Date: 06/07/91
Property Number: 879120088

Status: Unutilized

Base Closure: No

Comment: 1521 sq. ft., two story lightweight steel frame, most recent use—office, shops, communications, storage, berthing, dining, etc.

USCG Station—Garage

Oregon Inlet Coast Guard Station
Rodanthe, NC Co: Dare 27968—
Federal Register Notice Date: 06/07/91
Property Number: 879120089

Status: Unutilized

Base Closure: No

Comment: 1920 sq. ft., one story steel frame, most recent use—garage/storage.

USCG Station—Building

Oregon Inlet Coast Guard Station
Rodanthe, NC Co: Dare 27968—
Federal Register Notice Date: 06/07/91
Property Number: 879120090

Status: Unutilized

Base Closure: No

Comment: 320 sq. ft., one story wood frame, most recent use—storage

Oregon

Suitable Land (by Agency)

DOT

Port Orford Radio Station

Port Orford, OR Co: Curry 97465—
Federal Register Notice Date: 06/07/91
Property Number: 879010007

Status: Excess

Base Closure: No

Comment: 5.17 acres, radio station.

Puerto Rico

Suitable Buildings (by Agency)

DOT

Mona Island

Punta Este, PR Co: Mona Island
Federal Register Notice Date: 06/07/91
Property Number: 879010004

Status: Excess

Base Closure: No

Comment: Light house on 2.09 acres.

Virginia

Suitable Buildings (by Agency)

DOT

Housing

Rt. 637—Gwynnville Road
Gwynn Island, VA Co: Mathews 23066—
Federal Register Notice Date: 06/07/91
Property Number: 879120082

Status: Unutilized

Base Closure: No

Comment: 929 sq. ft., one story residence.

SUITABLE/UNAVAILABLE PROPERTIES

Arizona

Suitable Land (by Agency)

Energy

Liberty Substation

Buckeye, AZ Co: Maricopa 85326—
Location: 3 miles south of Interstate 10 on
Tuthill Road

Federal Register Notice Date: 06/07/91

Property Number: 419030001

Status: Underutilized

Base Closure: No

Comment: 15 acres; buffer area for substation.

California

Suitable Land (by Agency)

VA

Land

VA. Medical Center
Wilshire and Sawtelle Boulevards
Los Angeles, CA Co: Los Angeles 90073—
Federal Register Notice Date: 06/07/91

Property Number: 979010077

Status: Underutilized

Base Closure: No

Comment: Approximately 30 acres of 80 acre tract; 7 acre portion contaminated; portions may be environmentally protected.

Florida

Suitable Land (by Agency)

DOT

Parcel A & B

U.S. Coast Guard Light Station
Lots 1, 8 & 11, Section 31
Jupiter Inlet, FL Co: Palm Beach 33420—
Location: Township 40 south, range 43 east.

Federal Register Notice Date: 06/07/91

Property Number: 879010009

Status: Unutilized

Base Closure: No

Comment: 56.61 acres; area is uncleared, vegetation growth is heavy; no utilities.

Iowa

Suitable Land (by Agency)

Energy

Sioux City Substation

Hinton, IA Co: Plymouth 51024—
Location: 1 mile south of Hinton Iowa on
Highway 75.

Federal Register Notice Date: 06/07/91

Property Number: 419030003

Status: Underutilized

Base Closure: No

Comment: 34 acres; limitation—easement restrictions; most recent use—transmission line corridor and buffer area.

Illinois

Suitable Land (by Agency)

VA

VA. Medical Center

3001 Green Bay Road
North Chicago, IL Co: Lake 60064—
Federal Register Notice Date: 06/07/91

Property Number: 979010082

Status: Underutilized

Base Closure: No

Comment: 2.5 acres; currently being used as a construction staging area for the next 6–8 years; potential utilities.

Maryland

Suitable Buildings (by Agency)

VA

Bldg. 8A

DVA Medical Center

Perry Point

Perry Point, MD Co: Cecil 21902—

Federal Register Notice Date: 06/07/91

Property Number: 979010047

Status: Underutilized

Base Closure: No

Comment: 17000 sq. ft.; 1 story masonry; needs a roof; no utilities; most recent use—storage.

Bldg. 9H

DVA Medical Center

Perry Point

Perry Point, MD Co: Cecil 21902—

Federal Register Notice Date: 06/07/91

Property Number: 979010048

Status: Underutilized

Base Closure: No

Comment: 19000 sq. ft.; 3 story reinforced concrete; basement floods; most recent use—nursing home.

Michigan*Suitable Land (by Agency)*

VA

VA Medical Center
5500 Armstrong Road
Battle Creek, MI Co: Calhoun 49018-
Federal Register Notice Date: 06/07/91
Property Number: 979010015
Status: Underutilized
Base Closure: No
Comment: 20 acres; used as exercise trails
and storage areas; potential utilities.

Minnesota*Suitable Land (by Agency)*

VA

Bldg. 43 Land Site
VA Medical Center
54th Street & 48th Avenue South
Minneapolis, MN Co: Hennepin 55417-
Federal Register Notice Date: 06/07/91
Property Number: 979010005
Status: Underutilized
Base Closure: No
Comment: 8.9 acres; most recent use—
parking; potential utilities.

Bldg. 227-229 Land
VA Medical Center
Fort Snelling
St Paul, MN Co: Hennepin 55111-
Federal Register Notice Date: 06/07/91
Property Number: 979010006
Status: Underutilized
Base Closure: No
Comment: 2.0 acres., potential utilities;
buildings occupied; residence/garage.

VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN Co: Hennepin 55417-
Location: Land (Site of Building 15, 16, 21, 48,
64, T10)
Federal Register Notice Date: 06/07/91
Property Number: 979010024
Status: Underutilized
Base Closure: No
Comment: 12.1 acres; most recent use—
parking; potential utilities.

Land—12 acres
VAMC
Near 5629 Minnehaha Avenue
Minneapolis, MN Co: Hennepin 55417-
Federal Register Notice Date: 06/07/91
Property Number: 979010031
Status: Unutilized
Base Closure: No
Comment: 12 acres; possible asbestos; leased
to Department of Natural Resources as a
park walking trail.

Suitable Buildings (by Agency)

Bldg. 15

VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN Co: Hennepin 55417-
Federal Register Notice Date: 06/07/91
Property Number: 979010025
Status: Underutilized
Base Closure: No
Comment: 15100 sq. ft.; 2 story concrete/brick
frame; asbestos present in pipe insulation;
most recent use—laundry.

Bldg. 16

VA Medical Center

Near 5629 Minnehaha Avenue
Minneapolis, MN Co: Hennepin 55417-
Federal Register Notice Date: 06/07/91

Property Number: 979010026
Status: Underutilized
Base Closure: No
Comment: 8000 sq. ft.; 3 story concrete/brick;
asbestos present on pipe insulation; most
recent use—boiler plant.

Bldg. 21

VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN Co: Hennepin 55417-
Federal Register Notice Date: 06/07/91
Property Number: 979010027
Status: Underutilized
Base Closure: No
Comment: 3200 sq. ft.; 1 story prefab/quonset;
most recent use—garage for motor vehicles.

Bldg. 48

VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN Co: Hennepin 55417-
Federal Register Notice Date: 06/07/91
Property Number: 979010028
Status: Underutilized
Base Closure: No
Comment: 2000 sq. ft.; 1 story concrete/block;
most recent use—incinerator/storage.

Bldg. 64

VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN Co: Hennepin 55417-
Federal Register Notice Date: 06/07/91
Property Number: 979010029
Status: Unutilized
Base Closure: No
Comment: 380 sq. ft.; 1 story prefab; potential
utilities.

Bldg. T-10

VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN Co: Hennepin 55417-
Federal Register Notice Date: 06/07/91
Property Number: 979010030
Status: Unutilized
Base Closure: No
Comment: 1800 sq. ft.; 1 story prefab/quonset;
potential utilities; most recent use—
storage.

Bldg. 43

VA Medical Center
Minneapolis, MN Co: Hennepin 55441-7
Location: 54th Street and 48th Avenue S.
Federal Register Notice Date: 06/07/91
Property Number: 979010032
Status: Underutilized
Base Closure: No
Comment: 26000 sq. ft.; 8 story brick/steel
frame; asbestos present on pipe insulation;
most recent use—office/storage.

Bldg. 227

VA Medical Center
Fort Snelling
St. Paul, MN Co: Hennepin 55111-
Federal Register Notice Date: 06/07/91
Property Number: 979010033
Status: Unutilized
Base Closure: No
Comment: 850 sq. ft.; 2 story wood frame and
brick residence; utilities disconnected.

Bldgs. 240-242, 244-248, 253

VA Medical Center
Fort Snelling
St. Paul, MN Co: Hennepin 55111-

Federal Register Notice Date: 06/07/91
Property Numbers: 979010036-979010044

Status: Unutilized
Base Closure: No
Comment: 800 sq. ft. each; 2 story wood
frame; potential utilities; asbestos present
on pipe insulation.

Bldg. 243

VA Medical Center
Fort Snelling
St. Paul, MN Co: Hennepin 55111-
Federal Register Notice Date: 06/07/91
Property Number: 979010045

Status: Unutilized
Base Closure: No
Comment: 600 sq. ft.; 1 story wood frame; no
utilities; most recent use—garage.

Bldg. 249

VA Medical Center
Fort Snelling
St. Paul, MN Co: Hennepin 55111-
Federal Register Notice Date: 06/07/91
Property Number: 979010046
Status: Unutilized
Base Closure: No
Comment: 200 sq. ft.; 1 story wood frame; no
utilities; most recent use—garage.

Montana*Suitable Land (by Agency)*

Energy

Miles City Substation
Miles City, MT Co: Custer 59301-
Location: 1 mile east of Miles City
Federal Register Notice Date: 06/07/91
Property Number: 419030004
Status: Underutilized
Base Closure: No
Comment: 59 acres; limitation—easement
restrictions subject to grazing lease; most
recent use—buffer area for substation.

Custer Substation

Custer, MT Co: Yellowstone 59024-
Location: 2 miles east of the town of Custer—
east of Highway 47
Federal Register Notice Date: 06/07/91
Property Number: 419030006
Status: Underutilized
Base Closure: No
Comment: 18 acres; buffer area for
substation.

North Dakota*Suitable Land (by Agency)*

Energy

Fargo Substation
Fargo, ND Co: Cass 58102-
Federal Register Notice Date: 06/07/91
Property Number: 419030005
Status: Underutilized
Base Closure: No
Comment: 25 acres; most recent use—
transmission line corridor and buffer.

Nebraska*Suitable Land (by Agency)*

Energy

Grand Island Substation
Phillips, NE Co: Merrick 68865-
Location: 5 miles east of Grand Island and 4
miles west of Phillips.
Federal Register Notice Date: 06/07/91

Property Number: 419030002
 Status: Underutilized
 Base Closure: No
 Comment: 11 acres; buffer area for substation; right-of-way for transmission lines for Nebraska Public Power District.

New York

Suitable Buildings (by Agency)

VA

Bldg. 5
 V.A. Medical Center
 Redfield Parkway
 Batavia, NY Co: Genesee 14020-
Federal Register Notice Date: 06/07/91
 Property Number: 979030001
 Status: Underutilized
 Base Closure: No
 Comment: Portion of 16800 sq. ft.; 3 story; brick and masonry bldg.; needs minor repairs.

Suitable Land (by Agency)

VA Medical Center
 Fort Hill Avenue
 Canandaigua, NY Co: Ontario 14424-
Federal Register Notice Date: 06/07/91
 Property Number: 979010017
 Status: Underutilized
 Base Closure: No
 Comment: 27.5 acres; used for school ballfield and parking; existing utilities easements; portion leased.

Pennsylvania

Suitable Land (by Agency)

VA

Land No. 645
 VA Medical Center
 Highland Drive
 Pittsburgh, PA, Co: Allegheny 15206-
 Location: Between Campania and Wiltsie Streets.
Federal Register Notice Date: 06/07/91
 Property Number: 979010080
 Status: Unutilized
 Base Closure: NO
 Comment: 52.42 acres; heavily wooded; property includes dump area and numerous site storm drain outfalls.
 VA Medical Center
 New Castle Road
 Butler, PA, Co: Butler 16001-
Federal Register Notice Date: 06/07/91
 Property Number: 979010016
 Status: Underutilized
 Base Closure: NO
 Comment: Approximately 9.29 acres; used for patient recreation; potential utilities.

Puerto Rico

Suitable Buildings (by Agency)

DOT

USCG Officer/Charge Quarters
 Cape San Juan Light
 Fajardo, PR, Co: Fajardo
Federal Register Notice Date: 06/07/91
 Property Number: 879110001
 Status: Excess
 Base Closure: NO
 Comment: 1197 sq. ft., one story concrete block on floating slab; off-site use only; environmentally protected

Texas

Suitable Buildings (by Agency)

DOT

Brownsville Urban System (Grantee)
 700 South Iowa Avenue
 Brownsville, TX, Co: Cameron 78520-
Federal Register Notice Date: 06/07/91
 Property Number: 879010003
 Status: Unutilized
 Base Closure: NO
 Comment: 3500 sq. ft., 1 story concrete block, (2nd floor of Admin. Bldg.) on 10750 sq. ft. land, contains underground diesel fuel tanks.

Washington

Suitable Land (by Agency)

ENERGY

Raver Substation (See County), WA, Co: King
 Location: Approximately 16 miles east of Kent
Federal Register Notice Date: 06/07/91
 Property Number: 419030012
 Status: Unutilized
 Base Closure: NO
 Comment: 10+ acres; potential utilities; heavily treed

West Virginia

Suitable Land (by Agency)

VA

VA Medical Center
 1540 Spring Valley Drive
 Huntington, WV, Co: Wayne 25704-
Federal Register Notice Date: 06/07/91
 Property Number: 979010022
 Status: Unutilized
 Base Closure: NO
 Comment: 72 acres; very rough terrain and wooded; potential utilities

Wyoming

Suitable Buildings (by Agency)

VA

Bldg. 13
 Medical Center
 N.W. of town at the end of Fort Road
 Sheridan, WY, Co: Sheridan 82801-
Federal Register Notice Date: 06/07/91
 Property Number: 979110001
 Status: Unutilized
 Base Closure: NO
 Comment: 3613 sq. ft.; 3 story wood frame masonry veneered; potential utilities; possible asbestos; needs rehab
 Bldg. 79
 Medical Center
 N.W. of town at the end of Fort Road
 Sheridan, WY, Co: Sheridan 82801-
Federal Register Notice Date: 06/07/91
 Property Number: 979110003
 Status: Unutilized
 Base Closure: NO
 Comment: 45 sq. ft.; 1 story brick and tile frame; limited utilities; most recent use—reservoir house; use for storage purposes

Unsuitable Properties

Alaska

Unsuitable Buildings (by Agency)

Navy

LORAN Station, Map Grid 09L11

Naval Air Station

Adak, AK, Co: Adak 98791-
Federal Register Notice Date: 06/07/91
 Property Number: 779120006
 Status: Unutilized
 Base Closure: No
 Reason: Secured Area
 DOT
 Old Upper Govt Housing—Bldgs. #1-#70
 Coast Guard Support Center Kodiak, POB14
 Kodiak, AK, Co: Kodiak 99619-5000
Federal Register Notice Date: 06/07/91
 Property Numbers: 879120012-879120031
 Status: Unutilized
 Base Closure: No
 Reason: Secured Area

Alabama

Unsuitable Buildings (by Agency)

DOT

Dwellings A, B
 USCG Mobile Pt. Station
 Ft. Morgan
 Gulfshores, AL, Co: Baldwin 36542-
Federal Register Notice Date: 06/07/91
 Property Numbers: 879120001-879120002
 Status: Excess
 Base Closure: No
 Reason: Floodway
 Oil House
 USCG Mobile Pt. Station
 Ft. Morgan
 Gulfshores, AL, Co: Baldwin 36542-
Federal Register Notice Date: 06/07/91
 Property Number: 879120003
 Status: Excess
 Base Closure: No
 Reason: Floodway
 Garage
 USCG Mobile Pt. Station
 Ft. Morgan
 Gulfshores, AL, Co: Baldwin 36542-
Federal Register Notice Date: 06/07/91
 Property Number: 879120004
 Status: Excess
 Base Closure: No
 Reason: Floodway
 Shop Building
 USCG Mobile Pt. Station
 Ft. Morgan
 Gulfshores, AL, Co: Baldwin 36542-
Federal Register Notice Date: 06/07/91
 Property Number: 879120005
 Status: Excess
 Base Closure: No
 Reason: Floodway

California

Unsuitable Land (by Agency)

VA

DVA Medical Center
 4951 Arroyo Road
 Livermore, CA, Co: Alameda 94550-
Federal Register Notice Date: 06/07/91
 Property Number: 979010023
 Status: Unutilized
 Base Closure: No
 Reason: Other
 Comment: 750,000 gal water reservoir.
 Energy
 Elverta Substation
 736 W. Elverta Road

Elverta, CA, Co: Sacramento 95626-
Federal Register Notice Date: 06/07/91
Property Number: 419030008
Status: Underutilized
Base Closure: No
Reason: Secured Area

Colorado

Unsuitable Buildings (by Agency)

DOT

Alemeda Facility
 350 S. Santa Fe Drive
 Denver, CO, Co: Denver
Federal Register Notice Date: 06/07/91
Property Number: 879010014
Status: Unutilized
Base Closure: No
Reason: Other environmental
Comment: contamination

Unsuitable Land (by Agency)

Energy

Curecanti Substation
 Cimarron, CO, Co: Montrose 81220-
Location: 2 miles east of Cimarron on
 Highway 50
Federal Register Notice Date: 06/07/91
Property Number: 419030009
Status: Excess
Base Closure: No
Reason: Floodway

Florida

Unsuitable Buildings (by Agency)

DOT

USCG Station Cortez
 4350 124th St., Circle W
 Cortez, FL, Co: Manatee 33506-
Federal Register Notice Date: 06/07/91
Property Number: 879120008
Status: Underutilized
Base Closure: No
Reason: Secured Area, Floodway

Illinois

Unsuitable Buildings (by Agency)

DOT

Vortac Facility
 FAA
 Joliet, IL, Co: DuPage 60436-
Location: From Joliet Airport west on Hwy.
 52—8 miles north of Township Gravel
 Road—2.5 miles to site entrance
Federal Register Notice Date: 06/07/91
Property Number: 879120011
Status: Underutilized
Base Closure: No
Reason: Secured Area

Louisiana

Unsuitable Land (by Agency)

VA

Land—3.4 acres
 VA Medical Center
 2501 Shreveport Highway
 Alexandria, LA, Co: Rapides 71301-
Federal Register Notice Date: 06/07/91
Property Number: 979010010
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or
 explosive material

Michigan

Unsuitable Land (by Agency)

DOT

Middle Marker Facility
 Ypsilanti, MI, Co: Washtenaw 48198-
Location: 549 ft. north of intersection of
 Coolidge and Bradley Ave. on East side of
 street
Federal Register Notice Date: 06/07/91
Property Number: 879120006
Status: Unutilized
Base Closure: No
Reason: Within airport runway clear zone

Minnesota

Unsuitable Land (by Agency)

VA

VAMC
 VA Medical Center
 4801 8th Street No.
 St. Cloud, MN, Co: Sterns 56303-
Federal Register Notice Date: 06/07/91
Property Number: 979010049
Status: Underutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or
 explosive material

Montana

Unsuitable Land (by Agency)

Energy

Dawson County Substation
 Glendive, MT, Co: Dawson 59330-
Location: 3 miles east of Glendive, MT on
 highway 20
Federal Register Notice Date: 06/07/91
Property Number: 419030011
Status: Underutilized
Base Closure: No
Reason: Secured Area
 Anaconda Substation
 (See County), MT, Co: Deer Lodge
Location: 4 miles southeast of Anaconda
Federal Register Notice Date: 06/07/91
Property Number: 419030013
Status: Unutilized
Base Closure: No
Reason: Other environmental
Comment: Contamination

North Carolina

Unsuitable Buildings (by Agency)

VA

Bldg. 9
 VA Medical Center
 1100 Tunnel Road
 Asheville, NC, Co: Buncombe 28805-
Federal Register Notice Date: 06/07/91
Property Number: 979010008
Status: Underutilized
Base Closure: No
Reason: Other
Comment: Friable asbestos.

North Dakota

Unsuitable Land (by Agency)

VA

VAM & ROC—Land, 2 parcels—6.1 & 8.9
 acres
 2101 Elm Street, N.
 Fargo, ND, Co: Cass 58102-
Federal Register Notice Date: 06/07/91

Property Numbers: 979010018-979010019
Status: Underutilized
Base Closure: No
Reason: Floodway

New Jersey

Unsuitable Buildings (by Agency)

DOT

Bldg. 120
 USCG Training Center Cape May
 North side of Munro Ave.
 Cape May, NJ, Co: Cape May 08204-
Location: Opposite GSK Bldg. 204
Federal Register Notice Date: 06/07/91
Property Number: 879120007
Status: Unutilized
Base Closure: No
Reason: Secured Area

New Mexico

Unsuitable Buildings (by Agency)

Interior

Farmington Office and Yard
 900 La Plata Highway
 Farmington, NM, Co: San Juan 87499-
Federal Register Notice Date: 06/07/91
Property Number: 619010001
Status: Unutilized
Base Closure: No
Reason: Within airport runway clear zone

New York

Unsuitable Buildings (by Agency)

DOT

Bldg. S-253
 Governors Island
 Governors Island, NY, Co: New York 10004-
Location: The first building directly south of
 the base library
Federal Register Notice Date: 06/07/91
Property Number: 879120095
Status: Unutilized
Base Closure: No
Reason: Secured Area, Other
Comment: Not accessible by road

Unsuitable Land (by Agency)

VA

Tracts 1, 2, 3, 4
 VA Medical Center
 Bath, NY, Co: Steuben 14810-
Location: Exit 38 off New York State Route 17
Federal Register Notice Date: 06/07/91
Property Numbers: 979010011-979010014
Status: Unutilized
Base Closure: No
Reason: Secured Area

Oregon

Unsuitable Buildings (by Agency)

Interior

Eugene District Office Site
 751 South Danebo
 Eugene, OR, Co: Lane 97402-
Federal Register Notice Date: 06/07/91
Property Number: 619010003
Status: Underutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or
 explosive material

Pennsylvania*Unsuitable Buildings (by Agency)*

DOT

Harrisburg Arpt Surv Radar 4

FAA

Lower Allen Township, PA, Co: Cumberland
17070-Location: Take left at the end of Beacon Hill
Road in New Cumberland

Federal Register Notice Date: 06/07/91

Property Number: 879120009

Status: Underutilized

Base Closure: No

Reason: Secured Area

Texas*Unsuitable Buildings (by Agency)*

VA

Bldgs. 24, 25, 26

Olin E. Teague Veterans Center

1901 South 1st Street

Temple, TX, Co: Bell 76504-

Federal Register Notice Date: 06/07/91

Property Numbers: 979010050-979010052

Status: Unutilized

Base Closure: No

Reason: Other

Comment: Friable asbestos

Washington*Unsuitable Buildings (by Agency)*

Interior

Dahinden Chicken Coop

Quinault Ranger Station

Route 2, Box 76

Amanda Park, WA 98526-

Federal Register Notice Date: 06/07/91

Property Number: 619030014

Status: Unutilized

Base Closure: No

Reason: Other

Comment: Chicken Coop

Dahinden Outhouse

Quinault Ranger Station

Route 2, Box 76

Amanda Park, WA 98526-

Federal Register Notice Date: 06/07/91

Property Number: 619030015

Status: Unutilized

Base Closure: No

Reason: Other

Comment: Detached latrine

Haas Chicken Coop

c/o Quinault Ranger Station

Route 2, Box 76

Amanda Park, WA, Co: Grays Harbor 98526-

Federal Register Notice Date: 06/07/91

Property Number: 619040004

Status: Excess

Base Closure: No

Reason: Other

Comment: Chicken Coop

Haas Lean-to

c/o Quinault Ranger Station

Route 2, Box 76

Amanda Park, WA, Co: Grays Harbor 98526-

Federal Register Notice Date: 06/07/91

Property Number: 619040005

Status: Excess

Base Closure: No

Reason: Other

Comment: Lean-to

Unsuitable Land (by Agency)

Energy

Snoqualmie Substation

(See County), WA, Co: King

Location: 12 miles southwest of North Bend

Federal Register Notice Date: 06/07/91

Property Number: 419030007

Status: Unutilized

Base Closure: No

Reason: Secured Area

DOT

Land

Puffin Island Light House Res.

San Juan, WA, Co: San Juan

Federal Register Notice Date: 06/07/91

Property Number: 879010013

Status: Excess

Base Closure: No

Reason: Other

Comment: Island

Wisconsin*Unsuitable Buildings (by Agency)*

Agriculture

Building

Laona Ranger District

Nicolet National Forest

Laona, WI 54541-

Federal Register Notice Date: 06/07/91

Property Number: 159040002

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or
explosive material

DOT

Vortac Facility

FAA

Wausau, WI, Co: Marathon 54401-

Location: From intersection of St. Hwy. 29
and County Trunk X proceed south on X
4 1/2 miles to site entrance

Federal Register Notice Date: 06/07/91

Property Number: 879120010

Status: Underutilized

Base Closure: No

Reason: Secured Area

Wyoming*Unsuitable Buildings (by Agency)*

VA

Bldg. 95

Medical Center

N.W. of town at the end of Fort Road

Sheridan, WY, Co: Sheridan 82801-

Federal Register Notice Date: 06/07/91

Property Number: 979110004

Status: Unutilized

Base Closure: No

Reason: Other

Comment: Sewage digester for disposal plant

Bldg. 96

Medical Center

N.W. of town at end of Fort Road

Sheridan, WY, Co: Sheridan 82801-

Federal Register Notice Date: 06/07/91

Property Number: 979110005

Status: Unutilized

Base Closure: No

Reason: Other

Comment: Pump house for sewage disposal
plant

Structure 99

Medical Center

N.W. of town at the end of Fort Road

Sheridan, WY, Co: Sheridan 82801-

Federal Register Notice Date: 06/07/91

Property Number: 979110006

Status: Unutilized

Base Closure: No

Reason: Other

Comment: Mechanical screen for sewage
disposal plant

Structure 100

Medical Center

N.W. of town at the end of Fort Road

Sheridan, WY, Co: Sheridan 82801-

Federal Register Notice Date: 06/07/91

Property Number: 979110007

Status: Unutilized

Base Closure: No

Reason: Other

Comment: Dosing tank for sewage disposal
plant

Structure 101

Medical Center

N.W. of town at the end of Fort Road

Sheridan, WY, Co: Sheridan 82801-

Federal Register Notice Date: 06/07/91

Property Number: 979110008

Status: Unutilized

Base Closure: No

Reason: Other

Comment: Chlorination chamber for sewage
disposal plant

[FR Doc. 91-13273 Filed 6-6-91; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Receipt of Application for Permit**

The following applicant have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 757950

Applicant: Popcorn Park Zoo, Forked River,
NJ

The applicant requests a permit to import one male captive-born jaguar (*Panthera onca*) from the Canadian Society for the Prevention of Cruelty to Animals, Montreal, Canada for enhancement of propagation through educational display.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to, or by appointment

during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: June 3, 1991.

Maggie Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91-13440 Filed 6-6-91; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[AK-956-4230-15]

Alaska; Notice for Publication; AA-6709-A, AA-6709-C; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Ounalashka Corporation for 157,412 acres. The lands involved are in the vicinity of Unalaska, Alaska, within Tps. 72 S., Rs. 117 and 118 W., and T. 73 S., R. 118 W., Seward Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Anchorage Times and the Aleutian Eagle. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 8, 1991 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Mary Jane Piggott,

Chief, Branch of Southwest Adjudication.

[FR Doc. 91-13479 Filed 6-6-91; 8:45 am]

BILLING CODE 4310-JA-M

[G-010-4111-02/G1-0116]

Albuquerque District, NM; District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Albuquerque District Advisory Council Meeting.

SUMMARY: The BLM Albuquerque District Advisory Council will meet on June 28 and 29, 1991 in Taos, New Mexico. The June 28th meeting will begin at 10 a.m. in the meeting room at the Quality Inn in Taos. The Quality Inn is located approximately 2 miles south of the Plaza on Paseo del Pueblo Sur.

The agenda on Friday June 28 will include updates on current Albuquerque District Issues including the Resource Management Plan Amendment process, Sikes Act wildlife habitat improvement projects, and the status of the proposed Rio Grande del Norte National Conservation Area. On Saturday June 29, the Council will tour the proposed Conservation Area.

The meeting and tour is open to the public. Individuals wishing to address the Council are urged to contact Alan Hoffmeister, Public Affairs Specialist, at (505) 761-4513, Bureau of Land Management, 435 Montano NE, Albuquerque, New Mexico 87107.

Dated: May 30, 1991.

Robert T. Dale,

District Manager.

[FR Doc. 91-13452 Filed 6-6-91; 8:45 am]

BILLING CODE 4310-FB-M

[CA-060-01-4410-04-ADVB]

California Desert District Advisory Council; Meeting

SUMMARY: Notice is hereby given, in accordance with Public Laws 92-463 and 94-579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet in formal session Friday, July 19, 1991, from 10 a.m. to 5 p.m., and Saturday, July 20, 1991, from 8 a.m. to 12 noon, in the Convention "C" meeting room in the Holiday Inn at 15494 Palmdale Road in Victorville, California.

Agenda items for the meetings will include:

- Subcommittee report on the Canyon Lake Public Land Parcel.
- Back Country Byway proposals and recommendations for Fiscal Year 1991.
- Updates on proposed Desert District issues, which include: Fort Irwin Expansion; Fort Irwin-Twenty-nine

Palms Tank Trail; Hazardous Material disposal sites; and landfill sites.

—A report from the California Deserts District's Futuring committee.

—Briefings on Long Term Visitor Area Management and the Mule Mountain LTVA designation; Eastern Sierra Land Tenure Project; cultural diversity in recreational use of Public Lands; and air quality issues.

—A review and update on the current status of BLM's Wilderness package.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

FOR FURTHER INFORMATION AND MEETING

CONFIRMATION: Contact the Bureau of Land Management, California Desert District, Public Affairs Office, 6221 Box Springs Boulevard, Riverside California 92507-0714; (714) 653-6950.

Dated: May 31, 1991.

Gerald E. Hillier,

District Manager.

[FR Doc. 91-13453 Filed 6-6-91; 8:45 am]

BILLING CODE 4310-40-M

[CO-070-01-4212-13; C-50854]

Realty Action—Exchange; Colorado

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Correction of, and amendment to, notice of realty action—exchange.

SUMMARY: This notice corrects errors in the description of the lands described in the notice of realty action published on Monday, March 11, 1991, in Vol. 56, No. 47, page 10281, and amends the notice to include additional lands.

Corrections

Lands described as being in T. 8 N., R. 90 W., should read as being in T. 9 N., R. 90 W., and lands described as being in T. 8 N., R. 94 W., Secs. 28, 29, 30, 31, and 32 should read as being in T. 9 N., R. 94 W., Secs. 28, 29, 30, 31, and 32.

Additional Lands

The notice is amended to include the following-described lands:

Sixth Principal Meridian, Colorado

T. 8 N., R. 90 W.,
Section 8; Lots 16 through 23
T. 9 N., R. 91 W.,
Sections 13, 15, and 17
T. 9 N., R. 95 W.,
Sections 28, 29, 30, 31, 32, and 33
T. 9 N., R. 96 W.,

Sections 8, 9, 16, 17, 20, 29, 30, 31, and 32
T. 8 N., R. 97 W.,
Sections 1, 2, 11, and 12

The publication of this notice in the **Federal Register** will segregate the lands described above to the same extent as described in the original notice.

FOR FURTHER INFORMATION CONTACT:

Additional information concerning the lands proposed for exchange is available for review in the Little Snake Resource Area Office, 1280 Industrial Avenue, Craig, Colorado 81625 and the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602.

For a period of 30 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Craig District, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625.

Dated: May 30, 1991.

William Pulford,
District Manager, Craig District.

[FR Doc. 91-13454 Filed 6-6-91; 8:45 am]

BILLING CODE 4310-JB-M

[ID-942-01-4730-12]

Idaho: Filing of Plats of Survey

The supplemental plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., May 30, 1991.

The supplemental plat prepared to correct the parenthetical distance of the east ½ of the west ½ mile on the south boundary of section 31, which charges the distance of 21.21 chains to 20.21 chains, T. 5 S., R. 18 E., Boise Meridian, Idaho, was accepted May 28, 1991.

This plat was prepared to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: May 30, 1991.

Duane E. Olsen,
Chief Cadastral Surveyor for Idaho.

[FR Doc. 91-13455 Filed 6-6-91; 8:45 am]

BILLING CODE 4310-66-M

[NM-940-4214-10; NMMN 86060]

Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 40 acres of public land in Otero County, to relocate and establish the Berrendo Camp Administrative Site. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by September 5, 1991.

ADDRESSES: Comments and meeting requests should be sent to the New Mexico State Director, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504-1449.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, Bureau of Land Management, New Mexico State Office, 505-988-6071.

SUPPLEMENTARY INFORMATION: On May 31, 1991, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

New Mexico Principal Meridian

T. 23 S., R. 15 E.,
Sec. 9, NW¼NW¼.

The area described contains 50 acres in Otero County.

The purpose of the proposed withdrawal is to relocate and establish the Berrendo Camp Administrative Site.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at

least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled, or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, or nonsurface-disturbing discretionary land use authorizations of a temporary nature, but only with the approval of an authorized officer of the Bureau of Land Management during the segregative period.

Dated: May 31, 1991.

Larry L. Woodard,
State Director.

[FR Doc. 91-13465 Filed 6-6-91; 8:45 am]

BILLING CODE 4310-FB-M

Bureau of Reclamation

[INT-FES-91-13]

Shasta Outflow Temperature Control, California

AGENCY: Bureau of Reclamation (Interior).

ACTION: Notice of availability of planning report/final environmental statement (PR/FES).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, the Department of the Interior, Bureau of Reclamation (Reclamation) has prepared a planning report/final environmental impact statement (PR/FES) on the Shasta Outflow Temperature Control Project. The PR/FES describes and presents the environmental effects of three alternatives, including no action, for utilizing the available cold water resources of Shasta Lake to improve water temperatures in the upper Sacramento River for the benefit of chinook salmon, particularly the State endangered/federally threatened winter run.

ADDRESSES: Copies of the PR/FES may be requested at the following addresses:

- Regional Director, (Attention: MP-750), Bureau of Reclamation, Mid-Pacific Regional Office, 2800 Cottage Way, Sacramento CA 95825-1898, telephone: (916) 978-5130.

Copies of the PR/FES are available for inspection at the address above and at the following locations:

- Bureau of Reclamation, Technical Liaison Division, 1849 C Street, NW., room 7456, Washington DC 20240, telephone: (202) 208-4662.

- Bureau of Reclamation, Denver Office Library, Building 67, room 167, Denver Federal Center, Denver CO 80225, telephone: (303) 236-6963.

Libraries: California State University, 2000 Jed Smith Dr., Sacramento, California; Sacramento County Library, 536 Downtown Plaza, Sacramento, California; Shasta County Public Library, 1855 Shasta, Redding, California; Tehama County Public Library, 645 Madison, Red Bluff, California; University of California, Water Resources Center, Berkely Archives Collection, Berkeley, California.

FOR FURTHER INFORMATION CONTACT: Colette Diede (Project Manager, Bureau of Reclamation, Mid-Pacific Region), (916) 978-4956; Douglas Kliensmith (Project Environmental Specialist, Bureau of Reclamation, Mid-Pacific Region), (916) 978-5121; or Dr. Wayne Deason (Manager, Environmental Services Staff, Bureau of Reclamation, Denver Federal Center), (303) 236-9336.

SUPPLEMENTARY INFORMATION: The PR/FES analyzes two action alternatives which would provide a permanent solution to the temperature problem in the upper Sacramento River. The recommended plan proposes construction of a conventional multilevel intake device that allows selective withdrawal of water. This device would allow releases to be made through the powerplant, thereby accessing the coldest water in Shasta Lake, and at the same time providing for temperature, water quality, and water-supply needs. Construction of the device would allow for withdrawals from various reservoir depths, either singly or in combination, to control the temperature, turbidity, and/or dissolved oxygen content of the releases. The other action alternative is a bypass of the Shasta Powerplant. This alternative would be an operational scheme designed to use the cold water resource in Shasta Lake without any structural changes, but which would be less effective in controlling temperature of releases and would result in a significant loss of electrical power production.

The PR/FES also presents the comments received during the 90-day public review of the draft statement and provides Reclamation's responses.

Dated: May 16, 1991.

D.W. Webber,

Assistant Commissioner, Engineering and Research.

[FR Doc. 91-13548 Filed 6-6-91; 8:45 am]

BILLING CODE 4310-09-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 is:

Louisiana-Pacific Corporation, 111 SW Fifth Ave., Portland, OR 97204

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation are:

- Kirby Forest Industries, Inc. (Delaware), Route 1, Box 104, Bon Wier, TX 75928
- Rounds & Porter Company (Delaware), 9233 Denton Dr., Dallas, TX 75235
- Rounds & Porter Company (Delaware), P.O. Box 1455, Dodge City, KS 67801
- Rounds & Porter Company (Delaware), P.O. Box 1395, Salina, KS 67402
- Rounds & Porter Company (Delaware), P.O. Box 470465, Tulsa, OK 74147

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-13535 Filed 6-6-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31887]

Chicago Southshore & South Bend Railroad Co.—Trackage Rights Exemption—Illinois Central Railroad

Illinois Central Railroad (IC) has agreed to grant Chicago Southshore & South Bend Railroad Company (CSS&SB) the right to use its existing overhead trackage rights—between milepost (AO) 39.0, at South Joliet, IL, and Kensington Station in Chicago, IL, near milepost 14—to interchange with The Belt Railway of Chicago at 95th Street in Chicago (approximately milepost 11.6±).¹ The trackage rights

¹ The referenced existing trackage rights were granted under a notice of exemption in Finance Docket No. 31236, *Chicago South Shore and South*

were to become effective on May 31, 1991.

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. Pleadings must be filed with the Commission and served on: Suzanne M. Te Beau, Weiner, McCaffrey, Brodsky, Kaplan & Levin, P.C., suite 800, 1350 New York Avenue, NW., Washington, DC 20005-4797.

As a condition to the 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: June 3, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland Jr.,

Secretary.

[FR Doc. 91-13536 Filed 6-6-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or

Bend Railroad—Trackage Rights—Illinois Central Gulf Railroad Company (not printed), served and published March 10, 1988 (53 FR 7812). CSS&SB is the successor to Chicago South Shore and South Bend Railroad Co. See Finance Docket No. 31575, *Chicago Southshore & South Bend Railroad Co.—Acquisition and Operation Exemption—Chicago South Shore and South Bend Railroad Co.* (not printed), served and published (55 FR 924) January 10, 1990.

threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 17, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 17, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training

Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 28th day of May 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

| Petitioner: Union/workers/firm-- | Location | Date received | Date of petition | Petition No. | Articles produced |
|--|-------------------------|---------------|------------------|--------------|--------------------------------------|
| AT&T Communications (wkrs)..... | Buffalo, NY..... | 05/28/91 | 05/21/91 | 25,856 | Communications Services. |
| B&S Testers Inc. (wkrs)..... | Gillette, WY..... | 05/28/91 | 05/17/91 | 25,857 | Oil Service. |
| Bestform Foundation (wkrs)..... | Johnstown, PA..... | 05/28/91 | 05/11/91 | 25,858 | Sleepwear. |
| Bogert Oil Co. (wkrs)..... | Oklahoma City, OK..... | 05/28/91 | 05/20/91 | 25,859 | Oil and Gas. |
| Carlton/Thyroco (wkrs)..... | Telford, PA..... | 05/28/91 | 05/16/91 | 25,860 | Dimmer Switches and Fan Controls. |
| Complab Technologies..... | Chicago, IL..... | 05/28/91 | 05/17/91 | 25,861 | Central Office Equip. |
| Dana Corp.—Parish Div. (USWA)..... | Reading, PA..... | 05/28/91 | 05/15/91 | 25,862 | Vehicle Frames. |
| Darawool Inc. (wkrs)..... | Queens Village, NY..... | 05/28/91 | 05/18/91 | 25,863 | Steel Wool. |
| Electronic Services Inc. (wkrs)..... | Portland, OR..... | 05/28/91 | 05/14/91 | 25,864 | Telephone Devices. |
| Ensearch Exploration, Inc. (wkrs)..... | Midland, TX..... | 05/28/91 | 05/15/91 | 25,865 | Oil and Gas. |
| Fayscott Co. (wkrs)..... | Dexter, ME..... | 05/28/91 | 05/14/91 | 25,866 | Gear Hobbers and Surface Grinders. |
| Fiatallis North America, Inc. (company)..... | Irving, TX..... | 05/28/91 | 05/15/91 | 25,867 | Construction Machinery. |
| Fiatallis North America, Inc. (company)..... | Carol Stream, IL..... | 05/28/91 | 05/15/91 | 25,868 | Construction Machinery. |
| Fiatallis North America, Inc. (company)..... | Portsmouth, VA..... | 05/28/91 | 05/15/91 | 25,869 | Construction Machinery. |
| Fiatallis North America, Inc. (company)..... | W. Sacramento, CA..... | 05/28/91 | 05/15/91 | 25,870 | Construction Machinery. |
| Fiatallis North America, Inc. (company)..... | Stone Mountain, GA..... | 05/28/91 | 05/15/91 | 25,871 | Construction Machinery. |
| Fiatallis North America, Inc. (company)..... | Springfield, IL..... | 05/28/91 | 05/15/91 | 25,872 | Construction Machinery. |
| Fiatallis North America, Inc. (company)..... | Cranbury, NJ..... | 05/28/91 | 05/15/91 | 25,873 | Construction Machinery. |
| Herman Geist Apparel Corp. (ILGWU)..... | Norwood, MA..... | 05/28/91 | 05/17/91 | 25,874 | Apparel. |
| IMC Magnetics Corp. (Florida Div.) (wkrs)..... | Miami Lakes, FL..... | 05/28/91 | 05/13/91 | 25,875 | Power Supplies. |
| Jerell, Inc.—San Antonio Mfg. (wkrs)..... | San Antonio, TX..... | 05/28/91 | 05/17/91 | 25,876 | Clothing. |
| JMS Inc. (wkrs)..... | Parachute, CO..... | 05/28/91 | 05/15/91 | 25,877 | Kerogen—Oil and Oil Products. |
| Keptel, Inc. (wkrs)..... | Tinton Falls, NJ..... | 05/28/91 | 05/17/91 | 25,878 | Telephone Network Devices. |
| Keystone Fireworks Mfg. Co., Inc. (wkrs)..... | Dunbar, PA..... | 05/28/91 | 05/20/91 | 25,879 | Fireworks. |
| Mallon Resources Corp. (wkrs)..... | Denver, CO..... | 05/28/91 | 05/03/91 | 25,880 | Gold and Silver. |
| North American Royalties, Inc. (wkrs)..... | Lafayette, LA..... | 05/28/91 | 05/16/91 | 25,881 | Oil and Gas. |
| Procter and Gamble Mfg. Co. (wkrs)..... | Avenel, NJ..... | 05/28/91 | 05/15/91 | 25,882 | Oils and Beauty Care Products. |
| Procter and Gamble Mfg. Co. (wkrs)..... | Staten Island, NY..... | 05/28/91 | 05/15/91 | 25,883 | Soap and Juice Products. |
| Richwoods Mining Co., (wkrs)..... | Richwoods, MO..... | 05/28/91 | 05/15/91 | 25,884 | Tiff, Barite and Barium Sulphate. |
| Seneca Wire & Mfg. Co., (UAW)..... | Fostonia, OH..... | 05/28/91 | 05/13/91 | 25,885 | Steel Wire. |
| Textronix Inc.—ACC, (wkrs)..... | Beaverton, OR..... | 05/28/91 | 05/12/91 | 25,886 | Chemical Components. |
| United Technologies Auto (ACTWU)..... | Herrin, IL..... | 05/28/91 | 05/16/91 | 25,887 | Auto Package Trays. |
| Vancouver Extrusion Co., Inc. (wkrs)..... | Vancouver, WA..... | 05/28/91 | 05/08/91 | 25,888 | Aluminum Frames and Component Parts. |

[FR Doc. 91-13515 Filed 6-8-91; 8:45 am]

BILLING CODE 4510-30-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 have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the

minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal

Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3014, 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

| | |
|------------------------------|-------------------------|
| Connecticut: | |
| CT91-1 (Feb. 22, 1991)..... | p. 63, p. 65. |
| District of Columbia: | |
| DC91-1 (Feb. 22, 1991)..... | p. 79, pp. 80, 83-84. |
| Florida: | |
| FL91-36 (Feb. 22, 1991)..... | p. 185, p. 186. |
| Tennessee: | |
| TN91-4 (Feb. 22, 1991)..... | p. 1199, pp. 1200-1201. |
| Virginia: | |
| VA91-52 (Feb. 22, 1991)..... | p. 1363. |
| West Virginia: | |
| WV91-2 (Feb. 22, 1991)..... | p. 1421, p. 1425. |
| WV91-3 (Feb. 22, 1991)..... | p. 1445, p. 1448. |

Volume II

| | |
|------------------------------|------------------------|
| Illinois: | |
| IL91-11 (Feb. 22, 1991)..... | p. 163, pp. 164-165. |
| IL91-12 (Feb. 22, 1991)..... | p. 171, pp. 172-174. |
| IL91-13 (Feb. 22, 1991)..... | p. 183, pp. 184-186. |
| IL91-14 (Feb. 22, 1991)..... | p. 195, pp. 196-198. |
| IL91-15 (Feb. 22, 1991)..... | p. 205, pp. 206-208. |
| Indiana: | |
| IN91-3 (Feb. 22, 1991)..... | p. 279, pp. 280, 282. |
| Kansas: | |
| KS91-8 (Feb. 22, 1991)..... | p. 373, p. 376. |
| KS91-10 (Feb. 22, 1991)..... | p. 387, p. 388. |
| KS91-11 (Feb. 22, 1991)..... | p. 389, p. 399. |
| Oklahoma: | |
| OK91-16 (Feb. 22, 1991)..... | p. 999, pp. 1000-1001. |

Volume III

| | |
|------------------------------|-----------------|
| Alaska: | |
| AK91-1 (Feb. 22, 1991)..... | p. 1, pp. 2-3. |
| Nevada: | |
| NV91-1 (Feb. 22, 1991)..... | p. 299, p. 301. |
| NV91-5 (Feb. 22, 1991)..... | p. 345, p. 346. |
| Utah: | |
| UT91-3 (Feb. 22, 1991)..... | p. 409, p. 410. |
| UT91-8 (Feb. 22, 1991)..... | p. 429, p. 430. |
| UT91-9 (Feb. 22, 1991)..... | p. 433, p. 434. |
| UT91-11 (Feb. 22, 1991)..... | p. 437, p. 438. |
| UT91-12 (Feb. 22, 1991)..... | p. 439, p. 440. |
| Washington: | |
| WA91-8 (Feb. 22, 1991)..... | p. 507, p. 508. |

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC., this 31st day of May 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-13299 Filed 6-6-91; 8:45 am]

BILLING CODE 4510-27-M

Pension and Welfare Benefits Administration

[Application No. D-8600, et al.]

Proposed Exemptions; Gemco Ware, Inc. Amended and Restated Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits

Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Gemco Ware, Inc. Amended and Restated Pension Plan (the Plan) Located in Freeport, New York

[Application No. D-8600]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of mortgage loan participation interests (the Participations) to Walter Schlessel (Schlessel), a party in interest with respect to the Plan; provided that the sale price is no less than the greater of (1) the principal amount of the

Participations plus accrued interest to the date of sale, or (2) the fair market value of the Participations as of the date of the sale.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with 27 participants and assets of approximately \$420,000 as of June 30, 1990. The Plan's sponsor is Gemco Ware, Inc. (the Employer), a closely-held New York corporation engaged in the manufacture and marketing of kitchenware products in Freeport, New York. Until May 31, 1990 Schlessel and his spouse were the sole shareholders of the Employer and Schlessel was the Plan's trustee. On May 31, 1990, pursuant to a stock purchase agreement (the Agreement), Schlessel and his spouse sold all shares of the Employer to GW Products, Inc. (GWP), a New York corporation which is 90 percent owned by Triumph Capital, L.P. (Triumph), a New York limited partnership. Since May 31, 1990, the trustees of the Plan (the Trustees) have been Michael Nugent, a general partner of Triumph, and Herbert Lustig, an employee of GWP. Schlessel has continued as an officer and director of the Employer and he and his spouse each own five percent of the shares of GWP. As an element of the sale of the Employer to GWP, the Agreement provides that, subject to approval of the Department, GWP shall cause the Plan to sell the Participations to Schlessel. The Trustees are requesting an exemption to permit the Plan's sale of the Participations to Schlessel pursuant to the Agreement under the terms and conditions described herein.

2. The Participations consist of investments of Plan assets by Schlessel in mortgage participations sold by Eagle SA Funding Company (Eagle), a New York general partnership engaged in the sale of participations in mortgage loans.¹ On November 20, 1986, the Plan purchased from Eagle for \$130,000 an undivided interest in a \$190,000 mortgage loan made by Eagle to Samanthe Farms (the SF Participation). On December 1, 1986 the Plan purchased from Eagle for \$70,000 an undivided interest in a \$379,500 mortgage loan from Eagle to Lot B 37 Sarles Street, Inc. (the Lot B Participation). Each of the

¹ The Department expresses no opinion as to whether the investments of Plan assets in the Participations were in violation of section 404(a) of the Act. Section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interests of the plan's participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

Participations provided for interest at the rate of sixteen percent per annum and each was guaranteed as to principal and interest payments by the two partners of Eagle. The terms of each Participation required monthly payments of interest and a final lump sum payment of principal upon maturity. The Trustees represent that the borrowers who mortgaged the underlying real properties with respect to the Participations were unrelated to the Plan.

The Plan began receiving monthly interest payments of \$1,733.00 in accordance with the SF Participation on December 20, 1986 and monthly payments in that amount were received through May 20, 1989, at which time payments ceased. No interest payments with respect to the SF Participation have been received by the Plan since May 20, 1989 and no principal payments with respect to the SF Participation were received by the Plan. The Plan began receiving monthly interest payments of \$933.33 in accordance with the Lot B Participation on January 1, 1987 and monthly payments in that amount were received through May 1, 1989, at which time the payments ceased. No interest payments with respect to the Lot B Participation have been received by the Plan since May 1, 1989 and no principal payments with respect to the Lot B Participation were received by the Plan. The Trustees represent that interest payments received by the Plan with respect to the Participations were paid by Eagle and that the Plan received no payments from and had no direct contact with the mortgagors of the mortgages underlying the Participations.

3. By a letter dated May 18, 1989, Eagle notified Schlessel as Plan trustee that the mortgagors of the mortgages underlying the Participations had defaulted on their interest payments to Eagle and that Eagle's interest payments to the Plan pursuant to the Participations were being suspended due to Eagle's cash flow problems. On June 10, 1990 the Plan received notice that Eagle filed a voluntary bankruptcy petition in the U.S. District Court for the Southern District of New York on May 10, 1990. The Agreement executed May 31, 1990, under which Schlessel sold all shares of the Employer to GWP, reflected the Trustees' determination that Schlessel should restore to the Plan losses caused by investments in the Participations by purchasing the Participations from the Plan.

4. The Agreement requires Schlessel to pay the Plans cash for the Participations in their face amounts, which is \$130,000 for the SF

Participation and \$70,000 for the Lot B Participation, plus all interest accrued but unpaid under such Participations as of the date of the sale to Schlessel. The Trustees represent that these sale terms were negotiated at arm's length between Schlessel and the principals of Triumph, which they represent to have been unrelated at the time of the execution of the Agreement. The Trustees represent that an escrow agreement (the Escrow) was executed on November 16, 1990 between Schlessel and the Trustees, pursuant to which Schlessel deposited into an escrow account the face amount of the Participations plus accrued, unpaid interest calculated as of November 16, 1990 and the Trustees deposited all indicia of the Plan's ownership of the Participations. If the requested exemption is granted, the Plan will receive the cash in the Escrow plus cash representing additional accrued, unpaid interest through the date of the consummation of the proposed transaction.

5. The Trustees represent that the proposed sale of the Participations to Schlessel upon the terms provided in the Agreement is in the best interests of the Plan because the Participations do not have values in excess of their face amounts. With respect to the Lot B Participation, the Trustees state that the real property securing the mortgage underlying the Lot B Participation has been foreclosed upon by other parties with claims superior to Eagle's and that as a result the Plan's lien on the underlying real property, associated with the Lot B Participation, has been extinguished. With respect to the SF Participation, the Trustees state that efforts by Eagle's creditors to liquidate the underlying real property have been unsuccessful and that proceeds of any such sale must first satisfy more senior indebtedness of approximately \$900,000 and then be shared by the Plan with six other creditors who claims similar to the Plan's Lot B Participation. Furthermore, the Trustees represent that the Plan no longer has an exclusive claim on the proceeds of any foreclosure action with respect to the Participations because the Plan's interests in the Participations were assigned to the bankruptcy in cooperation with and for the benefit of all other creditors of Eagle (the Creditors) in Eagle's bankruptcy proceeding. The Trustees represent that they assigned the Plan's interests under the Participations to the bankruptcy estate in concert with the Creditors, who hold conflicting interests issued by Eagle in the same underlying real properties, because the nature and priorities of the various claims are

unclear and inadequately documented and because counsel to the Creditors advised that legal action would commence against any Eagle investors who did not join in assigning interests for the benefit of all Creditors.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plan will recover its principal investment in the Participations plus the accrued, unpaid interest required by the Participations' terms through the date of the transfer; (2) The Plan will receive cash for the Participations, which the Trustees have determined to have no value in excess of their face amounts; and (3) The Plan will avoid further illiquidity and loss of income resulting from the investments in the Participations, which constitute about one-half of the Plan's assets.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202)523-8881. (This is not a toll-free number.)

Merrill Lynch, Pierce, Fenner & Smith Incorporated

[Application No. D-8603]

Proposed Exemption

Based on the facts and representations set forth in the above referenced application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

I. Transactions

(a) The restrictions of sections 406(a)(1) (A) through (D) and 406(b) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (F) of the Code shall not apply to the following transactions in connection with purchases and sales of securities issued by a Merrill Lynch Mutual Fund, if the conditions set forth in sections II and III are met.

(1) The effecting by a Distributor of a purchase or sale on behalf of a plan of securities issued by a Merrill Lynch Mutual Fund.

(2) The receipt of a sales commission by a Distributor in connection with the purchase or sale by a plan of securities issued by a Merrill Lynch Mutual Fund.

II. General Conditions

(a) The transaction is affected by the Distributor in the ordinary course of its

business as an investment company principal underwriter.

(b) The transaction is on terms at least as favorable to the plan as an arm's-length transaction with an unrelated party would be.

(c) The combined total of all fees, commissions and other consideration received by a Distributor for the provision of services to the plan and in connection with the purchase or sale of securities issued by a Merrill Lynch Mutual Fund is not in excess of "reasonable compensation" within the contemplation of sections 408(b)(2) and 408(c)(2) of the Act and sections 4975(d)(2) and 4975(d)(10) of the Code. If such total is in excess of "reasonable compensation," the "amount involved" for purposes of the civil penalties of section 502(i) of the Act and the excise taxes imposed by section 4975 (a) and (b) of the Code is the amount of compensation in excess of "reasonable compensation."

III. Specific Conditions

(a) The Distributor is not (1) a trustee of the plan (other than by reason of serving as a nondiscretionary trustee who does not render investment advice with respect to any assets of the plan or a trustee of the GIC Trust); (2) a plan administrator (within the meaning of section 3(16)(A) of the Act and section 414(g) of the Code); or (3) a fiduciary who is expressly authorized in writing to manage, acquire or dispose on a discretionary basis of those assets of the plan that are or could be invested in securities issued by a Merrill Lynch Mutual Fund or in units of the GIC Trust; or (4) an employer any of whose employees are covered by the plan.

(b) Prior to the execution of a transaction, the Distributor provides to an independent plan fiduciary with respect to the plan:

(1) A written document separate from the fund prospectus which lists, for each investment, the types of information required to be disclosed under paragraph (2) of this subsection, and describes where such information can be located; and

(2) The following information in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in investment matters:

(A) The nature of the Distributor's relationship to the Merrill Lynch Mutual Fund and the limitation, if any, that such relationship places upon its ability to recommend investment company securities.

(B) The sales commission, expressed as a percentage of the dollar amount of

the plan's gross payment and of the amount actually invested, that will be received by the Distributor in connection with the purchase or sale of the recommended securities issued by the investment company;

(C) A detailed description of any other charges, fees, discounts, penalties, or adjustments which may be imposed in connection with the purchase, holding, exchange, termination or sale of such securities.

(D) A description of the investment objectives and policies of the Fund or Funds whose securities are being purchased or sold, and the principal risk factors associated with investment in such Fund or Funds;

(E) A description of the management of the Fund or Funds, including the board of directors and the investment adviser and their affiliations (if any) with Merrill Lynch, and any other person or persons who provide significant administrative or business affairs management services;

(F) A statement of expenses of the Fund or Funds;

(G) A description of the procedure or procedures for redeeming securities of the Fund or Funds;

(H) A description of any material pending legal proceedings involving the Fund or Funds.

(3) Following receipt of the information required to be disclosed in paragraphs (b) (1) and (2) of this section, and prior to the execution of the transaction, the Independent Fiduciary approves the transaction on behalf of the Plan. Such fiduciary may be an employer of employees covered by the plan, but may not be a principal underwriter involved in the transaction. Such fiduciary may not receive, directly or indirectly (e.g., through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(c)(1) With respect to additional purchases of securities issued by Merrill Lynch Mutual Funds, the written disclosure required under paragraphs (b) (1) and (2) of this section need not be repeated, unless—

(A) More than one year is passed since such disclosure was made with respect to the same kind of security, or

(B) The security being purchased or sold or the commission with respect thereto is materially different from that for which the approval described in subparagraph (b)(3) of this section was obtained.

(d)(1) The Distributor shall retain or cause to be retained for a period of six

years from the date of any transaction covered by this exemption the following:

(A) The information disclosed with respect to such transaction pursuant to paragraphs (b) and (c) of this section; and

(B) Any additional information or documents provided to the Independent Fiduciary described in paragraph (b) of this section with respect to such transaction.

(2) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the Distributor, such records are lost or destroyed prior to the end of such six-year period.

(3) Notwithstanding anything to the contrary in sections 504 (a)(2) and (b) of the Act, such records are unconditionally available for examination during normal business hours by duly authorized employees or representatives of the Department of Labor, the Internal Revenue Service, plan participants and beneficiaries, any employer of plan participants and beneficiaries, and any employee organization any of whose members are covered by the plan.

IV. Definitions

For purposes of this exemption:

(a) The term "Merrill Lynch Mutual Fund" means any investment company registered under the Investment Company Act of 1940 for which Merrill Lynch Asset Management, Inc. or Fund Asset Management, Inc. serves as investment adviser, and for which a Distributor serves as principal underwriter (as that term is defined in section 2(a)(29) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(29)).

(b) The term "Distributor" means Merrill Lynch Funds Distributor, Inc., and Merrill Lynch, Pierce, Fenner & Smith Incorporated or any affiliate.

(c) The term "affiliate" means:

(1) Any direct or indirect wholly-owned subsidiary of Merrill Lynch & Co., Inc.;

(2) Any person directly or indirectly controlling, controlled by, or under common control with Merrill Lynch, Pierce, Fenner & Smith Incorporated or Merrill Lynch Funds Distributor, Inc.;

(3) Any officer, director, employee (including, in the case of a principal underwriter, any registered representative thereof, whether or not such person is a common law employee of such principal underwriter), or relative of any such person, or any partner in such person; or

(d) The term "control" means the power to exercise a controlling influence

over the management or policies of a person other than an individual.

(e) The term "GIC Trust" means the Merrill Lynch GIC Managed Trust, a qualified group trust within the meaning of Revenue Ruling 81-100, of which Merrill Lynch Trust Company (or its successor) serves as trustee.

(f) The term "Independent Fiduciary" means a fiduciary with respect to a plan, which fiduciary has no relationship to or interest in a Distributor that might affect the exercise of such fiduciary's best judgment as a fiduciary.

(g) The term "nondiscretionary trustee" of a plan means a trustee whose powers and duties with respect to any assets of the plan are limited to (1) the provision of nondiscretionary trust services to the plan, and (2) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term "nondiscretionary trust services" means custodial services and services ancillary to custodial services, none of which services are discretionary.

(h) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

EFFECTIVE DATE: If granted, this exemption will be effective June 7, 1991.

Summary of Facts and Representations

1. Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"), is a wholly-owned subsidiary of Merrill Lynch & Co., Inc. (referred to herein, along with other subsidiaries of Merrill Lynch & Co., Inc., collectively as "Merrill Lynch Affiliates"). MLPF&S is one of the world's largest securities firms. Incorporated in 1953, MLPF&S is currently a registered broker-dealer under the Securities Exchange Act of 1934 and a member of the various securities and futures exchanges. In the course of its activities, MLPF&S is subject to regulation by the Securities and Exchange Commission, the National Association of Securities Dealers, Inc., the National Futures Association, and various other federal and state agencies. MLPF&S is also registered as an investment adviser with the Securities and Exchange Commission, as well as with certain states that require such registration.

MLPF&S provides a variety of services to employee pension benefit plans including the execution of securities transactions, custodial services for plan securities and recordkeeping services. In certain instances, MLPF&S may also invest plan funds in accordance with

standing instructions (either plan-level instructions or participant-level instructions, depending on the type of plan). These services and other Merrill Lynch Affiliate services and financial products provided to employee benefit plans are marketed principally through MLPF&S brokers (who are referred to as "Financial Consultants"). MLPF&S and the Financial Consultants may receive commissions or other compensation based on the services or investment products sold through their efforts.

2. Merrill Lynch Funds Distributor, Inc. (MLFD), a wholly-owned subsidiary of Merrill Lynch Asset Management, Inc. (MLAM) (which is in turn an indirect wholly-owned subsidiary of Merrill Lynch & Co., Inc.), generally acts as the principal underwriter (as defined in section 2(a)(29) of the Investment Company Act of 1940) for Merrill Lynch Mutual Funds (described below).² MLFD is a registered broker-dealer under the Securities Exchange Act of 1934, and is subject to the regulatory requirements of the Investment Company Act of 1940.

MLFD offers shares of Merrill Lynch Mutual Funds on a continuous basis under distribution agreements with each Fund. MLFD markets and sells these shares through MLPF&S, with which it has entered into a selling securities dealer agreement.

3. Merrill Lynch Trust Company (MLTC) is a wholly-owned subsidiary of Merrill Lynch & Co., Inc., which was incorporated in 1987. It is a New Jersey state-chartered qualified bank and limited purpose trust company, subject to regulation and periodic examination by the New Jersey Department of Banking and supervisory control of the New Jersey Commissioner of Banking. MLTC provides nondiscretionary trust services to plans, and serves as trustee of the GIC Trust. As trustee of the GIC Trust, MLTC does not have any discretionary authority, responsibility, or control with respect to assets of a participating plan that could be used to purchase Merrill Lynch Mutual Fund shares or units in the GIC Trust.

4. The Merrill Lynch Mutual Funds which are the subject of this proposed exemption are open-end investment companies registered under the Investment Company Act of 1940 for which MLAM or Fund Asset Management, Inc., a wholly-owned subsidiary of MLAM, served as the investment adviser. There are over 70 Merrill Lynch Mutual Funds holding approximately \$94 billion in assets. The funds offer different levels of risk and a range of choices of investment

objectives, such as capital preservation, current income, or long-term or short-term growth. Plan fiduciaries may invest plan assets in such funds, and sponsors of participant-directed account plans may select appropriate Merrill Lynch Mutual Funds as investment options for their plan participants. Shares of Merrill Lynch Mutual Funds are redeemable upon receipt by MLPF&S or a Fund's transfer agent upon proper notice of redemption. Proceeds from such redemption are generally received either into the investor's MLPF&S securities account within 5 business days after the date of the transaction, or by check within two weeks.

MLFD and MLPF&S are compensated for their distribution and sales expenses through one of two methods depending on the type of shares sold. The Mutual Funds generally offer two classes of shares, Class A and Class B. Class A shares are sold subject to a front-end sales load, or sales commission, that is paid at the time of sale to the broker-dealer (MLPF&S or MLFD) responsible for the sale. Shares acquired upon automatic reinvestment of dividends or capital gains distributions from Class A shares are not subject to the sales load, and the sales load may be waived or reduced under certain conditions described in the Mutual Fund prospectuses.

Class B shares are not subject to an initial front-end load, but rather to a contingent deferred sales charge upon disposition of the shares and to ongoing distribution fees. The deferred sales charge declines as the number of years between the purchase and sale of the shares increases, and generally expires after 6 years, depending on the particular fund. The ongoing distribution fees are charged against the fund's net asset value represented by the Class B shares, in accordance with a distribution plan adopted by the fund pursuant to the requirements of Rule 12b-1 of the Investment Company Act of 1940.

In selling Merrill Lynch Mutual Fund shares to plans, Merrill Lynch Affiliates have, when appropriate, relied upon the relief afforded by Prohibited Transaction Exemption 84-24 (PTE 84-24, 49 FR 13208, April 3, 1984).

5. The Merrill Lynch Affiliates have developed the Merrill Lynch GIC Managed Trust (GIC Trust or Trust). The Trust is a qualified group trust maintained under Revenue Ruling 81-100 by Merrill Lynch Trust Company (MLTC), a Merrill Lynch Affiliate.

The assets of the Trust are invested in GICs, bank investments contracts, and other investments with similar characteristics, as well as money market

instruments. The Trust's assets are not and will not be invested in contracts issued by, or in funds advised or managed by, Merrill Lynch Affiliates. As of December 31, 1990, the Trust contained approximately \$145 million in assets. For the first six months of 1990, the Trust assets earned a net annual effective yield of 8.5 percent.

The Trust is maintained as a bank collective trust fund. MLTC, as trustee, is required under applicable banking law to have discretion as to the investment of trust assets. Thus, MLTC has the responsibility for the maintenance, investment, reinvestment, and administration of the GIC Trust. The assets of the GIC Trust consist of investments that MLTC, in its sole discretion, determines to be suitable and appropriate for the Trust.

Under the Declaration of Trust, MLTC may retain investment advisers, who may be affiliates of MLTC. MLTC has retained MLAM as its investment adviser. MLAM's investment advisory role is limited to assisting MLTC in formulating a list of approved investments for the GIC Trust and in making investment recommendations based on its monitoring of the guaranteed investments market and the specific investments held by the Trust. MLAM has no discretion in the decision of how the GIC Trust assets are invested. MLAM's compensation for providing investment advice is paid by MLTC from its fee.

Units in the Trust are marketed and sold through MLPF&S, primarily through its Financial Consultants and business financial services department.³ There are no direct sales charges to unit holders. Sales and marketing expenses and sales commissions are paid out of MLTC's fee.

6. PTE 84-24 provides relief from the prohibitions of sections 406(a)(1)(A) through (D) and 406(b) of the Act, and from the taxes imposed by section 4975 of the Code for certain classes of transactions involving plan purchases, of insurance or annuity contracts and of securities issued by registered investment companies, and the receipt of sale commissions in connection therewith. However, no relief is available under PTE 84-24 if the investment company principal underwriter or its affiliate is a plan trustee other than a discretionary trustee who does not render investment

² In certain limited cases, MLPF&S acts as the principal underwriter for certain of these funds.

³ The Department notes that this exemption provides no relief for any prohibited transaction that may occur as a result of a plan's purchase or sale of units in the GIC Trust. See section 408(b)(8) of the Act.

advice with respect to any plan assets. MLTC is a trustee other than a nondiscretionary trustee with respect to plans that purchase interests in the GIC Trust. Consequently, the relief provided by PTE 84-24 is unavailable to those Merrill Lynch Affiliates which sell Merrill Lynch Mutual Fund shares to plans that have invested in the GIC Trust.

7. The applicant requests relief to permit a Distributor to effect a purchase or sale of securities issued by a Merrill Lynch Mutual Fund on behalf of a plan and to receive a sales commission in connection with such purchase or sale. The applicant represents that it will, in general, comply with the conditions in PTE 84-24. The applicant also represents that the trustee of the GIC Trust does not have any discretionary authority, responsibility or control with respect to assets of a participating plan that could be used to purchase Merrill Lynch Mutual Fund Shares. Finally, the applicant has suggested additional conditions for the protection of the participants and beneficiaries of the plan, including the provision of more detailed disclosure.

8. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because: (a) The decision to invest in a Merrill Lynch Mutual Fund will be made by an independent plan fiduciary; (b) the independent plan fiduciary will receive prior to making an investment decision, detailed disclosures regarding fees, investment objectives and other relevant information; (c) all the transactions will be conducted on an arm's-length basis; and (d) the combined total of all fees, commissions, and other consideration received by a Merrill Lynch affiliate in connection with purchase and sale transactions involving Merrill Lynch Mutual Fund shares will not be in excess of reasonable compensation within the meaning of sections 408(b)(2) and 408(c)(2) of the Act.

FOR FURTHER INFORMATION CONTACT: Ms. Lyssa E. Hall of the Department at (202) 523-8971. (This is not a toll-free number.)

Electro-Matic Products, Inc. Profit Sharing Plan (the Plan) Located in Farmington Hill, Michigan

[Application No. D-8664]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code in accordance with the procedures set

forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain vacant land (the Land) to Electro-Matic Products Inc. (the Employer), the sponsor of the Plan; provided that the Plan receives the greater of \$260,000 or the fair market value at the time of the sale.

Summary of Facts and Representations

1. The Plan, established on January 1, 1974, is a profit sharing plan with five participants, which as of September 30, 1990 had \$1,756,710.10 in total assets. The applicant represents that the Plan provides for individual accounts. The Employer, which is in the business of distributing automotive equipment, was incorporated in the State of Michigan on June 1, 1969. The trustees of the Plan are Raymond J. Persia, Tom C. Moore and Robert Waldie, who collectively own 100% of the common stock of the Employer. The Plan was terminated on December 10, 1989 by the action of the Board of Directors of the Employer. The applicant represents that a form 5310 (Application for Determination upon Termination) was filed with the Internal Revenue Service (IRS) on June 8, 1990. IRS has issued a favorable determination on the termination by letter dated August 27, 1990.

2. The Plan acquired the Land on March 6, 1979 for investment purposes from John and Eileen Cole, independent parties with respect to the Plan and the Employer. The acquisition was for \$218,000 in cash. The Land, located in Bear Creek Township in northwest upper Michigan, is a 4.7 acre parcel of vacant land. An appraisal of the Land was prepared on November 7, 1990, by Lloyd G. Kirby, MAI and Michael L. Navarre, RM (The Appraisers), independent and qualified Appraisers with Michigan Appraisal Company, Inc. The Appraisers relied primarily on the sales comparison appraisal method and determined that as of November 7, 1990, the fair market value of the Land was \$260,000.⁴ The applicant represents that the Land is not adjacent to any other property owned by parties in interest. Furthermore, the Land has never been used by or leased to any parties in interest.

⁴ The Department is providing no opinion herein as to whether the Plan's acquisition or holding of the Land violated any provision of part 4 of title I of the Act.

3. The applicant represents that the Plan will experience economic hardship if the transaction is denied because the Plan will be prevented from liquidating the assets that are currently invested in the Land. The applicant also represents that the Plan has unsuccessfully attempted to sell the Land since its initial acquisition in 1979. The Plan has retained the services of four different realtors in its attempts to sell the Land. As such, the denial of the proposed transaction would delay and possibly reduce the amount of cash distributions to the Plan participants. Furthermore, the proposed sale will be for cash and the Plan will incur no expenses with respect to the transaction. Therefore, the applicant represents that the proposed sale is administratively feasible, protective and in the best interest of the Plan.

4. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one-time cash transaction;

(b) The price paid to the Plan will be the greater of \$260,000 or the fair market value as determined at the time of the sale by an independent, qualified appraiser;

(c) The Plan will pay no expenses associated with the transaction; and

(d) The sale will enable the Plan to liquidate its assets and, upon termination, to make cash distributions to the Plan participants.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate

for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 4th day of June, 1991.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.*

[FR Doc. 91-13513 Filed 6-6-91; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On April 29, 1991, the National Science Foundation published a notice in the Federal Register of permit applications received. A permit was issued to Richard R. Veit on June 3, 1991: The applicant's request to take birds was

approved in part. Approval was granted to take the following specimens:

| Species | Number |
|----------------------------|--------|
| Cape Pigeon | 10 |
| Snow Petrel | 10 |
| Blue Petrel | 10 |
| Antarctic Fulmar | 10 |
| Dove Prion | 10 |
| Fairy Prion | 2 |
| Kerguelen Petrel | 5 |
| Common Diving-Petrel | 20 |

Special Conditions:

- All specimens should be collected at sea.
- No specimens should be taken while ashore.
- Species of seabird prohibited from collection:
 - Wandering and grey-headed albatrosses.
 - Grey-black storm petrels.
 - Emperor penguins.
 - Yellow-bill Pintails.
 - Pipits.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 91-13473 Filed 6-6-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-261]

Carolina Power & Light Co., H.B. Robinson Steam Electric Plant, Unit No. 2, Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Carolina Power & Light Company (the licensee) for an amendment to Facility Operating License No. DPR-23, issued to the licensee for operation of the H.B. Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina. Notice of Consideration of Issuance of this amendment was published in the Federal Register on March 20, 1991 (56 FR 11774).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to change the one-point calibration check of the excore nuclear power range detectors from a monthly interval to an interval of at least once per effective full power month. The NRC staff has concluded that the licensee's request cannot be granted.

By July 8, 1991, the licensee may demand a hearing with respect to the denial described above. Any person

whose interest may be affected by this proceeding may file a written petition for leave to intervene. A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to R.E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated January 7, 1991, as supplemented April 15, 1991, and (2) the Commission's letter to notify the licensee of the Commission's denial dated

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, attention: Document Control Desk.

Dated at Rockville, Maryland, this 30th day of May 1991.

For the Nuclear Regulatory Commission

Anthony J. Mendiola,

*Acting Director, Project Directorate II-1,
Division of Reactor Projects II/I, Office of
Nuclear Reactor Regulation.*

[FR Doc. 91-13537 Filed 6-6-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

Illinois Power Co., et al., Clinton Power Station, Unit No. 1 Denial of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensees for amendment to Facility Operating License No. NPF-62, issued to the Illinois Power Company and Soyland Power Cooperative (the licensees), for operation of the Clinton Power Station (CPS), Unit No. 1 (the facility) located in DeWitt County, Illinois.

During the performance of a routine functional test of Main Steam Isolation Valve (MSIV) dual solenoid valves, the Main Control room failed to receive positive indication of full closure of inboard MSIV 1B21-F022D. The valve was verified to have been closed through the use of other control room indications. The problem was traced to a malfunctioning limit switch which provides the "open" position signal for indication in the Main Control room. During the licensees' evaluation of the event and TS-required action statement, it appeared that a change to CPS TS 3.3.7.5 would be required to prevent an unnecessary plant shutdown not only for this event but also in the event of a similar occurrence in the future.

The amendment, as proposed by the licensees, would consist of changes to the Technical Specifications (appendix A to Facility Operating License No. NPF-62.

Technical Specification (TS) 3/4.3.7.5, "Accident Monitoring Instrumentation," describes Limiting Conditions for Operation (LCO) for inoperable primary containment isolation valve (PCIV) position indication(s). The licensees proposed to modify the TS Action statements (82 a. and 82 b.) by providing a footnote following the words, "restore the inoperable channel(s) to OPERABLE status within 30 days," for Action 82a. and "restore the inoperable channel(s) to OPERABLE status within 7 days," for Action 82b. The licensees' submittal included the following proposed footnote:

If the location(s) of failure is inaccessible during plant operation, operation may continue provided that a planned alternate method for determining the post-accident isolation status of the associated containment penetration(s) is implemented. The provisions of Technical Specification 3.0.4 are applicable if this alternative is utilized.

The licensees' application for an amendment to operating license NPF-62 was dated May 15, 1991, and supplemented by a letter dated May 22, 1991.

The portion of the amendment application which proposed the use of the TS for any PCIV is interpreted by the staff as being potentially generic in nature and thus not appropriate to issue on an emergency basis; therefore, the staff has denied this aspect of the licensee's request. The staff determined that the proposed amendment was acceptable as applied to the current MSIV failure and the licensees' proposed alternate method for determining containment penetration status alone.

The licensees were notified of the Commission's denial of this request by

letter dated May 30, 1991. All other changes requested by the licensees' application have been approved by Amendment No. 58. Notice of issuance of Amendment No. 58 will be published in the Commission's regular biweekly **Federal Register** notice.

By July 8, 1991, the licensees may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555 and to Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606, attorney for the licensees.

For further details with respect to this action, see (1) the application for amendment dated May 15, 1991; (2) its supplement dated May 22, 1991; and (3) the Commission's Safety Evaluation issued with Amendment No. 58 to NPF-62 dated May 30, 1991 which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727. A copy of item (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, attention: Division of Reactor Projects—III/IV/V.

Dated at Rockville, Maryland, this 30th day of May 1991.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-13578 Filed 6-6-91; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

Commission Visit

June 4, 1991.

Commission Chairman George W. Haley, Commissioner W.H. "Trey" LeBlanc, III and other members of the Commission advisory staff will visit Scan-Code, East Hartford, Connecticut

on Tuesday afternoon June 18, 1991, and ADVO-System, Windsor, Connecticut on Wednesday morning June 19, 1991. The purpose of the visits is to learn of mailer practices to take advantage of new rate discounts.

A report of these visits will be on file with the Commission Docket Room. For further information contact Gerald Cerasale at 202-789-6871.

Charles L. Clapp,

Secretary.

[FR Doc. 91-13493 Filed 6-6-91; 8:45 am]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29260; International Series Release No. 279; File No. SR-Amex-91-10]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Index Warrants Based on the FT-SE Eurotrack 200 Index

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 May 17, 1991, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. 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 Amex is proposing to approve for listing and trading under section 106 of the Amex Company Guide index warrants based on the Financial Times-Stock Exchange ("FT-SE") Eurotrack 200, an index of 200 stocks representing twelve European countries.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

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 Amex 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. The

Amex 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

(1) Purpose

Under section 106 (Currency and Index Warrants) of the Amex Company Guide, the Exchange may approve for listing index warrants based on established foreign and domestic stock indices. The Amex is proposing to list index warrants based on the FT-SE Eurotrack 200 ("Index"), a capitalization-weighted index of 200 leading stocks representing twelve European countries. All stocks in the Index are traded through the facilities of the International Stock Exchange of the United Kingdom and the Republic of Ireland ("ISE") via the Stock Exchange Automated Quotation System ("SEAQ") (companies in the U.K. and the Republic of Ireland) or SEAQ International (non-U.K. or Republic of Ireland companies).

From 9:45 a.m. to 3:30 p.m. (London Time) the Index, which is designed and managed by ISE, is calculated and disseminated minute by minute utilizing SEAQ and SEAQ International real time prices. The Index is widely disseminated via publications (e.g., Financial Times) and commercial information vendors.

The capitalization weighting for Index component stocks for each Index country are as follows, as of April 2, 1991: U.K. (42.56%); Germany (15.04%); France (13%); Netherlands (7.24%); Switzerland (6.33%); Italy (5.98%); Spain (3.77%); Belgium (2.94%); Sweden (2.06%); Ireland (0.66%); Norway (0.26%); Denmark (0.17%).

Such warrant issues will conform to the listing guidelines under section 106, which provide that (1) the issuer shall have assets in excess of \$100,000,000 and otherwise substantially exceed size and earnings requirements in section 101(a) of the Company Guide; (2) the term of the warrants shall be for a period ranging from one to five years from date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and an aggregate market value of \$4,000,000.

Eurotrack 200 index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European

style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Eurotrack 200 has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Eurotrack 200 has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The Amex has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Rule 411, Commentary .02 applies the options suitability standard in rule 923 to recommendations regarding index warrants; and the Amex recommends that index warrants be sold only to options-approved accounts. Rule 421, Commentary .02 requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day entered. In addition, the Amex, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the Eurotrack 200.

In its approval order for index warrants (Release No. 34-26152, October 3, 1988), the Commission noted that, in connection with trading of index warrants based on a foreign index, there should be adequate surveillance sharing agreements with respect to the component stocks of the underlying index. The Amex has in place surveillance sharing agreements with certain principal markets where the component Index securities are traded.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Securities Exchange Act of 1934 ("Act") in general and furthers the objectives of section 6(b)(5) of the Act in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by June 28, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1991.

Jonathan G. Katz,
Secretary.

[FR Doc. 91-13507 Filed 6-6-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29263; File No. SR-PHLX-91-10]

**Self-Regulatory Organizations;
Philadelphia Stock Exchange, Inc.;
Notice of Filing and Immediate
Effectiveness of Proposed Rule
Change Relating to the Proper
Utilization of the Exchange's Security
System**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 9, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by 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 PHLX, pursuant to rule 19b-4 of the Act, proposes to amend regulation 7—Proper Utilization of the Security System, enacted as a regulation of order and decorum under PHLX rule 60. Specifically, the proposed amendment will clarify that any Exchange member or participant, or employee thereof, will be required to pass through the Exchange's security system upon entering and exiting the Exchange's trading facilities. Previously, regulation 7 prohibited Exchange members and participants, and employees thereof, from circumventing the Exchange's security system.

A copy of proposed PHLX regulation 7(a) is attached as exhibit A.

**II. Self-Regulatory Organization's
Statements Regarding 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. 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**

The purpose of the proposed rule change is to codify an existing interpretation of regulation 7(a), regarding attempts to circumvent the Exchange's security system. Enacted under PHLX rule 60 as a regulation of order and decorum, regulation 7(a) seeks to fortify Exchange security and penalize transgressors. The PHLX believes that the goal of maintaining safety and security on the Exchange floor is a predominant purpose of rule 60. In this regard, the rule change proposes to add "entry and exist" in the text of this regulation in place of "circumvent". The PHLX believes that because this was the original intent of the provision, the language should be formally amended for both clarity and notice to the floor. Regulations of order and decorum seek to not only punish violations thereof, but to encourage that very order and decorum by deterring violations; clarity and completeness in the language of the provisions serves this purpose. The PHLX notes that regulations 7 (b) and (c) remain unchanged under this proposal.

This proposed rule change is consistent with the Act, and, in particular, section 6(b)(5) in that it is designed to protect investors and the public interest.

**B. Self-Regulatory Organization's
Statement on Burden on Competition**

The PHLX does not believe that the proposed rule change will impose any burden on competition.

**C. Self-Regulatory Organization's
Statement on Comments on the
Proposed Rule Change Received From
Members, Participants or Others**

No written comments were either solicited or received.

**III. Date of Effectiveness of the
Proposed Rule Change and Timing for
Commission Action**

The foregoing rule has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b-4 because it is a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing Exchange rule. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

or otherwise in furtherance of the purposes of the Act.

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 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 File No. SR-PHLX-91-10 and should be submitted by June 28, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1991.

Jonathan G. Katz,
Secretary.

Exhibit A

New text italicized, deleted text bracketed.

*Regulation 7—Proper Utilization of the
Security System*

**(a) Attempt to Circumvent the
Security System of the Exchange**

Any member/participant or employee of a member/participant firm who wishes to enter or exit the Exchange trading facilities must do so through the areas where the Exchange Security Systems are located.

[It is strictly prohibited for any member/participant or employee of a member/participant firm to attempt to circumvent the Security System of the Exchange.]

1st Occurrence—\$250

2nd Occurrence—\$500

3rd and Thereafter—Sanctions are discretionary with the Business Conduct Committee

(b) No change.

(c) No change.

[FR Doc. 91-13508 Filed 6-6-91;8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 3, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted privileges in the following securities:

Telefonos de Mexico, S.A.

American Depository, No Par Value
(File No. 7-6885).

Terex Corporation

Common Stock, \$0.01 Par Value (File
No. 7-6886).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 24, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13446 Filed 6-6-91; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration (Farah Incorporated, Common Stock, \$4 Par Value) File No. 1-5400

June 3, 1991.

Farah Incorporated ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder to withdraw its Common

Stock from listing and registration on the Pacific Stock Exchange, Inc. ("PSE")

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Farah Incorporated already is listed on the New York Stock Exchange ("NYSE"). The Company's Board of Directors feels that by being listed on both the NYSE and PSE the relatively low volume of Farah stock activity is being diluted. In addition, the Company will experience a cost reduction by remaining listed only on the NYSE.

Any interested person may, on or before June 24, 1991 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and/or PSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matters.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13445 Filed 6-6-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25324]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 31, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 24, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified

below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Georgia Power Company

(70-7843)

Georgia Power Company ("Georgia Power"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, an electric public-utility subsidiary company of The Southern Company, a registered holding company, has filed a declaration under section 12(d) of the Act and rule 44 thereunder.

Georgia Power has ownership interests as a tenant in common in Plant Robert W. Scherer ("Plant Scherer"), consisting of four 810 MW nominally rated coal fired generating units in Monroe County, Georgia. Georgia Power's interests in Plant Scherer are: (1) 8.4% in Plant Scherer Units Nos. 1 and 2; (2) 75% in Plant Scherer Unit No. 3; and (3) 100% in Plant Scherer Unit No. 4. Georgia Power also owns interests in certain common facilities relating to Plant Scherer, including: (a) A 47.95% undivided ownership interest in facilities used in common by one or both of Plant Scherer Unit No. 1 or Plant Scherer Unit No. 2 and one or both of Plant Scherer Unit No. 3 or Plant Scherer Unit No. 4 (the "Plant Scherer Common Facilities"); (b) a 87.5% undivided ownership interest in facilities used in common by Plant Scherer Unit No. 3 and Plant Scherer Unit No. 4 ("Additional Unit Common Facilities") and (c) a 47.95% undivided ownership interest in the coal stockpile serving Plant Scherer ("Plant Scherer Coal Stockpile").

Georgia Power proposes to sell, pursuant to a proposed Plant Robert W. Scherer Unit Number Four Amended and Restated Purchase and Ownership Participation Agreement and a proposed Plant Robert W. Scherer Unit Number Four Substation Purchase Agreement, to Florida Power & Light Company ("FPL"), a public-utility subsidiary company of FPL Group, Inc., an exempt holding company, and to Jacksonville Electric Authority ("JEA"), an independent agency of Jacksonville, Florida, all of Georgia Power's percentage undivided ownership interests in Plant Scherer Unit No. 4, the Plant Scherer Common Facilities, the Additional Unit Common

Facilities and the Plant Scherer Coal Stockpile, for a total purchase price of approximately \$810 million. The sales to FPL and JEA will be made in stages through June 1, 1995.

There will be four separate sales to FPL ("FPL Closings"). At the first FPL Closing, scheduled to occur not later than June 30, 1991, Georgia Power proposes to sell FPL a 17.73% undivided ownership interest in Plant Scherer Unit No. 4 and the corresponding percentage undivided ownership interests in the Plant Scherer Common Facilities, the Additional Unit Common Facilities and the Plant Scherer Coal Stockpile (collectively, "Additional Property") for a purchase price of \$147,900,000. At the second FPL Closing, scheduled to occur on or about June 1, 1993, Georgia Power proposes to sell FPL a 31.44% undivided ownership interest in Plant Scherer Unit No. 4 and the corresponding percentage undivided ownership interests in the Additional Property for a purchase price of \$252,434,000. At the third FPL Closing, scheduled to occur on or about June 1, 1994, Georgia Power proposes to sell FPL a 16.55% undivided ownership interest in Plant Scherer Unit No. 4 and the corresponding percentage undivided ownership interests in the Additional Property for a purchase price of \$131,740,000. At the fourth FPL Closing, scheduled to occur on or about June 1, 1995, Georgia Power proposes to sell FPL a 10.64% undivided ownership interest in Plant Scherer Unit No. 4 and the corresponding percentage undivided ownership interests in the Additional Property for a purchase price of \$83,430,000.

There will be two separate sales to JEA ("JEA Closings"). At the first JEA Closing, scheduled to occur not later than June 30, 1991, Georgia Power will sell JEA a 17.73% undivided ownership interest in Plant Scherer Unit No. 4 and the corresponding percentage undivided ownership interests in the Additional Property for a purchase price of \$147,900,000. At the second JEA Closing, scheduled to occur on or about June 1, 1995, Georgia Power will sell JEA a 5.91% undivided ownership interest in Plant Scherer Unit No. 4 and the corresponding percentage undivided ownership interests in the Additional Property for a purchase price of \$46,350,000.

In the event Georgia Power and FPL do not consummate the transactions contemplated at the first FPL Closing, JEA shall have an option to withdraw from the transaction or acquire all or a portion of the percentage undivided ownership interests to be acquired by FPL at such closing. If Georgia Power

and JEA do not consummate the transactions contemplated at the first JEA Closing or at the second JEA Closing, FPL shall have the option to purchase the percentage undivided ownership interests to be acquired by JEA at such closings at the same purchase price as set forth in the Ownership Agreement for JEA.

The purchase price, subject to adjustments, for each sale represents: (1) The adjusted book basis of the assets being conveyed plus (2) an amount to compensate Georgia Power for federal and state income taxes payable due to permanent differences in book and tax basis (such as the equity component of the allowance for funds used during construction and differences in the investment tax credit basis) with respect to the sale by Georgia Power of such percentage undivided ownership interest plus (3) a contribution towards prior costs incurred by Georgia Power but not recovered.

Georgia Power will obtain a release of such undivided ownership interests in Plant Scherer Unit No. 4 and the Additional Property to be sold to FPL and JEA from the lien of Georgia Power's First Mortgage Bond Indenture. Georgia Power will use the proceeds of the sale for general corporate purposes (which may include payment of short-term debt). Georgia Power is also considering calling bonds at par under the terms of its indenture.

Entergy Corporation et al.

(70-7851)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its wholly-owned subsidiary company, Electec, Inc. ("Electec"), 639 Loyola Avenue, New Orleans, Louisiana 70113, have filed an application-declaration under sections 6(a), 7, 9(a) and 10 of the Act.

Entergy and Electec propose to collaborate with First Pacific Networks, Inc. ("FPN"), a non-affiliate Delaware corporation, to develop utility applications for FPN's patented communications system ("PX System"), including a Customer-Controlled Load Management/Automated Feedback System ("CCLM/AFS"). The CCLM/AFS would include remote meter reading and interactive customer communications.

Electec proposes to issue and sell, and Entergy proposes to acquire, through December 31, 1994, up to 15,500 shares of Electec common stock, no par value ("Electec Common"), in one or more series, for an aggregate cash consideration of up to \$15.5 million ("Initial Offering"). Electec proposes to

use the proceeds for the Initial Offering to (a) acquire an interest in FPN, pay Electec's share of CCLM/AFS development costs, and acquire licensing rights to CCLM/AFS, and (b) pay to Entergy Services, Inc., or other associate companies or trade creditors, not in excess of \$1.5 million for services performed for Electec in the development or implementation of its marketing business.

Electec also proposes to issue and sell, and Entergy proposes to acquire, in one or more series, through December 31, 1994, up to an additional 2,000 shares of Electec Common for an aggregate consideration of up to \$2 million ("Subsequent Offering"). Electec proposes to use the proceeds from the Subsequent Offering to make additional equity investments in FPN when desired to maintain its equity position, to provide additional funds for any reasonable increase in the estimated costs required to complete the development of CCLM/AFS, to permit Electec to co-fund desirable enhancements, and to fund Electec's initial marketing efforts.

Electec further proposes to acquire, prior to December 31, 1991, up to 6.5 million newly issued shares of common stock of FPN, \$.001 per value ("FPN Common"), representing approximately 9.95% of the ten issued and outstanding common stock of FPN, for the aggregate amount of \$3.5 million. Electec also proposes to acquire, through December 31, 1994, additional shares of FPN Common in order to maintain its ownership interest in FPN at a level of at least 9.95% but less than 10%. Such additional shares generally would be purchased at the lower of fair market value or the price negotiated with the other acquirors (except that purchases in response to the exercise of certain options and warrants would be at fair market value).

Electec proposes to acquire from FPN a license for the exclusive, except for FPN, right to market and sublease to electric, gas and water utilities the right to manufacture, use, sell, lease or otherwise provide to customers or end users the CCLM/AFS application of the PX System, and other utility applications of the PX System that may be developed, for a fee of up to \$8.5 million. Under certain specified conditions, Electec may terminate the arrangements with FPN and require it to refund the \$8.5 million fee or Electec may proceed with development of CCLM/AFS with a third party. Electec will be granted a security interest in FPN's technology and related patents and copyrights.

Electec proposes to acquire an option to acquire FPN's 12% subordinated secured notes ("Notes") for the outstanding principal amount thereof, plus accrued interest, from secured lenders ("Holders"), at no additional costs to Electec, if FPN is in default of its obligations thereunder. The Notes are secured by a security agreement, dated as of August 2, 1990, granting, for the benefit of the Holders, a security interest and first lien upon the assets of FPN, including the FPN's accounts receivable, inventory, equipment and intellectual property.

Electec has agreed to sponsor and participate in field trials for CCLM/AFS in the Entergy system's service area and bear all of the associated costs. The field trials would involve one or more of Electec's associate companies, which would be reimbursed by Electec for their costs incurred in these efforts. Electec will also pay 50% of the product development costs. The total cost to develop and field test CCLM/AFS is currently estimated to be approximately \$3 million, with Electec's share estimated to be approximately \$2 million. Electec will have the option to jointly fund enhancements to CCLM/AFS, with the same rights as those with respect to CCLM/AFS.

FPN and Electec intend to market the CCLM/AFS system under joint control to utilities for use in connection with their demand side load management programs. Electec and FPN would each bear their own costs associated with this marketing effort. FPN would be the principal marketer and negotiator of third party licenses with respect to CCLM/AFS, as between itself and Electec. Electec's marketing activities would be conducted from within the Entergy system service territory, with no additional personnel being hired exclusively for these efforts. Electec's marketing costs are currently estimated not to exceed approximately \$250,000 on an annual basis, plus legal fees and expenses related to the implementation of particular agreements. The licensing arrangements between Electec and FPN provide that the right to manufacture, use, sell, lease or otherwise provide CCLM/AFS to customers or end users would be made available through Electec to the Entergy system for use within its service territory without payment of licensing fees by other Entergy system companies or additional costs to Electec.

Electec would be entitled to retain 100% of the revenues from the licensing of any two licensees of CCLM/AFS and 50% of the revenues from the licensing of all other licensees. In addition, Electec

would receive 5% of the gross revenues derived from all the sales or leases by FPN of CCLM/AFS units (except for sales by FPN to the Entergy system which would be made at preferential prices). FPN will also share with Electec 50% of the net profits from maintenance by FPN of CCLM/AFS for licensees (other than Entergy system licensees).

Southwestern Electric Power Company (70-7856)

Southwestern Electric Power Company ("Swepeco") 428 Travis Street, Shreveport, Louisiana 71101, an electric public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rule 50(a)(5) thereunder.

Swepeco proposes to incur obligations in connection with the proposed issuance of Pollution Control Revenue Refunding Bonds, 1991 Series B ("1991 Series B Bonds"), through June 30, 1992, by Titus County Fresh Water Supply District No. 1 ("District"), up to an aggregate principal amount of \$12.29 million. The purpose of the issuance of the 1991 Series B Bonds is to redeem \$12.29 million of the District's outstanding Pollution Control Revenue Bonds, 1974 Series A ("1974 Series A Bonds").

The 1991 Series B Bonds will bear interest payable semi-annually and will mature on November 1, 2004. Swepeco anticipates that the 1991 Series B Bonds will be sold by the District pursuant to an agreement ("Bond Purchase Agreement") in a placement in which First Chicago Capital Markets, Inc. will act as placement agent. Swepeco will be a party to the Bond Purchase Agreement, which will contain various warranties, representations and indemnities by Swepeco.

Southwestern Electric Power Company (70-7857)

Southwestern Electric Power Company ("Swepeco"), 428 Travis Street, Shreveport, Louisiana 71156, an electric public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rule 50(a)(5) thereunder.

Swepeco proposes to incur obligations in connection with the issuance, in 1992, of Pollution Control Revenue Refunding Bonds, Series 1992 ("Series 1992 Bonds") by the Parish of DeSoto, Louisiana, a Parish within the Commonwealth of Louisiana ("District"), up to an aggregate principal amount of \$53.5 million. The proceeds from the issuance of the Series 1992 Bonds will be used to redeem the

Series 1983 Bonds on or about January 1, 1993 at the redemption price of 103%. Any funds in addition to the proceeds of the premium on redemption of the Series 1983 Bonds and the costs of issuance of the Series 1992 Bonds, will be provided by Swepeco from internally generated funds and short-term borrowings.

The Series 1992 Bonds will bear interest payable semi-annually and will mature on December 1, 2018, and will be subject to certain mandatory and optional redemption provisions and sinking fund provisions.

The District and Swepeco will enter into a bond purchase agreement ("Bond Purchase Agreement") with one or more purchasers by July 15, 1991, or as soon thereafter as is practicable. The purchasers would be obligated pursuant to the Bond Purchase Agreement on or about November 24, 1992 to purchase \$53.5 million aggregate principal amount of the Series 1992 Bonds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 91-13510 Filed 6-6-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18176; 812-7721]

Scottish Widows International Fund, et al.; Application

May 31, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Scottish Widows International Fund (the "Fund") and Advest, Inc. (the "Distributor").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) which would grant an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the 1940 Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order under section 6(c) of the 1940 Act to permit the Fund to assess a contingent deferred sales load ("CDSL") on certain redemptions of shares.

FILING DATE: The Application was filed on May 10, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's

Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 27, 1991, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants: Scottish Widows International Fund, 60 State Street, Boston, MA 02109; Advest, Inc., 280 Trumbull Street, Hartford, CT 06103.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney (202) 272-2190, or Jeremy N. Rubenstein, Branch Chief (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is a registered open-end management investment company organized as a Massachusetts business trust. The Fund offers its single series of shares through the Distributor, which acts as the Fund's principal underwriter. The Fund requests that any relief granted apply to any future series of the Fund as well as to the existing series.

2. The Fund currently offers its shares for sale at net asset value plus a traditional front-end sales charge which decreases as the quantity of shares purchased by any person increases.

3. The Fund proposes to eliminate the sales charge on all purchases of \$2,000,000 or more, and to pay the Distributor a CDSL from the proceeds of certain redemptions of shares initially sold without a sales charge. The CDSL would be imposed only in the event of a redemption transaction within twelve months following the share purchase. The CDSL will be equal to 1% of the lesser of the net asset value of the shares redeemed, or the original cost of the investment being redeemed. No CDSL will be imposed when the investor redeems amounts derived from increases in the value of the account above the original cost of the investment being redeemed due to increases in the net asset value per share of the Fund; shares acquired through reinvestment of dividend income and capital gains distributions; or an investment that the

investor has held for more than 12 months.

4. In determining whether a contingent deferred sales load is payable, applicants propose to assume that shares, or amounts representing shares, that are not subject to any deferred sales load are redeemed first, and other shares are then redeemed in the order purchased, except as may otherwise be consistent with applicants' undertaking to comply with proposed rule 6c-10 under the 1940 Act in the form proposed or as it may eventually be adopted.

5. If additional series are created in the future and the Fund permits exchanges between series, it is contemplated that no CDSL will be imposed on exchanges of shares of any series for shares of other series. If, however, the shares acquired in an exchange are redeemed (other than in connection with another exchange) within twelve months following the original investment, a CDSL will be assessed at the rate of 1% of the lesser of the net asset value of the shares redeemed or the original cost of the shares initially purchased and then exchanged. With respect to all exchanges of shares that are subject to a CDSL, applicants will comply with rule 11a-3 under the 1940 Act to the extent applicable.

6. Applicants intend to waive the CDSL on redemptions in connection with (a) distributions from retirement plans qualified under Internal Revenue Code ("Code") section 401(a) when such redemptions are necessary to make distributions to plan participants; (b) distributions from a custodial account under Code section 403(b)(7) or an individual retirement account (an "IRA") due to death, disability or attainment of age 59½; (c) a tax-free return of an excess contribution to an IRA; (d) distributions by other employee benefit plans to pay benefits; and (e) distributions from a retirement plan qualified under Code section 401(a) due to death.

7. Applicants intend to provide a credit for any CDSL paid in connection with a redemption of shares followed by a reinvestment effected within 35 days after the redemption.¹

Applicants' Legal Analysis

1. Applicants assert that the imposition of the CDSL would not cause shares of the Fund to fall outside the definition of "redeemable security" in

¹ By letter dated May 29, 1991, applicants' Counsel represented that they were authorized on behalf of applicants to state that any credit given to an investor for reinvestment in the Fund will be paid by the Distributor, not by the Fund.

section 2(a)(32) of the Act. Section 2(a)(32) defines redeemable security to be a security that, upon presentation to the issuer or to a person designated by the issuer, entitles the shareholder to receive approximately his proportionate share of the issuer's current net assets. Applicants assert that the imposition of the CDSL will not restrict a shareholder of the Fund from receiving a proportionate share of the current net assets of the Fund, but will merely defer the deduction of a sales charge and make it contingent upon an event which may never occur. However, to avoid uncertainty in this regard, applicants request an exemption from the operation of section 2(a)(32) of the Act to the extent necessary to permit the imposition of the proposed CDSL.

2. Applicants assert that the charge is consistent with the intent of the definition of "sales load" in section 2(a)(35). Section 2(a)(35) defines sales load to be the amount properly chargeable to sales or promotional expenses that are paid at the time the securities are purchased. In this case, applicants will pay the CDSL to the Distributor to reimburse it for expenses related to the sale of shares; therefore, applicants submit that this arrangement is within the section 2(a)(35) definition of sales load, but for the timing of the imposition of the charge. Applicants contend that the deferral of the sales charge, and its contingency upon the occurrence of an event which may not occur, does not change the basic nature of this charge, which is in every other respect a sales charge.

3. Applicants assert that the implementation of the proposed CDSL would not violate section 22(c) of the Act or rule 22c-1 thereunder. Section 22(c) of the Act and rule 22c-1 thereunder require that the price of a redeemable security issued by an open-end management company for purposes of sale, redemption, and repurchase be based on the company's current net asset value. Applicants contend that the redemption price of the shares of the Fund is based on current net asset value. The CDSL charge is then deducted from this redemption price. However, to avoid any question as to the potential applicability of section 22(c) and rule 22c-1, applicants request an exemption from rule 22c-1 to the extent necessary to permit applicants to impose the proposed CDSL.

4. Applicants request an exemption from the provisions of section 22(d) of the Act to permit the waiver of the CDSL as described in this notice. Section 22(d) requires a registered investment company, principal underwriter, or

dealer in redeemable securities to sell these securities only at a current public offering price described in the company's prospectus. Subject to certain conditions, rule 22d-1 provides an exemption from section 22(d) allowing investment companies to charge different loads to different classes of investors. Rule 22d-1, however, applies to sales loads at the time of purchase only. Applicants contend that the policies underlying rule 22d-1 are equally applicable to waivers of a deferred sales load.

Applicants' Condition

If the request to issue the order is granted, applicants expressly consent to the following condition:

The applicants will comply with the provisions of proposed rule 6c-10 under the 1940 Act (including any modifications that are proposed prior to the adoption of such rule) until such rule is adopted, and after such adoption will comply with such rule in the form in which it is in effect from time to time.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 91-15309 Filed 6-6-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[(Declaration of Disaster Loan Area #2505)]

Mississippi (With a Contiguous County in Arkansas); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on May 17, 1991, I find that the Counties of Carroll, Coahoma, Grenada, Holmes, Humphreys, Leflore, Panola, Quitman, Sharkey, Sunflower, Tallahatchie, Tate, Warren, Washington, and Yalobusha in the State of Mississippi constitute a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on April 26, 1991. Applications for loans for physical damage may be filed until the close of business on July 15, 1991, and for loans for economic injury until the close of business on February 18, 1992, at the addresses listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, Georgia, 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Attala, Bolivar, Calhoun, Claiborne, DeSoto, Hinds,

Issaquena, Lafayette, Madison, Marshall, Montgomery, Tunica, Webster, and Yazoo in the State of Mississippi and Phillips County in the State of Arkansas may be filed until the specified date at the above location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as primary or contiguous counties in another declaration for the same occurrence.

The interest rates are:

| | <i>Per cent</i> |
|---|-----------------|
| For physical damage: | |
| Homeowners with Credit Available Elsewhere | 8.000 |
| Homeowners without Credit Available Elsewhere | 4.000 |
| Business with Credit Available Elsewhere..... | 8.000 |
| Business and Non-Profit Organizations without Credit Available Elsewhere | 4.000 |
| Others (Including Non-Profit Organizations) With Credit Available Elsewhere | 9.125 |
| For Economic Injury: | |
| Business and Small Agricultural Cooperatives without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 250506 and for economic injury the numbers are 731500 for the State of Mississippi and 731400 for the State of Arkansas.

(Catalog of Federal Domestic Program Nos. 59002 and 59008.)

Dated: May 23, 1991.

Alfred E. Judd,
Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-13541 Filed 6-6-91; 8:45 am]

BILLING CODE 8025-01-M

Region IV National Advisory Council Members; Public Meeting

The U.S. Small Business Administration National Advisory Council, located in the geographical area of Atlanta, will hold a public meeting at 9:30 a.m. on Monday, June 24, 1991, at the Atlanta Regional Office, 1375 Peachtree Street, NE., 5th Floor, Atlanta, Georgia, 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 Roger Gribble, Acting Regional Administrator, U.S. Small Business Administration, 1375 Peachtree Street,

NE., suite 502, Atlanta, Georgia 30367-8102, telephone (404) 347-4999.

Dated: May 31, 1991.

Jean M. Nowak,
Director, Office of Advisory Councils.

[FR Doc. 91-13542 Filed 6-6-91; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council Meeting; Change in Date of Scheduled Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Albuquerque, has changed the date for its public meeting from Wednesday, June 12, 1991, to Tuesday, July 9, 1991, at 9 a.m., at the SBA Office, 625 Silver SW., suite 320, Albuquerque, New Mexico, 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 Tom W. Dowell, District Director, U.S. Small Business Administration, 625 Silver SW., suite 320, Albuquerque, New Mexico 87102, telephone (505) 766-1886 or FTS 474-1886.

Dated: May 31, 1991.

Jean M. Nowak,
Director, Office of Advisory Councils.

[FR Doc. 91-13543 Filed 6-6-91; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Cleveland, will hold a public meeting at 9:30 a.m. on Friday, June 28, 1991, at the University of Akron, in its new building devoted to the teaching of business, Akron, Ohio, 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 Norma M. Nelson, District Director, U.S. Small Business Administration, 1240 East Ninth Street, room 317, Cleveland, Ohio 44199-2095, telephone (216) 522-4180.

Dated: May 31, 1991.

Jean M. Nowak,
Director, Office of Advisory Councils.

[FR Doc. 91-13544 Filed 6-6-91; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Richmond, will hold a public meeting from 9 a.m. to 2 p.m. on Thursday, June 27, 1991, at the Holiday Inn Crossroads, 2000 Staples Mill Road, Richmond, Virginia, 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 Dratin Hill, Jr., District Director, U.S. Small Business Administration, P.O. Box 10126, Federal Building, Richmond, Virginia 23240, telephone (804) 771-2741.

Dated: May 31, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-13545 Filed 6-6-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1410]

Shipping Coordinating Committee; Maritime Safety Committee and Associated Bodies; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 11 a.m. on June 26, 1991, in room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. This meeting will be held immediately following the meeting of the Subcommittee on Prevention of Marine Pollution scheduled for 9:30 a.m. on that day and announced in the *Federal Register* on May 31, 1991. The purpose of the meeting is to report on the status of the International Convention on Salvage, 1989, which was signed by the United States in March 1990, and the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990, signed by the United States in November 1990. As the Administration transmits these Conventions to the Senate seeking its advice and consent to ratification, it is interested in addressing any questions that the public may have concerning either of them.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: CDR W. St. J. Chubb, or LCDR R. G. Pond, U.S. Coast Guard (G-MEP-3), room 2100, 2100 Second Street SW., Washington, DC 20593 or by calling: (202) 267-0419.

Dated: June 3, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91-13437 Filed 6-6-91; 8:45 am]

BILLING CODE 4710-7-M

SUSQUEHANNA RIVER BASIN COMMISSION

Inclusion of Wildcat Creek Flood Protection Project in the Comprehensive Plan

AGENCY: Susquehanna River Basin Commission (SRBC).

ACTION: Notice of public hearing on proposed inclusion of Wildcat Creek Flood Protection Project in the Comprehensive Plan.

DATES: The public hearing will be held on July 29, 1991 at 1:30 p.m.

ADDRESSES: The hearing will be held in the third floor conference room of the Commission's Headquarters Building at 1721 N. Front St., Harrisburg, PA 17102-2391. Written comments should be submitted to Richard A. Cairo, Secretary to the Commission, at the above address.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo or John D. Graham, SRBC, at (717) 238-0423; also Gary Barone or Andy Malene, Pa. Dept. of Environmental Resources, at (717) 783-7928.

SUPPLEMENTARY INFORMATION: The Susquehanna River Basin Commission will hold a public hearing to receive comments from citizens, government agencies and others on the proposed addition of a Pa. Dept. of Environmental Resources local flood protection project to its Comprehensive Plan for Management and Development of the Water Resources of the Susquehanna River Basin. The project is located on Wildcat and Tinklepaugh Creeks, and the Lackawanna River, at the Borough of Blakely, Lackawanna County, Pennsylvania.

The Susquehanna River Basin Commission Compact, Public Law 91-575, 84 Stat. 1509 et seq., requires the Commission to maintain a comprehensive plan for the immediate and long-range use, management and development of the water and related resources of the basin. Section 12.2(2) of the Compact requires that all projects of a signatory state affecting the water resources of the basin be included in that plan. Initially adopted in December 1973, the Plan provides a basinwide strategy to guide the Commission and

others in the management, use, and conservation of the basin's resources. The Plan is also used to evaluate proposed water resource developments that the commission must, by law, approve.

The Borough of Blakely Project will include the construction of rectangular reinforced concrete channels on Wildcat and Tinklepaugh Creeks. These concrete channels will vary in width from 13 to 35 feet and have a total length of approximately 9,000 feet. Three debris basins and 580 feet of rock-lined trapezoidal channel are also proposed as part of the project. In addition, precast box culverts will be installed at various places along the project and three pedestrian foot bridges and five private vehicular crossings will be constructed.

The project will provide 100-year flood protection against high stages on both wildcat and Tinklepaugh Creeks within the Borough of Blakely. Estimated cost of the project is 5.3 million dollars.

The Commission has agreed to consider this project for adoption into the Comprehensive Plan. Adoption into the Comprehensive Plan will affirm the project compliance with the goals and objectives of the Comprehensive Plan, thus clearing the way for implementation by the Commonwealth of Pennsylvania.

The hearing will be informal in nature. Interested parties are invited to attend the hearing and to participate by making oral or written statements presenting their data, views, and comments on the proposed Comprehensive Plan additions. Those wishing to personally appear to present their views are urged to notify the Commission in advance that they desire to do so. However, any person who wishes to be heard will be given the opportunity to be heard whether or not they have given such notice. After the hearing, the Commission will evaluate whether to adopt the project into the Comprehensive Plan.

A more detailed description of the project is available upon request to Richard A. Cairo, Secretary, Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania, 17102-1291, (717) 238-0423. Additional information on the project can also be obtained from Gary Barone or Andy Malene, Pa. Dept. of Environmental Resources, P.O. Box 1467, Harrisburg, PA 17120, (717) 783-7928.

Authority: Susquehanna River Basin Compact, 84 Stat 1509 et seq.

Dated: May 31, 1991.

Robert J. Bielo,

Executive Director.

[FR Doc. 91-13457 Filed 6-6-91; 8:45 am]

BILLING CODE 7040-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Action With Regard to Duties Increased in the Japan Semiconductor Case

SUMMARY: Pursuant to authority delegated by the President in Proclamation No. 5631 of April 17, 1987, the United States Trade Representative hereby suspends all remaining increased duties on imports of high performance portable and desktop computers, and electropneumatic hammers from Japan because of Japan's progress in implementing its obligations under the U.S.-Japan Arrangement concerning Trade in Semiconductor Products dated September 2, 1986 (the "1986 Arrangement"), and because the market access objectives are expected to be fully realized within the framework of a new arrangement scheduled to enter into force on August 1, 1991.

EFFECTIVE DATE: This action becomes effective upon the date of the entry into force of the 1991 Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Semiconductor Products. The Office of the U.S. Trade Representative will publish a notice in the *Federal Register* in advance of the date of entry into force.

FOR FURTHER INFORMATION CONTACT: Timothy Richards or Sarah Hall, (202) 395-6160 (for technical and policy information); Timothy Reif, (202) 395-6800 (for legal issues).

SUPPLEMENTARY INFORMATION: On April 17, 1987, the President determined, under section 301 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2411, that the Government of Japan had not implemented or enforced major provisions of the Arrangement and that this was inconsistent with the provisions of, or otherwise denied benefits to the United States under, the

Arrangement; and was unjustifiable and unreasonable, and constituted a burden or restriction on U.S. commerce (52 FR 13419).

In response, the President proclaimed increases in customs duties to a level of 100 percent ad valorem on certain products of Japan and, accordingly, by Proclamation No. 5631 raised duties on specified products of Japan (52 FR 13412).

On June 15, 1987, the USTR determined to suspend the increased customs duties on 20-inch televisions from Japan, based upon Japan's improved compliance with some obligations under the Arrangement (52 FR 22693). On this basis the USTR determined that suspension of the increased duties on 20-inch color televisions from Japan was in the interest of the United States.

Further, on November 9, 1987, (52 FR 43146) the USTR determined that it was in the interest of the United States to suspend the increased duties imposed by Proclamation No. 5631 on certain power hand tools, 18- and 19-inch color televisions, and low performance 16-bit desktop computers from Japan as a result of price increases eliminating the unfairly low pricing. Consequently, the USTR suspended the increased duties imposed by Proclamation No. 5631 on certain power hand tools, 18- and 19-inch color televisions, and low performance 16-bit desktop computers the product of Japan.

As a result of Japan's progress in implementing its market access obligations under the 1986 Arrangement, and because the market access objectives are expected to be fully realized within the framework of the 1991 Arrangement, I have determined that it is in the interest of the United States to suspend the increased duties on the remainder of the products of Japan subject to increased duties under Proclamation 5631. Consequently, I hereby suspend the increased duties imposed by Proclamation 5631 on certain products covered by tariff items 9903.41.15, 9903.41.20 and 9903.41.30. The Harmonized Tariff Schedule of the United States is modified to reflect the suspension of the increased duties for

articles provided for in those tariff items, as set forth in the Annex hereto.

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

S. Lina Williams,

Acting United States Trade Representative.

Annex

Articles from Japan:

9903.41.15—Automatic data processing machines, of the type of which constituent units are integrated in the same housing, whether finished or unfinished, which incorporate a microprocessor-based calculating mechanism, are capable of handling data words of at least 16-bits off the microprocessor, and are designed for use with a non-cathode ray tube (non-CRT) display unit, whether or not capable of use without an external power source (provided for in subheading 8471.20).

Automatic data processing machines, of the type of which the constituent units are separately housed, whether finished or unfinished, which incorporate a microprocessor-based calculating mechanism, are capable of handling data words of at least 16-bits off the microprocessor, designed for use while affixed to or placed on a table, desk, or similar place:

9903.41.20—Having a microprocessor-based calculating mechanism capable of directly handling memory of over 8 megabits (provided for in subheading 8471.91).

Rotary drills, not battery powered, with a chuck capacity of ½ inch or more; electropneumatic rotary and percussion hammers; and grinders, sanders, and polishers, (except angle grinders, sanders and polishers, belt sanders, and orbital and straight-line sanders), the foregoing which are electromechanical tools for working in the hand with self-contained electric motor:

9903.41.30—Electropneumatic rotary and percussion hammers (provided for in subheading 8508.80).

[FR Doc. 91-13579 Filed 6-6-91; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register

Vol. 56, No. 110

Friday, June 7, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Joint Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:17 p.m. on Tuesday, June 4, 1991, the Federal Deposit Insurance Corporation's Board of Directors met jointly with the Board of Directors of the Resolution Trust Corporation in open session to consider a statement of policy regarding the payment of state and local property taxes.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), Vice Chairman Andrew C. Hove, Jr., and Chairman L. William Seidman, that Corporation business required its consideration of the matter on less than seven days' notice to the public and that no notice earlier than May 30, 1991, was practicable.

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Dated: June 5, 1991.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 91-13681 Filed 6-5-91; 12:06 pm]
BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, June 4, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Applications of Woodford County Bank, El Paso, Illinois, an insured state nonmember bank, for consent to acquire certain assets and assume the liability

to pay deposits of the El Paso Branch of Citizens Savings Bank, F.S.B., Normal, Illinois, a Federally chartered thrift institution; and for consent to convert deposits from the Savings Association Fund to the Bank insurance Fund as contemplated by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Administrative enforcement proceedings.

Proposed contract for legal Division Management Information System.

Reports of the Office of Inspector General:

Audit Report re:

Beverly Hills Federal Savings Bank, Laguna Hills, California, Assistance Agreement, Case Number C-393c (Memo dated May 8, 1991)

Audit Report re:

Chisolm Federal Savings & Loan Association, Kingfisher, Oklahoma, Assistance Agreement, Case Number SWP-010c (Memo dated April 29, 1991)

Audit Report re:

First Heights, F.S.A., Houston, Texas and Heights of Texas, F.S.B., Houston, Texas, Assistance Agreement, Case Number SWP-013/014c (Memo dated May 16, 1991)

Audit Report re:

Sunbelt Savings, F.S.B., Irving, Texas, Assistance Agreement, Case Number SWP-005c (Memo dated May 3, 1991)

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The Permanent Savings Bank, Niagara Falls, New York (4248) (Memo dated May 13, 1991)

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Inventory Closing Procedures, Addison Consolidated Office (Memo dated May 14, 1991)

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Procurement and Control of Property Managers, Orlando Consolidated Office (Memo dated May 17, 1991)

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Vice Chairman Andrew C. Hove, Jr., Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman L. William Seidman that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of

the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: June 5, 1991.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 91-13682 Filed 6-5-91; 12:06 pm]
BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, June 12, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed establishment of an all-electronic Automated Clearing House (ACH) service. (Proposed earlier for public comment: Docket No. R-0718.)
2. Proposed 1992 Federal Reserve Bank budget objective.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 5, 1991.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 91-13669 Filed 6-5-91; 11:18 am]
BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, June 12, 1991,

following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 5, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13670 Filed 6-5-91; 11:18 am]

BILLING CODE 6210-01-M

U.S. INTERNATIONAL TRADE COMMISSION:

[USITC SE-91-17]

TIME AND DATE: Tuesday, June 11, 1991 at 10:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints.
5. Inv. 731-TA-581 (Preliminary) (Hand-held aspherical indirect ophthalmoscopy lenses from Japan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: May 29, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-13665 Filed 6-5-91; 11:18 am]

BILLING CODE 7020-02-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business requires that the previously announced closed meeting (Federal Register, June 5, 1991) scheduled for 9:30 a.m. on Tuesday, June 11, 1991, include

the following additional item, which is closed to public observation:

Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

The Board voted unanimously to add this item to the closed agenda.

The previously announced items are:

1. Approval of Minutes of Previous Closed Meetings.
2. Administrative Actions under Section 201 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. NCUA Delegations of Authority. Closed pursuant to exemption (2).
4. Midsession Budget Review. Closed pursuant to exemptions (2) and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 91-13631 Filed 6-5-91; 8:52 am]

BILLING CODE 7535-01-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors' Meeting

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, June 19, 1991, at 10:00 a.m.

ADDRESS: The meeting will be held at the Pennsylvania Avenue Development Corporation, Suite 1220N, 1331 Pennsylvania Ave., NW, Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations part 901, and is open to the public.

Dated: June 3, 1991.

M.J. Brodie,

Executive Director.

[FR Doc. 91-13746 Filed 6-5-91; 3:23 pm]

BILLING CODE 7630-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on June 3, 1991, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for July 1, 1991, in Washington, DC. The members will consider the Postal Rate Commission's May 24, 1991, Opinion and Further Recommended Decision in Docket No. R90-1.

The meeting is expected to be attended by the following persons:

Governors Alvarado, Daniels, del Junco, Griesemer, Hall, Mackie, Nevin, Pace and Setrakian; Postmaster General Frank, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Hughes.

The Board determined that pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information in connection with proceedings under Chapter 36 of title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code.

The Board determined further that pursuant to section 552b(c)(10) of title 5 United States Code, and section 7.3(j) of title 39, Code of Federal Regulations, this discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after an opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of title 5, United States Code; section 410(c)(4) of title 39, United States Code; and section 7.3 (c) and (j) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 91-13735 Filed 6-5-91; 2:57 pm]

BILLING CODE 7710-12-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:32 p.m. on Tuesday, June 4, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to (1) the resolution of failed thrift institutions, (2)

contracting activities, and (3) the issuance of securities backed by mortgages.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that

Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters could be considered in a closed meeting by authority of subsections (4), (8), (9)(A)(ii), (9)(B) and (10), of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, N.W., Washington, D.C.

Dated: June 5, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.

Executive Secretary.

[FR Doc. 91-13733 Filed 6-6-91; 8:45 am]

BILLING CODE 6714-01-M

federal register

Friday
June 7, 1991

Part II

Environmental Protection Agency

40 CFR Parts 141 and 142

**Maximum Contaminant Level Goals and
National Primary Drinking Water
Regulations for Lead and Copper; Final
Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL-3823-5]

RIN 2040-AB51

Drinking Water Regulations

Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In this notice, EPA is promulgating maximum contaminant level goals (MCLGs) and national primary drinking water regulations (NPDWRs) for controlling lead and copper in drinking water. EPA is promulgating an MCLG of zero for lead and an MCLG of 1.3 mg/L for copper. EPA is promulgating an NPDWR for lead and copper consisting of a treatment technique requirement that includes corrosion control treatment, source water treatment, lead service line replacement, and public education.

EFFECTIVE DATE: The provisions of 40 CFR 141.86, 141.87, 141.88, 141.89, 141.90, 141.91, 142.14, 142.15, 142.16, and 142.17 will be effective on June 6, 1991. The remainder of the rule shall become effective Nov. 6, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 6, 1991.

ADDRESSES: The rulemaking record, including public comments on the rule, the comment/response document, applicable **Federal Register** notices, other major supporting documents, and a copy of the index to the public docket for this rulemaking, are available for review at EPA's Drinking Water Docket: 401 M Street, SW.; Washington, DC 20460. For access to docket materials call (202) 382-3027 between 9 am and 3:30 pm Eastern Standard Time. Major supporting documents cited in the reference section of this notice are also available for inspection at the Drinking Water Supply Branches in EPA's Regional Offices, listed below.

- I. JFK Federal Building., Room 2203, Boston, MA 02203
Phone: (617) 565-3602, Jerome Healey
- II. 26 Federal Plaza, Room 824, New York, NY 10278
Phone: (212) 264-1800, Walter Andrews
- III. 841 Chestnut Street, Philadelphia, PA 10107

Phone: (215) 597-8227, Jeff Hass
IV. 345 Courtland Street, Atlanta, GA 30365

Phone: (404) 347-2913, Allen Atley
V. 230 S. Dearborn Street, Chicago, IL 60604

Phone: (312) 353-2152, Edward Watters
VI. 1445 Ross Avenue, Dallas, TX 75202
Phone: (214) 255-7155, Tom Love

VII. 726 Minnesota Avenue, Kansas City, KS 66101

Phone: (913) 551-7032, Ralph Langemeier
VIII. One Denver Place, 999 18th Street, Suite 300, Denver, CO 80202

Phone: (303) 293-1408, Chet Pauls
IX. 1235 Mission Street, San Francisco, CA 94103

Phone: (415) 744-1817, Steve Pardieck
X. 1200 Sixth Avenue, Seattle, WA 98102

Phone: (206) 442-4092, Janis Hastings
FOR FURTHER INFORMATION CONTACT: Jeff Cohen, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-5456, or one of the EPA Regional Office contacts listed above. For further information, call the U.S. EPA Safe Drinking Water Hotline between 8:30 am and 5 pm Eastern Time, Monday through Friday excluding Federal holidays, by telephoning toll-free 1-800-426-4791 nationwide.

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Glossary of Terms

The following definitions are presented to assist the reader in understanding common words or phrases used in the preamble and rule.

Action Level: Concentration of lead or copper in water that determines, in some cases, whether a water system must install corrosion control treatment, monitor source water, replace lead service lines, and undertake a public education program.

Blood Lead Level or PbB Level: The concentration of lead in whole blood. Blood lead is the most common index of lead exposure. Health risks associated with lead have been indexed to blood lead levels, measured in micrograms of lead per deciliter of blood ($\mu\text{g}/\text{dL}$).

Corrosion: Dissolution or eroding of pipe or other plumbing material by water or other physical and chemical parameters.

Distributed Water: Water leaving the water treatment facility and/or entering the distribution system.

Ends of the Distribution System: Those points in the water supply distribution system with low or no flow.

First Draw Sample: A 1-liter sample of tap water that has been standing in the plumbing pipes at least 6 hours and is collected without flushing the tap.

Fully Flushed Sample: Water collected from a tap that has been allowed to flow freely for several minutes.

Galvanic Corrosion: Corrosion of one metal accelerated by the presence of another metal with a different electrochemical potential (e.g., corrosion

of lead solder is accelerated by the presence of copper pipe).

Gooseneck or Pigtail: A short section of pipe used to connect the service line to the water main or the service line to the water meter. See Figure 1.

Large Water System (for purposes of this rule only): A water system that serves more than 50,000 persons.

Medium-Size Water System (for purposes of this rule only): A water system that serves greater than 3,300 and less than or equal to 50,000 persons.

Lead Service Line: A service line made of lead which connects the water main to the building inlet and any lead pigtail, gooseneck or other fitting which is connected to such lead line. (See Figure 1.)

Optimal Corrosion Control Treatment (for the purposes of this rule only): Corrosion control treatment that minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulation.

Service Line Sample: One-liter sample of water that has been standing for at least 6 hours in a service line. This sample may be collected by one of three methods: (1) direct sampling of the service line, (2) tap sample collected based on a temperature change in the water, or (3) tap sample collection after flushing a volume of water equal to that contained in the pipes connecting the tap to the service line.

Single Family Structure (for the purpose of this rule only): A building constructed as a single-family residence that is currently used as either a residence or a place of business.

Small Water System (for purposes of this rule only): A water system that serves 3,300 persons or fewer.

Abbreviations

BAT: Best Available Technology
 CASAC: Clean Air Science Advisory Committee
 MCL: Maximum Contaminant Level
 MCLG: Maximum Contaminant Level Goal
 MDL: Method Detection Limit
 MGD: Million Gallons per Day
 mg/L: Milligram per Liter
 $\mu\text{g}/\text{L}$: Microgram per Liter
 $\mu\text{g}/\text{dL}$: Microgram per Deciliter
 NHANES II: Second National Health and Nutrition Survey
 NIRS: National Inorganics and Radionuclide Survey
 NOMS: National Organics Monitoring Survey
 NPDWR: National Primary Drinking Water Regulation
 NSDWR: National Secondary Drinking Water Regulation
 NTNCWS: Non-Transient, Non-Community Water System
 PbB: Blood Lead Level

PbW: Water Lead Level
 PQL: Practical Quantitation Level
 PWS: Public Water System
 SDWA: Safe Drinking Water Act
 TTHM: Total Trihalomethanes
 VOC: Volatile Organic Chemical

I. Statutory Requirements

The Safe Drinking Water Act (42 U.S.C. 300f et seq.) (SDWA or the Act) requires EPA to establish maximum contaminant level goals (MCLGs) and national primary drinking water regulations (NPDWRs) for contaminants that, in the judgment of the Administrator, may have any adverse effect on the health of persons and that are known or anticipated to occur in public water systems. Section 1412(b)(3)(A). MCLGs and MCLs are to be proposed and promulgated simultaneously. Section 1412(b)(1).

MCLGs are Non-Enforceable Health Goals

MCLGs do not constitute regulatory requirements which impose any obligations on public water systems. Rather, MCLGs are health goals which are based solely upon considerations of protecting the public from adverse health effects of drinking water contamination. The MCLGs reflect the aspirational health goals of the SDWA which the enforceable requirements of NPDWRs (discussed below) seek to attain to the extent feasible. Section 1412(b)(4) directs that MCLGs be set at a level at which, in the Administrator's judgment, "no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety." Section 1412(b)(4). The House Report on the bill that eventually became the SDWA of 1974 provides congressional guidance on developing MCLGs:

[T]he recommended maximum contaminant level [renamed maximum contaminant level goal in the 1986 amendments to the SDWA] must be set to prevent the occurrence of any known or anticipated adverse effect. It must include an adequate margin of safety, unless there is no safe threshold for a contaminant. In such a case, the recommended maximum contaminant level should be set at the zero level.

(H.R. Rep. No. 93-1185, Pg. 20, 1974)

NPDWRs Set the Enforceable Standards.

NPDWRs include either MCLs or treatment technique requirements as well as compliance monitoring requirements. Section 1401(1). The MCL for a contaminant must be set as close to the MCLG as is "feasible." Section 1412(b)(4). Feasible means "feasible with the use of the best technology,

treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions are available (taking costs into consideration)." Section 1412(b)(5). A treatment technique must "prevent known or anticipated adverse effects on the health of persons to the extent feasible." Section 1412(b)(7)(A). A treatment technique requirement can be set only if the Administrator makes a finding that "it is not economically or technologically feasible to ascertain the level of the contaminant." Section 1412(b)(7)(A).

Secondary MCLs.

EPA sets national secondary drinking water regulations (NSDWRs) to control water color, odor, appearance, and other characteristics affecting consumer acceptance of water. The secondary regulations are not federally enforceable, but are considered guidelines for the States. Section 1401(2).

Amendments to the SDWA.

The 1986 amendments to the SDWA established a list of 83 contaminants for which EPA is to develop MCLGs and NPDWRs. Lead and copper are among these contaminants, and this final rule fulfills the statutory requirement.

II. Background

A. Regulatory Background

The current MCL for lead is 0.050 milligrams per liter (mg/L) (see 40 CFR 141.11(b)). EPA promulgated this MCL as an interim drinking water regulation in 1975. For copper, there is currently a NSDWR of 1 mg/L. On November 13, 1985, EPA proposed MCLGs for lead and copper (50 FR 46936). Because the 1986 amendments to the SDWA require that MCLGs and NPDWRs be proposed and promulgated simultaneously, EPA was required to repropose MCLGs for contaminants for which MCLGs were originally proposed in the November 1985 notice, including lead and copper. On August 18, 1988, EPA proposed to set the MCLG for lead at zero and the MCLG for copper at 1.3 mg/L (53 FR 31516). In addition, EPA proposed a lead MCL for source water of 0.005 mg/L and a copper MCL of 1.3 mg/L that would have been measured at each entry point to the distribution system of the public water system (PWS's). The 1988 notice also proposed a treatment technique that would have required a PWS to install optimal corrosion control to minimize the occurrence of lead and copper corrosion by-products and to develop and deliver a public education

program that would inform citizens about the risk of exposure to lead and copper in drinking water and thereby allow them to take the necessary steps to reduce their exposure to lead.

Corrosion control would have been triggered if: (1) The average lead levels in targeted tap samples from a system exceeded 0.010 mg/L lead; (2) the copper levels were greater than 1.3 mg/L in more than 5 percent of targeted tap samples; (3) or if pH was less than 8.0 in more than 5 percent of targeted tap samples. The proposed public education requirements would have been triggered if the lead levels exceeded an average of 0.010 mg/L or if more than 5 percent of the targeted tap samples were greater than 0.020 mg/L.

In addition to directing EPA to revise the NPDWR for lead, the SDWA includes other provisions that affect lead contamination of drinking water. Section 1417 of the 1986 SDWA amendments banned the use of lead solder or flux (i.e., solder or flux containing more than 0.2 percent lead) and lead-bearing pipes and fittings (i.e., pipes and fittings containing more than 8 percent lead). The lead ban became effective on June 19, 1986. States have been required to implement and enforce the lead ban as of June 19, 1988. EPA has a program to withhold 5 percent of Federal grants a State receives for drinking water implementation if a State fails to enforce the ban.

The SDWA also imposed special public notification requirements regarding lead in drinking water. Section 1417(a)(2). Public water systems were required to identify and provide notice to persons who may be affected by lead contamination in their drinking water when such contamination results from the use of lead in the construction materials of the system and/or corrosivity of the water supply sufficient to cause lead leaching from plumbing systems. This provision requires notification even if the system is in compliance with the current MCL for lead. EPA published final regulations to implement this requirement of the SDWA on October 28, 1987 (52 FR 41534). Under these regulations, systems were required to provide a one-time notice to consumers by June 19, 1988.

B. Overview of Problem

1. Lead

Lead occurs in drinking water from two sources: (1) Lead in raw water supplies, i.e., source water or distributed water, and (2) corrosion of plumbing materials in the water distribution system (corrosion by-products). Most

lead contamination is from corrosion by-products.

a. *Occurrence in Source Water and Distributed Water.* In a national drinking water survey of nearly 1000 randomly chosen groundwater supplies completed in 1987 (the National Inorganics and Radionuclides Survey or NIRS), about 5 percent of the drinking water samples collected from fully flushed taps exceeded 0.005 mg/L of lead (EPA, 1988a). Because lead as a corrosion by-product may enter fully flushed tap samples and be attributed erroneously to source water, EPA resampled the supplies in NIRS that showed positive results for lead. EPA found very few samples above 0.005 mg/L when the sampling point was moved to the entry point to the distribution system. Based on these data, EPA now estimates that approximately 600 groundwater systems may have water leaving the treatment plant with lead levels greater than 0.005 mg/L (EPA, 1991a; EPA, 1990b). The National Organic Monitoring Survey (EPA, 1980) provided data on the quality of fully flushed water from surface water supplies. Based on these data, EPA estimates that about 215 surface suppliers may have water leaving the treatment plant with lead levels greater than 0.005 mg/L (EPA, 1991a). These two sources together indicate that less than 1 percent of the public water systems in the United States have water entering the distribution system with lead levels greater than 0.005 mg/L. These systems serve a population that represents less than 3 percent of the 226 million people in the United States that receive their drinking water from public water systems (EPA, 1991a).

b. *Occurrence as a Corrosion By-Product.* Lead in drinking water results primarily from corrosion of materials located throughout the distribution system containing lead and copper and from lead and copper plumbing materials used to plumb public- and privately-owned structures connected to the distribution system. The amount of lead in drinking water attributable to corrosion by-products depends on a number of factors, including the amount and age of lead and copper bearing materials susceptible to corrosion, how long the water is in contact with the lead containing surfaces, and how corrosive the water in the system is toward these materials.

As illustrated in Figure 1, the potential sources of lead found in a drinking water distribution system (including plumbing in buildings) can include:

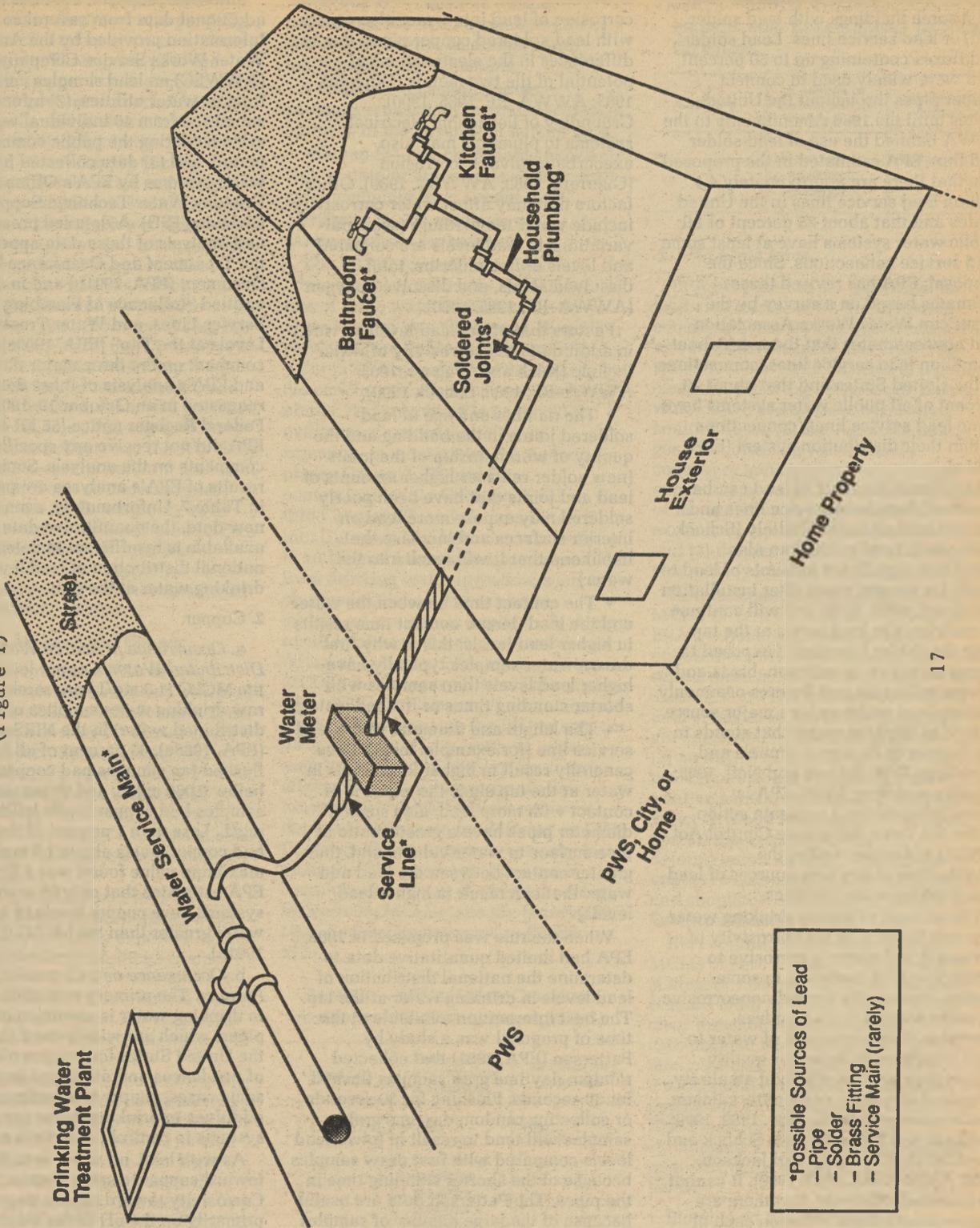
- Water service mains (rarely).
- Lead goosenecks or pigtails.

- Lead service lines and interior household pipes.
- Lead solders and fluxes used to connect copper pipes.
- Alloys containing lead, including some faucets made of brass or bronze.

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Public Water System (PWS) and Homeowner Plumbing

(Figure 1)



- *Possible Sources of Lead**
- Pipe
 - Solder
 - Brass Fitting
 - Service Main (rarely)

Most public water systems serve at least some buildings with lead solder and/or lead service lines. Lead solder and fluxes containing up to 50 percent lead were widely used to connect copper pipes throughout the United States until the 1986 Amendments to the SDWA banned the use of lead solder and flux. EPA estimated in the proposed rule that there are approximately 4.4 million lead service lines in the United States and that about 25 percent of all public water systems have at least some lead service connections. Since the proposal, EPA has revised these estimates based on a survey by the American Water Works Association and now estimates that there are about 10 million lead service lines/connections in the United States and that about 20 percent of all public water systems have some lead service lines/connections within their distribution system (EPA, 1991a).

Significant amounts of lead can be dissolved from lead service lines and interior lead pipes indefinitely (Schock 1989, 1990). Lead solder can also contribute significant amounts of lead to water for several years after installation (Oliphant, 1982, 1983) and will continue to contribute to lead levels at the tap after the solder has aged if exposed to corrosive water. In addition, brass and bronze in faucets and fixtures commonly contain lead and may be a major source of lead in drinking water that stands in the faucets or fixtures (Samuels and Meranger, 1984; Schock and Neff, 1988; Gardels and Sorg, 1989). EPA is considering taking a separate action under the Toxic Substance Control Act (TSCA) to further restrict the introduction of any new sources of lead into drinking water supplies.

The amount of lead in drinking water depends heavily on the corrosivity of the water. All water is corrosive to metal plumbing materials to some degree, even water termed noncorrosive or water treated to make it less corrosive. The corrosivity of water to lead is influenced by water quality parameters such as pH, total alkalinity, dissolved inorganic carbonate, calcium, and hardness (Schock, 1980, 1989, 1990; Sheiham and Jackson, 1981; Schock and Gardels, 1983; Gregory and Jackson, 1984; AWWA-RF, 1985, 1990). It cannot be assumed, however, that there are simple associations between each of these parameters and lead levels in drinking water. For example, increasing the hardness of the water will in many cases decrease lead levels; however, there are several studies that could not correlate increased water hardness with lower lead levels (Elzenga and

Graveland, 1981; Haring, 1984). Galvanic corrosion of lead into water also occurs with lead-soldered copper pipes, due to differences in the electrochemical potential of the two metals (Oliphant, 1983; AWWA-RF, 1985, 1990). Grounding of household electrical systems to plumbing may also exacerbate galvanic corrosion (Guerrera, 1980; AWWSC, 1989). Other factors that may affect water corrosivity include water temperature (seasonal variations in lead levels are common) and levels of free chlorine, total dissolved solids, and dissolved oxygen (AWWA-RF, 1985, 1990).

Factors that affect lead levels in water in addition to the corrosivity of water include (Kuch and Wagner, 1983; AWWA-RF, 1985; Schock 1990):

- The number and age of lead-soldered joints in the building and the quality of workmanship of the joints (new solder releases higher amounts of lead and joints that have been poorly soldered may expose more lead on interior surfaces and increase the likelihood that it will leach into the water)
- The contact time between the water and the lead (longer contact time results in higher lead levels; this is why first drawn water samples typically have higher lead levels than samples with shorter standing times or flushed water)
- The length and diameter of the lead service line (for example, longer lines generally result in higher lead levels in water at the tap since the water is in contact with more lead; also smaller diameter pipes have a greater ratio of pipe surface to water volume and, thus, greater contact between the lead and water that can result in higher lead levels)

When the rule was proposed in 1988, EPA had limited quantitative data to determine the national distribution of lead levels in drinking water at the tap. The best information available at the time of proposal was a study by Patterson (EPA, 1981) that collected random daytime grab samples flushed for 30 seconds. Flushing for 30 seconds or collecting random daytime grab samples will tend to result in lower lead levels compared with first draw samples because of the shorter standing time in the pipes. The Patterson data are useful because of the large number of samples (782 samples) taken and because the samples were widely distributed geographically across the country (58 cities in 47 States were sampled). The average lead level was 0.013 mg/L, with 90 percent of the values below 0.033 mg/L (EPA, 1991a).

Since the proposal, EPA has received additional data from several sources: (1) Information provided by the American Water Works Service Company (AWWSC) on lead samples collected from 94 water utilities, (2) information submitted from 40 individual water systems during the public comment period, and (3) data collected from 9 water systems by EPA's Office of Drinking Water Technical Support Division (TSD). A detailed presentation and analysis of these data appears in the Treatment and Occurrence Support Document (EPA, 1991b) and in a paper entitled "Influence of Plumbing, Lead Service Lines, and Water Treatment Levels at the Tap" (EPA, 1990e). Public comment on the three major data sets and EPA's analysis of these data were requested in an October 19, 1990, Federal Register notice (55 FR 42409). EPA did not receive any specific comments on the analysis. Summary results of EPA's analyses are presented in Table 7. Unfortunately, even with this new data, the quantitative data available is insufficient to determine the national distribution of lead levels in drinking water at the tap.

2. Copper

a. *Occurrence in Source Water and Distributed Water.* Copper levels above the MCLG (1.3 mg/L) are rarely found in raw drinking water supplies or in distributed water. In the NIRS study (EPA, 1988a), 85 percent of all fully flushed tap samples had copper levels below 0.060 mg/L, and 98 percent of samples had copper levels below 0.46 mg/L. Less than 1 percent of the samples had copper levels above 1.0 mg/L. The maximum value found was 2.37 mg/L. EPA estimates that only 66 water systems have copper levels in source water greater than the MCLG (EPA, 1991a).

b. *Occurrence as a Corrosion By-Product.* The primary source of copper in drinking water is corrosion of copper pipes, which are widely used throughout the United States for interior plumbing of residences and other buildings. In some cases, copper is a component of additives to drinking water used by systems to control the growth of algae.

As with lead, all water is corrosive toward copper to some degree. Corrosivity toward copper depends primarily on the pH of the water, with very low pHs associated with the highest levels of copper corrosion by-products (AWWA-RF, 1985; Schock, 1985). Many of the other factors that affect the corrosivity of water toward lead can also be expected to affect the corrosion of copper.

Patterson (EPA, 1981) measured copper levels in the 30-second partially flushed samples taken at random times during the day. Three percent of the samples had copper levels exceeding 1 mg/L and 19 percent exceeded 0.2 mg/L. The national average was 0.221 mg/L (median = 0.04 mg/L). In the 1969 Community Water Supply Survey (CWSS), samples were taken from 678 groundwater supplies, 109 surface water supplies, and 182 supplies of unknown or mixed origin (a total of 969 systems). For the groundwater supplies, the maximum copper level found was 0.47 mg/L and the mean of the positive measurements (i.e., those exceeding the detection limit of 0.010 mg/L) was 0.075 mg/L. For the surface water supplies, the maximum copper value found was 0.304 mg/L and the mean of the positive measurements was 0.066 mg/L. Copper data were also collected in the AWWSC survey and the results indicate that 15 of 93 systems had one or more samples greater than 1.3 mg/L, with only 19 of 1942 total samples collected greater than 1.3 mg/L. The AWWSC data also indicate that elevated copper levels are generally associated with elevated lead levels (AWWSC, 1989).

III. MCLGs for Lead and Copper

The SDWA requires EPA to set MCLGs at concentration levels at which no known or anticipated adverse effects would occur, allowing for an adequate margin of safety. Section 1412(b)(4). Establishment of a specific MCLG usually depends on the evidence of carcinogenicity from drinking water exposure or the Agency's reference dose (RfD), which is calculated for each contaminant.

The RfD is an estimate, with an 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 health effects during a lifetime. For chemicals suspected as carcinogens, the Agency has adopted a carcinogenic classification scheme that considers the weight of evidence of carcinogenicity in humans, using bioassays in animals and human epidemiological studies as well as information that provides indirect evidence (i.e., mutagenicity and other short-term test results). Carcinogens are classified as either Group A, B1, B2, C, D, or E and are based on the following:

- Group A—Human carcinogen based on sufficient evidence from epidemiological studies.

- Group B1—Probable human carcinogen based on at least limited evidence of carcinogenicity to humans.

- Group B2—Probable human carcinogen based on a combination of sufficient evidence in animals and inadequate data in humans.

- Group C—Possible human carcinogen based on limited evidence in animals, in the absence of human data.

- Group D—Not classifiable based on lack of data or inadequate evidence of carcinogenicity from animal data.

- Group E—No evidence of carcinogenicity for humans.

The MCLG for a drinking water contaminant is generally established in one of three ways depending on its classification as a Category I, II, or III chemical (see Table 1). The starting point in EPA's analysis is the Agency's cancer classification scheme described above. Each chemical is analyzed for evidence of carcinogenicity via ingestion. In most cases, the Agency places Group A, B1, and B2 contaminants into Category I, Group C into Category II, and Groups D and E into Category III. However, where there is additional information on cancer risks from drinking water ingestion, such as pharmacokinetics and exposure, additional scrutiny is applied which may result in placing the contaminant into a different category. EPA's policy is to set MCLGs for Category I chemicals at zero. The MCLG for Category II contaminants is calculated by using the RfD to account for noncancer effects, with an added margin of safety to account for cancer effects, or is based on a cancer risk range of 10^{-5} to 10^{-6} when noncancer data are inadequate for deriving an RfD. Category III contaminants are calculated using the RfD approach. For a more complete discussion of the methodology for deriving MCLGs, see the January 30, 1991, Federal Register notice (56 FR 3526).

TABLE 1.—EPA'S THREE-CATEGORY APPROACH FOR ESTABLISHING MCLGS

| Category | Evidence of carcinogenicity via ingestion | MCLG setting approach |
|----------|--|--|
| I..... | Strong evidence considering weight of evidence, pharmacokinetics, and exposure. | Zero. |
| II..... | Limited evidence considering weight of evidence, pharmacokinetics, and exposure. | RfD approach with added safety margin or 10^{-5} to 10^{-6} cancer risk range. |

TABLE 1.—EPA'S THREE-CATEGORY APPROACH FOR ESTABLISHING MCLGS—Continued

| Category | Evidence of carcinogenicity via ingestion | MCLG setting approach |
|----------|---|-----------------------|
| III..... | Inadequate or no animal evidence. | RfD approach. |

A. MCLG for Lead

EPA proposed to set the MCLG for lead at zero, based on the following considerations: (1) The occurrence of a variety of low level health effects for which it is currently difficult to identify clear threshold exposure levels below which there are no risks of adverse health effects; (2) the Agency's policy goal that drinking water should contribute minimal lead to total lead exposures because a substantial portion of the sensitive population already exceeds acceptable blood lead levels; and (3) the classification of lead as a Group B2 (probable human) carcinogen.

Several commenters supported the MCLG of zero for lead and agreed with EPA's rationale. Others, however, opposed the MCLG of zero for lead and raised three main issues to support their argument: (1) The concern over blood lead levels at or below 10–15 µg/dl is not supported by the health effects data; (2) an MCLG of zero is not necessary to protect public health, because the relative contribution of lead in drinking water to blood lead levels is minimal; and (3) the carcinogenicity determination for lead is based on unproven and marginal scientific facts and should be reviewed by the U.S. EPA Science Advisory Board.

EPA continues to believe that an MCLG of zero for lead is appropriate (Category I contaminant) for the same reasons cited in the proposal (i.e., no clear threshold for some non-carcinogenic health effects, need to minimize lead in drinking water because a substantial portion of the sensitive population already exceeds acceptable blood lead levels, lead is a B2 carcinogen). Each of the major issues raised by commenters is addressed below.

1. Blood Lead Level of Concern

The concentration of lead in whole blood has been the most widely used index of total lead exposure. As discussed in the 1988 preamble, lead exposure across a broad range of blood lead (PbB) levels has been associated with a spectrum of pathophysiological

effects, including interference with heme synthesis necessary for formation of red blood cells, anemia, kidney damage, impaired reproductive function, interference with vitamin D metabolism, impaired cognitive performance (as measured by IQ tests, performance in school, and other means), delayed neurological and physical development, and elevations in blood pressure (EPA, 1986a). An extensive review of lead toxicity is contained in EPA's 1986 Air Quality Criteria Document and Addendum (EPA, 1986a) and its 1990 Supplement to the Addendum (EPA, 1990a).

Several commenters stated that the concern over blood lead levels at or below 10–15 $\mu\text{g}/\text{dL}$ was unsubstantiated. Other commenters argued that the health effects data indicated the appropriate range was 6–10 $\mu\text{g}/\text{dL}$ or lower. Still other commenters argued that the MCLG for lead could be above zero because the typical water lead contribution to total lead exposure is about 20 percent, the average population blood lead levels are expected to be only 4–6 $\mu\text{g}/\text{dL}$ in 1991 when this rule would take effect, and EPA's level of concern for individuals is 10–15 $\mu\text{g}/\text{dL}$. These commenters argued that water lead levels could be from 0.020 mg/L to as high as 0.050 mg/L and still maintain blood lead levels below the 10–15 $\mu\text{g}/\text{dL}$ level of concern.

As stated in the proposal, EPA believes that it is difficult to clearly identify what PbB level is an appropriate criterion or "threshold" below which there are no adverse health effects. Based on the information in the 1986 Air Quality Criteria Document (1986a), and the 1990 Supplement (EPA, 1990a), some of the key findings concerning the relationship between PbB and health effects are:

- Inhibited activity of enzymes involved in red blood cell metabolism, ALA-D and Py-5-N has been associated with PbB levels of 10–15 $\mu\text{g}/\text{dL}$ and possibly lower.
- Elevated erythrocyte protoporphyrin (EP) levels, an indication of lead related interference with heme synthesis, have been associated with PbB levels of 12–23 $\mu\text{g}/\text{dL}$ depending on iron status.
- Interference with vitamin D hormone synthesis has been detected in children with PbB levels as low as 12 $\mu\text{g}/\text{dL}$.
- Altered electrical brain wave activity has been identified at PbB levels down to 15 $\mu\text{g}/\text{dL}$ and possibly lower.
- Deficits in IQ and other measures of cognitive function, such as attention span, have been associated with PbB levels of 15 $\mu\text{g}/\text{dL}$ and possibly lower in socially disadvantaged children.

- Slowed peripheral nerve conduction has been detected in children with PbB levels of 20–30 $\mu\text{g}/\text{dL}$.

- Deficits in mental indices have been found in infants with maternal or umbilical cord PbB levels as low as 6–7 $\mu\text{g}/\text{dL}$.

- Low birth weights and decreased gestational age, factors that may influence early neurological development, have been associated with infants having maternal PbB above 12–14 $\mu\text{g}/\text{dL}$ and possibly as low as 7 $\mu\text{g}/\text{dL}$.

- Early childhood growth reductions have been associated with PbB levels from 5–35 $\mu\text{g}/\text{dL}$ in one study and with PbB levels greater than 40 $\mu\text{g}/\text{dL}$ in another.

- Small increases in blood pressure have been related to adults with PbB levels down to 7 $\mu\text{g}/\text{dL}$.

The lack of an apparent exposure threshold for several lead effects is supported by the fact that many of the biochemical changes that appear to underlie lead toxicity (e.g., alterations in enzyme activity, membrane receptors, calcium homeostasis) have been observed at the lowest experimental dosages administered, often with no discernible threshold (EPA, 1986a). There is uncertainty regarding the point at which subtle molecular changes individually or collectively become significant enough that they should be regarded as constituting "adverse" effects. However, such effects clearly become more pronounced (and likely), and broaden to cause more severe disruptions of the normal functioning of many organ systems, as PbB levels increase. This continuum of effects, from biochemical responses, cellular dysfunction, and morphological change, to organ system alterations, clinical symptoms, and toxicity, makes it difficult to clearly identify what PbB level, if any, constitutes an appropriate "threshold", below which there are no significant risks of adverse effects.

The 1986 Air Criteria Document concluded that for children: (1) The collective impact of the effects at PbB levels above 15 $\mu\text{g}/\text{dL}$ represents a clear pattern of adverse effects worthy of avoidance; (2) at levels of 10–15 $\mu\text{g}/\text{dL}$, there appears to be a convergence of evidence of lead-induced interference with a diverse set of physiological functions and processes, particularly evident in several independent studies showing impaired neurobehavioral function and development; and (3) the available data do not indicate a clear threshold at 10–15 $\mu\text{g}/\text{dL}$, but rather suggest a continuum of health risks approaching the lowest levels measured.

The health effects of lead below this range are less well substantiated.

In reviewing the information presented in the 1986 Air Quality Criteria Document and Addendum, EPA's Clean Air Science Advisory Committee (CASAC) concluded that various effects starting at PbB levels around 10–15 $\mu\text{g}/\text{dL}$ or even lower in young children "may be argued as becoming biomedically adverse" (EPA, 1986b).

Additional studies published since the proposal support EPA's earlier conclusions. These studies are reviewed in the 1990 Supplement (EPA, 1990a) to the Addendum of the 1986 Criteria Document, which concluded that "a PbB concentration of 10–15 $\mu\text{g}/\text{dL}$, and possibly lower, remains the level of concern for impaired neurobehavioral development in infants and children." After reviewing the Supplement, as well as the staff position paper of EPA's Office of Air Quality Planning and Standards (EPA, 1989d) on the National Ambient Air Quality Standards for Lead, CASAC concluded that PbB levels above 10 $\mu\text{g}/\text{dL}$ clearly warrant avoidance, especially for development of adverse health effects in sensitive populations. The Committee concluded "that EPA should seek to establish an air standard which minimizes the number of children with PbB levels above a target value of 10 $\mu\text{g}/\text{dL}$. In reaching this conclusion, the Committee recognizes that there is no discernible threshold for several lead effects and that biological changes can occur at lower levels" (EPA, 1990f).

Assessment of the more recent health effects data and additional review by EPA's science advisors support EPA's earlier conclusion that blood lead levels of 10–15 $\mu\text{g}/\text{dL}$ constitute an appropriate range of concern for health effects that warrant avoidance. In addition, the new data and other reviews (e.g., Davis, 1990) support the conclusion in the proposal that the occurrence of a variety of low level effects makes it difficult to identify a clear threshold blood lead level below which there are no risks of adverse health effects. Moreover, many of these effects at low exposure levels have no obvious symptoms. Lead accumulates in the body and although the resulting health effects are subtle, they can be persistent and cause significant effects on educational attainment and other long-term performance (Needleman et al., 1990).

Many commenters suggested that the MCLG should be based on the water lead levels associated with blood lead levels of 10–15 $\mu\text{g}/\text{dL}$ and did not understand why an MCLG of zero was

necessary to meet this goal. EPA has adopted the blood lead level of concern of 10 $\mu\text{g}/\text{dL}$ as a benchmark to assist the Agency in evaluating progress in reducing lead exposures. However, EPA does not consider this level to be a threshold below which there are no risks of adverse effects. In establishing MCLGs, the Agency seeks to ascertain the level at which there are no known or anticipated adverse effects on the health of persons and which includes an adequate margin of safety. Section 1412(b)(4). Given the growing body of scientific evidence that risks of adverse effects are present at increasingly lower levels of exposure, and the uncertainty that any blood lead level is free from risk of incurring adverse effects among the sensitive populations, EPA concludes that it would be difficult to identify an adequate margin of safety, and an associated water lead concentration, that would adequately achieve the health goal contained in § 1412(b)(4) of the SDWA.

Based on the available data, EPA believes there are no clearly discernible thresholds for some of the non-carcinogenic adverse health effects associated with lead (EPA, 1990a). Because of the possibility that adverse health effects may occur at blood lead levels below 10 $\mu\text{g}/\text{dL}$, the Agency believes that an MCLG of zero for lead in drinking water complies with the intent of the SDWA.

In addition, comments that average blood lead levels could be maintained below levels of concern with a higher MCLG ignore the distinction between individual blood lead concentrations at the level of concern (i.e., $\text{PbB} \geq 10 \mu\text{g}/\text{dl}$) and population average levels expected when this rule takes effect. There is a wide range of lead levels not only in water but also in house dusts, soils, diets, etc. In addition, there is tremendous variability, especially among children, in behavior patterns (including consumption), physiological sensitivity, and nutritional states. Because of these factors, there is a wide distribution of blood lead levels in the population.

Analysis in the Air Quality Criteria Document (EPA, 1988a) of blood lead distributions measured in the Second National Health and Nutrition Survey (NHANES II), the most recently completed nationwide survey of U.S. blood lead levels, indicates that among a population of U.S. children with an average blood lead level of 5 $\mu\text{g}/\text{dl}$, for example, approximately 2.5 percent would have blood lead levels above 10 $\mu\text{g}/\text{dl}$. It is estimated that several million children have blood lead levels

above 10 $\mu\text{g}/\text{dL}$, mainly from lead paint or from old contaminated soils in urban areas (ATSDR, 1988).

Because many children now have blood lead levels above the level of concern, EPA's policy goal continues to be that drinking water should contribute minimal additional lead to existing body burdens of lead. This policy is consistent with the statutory mandate to set MCLGs at a level that provides an "adequate margin of safety," which, as discussed in the legislative history of the SDWA, must consider exposure to contaminants from sources other than drinking water and adverse effects that may be experienced by sensitive sub-populations. For this additional reason, setting a health-based goal of zero for lead in drinking water is consistent with the statutory standard.

2. Contribution of Water Lead to Blood Lead Levels

Several commenters believed that EPA could establish an MCLG above zero and still protect public health because the contribution to blood lead levels from drinking water is minimal. These commenters raised two points: (1) the correlation between blood lead and water lead is questionable; and (2) drinking water comprises only a small proportion of total human lead intake.

a. Blood Lead to Water Lead Relationship. At the time of proposal, EPA used a correlation coefficient of 0.20 $\mu\text{g}/\text{dL}$ lead in blood per $\mu\text{g}/\text{L}$ lead in water, derived from duplicate diet studies by Ryu et al. (1983) and Lacey et al. (1985) (EPA, 1988b). Ryu et al. studied infants in Iowa fed a controlled diet of canned formula or cow's milk. Drinking water was not the source of lead, and use of these data assumes that lead absorption from water is equal to that from formula or diet. The Lacey et al. study collected data in Glasgow on infants' blood lead levels, and lead in a duplicate diet sample, in first-draw, random daytime tap water and in typical water use samples (from tea kettles). Several commenters stated that EPA had not established a clear correlation between water lead and blood lead. Other commenters claimed that the studies used to correlate water lead and blood lead had been improperly evaluated by EPA. One of these commenters stated that EPA had underestimated the blood lead response in the Ryu study because the study did not allow infant blood leads to reach a steady state. This commenter suggested that if the nonequilibrium conditions that existed in the Ryu et al. study are considered, a correlation coefficient of 0.48 $\mu\text{g}/\text{dL}$ lead in blood per $\mu\text{g}/\text{L}$ lead in water is derived. Another commenter

stated that the Ryu study was not a water study but a dietary study involving no drinking water lead impact.

Several studies have examined the contribution that lead levels in drinking water makes to blood lead in children and adults (e.g., Thomas et al., 1979; Worth et al., 1981; Moore, 1977; Moore et al., 1979; Sherlock and Quinn, 1986; Lacey et al., 1985; Raab et al., 1987; Laxen et al., 1987; Maes et al., 1991). These studies have correlated blood lead levels with water lead levels in first-draw water, in random or partially flushed water samples, or in composite samples from first, partially, or fully flushed water. Based on these studies, it is difficult to identify the single measure of water lead that best predicts blood lead (EPA, 1986a).

In response to comments, EPA has reanalyzed the Ryu and Lacey studies, along with a study by Laxen et al. (1987) on school children in Edinburgh in which tap water was sampled after a 5-minute flush and a 30-minute stagnation time. These analyses, summarized in Marcus (1989a; 1989b; 1990b; 1990c), found a nonlinear relationship between children's blood lead and water lead levels and best fit a piece-wise dose-response function with different water lead: blood lead coefficients at different water lead concentrations. This is consistent with the non-linear kinetics of lead transfer from the red blood cell and an apparent saturable transfer mechanism in the gut (EPA, 1986a).

EPA agrees that it is better to rely on studies where drinking water was the source of lead and believes the Lacey study, rather than the Ryu study, is the best study for indicating blood lead responses among infants to lead in drinking water. The Lacey study measured drinking water exposures of children from zero to 6 months of age. Regression analyses of the Lacey study found a slope of 0.26 $\mu\text{g}/\text{dL}$ blood per $\mu\text{g}/\text{L}$ water at water lead levels below 0.015 mg/L and 0.04 $\mu\text{g}/\text{dL}$ blood per $\mu\text{g}/\text{L}$ water at water lead levels above 0.015 mg/L. While EPA believes the Lacey study, because of its reliance on exposure through drinking water, is the best available study for estimating water lead: blood lead relationships for infants, the Agency notes that the Ryu study yielded results similar to the Lacey study (0.24 $\mu\text{g}/\text{dL}$ blood lead per g/L water lead assuming a water lead intake of 1 liter per day).

For older children, EPA is relying on a recent study by (Maes et al., 1991) of Hawaiians exposed to lead in drinking water across a wide range of levels. Again, a piece-wise linear relationship was found to provide the best fit to the

data with a slope of 0.12 $\mu\text{g}/\text{dL}$ blood per $\mu\text{g}/\text{L}$ water at water lead levels below 0.015 mg/L and 0.06 $\mu\text{g}/\text{dL}$ blood per $\mu\text{g}/\text{L}$ water at water lead levels above 0.015 mg/L . Because this study controlled for many different variables, including house dust and food, EPA concludes that it provides the most reliable estimate of blood lead:water lead relationships for children.

For adults, the 1986 Criteria Document identified Pocock et al. (1983) as the most useful study; regression analyses yielded a slope of 0.06 $\mu\text{g}/\text{dL}$ blood per $\mu\text{g}/\text{L}$ water lead.

In conclusion, EPA disagrees with commenters suggesting that the Agency has not established a clear correlation between blood lead and water lead levels and that additional research is needed to substantiate this relationship. EPA recognizes that differences exist in the correlation coefficients derived from the available studies on water lead/blood lead relationships. These differences can be attributed to such factors as differences in study populations, analytical methods, and potential confounders (e.g., other lead sources, including diet, dust, and air). EPA believes, nonetheless, that the studies reviewed and analyzed in the Air Quality Criteria Document (1986a) and the additional analyses cited above have established a quantitatively consistent relationship between blood lead and lead in drinking water for infants, children, and adults.

While the degree to which lead causes increases in blood lead levels is important for evaluating the degree of health effects associated with various water lead levels, this issue is not directly relevant to the Agency's bases for establishing an MCLG of zero. The first basis (lack of clear threshold for adverse effects) is based upon extensive studies of various health endpoints, and does not depend specifically on any water lead-blood lead relationship. The second basis for the zero MCLG is based on the empirically observed fact that a large number of children have blood leads above the level of concern. Even if there is a disagreement regarding the degree of change in blood lead levels that would be caused by water lead levels, it would always be the case that consumption of lead in water would contribute to some increase in blood lead levels, thereby causing an increased risk of adverse effects for the sensitive sub-population of children with blood lead levels already above 10 $\mu\text{g}/\text{dL}$. The third basis for the MCLG (carcinogenic effects), like the first basis, depends upon the non-threshold nature of lead's health effects,

and not upon any particular correlation between water lead and blood lead levels.

b. *Contribution of Drinking Water to Total Lead Intake.* EPA also disagrees with the assertion that drinking water comprises a small proportion of lead intake. EPA estimated in the proposal that the typical drinking water contribution to total lead exposure for an average 2-year-old child is about 20 percent (EPA, 1988c). The proportion of exposure due to lead, however, will vary with different levels of lead in the water and with variations in other lead exposures. For children with high levels of lead exposure from lead paint, contaminated soils and dusts near roadways or lead smelters, or other point sources of airborne lead, drinking water contributes a much lower, although still relevant, proportion of total exposure. For residents of houses and buildings with relatively new lead solder or lead service lines, drinking water can be the primary source of exposure, especially if the water is corrosive. As such, the total drinking water contribution to overall lead levels may range from as little as 5 percent to more than 50 percent of children's total lead exposure. Infants dependent on formula may receive more than 85 percent of their lead from drinking water. As exposures decline to sources of lead other than drinking water, such as gasoline and soldered food cans, drinking water will account for a larger proportion of total intake. The estimate of the relative contribution of drinking water to blood lead levels is not used in any risk assessments for the final rule. As discussed previously, blood lead impacts from different water lead scenarios have been estimated through application of empirical relationships between water lead and blood lead.

3. Carcinogenicity of Lead

As discussed above, the Agency has adopted a carcinogenic classification scheme for chemicals that considers the weight of evidence of carcinogenicity in humans, using bioassays in animals and human epidemiological studies, as well as information that provides indirect evidence (i.e., mutagenicity and other short-term test results). Carcinogens are classified as either Group A, B1, B2, C, D, or E. For known or probably human carcinogens (categories A, B1, or B2), EPA's established policy is to set MCLGs for such contaminants at zero.

EPA determined in the proposal that lead was a Group B2 (probable) human carcinogen. Several commenters disagreed, believing that the data were not adequate to make such a determination. They asked EPA's

Science Advisory Board (SAB) to review the data.

In March and April 1989, an ad hoc SAB committee reviewed the data and basis for EPA's classification of lead as a B2 carcinogen. The findings of the committee, consisting of members of the SAB Executive Committee, the SAB Environmental Health Committee, and the Clean Air Scientific Advisory Committee, were presented in a final report submitted to the EPA Administrator on November 21, 1989 (EPA, 1989b). The final report noted that there was limited understanding of the mechanisms of lead-induced tumorigenesis and that limitations in the available data made it inappropriate to develop a potency factor to perform a quantitative risk assessment for lead at this time. The committee, however, agreed with EPA's conclusion that it had been sufficiently established that lead is a probable human carcinogen, appropriately classified as a B2 carcinogen according to EPA's cancer assessment guidelines. Based on the SAB recommendation, a potency factor for lead has not been developed by EPA. If a potency factor for lead is developed, it will be reviewed by the SAB.

When establishing MCLGs, the Agency usually classifies B2 carcinogens as a Category I contaminant unless there is compelling evidence (e.g., exposure, pharmacokinetics) to place the contaminant into a different category. EPA believes the evidence warrants classifying lead as a Category I contaminant. This determination is based on data from over 20 separate ingestion studies that showed an elevated incidence of kidney tumors in rats and mice (EPA, 1988m; EPA, 1989g). In studies where animals were exposed via drinking water, positive results were reported in one experiment with rats exposed to lead acetate (Koller et al., 1985) but not another (Kanisawa and Schroeder, 1969). Possible induction of lymphocytic leukemia occurred in mice dosed with as little as 0.1 g of lead via drinking water (Blakley, 1987). As noted in EPA's evaluation of the data and reiterated in SAB's 1989 report, there is uncertainty regarding lead's mechanism of action on inducing tumors, but these uncertainties do not provide a basis to alter the weight of evidence for human carcinogenicity. It is known that a significant proportion of ingested lead is absorbed; in adults, the absorption of ingested lead has been estimated to range from 10 to 15 percent, with rates as high as 21-63 percent under fasting conditions, which may be more representative of between-meal absorption (EPA, 1986a; EPA, 1989g).

Experimental studies in children measured an average absorption rate of approximately 50 percent for ingested lead. Based on this information, EPA believes that lead should be classified as a category I contaminant and that the MCLG should be zero.

4. Multinational Business Services Petition

EPA has received a petition from Multinational Business Services Incorporated (MBS), to reconsider the Agency's policy of establishing MCLGs of zero for carcinogens and to establish instead MCLGs for carcinogenic contaminants at calculated negligible risk levels. EPA discussed this petition in the preamble to the proposed rule because the Agency proposed a zero MCLG for lead (53 FR 31516). However, MBS specifically requested EPA to consider its petition in the context of MCLG's being established in EPA's "Phase II" rulemaking. The Agency completed that rulemaking and fully addressed MBS's request in that proceeding (56 FR 3526). Since the MBS did not submit its request as part of comments on the proposed lead and copper rule, the Agency is therefore not addressing MBS's request in the context of this rulemaking.

B. MCLG for Copper

EPA proposed an MCLG of 1.3 mg/L for copper in the November 1985 and 1988 notices. No new data that would change the conclusions presented in the two notices have become available. EPA is, therefore, finalizing an MCLG of 1.3 mg/L for copper. This MCLG of 1.3 mg/L is based on a Lowest Observed Adverse Health Effect Level (LOAEL) of 5.3 mg/day from human clinical case studies in which 5.3 mg was the lowest acute oral dose at which gastrointestinal effects were seen (Chuttani et al., 1965). An uncertainty factor of two was applied, and standard daily consumption of 2 liters of water per day by an adult was assumed. Ten-day and longer exposure values were not derived because the data were inadequate (EPA, 1987c).

Several commenters on both the 1985 and 1988 notices believed that an MCLG for copper was unnecessary. The reasons included: (1) Inadequate adverse health effects data, (2) limited occurrence of copper in drinking water, and (3) the fact that copper is present in drinking water because of corrosion of copper pipes; thus, treatment at the water supply plant would not solve the problem of elevated copper concentrations.

EPA disagrees that there are inadequate health effects data for regulating copper. The data indicate that

copper, which is beneficial at lower levels, is a health risk at levels above 1.3 mg/L in water. Acute exposure to copper has resulted in gastrointestinal effects, such as nausea and diarrhea, as discussed in the 1985 proposal. EPA agrees that copper is not commonly found above the proposed MCLG, but high levels of copper have occasionally been detected in drinking water supplies across the country, and high levels of copper can dissolve from pipes in areas with corrosive water. Thus, EPA believes an MCLG and NPDWR are justified to protect against adverse health effects. In addition, Congress listed copper as 1 of 83 drinking water contaminants mandated for regulation in the 1986 amendments to the SDWA. Since EPA did not substitute another contaminant in place of copper (as authorized by section 1412(b)(2) of the SDWA), it remains on the list of 83 contaminants for which EPA must promulgate an MCLG and NPDWR.

IV. National Primary Drinking Water Regulations for Lead and Copper

In developing a regulatory approach for controlling lead and copper in drinking water, EPA confronted several problems. As described in the previous section, lead and copper differ from other drinking water contaminants because they generally do not occur in significant amounts in source water, but rather occur as the result of the corrosive action of the water in contact with plumbing materials containing lead and copper. Thus, the traditional regulatory approach, based on removing drinking water contaminants at the treatment plant prior to distribution, will have a marginal effect on lead and copper levels at the consumer's tap (except for the relatively few systems with contaminated source water). Second, much of the lead and copper-bearing plumbing material is privately owned and outside the public water system's control. Third, lead and copper contamination from corrosion of plumbing systems within individual residences and other buildings introduces a large degree of variability in lead and copper levels in water samples taken at customers' taps. These problems make it difficult for EPA to set uniform concentrations for lead and copper that can be met at taps throughout a public water system.

The Agency proposed a two-part approach to address the two sources of lead and copper in drinking water: source water contamination and corrosion by-products. EPA proposed an MCL for lead in distributed water of 0.005 mg/L and an MCL for copper in distributed water of 1.3 mg/L with

compliance measured at the entry point to the distribution system. The Agency also proposed a treatment technique requirement to control lead and copper entering water as corrosion by-products. The proposed treatment technique consisted of optimal corrosion control treatment to minimize corrosion, and public education. It was triggered by three "no-action" levels (NALs), as measured in first-draw tap samples from high risk homes (targeted samples): an average lead concentration in targeted samples of less than or equal to 0.010 mg/L, a copper concentration of 1.3 mg/L or less in at least 95 percent of the targeted samples, and pH greater than or equal to 8.0 in at least 95 percent of the targeted samples. If all three levels were met, "no-action" would be needed and the PWS would be deemed in compliance with the treatment technique. If any of these three levels were not met by a system, the system would have been required to install or improve its corrosion control treatment. In addition, if a PWS exceeded the average lead level of 0.010 mg/L or a fourth "no-action" lead level of 0.020 mg/L in at least 95 percent of the targeted samples collected, the system would have been required to conduct a public education program to help consumers reduce their exposures to lead in drinking water.

Systems serving more than 3,300 people that did not meet one or more of the NALs would have been required to develop and submit a treatment plan to the State. The treatment plan was to contain the specific steps that the water system would take to ensure that either the NALs were met or that optimal corrosion control treatment and/or public education were implemented. The State would have been required to review the system's plan and approve it if it would minimize corrosivity of the water. The proposal would have required States to specify the required treatment for systems serving fewer than 3,300 people in which any of the NALs were exceeded. If, after treatment was installed, any system continued to exceed one of the NALs, the system would have been required to demonstrate to the State that its treatment was optimal. In addition, the State would have been required to specify the water quality parameters under which a system would be required to continue to operate.

Water systems (of all sizes) exceeding one or both of the NALs for lead (either the average or the maximum) would have been required under the proposal to conduct a public education program to reduce exposure to lead as a part of

the treatment plan. The proposed public education program differed both from the general public notification requirements under section 1414 and the special lead public notification requirements under section 1417 of the Safe Drinking Water Act. The public education program was conceived as an ongoing requirement for as long as the PWS exceeded one or both of the action levels. Water systems would have been required to design their public education programs to meet three performance standards: program content, program delivery, and program evaluation.

As an alternative to the proposed two-part approach, the Agency solicited comment in the preamble to the proposal on the option of not promulgating an MCL for source water, but instead including source water treatment as a component of the treatment technique requirements. Under this option, systems exceeding the no-action level at the tap could take whatever measures (corrosion control, source water treatment or a combination of both) that would reduce levels at the tap to below the no action levels.

A. Comments on Proposed Two-Part Approach

A few commenters agreed with EPA's proposed two-part approach, but the majority disagreed, stating that the SDWA [1401 (1)(C)] requires EPA to set either an MCL or a treatment technique for the same contaminant, but not both. Other commenters disagreed with the two-part approach, arguing that it would cause numerous difficulties with implementation and enforcement of the rule.

Numerous commenters supported establishing MCLs only, with differences of opinion on the appropriate location for compliance monitoring. The majority of commenters supporting an MCL argued that the point of compliance should be either at the entry point to the distribution system or at the end of the water system's control (e.g., water meter, outside tap). These commenters reasoned that EPA has no authority to set an enforceable MCL at household taps since most lead and/or copper contamination detected at these taps is from sources beyond the control of public water system (e.g., household plumbing). They argued that section 1401(4) of the SDWA defines "public water system" as the "collection, treatment, storage, and distribution facilities under the control of the operator." Commenters interpreted this statutory language to mean that the PWS is responsible for the lead and copper content in water that is delivered through the distribution mains—up to

the property line or the water meter—but is not responsible for residential plumbing materials that exist beyond the water system's jurisdiction.

Several commenters supported establishing an MCL at the tap, with some favoring a fully flushed sample and others a first-draw sample. Commenters supporting a fully flushed sample collected at the tap (which would be used to represent water delivered to the home) used the same arguments as those commenters who supported an MCL outside the home: The levels of lead in first-draw tap samples reflect contamination beyond the control of the water system. Commenters arguing for first-draw tap samples stated that the SDWA (1412)(b)(7)(A) requires EPA to set MCLs for lead and copper if "it is economically and technologically feasible to ascertain the level of a contaminant". They argued that it is both economically and technologically feasible to ascertain the level of lead and copper at the tap; thus, MCLs are required to be set. Another commenter argued that while EPA was required by statute to set an MCL at the tap, EPA could address the problem of material corrosion outside the water systems control by incorporating a provision to allow the water system to demonstrate that the MCL exceedance was caused by conditions beyond its control.

Numerous commenters supported the establishment of a treatment technique, stating that the primary source of lead is from home plumbing materials, which are beyond the water system's direct control. These commenters argued that water systems can only control the water quality parameters that affect the corrosivity of the water and should not be held responsible for lead and copper levels at individual taps. They contended that it is infeasible to measure MCLs accurately at taps because corrosion control technology does not guarantee specific or predictable tap water lead levels, as is evident by monitoring programs that have shown significant variability in tap lead levels within a system and even within a tap over time after installation of treatment.

B. Rationale for Treatment Technique Approach

1. Response to Comments on Treatment Technique and MCL

EPA disagrees with commenters' assertions that the Agency would be legally precluded from adopting the dual MCL/treatment technique approach proposed by the Agency. At the same time, EPA agrees with commenters who

argued that setting an MCL for levels in source water in addition to the treatment technique requirements for corrosion by-products would result in unnecessary confusion among the public and the regulated community. To minimize such confusion, the Agency has chosen to promulgate a final rule consisting solely of a treatment technique that seeks to remedy all sources of lead and copper contamination caused by both corrosion and contaminated source water. EPA believes that this will be the most effective approach to control lead and copper in drinking water, that this approach will be simpler for the public and regulated community to understand, and that the approach is consistent with the statutory scheme of the SDWA.

As discussed further in Section F below, EPA believes that compared to the proposed approach, the inclusion of source water treatment as a component of the treatment technique better allows systems to choose the most effective means of reducing lead and copper levels at the tap. The proposed rule would have required all systems to conduct source water monitoring, even though EPA estimates that only 1 percent of all systems have lead levels in source water exceeding 0.005 mg/L, and less than 1 percent of systems have copper levels in source water exceeding 1.3 mg/L. The final rule reduces this burden by requiring source water monitoring only where levels measured at the tap exceed the lead or copper action levels and thereby indicate potential source water contamination. Including source water treatment as a component of the treatment technique allows systems the flexibility, in appropriate cases, to select the combination of corrosion control and/or source water treatment that will most effectively reduce lead and/or copper levels at the tap.

Commenters on the proposal pointed out that some source water treatments can actually increase water corrosivity and, therefore, aggravate the problem of lead and copper as corrosion by-products. The final rule, by including both as components of the treatment technique, allows systems to take into account the interrelated nature of source water and corrosion control treatment in implementing the treatment, or combination of treatment, that will minimize lead and copper levels at consumers' taps.

EPA also disagrees with commenters who argued that EPA should only establish MCLs for lead and copper for the water as it leaves the control of the public water system. This approach

would not adequately protect the public from lead and copper introduced by the interaction of corrosive water delivered by the public water system with lead and copper-bearing materials in homeowners' plumbing. While plumbing owned by users of the public water system is physically outside the system's control, the quality of the water delivered to the user (including its corrosivity) can be controlled by the system. Commenters who argued that public water systems have no responsibility for lead and copper levels at the tap ignored the fact that public water systems can affect, at least to some degree, water tap lead and copper levels through adjustment of the corrosivity of water delivered by the system. Similarly, EPA disagrees with commenters who recommended that EPA establish an MCL at the tap based upon a fully flushed sample, since such sampling would not adequately reflect the interaction between water delivered by the system and users' plumbing.

EPA also disagrees with commenters who argued that EPA's adoption of a treatment technique was contrary to the SDWA, which, they argued, mandates the establishment of MCLs for lead and copper. As these commenters noted, the statutory standard for determining whether to establish a treatment technique or MCL for a contaminant is whether it is "economically or technologically feasible to ascertain the level of the contaminant." Sections 1401(1)(C) and 1412(b)(7)(A). EPA disagrees, however, with the assertion by some commenters that the mere availability of analytical methods to monitor for lead and copper in drinking water conclusively resolves this issue and that the Act consequently permits EPA only to establish MCLs for these contaminants. As discussed in the preamble to the proposed rule, regulation of corrosion by-products in drinking water poses unique problems not associated with other contaminants regulated by EPA. These problems include variability of contaminant levels even after treatment and the elevation of levels at the tap even after a system has done everything within its control to remedy the sources of contamination. Because of the unique circumstances posed by these contaminants, EPA concludes that Congress has not spoken specifically to the question of how corrosion by-products should be regulated under the statute. Therefore, EPA believes that it is appropriate to weigh all the technical, legal, and policy issues posed by regulating these contaminants in selecting the regulatory alternative that best achieves

Congress's goal of protecting the public from drinking water contamination.

The predominant difficulty in establishing numerical drinking water standards for lead and copper is the variability in the levels of these contaminants at the tap after treatment of the water with BAT (which includes source water treatment, public education, lead service line replacement, and/or corrosion control). As discussed in the preamble to the proposal, this variability is due to many factors, including the amount of lead in the resident's plumbing or in the PWS's distribution system (although under the final rule, some lead service lines controlled by the PWS may be required to be removed over a period of years), temperature, age of plumbing components, chemical and physical characteristics of distributed water, and the length of time water is in contact with those materials. Moreover, the source waters of systems can vary in the degree of their corrosiveness and the extent to which that corrosivity can be reduced through pH, alkalinity adjustment, or other methods. Finally, data indicate that the variability in tap levels can persist even in cases where water quality conditions are kept relatively constant. Thus, the difficulty in establishing numerical standards for lead and copper at the tap results from both the many factors affecting water corrosivity as well as the complexity inherent in developing effective corrosion control treatment for the wide variety of conditions encountered among different systems. For this reason, EPA concluded in the preamble to the proposal that establishment of a treatment technique under the Act was appropriate because it is "technologically infeasible to ascertain whether the lead or copper level at a tap at a single point in time represents effective application of the best available treatment technology." (53 FR 31527).

Some commenters disputed the relevance of this conclusion to the issue of whether, under sections 1401 and 1412 of the SDWA, it is "feasible to ascertain the level of the contaminant." They contended that the plain language of the statute requires only that the contaminant, not the efficacy of treatment, be ascertainable in order that establishment of an MCL be mandated. While the commenters' literal interpretation of the statute is plausible, EPA believes that this constricted reading, if mechanically applied to the unique circumstances posed by corrosion by-products, would yield illogical results that could not have been

intended by Congress and that ultimately would fail to achieve the public health goals of the statute.

Read in the context of the statute as whole, the finding that it is "feasible to ascertain the level of the contaminant" is only the first step in establishing an MCL. In determining the actual MCL level, Congress directed EPA to set the MCL "as close as feasible" to the MCLG. Section 1412(b)(5). The legislative history indicates that the level should be achievable by large metropolitan water systems treating relatively clean source water. (see H.R. Rep. No. 93-1185 at 18 [1974] and reaffirmed when the Act was amended in 1986; see 132 Cong. Rec. S6287 [May 21, 1986] [statement of Sen. Durenberger]). Thus, to set an MCL, EPA must determine that it is feasible to measure for the contaminant in drinking water and must select the level that is as close to the MCLG as "feasible." EPA has carefully reviewed all the available data to determine what level would be "feasible" for large systems to meet. Because of the sources of variability described above, however, EPA concludes that there is no precise level at the tap that may generally be considered "feasible" based upon application of BAT in all water systems across the country. In fact, the level that is as close as feasible to the MCLG will vary from system to system depending upon the amount of lead located in the system, the corrosiveness of its water, and the degree to which the water is amenable to corrosion control treatment.

EPA analyzed data from several water systems to evaluate the variability in tap water lead and copper levels over time both within a system (Boston, MA, Bennington, VT, and Seattle, WA) and within a home (Chicago, IL, Newport News, VA, and New Bedford, MA). The data for Boston, Bennington, and Seattle were collected before and after installation of corrosion control treatment and were divided into subgroups that represent samples collected before (group 1) and after (groups 2, 3, 4, etc.) installation of corrosion control treatment. The samples collected after installation of corrosion control treatment were divided into smaller categories to assist in evaluating the effects of treatment on lead levels over time as stabilization of corrosion control treatment may take several months or even years. These systems were analyzed for the variability of lead and copper levels within the system over time.

To assess the variability of repeat samples at individual homes, EPA

evaluated three cities (Chicago, Newport News, and New Bedford) in which no treatment modifications were made during the sampling period that would have altered the aggressiveness of the water. The AWWSC data, discussed earlier, are not analyzed here because they represent single samples from homes and, thus, do not indicate the variability within a house or within systems over time.

As already noted, the wide variability in tap water lead levels is influenced by many factors, such as standing time of the water in the plumbing, age and type of plumbing, volume of the water sample, and the corrosivity of source water (Schock, 1988, 1990). Several of these effects were minimized for the six systems analyzed because each system collected the same type of sample (first-draw with standing time of at least 6 hours) from homes with similar characteristics (either homes with lead service lines or homes with no lead service lines).

EPA has conducted several analyses of the available data in order to characterize the extent of the variability

found in lead tap levels after application of corrosion control treatment. One approach utilizes the relationship between the 90th percentile tap level and the median (i.e., 50th percentile) tap level. As illustration, if 100 samples were taken, the 90th percentile level is the concentration in the 10th highest sample, the 50th percentile level is the concentration in the 50th highest sample. The purpose of this analysis was to evaluate the magnitude of the difference between these two points in the distribution of values. A high degree of variability would be reflected in a large difference in the 90th and 50th percentiles. Sufficiently large variability would indicate the inability of treatment to obtain any consistent level of efficacy as reflected in tap samples. The results in Table 2 analyze the variability of tap samples taken in three systems, Boston, Bennington, and Seattle, before and after installation of corrosion control treatment. The ratio of the 90th to the 50th percentile lead values after treatment was quite large, ranging from 2.4 to 5.1. Most notably, application of treatment did not decrease the extent of

the variability. The degree of variability actually increased in Boston and Bennington, and remained very large in Seattle.

The results in Table 3 indicate that tap water lead levels in selected Chicago homes varied considerably when collected over a 1 month period. The results for Newport News, New Bedford, Boston, and Bennington also indicate highly variable lead levels in the same house from month to month. Results presented in Tables 2 and 3 are discussed in detail in "Variability of Household Water Lead Levels in American Cities" (Marcus, 1990a). This report was made available to the public through a Federal Register notice published on October 19, 1990 (55 FR 42409). EPA received no comments on the report. The results in Table 4 indicate the high degree of variability in tap water copper levels in Boston and Bennington after installation of corrosion control treatment. Results presented in Table 4 are discussed in detail in "Variability of Household Copper Levels in Two American Cities" (Marcus, 1991).

TABLE 2.—WITHIN SYSTEM LEAD VARIABILITY IN FIRST DRAW TAP SAMPLES

| City/treatment | Lead levels (mg/L) | | |
|-------------------------------------|--------------------|-----------------|---------------|
| | Number of samples | 90th percentile | Q90/Q50 ratio |
| Boston: ¹ | | | |
| —No treatment | 49 | 0.110 | 2.4 |
| —Inhibitor | 59 | 0.139 | 2.7 |
| —No treatment | 26 | 0.161 | 2.2 |
| —pH adjustment | 61 | 0.108 | 3.1 |
| —pH adjustment | 49 | 0.048 | 2.7 |
| —pH adjustment | 50 | 0.047 | 2.6 |
| Bennington: ² | | | |
| —No treatment | 40 | 0.148 | 1.9 |
| —pH adjustment | 39 | 0.082 | 2.4 |
| —pH adjustment | 40 | 0.066 | 3.1 |
| —pH adjustment | 40 | 0.026 | 2.9 |
| Seattle (Cedar River): ³ | | | |
| —No treatment | 46 | 0.035 | 5.1 |
| —No treatment | 43 | 0.023 | 5.3 |
| —pH adjustment | 68 | 0.006 | 3.2 |
| —pH adjustment | 31 | 0.009 | 4.0 |
| —pH adjustment | 8 | 0.003 | 2.3 |
| Seattle (Tolt River): ⁴ | | | |
| —No treatment | 42 | 0.036 | 4.6 |
| —No treatment | 46 | 0.016 | 4.8 |
| —pH adjustment | 52 | 0.006 | 3.4 |
| —pH adjustment | 5 | 0.006 | 3.3 |
| —pH adjustment | 17 | 0.004 | 2.4 |

¹ Boston samples collected between 2/76-5/76; 7/76-12/76; 3/77-4/77; 6/77-11/77; 7/78-1/79; and 8/80-8/81.

² Bennington samples collected between 4/77-7/77; 8/77-12/77; 8/78-6/79; and 1/80-11/80.

³ Seattle (Cedar River) samples collected during 1979; 1981; 1983; 1985; and 1987.

⁴ Seattle (Tolt River) samples collected during 1979; 1981; 1983; 1985; and 1986.

TABLE 3.—WITHIN HOUSE VARIABILITY IN LEAD LEVELS IN FIRST DRAW TAP SAMPLES (MG/L)

| City/house | Sample 1 | Sample 2 | Sample 3 | Sample 4 | Sample 5 |
|-----------------------|----------|----------|----------|----------|----------|
| Chicago: ¹ | | | | | |
| House 6 | 0.024 | 0.012 | 0.028 | 0.030 | 0.013 |
| House 7 | 0.010 | 0.009 | 0.008 | 0.032 | |
| House 9 | 0.030 | 0.017 | 0.015 | < 0.003 | 0.008 |
| House 10 | 0.008 | 0.025 | 0.028 | 0.027 | 0.015 |

TABLE 3.—WITHIN HOUSE VARIABILITY IN LEAD LEVELS IN FIRST DRAW TAP SAMPLES (MG/L)—Continued

| City/house | Sample 1 | Sample 2 | Sample 3 | Sample 4 | Sample 5 |
|----------------------------|----------|----------|----------|----------|----------|
| Newport News: ² | | | | | |
| House 2..... | 0.001 | 0.004 | 0.016 | 0.012 | 0.008 |
| House 15..... | 0.011 | 0.004 | 0.004 | 0.005 | 0.022 |
| House 20..... | 0.005 | 0.005 | 0.010 | 0.004 | 0.020 |
| House 24..... | 0.006 | 0.004 | 0.013 | 0.005 | 0.024 |
| New Bedford: ³ | | | | | |
| House 1..... | 0.070 | 0.038 | 0.018 | 0.032 | 0.032 |
| House 3..... | 0.190 | 0.100 | 0.046 | 0.026 | |
| House 10..... | 0.050 | 0.044 | 0.024 | 0.020 | |
| Boston: ⁴ | | | | | |
| House 2..... | 0.052 | 0.051 | 0.032 | 0.019 | 0.027 |
| House 6..... | 0.064 | 0.008 | 0.013 | 0.038 | 0.027 |
| House 10..... | 0.010 | 0.040 | 0.052 | 0.009 | 0.023 |
| House 13..... | 0.022 | 0.075 | 0.014 | | 0.021 |
| Bennington: ⁵ | | | | | |
| House 2..... | 0.020 | 0.007 | 0.005 | 0.005 | 0.005 |
| House 5..... | 0.046 | 0.018 | 0.005 | 0.005 | 0.009 |
| House 6..... | 0.088 | 0.018 | 0.013 | 0.020 | 0.028 |
| House 10..... | 0.066 | 0.025 | 0.012 | 0.027 | 0.025 |

¹ Chicago samples collected from January 7 to February 5, 1986.

² Newport News samples collected once a month from January to May 1989.

³ New Bedford samples collected from January 1978 to July 1978.

⁴ Boston samples collected between February 1980 through August 1981 (about three years after treatment installed).

⁵ Bennington samples collected from March 1979 to November 1980 (about 2 years after treatment installed).

TABLE 4.—WITHIN SYSTEM/HOUSE VARIABILITY IN COPPER LEVELS IN FIRST DRAW TAP SAMPLES

| City/treatment | Copper levels (mg/L) | | |
|--------------------------|----------------------|-----------------|---------------|
| | Number of samples | 90th percentile | Q90/Q50 ratio |
| Boston: ¹ | | | |
| —No treatment..... | 51 | 0.71 | 1.4 |
| —Inhibitor..... | 60 | 0.75 | 1.4 |
| —No treatment..... | 26 | 1.13 | 1.6 |
| —pH adjustment..... | 57 | 0.35 | 2.2 |
| —pH adjustment..... | 43 | 0.18 | 2.3 |
| —pH adjustment..... | 53 | 0.12 | 2.2 |
| Bennington: ² | | | |
| —No treatment..... | 40 | 0.90 | 2.4 |
| —pH adjustment..... | 38 | 0.29 | 2.2 |
| —pH adjustment..... | 38 | 0.36 | 2.7 |
| —pH adjustment..... | 40 | 0.10 | 2.6 |

¹ Boston samples collected between 2/76-5/76; 7/76-12/76; 3/77-4/77; 6/77-11/77; 7/78-1/79; and 8/80-8/81.

² Bennington samples collected between 4/77-7/77; 8/77-12/77; 8/78-6/79; and 1/80-11/80.

| House | Within house variability | | | | |
|--------------------------|--------------------------|----------|----------|----------|----------|
| | Sample 1 | Sample 2 | Sample 3 | Sample 4 | Sample 5 |
| Boston: ¹ | | | | | |
| House 2..... | 0.100 | 0.100 | 0.100 | 0.060 | 0.050 |
| House 6..... | 0.290 | 0.608 | 0.070 | 0.150 | 0.090 |
| House 10..... | 0.100 | 0.140 | 0.120 | 0.030 | 0.090 |
| House 13..... | 0.100 | 0.100 | 0.020 | | 0.040 |
| Bennington: ² | | | | | |
| House 2..... | 0.430 | 0.020 | 0.040 | 0.030 | 0.100 |
| House 5..... | 0.410 | 0.090 | 0.020 | 0.020 | 0.040 |
| House 6..... | 0.870 | 0.140 | 0.060 | 0.020 | 0.010 |
| House 10..... | 0.860 | 0.140 | 0.110 | 0.120 | 0.110 |

¹ Boston samples collected between February 1980 through August 1981 (about three years after treatment installed).

² Bennington samples collected from March 1979 to November 1980 (about 2 years after treatment installed).

Several commenters felt that because a significant portion of the variability is caused by homeowner plumbing, variability in lead level samples could be eliminated or minimized, especially for systems with no lead service lines, by establishing an MCL measured at

either the entry point to the distribution system, at the end of a system's control, or at the tap with a fully flushed sample. EPA agrees that this would be one method for minimizing the variability in water samples. However, as discussed earlier, this approach would only

identify a small portion of the problem because in most cases lead and copper in drinking water is the result of corrosion of lead and copper bearing materials in household plumbing. EPA agrees that water systems should not be held directly responsible for plumbing

materials within private homes. The Agency believes, however, that water systems can control the main contributor to dissolution of lead and copper plumbing materials—corrosivity of the water. Since there is no single, reliable index for measuring water corrosivity toward lead and copper across the country, the degree to which a system has minimized corrosivity for lead and copper can be assessed adequately only through measuring lead and copper levels at the tap over time, and by correlating those levels and the levels for several water quality parameters (e.g., calcium, pH, alkalinity). Thus, basing an MCL only on samples taken at the source, at the meter, or even with fully flushed samples at the tap would not fully account for consumers' exposure to lead and copper levels in drinking water or provide a means to fully evaluate whether a system is properly implementing optimal corrosion control.

Regulation of lead and copper is also complicated by the fact that a major contributor to contaminant levels at consumers' taps is corrosion of materials not owned or controlled by the public water system. As discussed in the preamble to the proposed rule, section 1401(4) of the SDWA defines public water system to include "(A) any collection, treatment, storage, and distribution facilities under control of the system, and (B) any collection or pretreatment facilities not under such control * * *." EPA stated that the listing of distribution facilities in subparagraph (A) of this section, as opposed to paragraph (B), indicated that Congress intended to exclude from the responsibility of PWSs distribution facilities, such as customer's plumbing, which are not under control of the system. EPA concluded that this definition precluded the Agency from promulgating a drinking water regulation that holds a PWS liable for conditions that are beyond its control. Most commenters concurred with this conclusion. Several commenters argued that the definition of public water system contained in the Act was not intended by Congress to limit EPA's regulatory authority over public water systems, but merely to identify the systems that would be subject to regulation under the statute.

The commenter's assertion that the definition of public water system was only intended by Congress to designate who is a PWS (as opposed to what portion of a PWS is subject to EPA's regulatory authority) is not consistent with the plain language of section 1401(4). The first sentence of this section

defines public water system as a system for the provision to the public of piped water for human consumption which has at least 15 service connections or regularly serves at least 25 people; the second sentence then lists those components of the public water system which are "included" in the statutory definition of a public water system. The latter provision on its face attempts to distinguish between those facilities associated with a public water system which are subject to the statute and those which are not. If the commenter's argument were correct and this section only was designed to designate which entities are subject to regulation, then Congress would have had no reason to include the second sentence of section 1401(4). Because the commenter's interpretation would effectively read this sentence out of the statute, the Agency does not believe that commenter has reasonably interpreted the statutory language.

Based upon a review of the public comments and further consideration of the statutory language, EPA reaffirms the conclusion presented in the proposal that the definition of public water system in the Act limits systems' responsibility to portions of the distribution system under control of the system. This interpretation is consistent with the plain language of the statute and with the reasonable approach of requiring systems to address only those problems over which they exercise sufficient control for remedial action.

EPA considered whether, notwithstanding the difficulties in setting achievable numerical standards for lead and copper, Congress would have intended to require EPA to establish MCLs for these contaminants. On the one hand, the language contained in sections 1401(1)(C) and 1412(b)(7)(A) appears to indicate that MCLs must be set where monitoring for a contaminant is feasible. On the other hand, section 1412(b)(5) and the legislative history indicate that Congress assumed that where the level of the contaminant could be ascertained, EPA would be capable of establishing MCLs at "feasible" levels that could be met by large systems after application of best available technology taking cost into consideration. Congress does not appear to have anticipated the problem encountered with corrosion by-products, where, despite the availability of analytical methods to ascertain the level of the contaminants, establishment of any one "feasible" level as the sole determinant of systems' compliance is not technically justifiable.

EPA believes that, under these circumstances, the consequences of setting MCLs for lead and copper at the tap would run counter to the purposes and structure of the Act. As discussed in the preamble to the proposal, if a stringent MCL were set that would reflect the public health goals of the statute, the Agency believes that large numbers of water systems would be out of compliance and vulnerable to enforcement actions and citizen suits. The Agency discussed in the preamble to the proposal the possibility of providing relief for these systems from legal liability for exceedances of the MCLs by authorizing variances under section 1415 of the SDWA. EPA pointed out in the proposal, however, that the potential availability of variances would not adequately address this problem because (1) variances were intended by Congress to be temporary and some systems will never be able to come into compliance where the violation is due to lead in homeowners' plumbing; (2) an MCL is not "feasible" under the statute if a significant proportion of systems cannot meet it, and (3) variances are not available under section 1415 for systems that pose an "unreasonable risk to health." Moreover, EPA believes that Congress did not intend for large numbers of systems to be operating pursuant to variances under Section 1415, which would impose a substantial administrative burden on State primacy agencies (and EPA where States have not assumed primacy) to evaluate and grant variances (after notice and opportunity for public hearing provided under section 1415) and to supervise compliance with the variances. Therefore, for the reasons noted above, EPA continues to believe that the potential availability of variances does not adequately address the legal, technical, and administrative problems associated with setting relatively low MCLs for lead and copper that many systems could not meet.

EPA does not believe that establishing stringent MCLs that most systems might not be able to meet would be consistent with the statutory requirement that an MCL be "feasible." While the legislative history indicates that Congress intended that MCLs be set based upon the better performing systems (i.e., large systems applying BAT to "relatively clean source water"), there is no indication that Congress envisioned establishment of MCLs that would result in widespread noncompliance among water systems because of contamination caused by conditions beyond their control.

EPA also does not believe that it would be appropriate to adopt the

suggestion of one commenter that EPA adopt an MCL along with a provision that would allow systems to nonetheless be deemed in compliance if they could demonstrate that an exceedance was beyond their control. First, such an MCL would not in fact be "feasible" to meet, and therefore EPA believes such a standard would not be in line with the statutory requirement applicable to MCLs. Moreover, EPA would anticipate that most water systems exceeding the MCL would likely seek to make such a demonstration. This would impose a substantial administrative burden on States, while large numbers of systems would be out of compliance with the MCL pending State determinations on the requests. Having large numbers of systems out of compliance with the SDWA due potentially to problems outside their control would cause substantial confusion among the public and the water supply industry. Thus, EPA rejects the commenter's approach on both legal and policy grounds.

Alternatively, EPA could set MCLs high enough so that most systems could meet them after they had installed treatment. Such MCLs would not be based upon reliable engineering judgement regarding the levels achievable with BAT (because the levels achieved are so variable), but would instead be based on the principle that sufficiently high MCLs could be met by most systems, taking into account the variability in tap levels found among systems after treatment. EPA believes that such a course of action would be contrary to the purpose of the SDWA to reduce consumer exposure to drinking water contaminants. Under this option, many systems with relatively high contaminant levels (although still below the MCLs) would not have to install any treatment to be in compliance. This situation could lead to unnecessarily high exposures of significant segments of the population and would be inconsistent with the underlying objective of the statute to reduce exposure to the maximum extent feasible.

Taking into account all of the considerations discussed above, EPA concludes that setting MCLs for lead and copper is not feasible within the meaning of the SDWA and would, moreover, not achieve the basic purposes of the statute. The Agency believes that the treatment technique approach contained in the final rule will achieve the public health goals of the SDWA without the problems associated with establishing MCLs. As discussed more fully below, the components of the treatment technique (corrosion control,

source water treatment, lead service line replacement, and public education) will be triggered, in large part, if more than 10 percent of targeted tap lead and copper samples in water samples are above 0.015 mg/L for lead and 1.3 mg/L for copper (except that large systems may be required to install optimal corrosion control even if initial tap levels meet the action levels). The action level that will trigger corrosion control for small and medium size systems is more stringent than the corrosion control action level of 0.010 mg/L average, contained in the proposed rule (90th percentile lead level of 0.015 mg/L corresponds to approximately 0.005 mg/L as an average). This relatively stringent action level (which, as discussed in Section E(2)(a) below, is associated with substantial public health protection), is expected to trigger treatment among large numbers of systems nationwide, thereby substantially reducing public exposure to lead in drinking water. All small and medium-size systems that exceed either action level are required to make a detailed demonstration to the State that they have "optimized" corrosion control treatment; that is, they have minimized the lead and copper concentrations at users' taps. The final rule requires all large systems to make this demonstration. All other steps that systems can feasibly take (replacing lead service lines they control and reducing source water contamination so as to minimize lead and copper levels at the tap, as well as public education) are also required where systems exceed the action levels at the tap. While the treatment technique will require systems to take these steps to reduce consumers' exposure to lead and copper to the lowest levels feasible, it does so without the problems associated with establishing MCLs discussed above.

2. Amendment to Definition of MCL

In 1988, EPA proposed to amend the definition of MCL to delete the existing definition and substitute instead the statutory definition of MCL. Existing § 141.2 defines MCL as:

the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition.

In evaluating whether to change this definition, the Agency discussed several

factors. First, EPA noted that many NPDWRs appeared inconsistent with this definition because they require compliance monitoring to take place in the distribution system, and not at the tap. Second, to the extent the existing definition appeared to hold public water systems responsible for levels at the tap due to conditions in distribution facilities beyond their control, EPA stated that the existing definition was arguably inconsistent with the statutory definition of public water system which, as discussed above, does not include distribution facilities which are outside the system's control. Finally, EPA noted that the definition of MCL in the statute as "the maximum permissible level of a contaminant in water which is delivered to any user of a public water system," (Section 1401(3)) could be interpreted either as applying to the water at the tap or where water passed from the system to the user, but that the legislative history evinced Congressional intent that MCLs apply at the tap.

EPA received public comments both supporting and opposing the proposed change in the regulatory definition of MCL. Commenters supporting the change argued that Congress did not intend for public water systems to be responsible for conditions at the tap over which they did not have control, while commenters opposing the change argued that, in order to be protective of public health, MCLs must apply to the water actually consumed by the public.

EPA has decided to finalize the proposed change to the definition of MCL. Based upon the language and the legislative history of the statute, EPA believes that both the commenters supporting and opposing this approach are, in part, correct. For the reasons discussed below, EPA believes that Congress intended MCLs to apply to water at the tap, but that EPA has discretion to require monitoring at other locations as long as such monitoring is representative of levels at the tap. However, EPA concludes that Congress did not authorize the Agency to hold public water systems liable for tap levels to the extent they are due to conditions in the distribution system which are outside the system's control.

As noted above, the statutory definition of MCL can be interpreted either to favor the view that Congress intended to have MCLs apply at the tap, or the view that they apply at the point where water is delivered from the system to the user. The House Report on the bill that eventually become the SDWA of 1974 states that "[s]ince drinking water regulations are intended to be met at the consumer's tap, the

committee anticipates that monitoring would include tap sampling." (H.R.Rep. No. 93-1185, p. 13, 1974). Thus, while the statutory language is ambiguous, the legislative history indicates clearly that MCLs were intended to be met at the tap. However, the Committee stated only that it "anticipates that monitoring would include tap sampling." (emphasis added). EPA does not construe this language as evincing Congressional intent to mandate monitoring at the tap, as long as other monitoring locations (e.g., in the distribution system) would be representative of contaminant levels at the tap. This is the case with most contaminants, which enter drinking water at the source only and therefore do not increase as they pass through the distribution system and homeowners' plumbing. EPA has established monitoring requirements for inorganic and organic contaminants that require monitoring in the distribution system because this is easier and provides just as accurate an assessment of tap levels as tap sampling itself. See 40 CFR 141.23 and 141.24. EPA therefore construes the definition of MCL in the statute as authorizing, but not requiring, tap sampling, as long as the monitoring established by EPA provides an adequate representation of consumer exposure at the tap.

EPA believes, however, that the definition of MCL in the statute must also be reconciled with the statutory definition of public water system which, as EPA has discussed, precludes the Agency from holding public water systems responsible for contaminant levels at the tap which enter drinking water due to conditions in the distribution system which are beyond the system's control. The existing definition of MCL recognizes this fact by excluding "contaminants added to the water under circumstances controlled by the user." § 141.2. However, to the extent the current definition may be construed as implying that the level of corrosion by-products at the tap is entirely within the ability of public water systems to control, EPA believes that it is necessary to clarify the Agency's position and delete the current language in the current regulation. As discussed at length in this preamble, data indicate that adjustments by the water system to water quality can reduce the corrosivity of water to lead and copper-bearing materials. However, because all water is corrosive to some degree, corrosion of lead and copper materials outside the system's control (i.e., located in the home) cannot be completely eliminated. Thus, the data show that, even in instances where lead

materials are not present in the system's distribution facilities and the system has applied corrosion control treatment, tap levels continue to exhibit varying levels of corrosion by-products. In light of the Agency's current judgment that corrosion by-products at the tap can only be controlled in part by public water systems, EPA is therefore deleting the current language in § 141.2 relating to corrosion byproducts. While this change clarifies the Agency's technical judgment regarding systems' responsibility for the levels of corrosion by-products at the tap, this amendment has no actual effect on requirements applicable to public water systems with regard to corrosion by-products, because the Agency has established a treatment technique in lieu of MCLs for lead and copper.

In sum, the Agency is changing the existing definition of MCL so that the regulatory definition tracks exactly the statutory definition. In making this change, the Agency has not altered any requirements applicable to public water systems. Systems will continue to conduct monitoring for compliance with MCLs in accordance with the specific requirements of each NPDWR. This change merely clears up any apparent discrepancies between the existing definition of MCL and the monitoring protocols under a number of NPDWRs. In establishing future MCLs, EPA will exercise the discretion discussed above which the Agency has under the SDWA to require monitoring for compliance with MCLs at any location which will reflect contaminant levels at the tap, except where contamination at the tap reflects conditions outside the control of the public water system as defined in section 1401 of the Act. In such cases, EPA will determine the appropriate approach on a case-by-case basis.

C. Summary of Final Regulatory Approach

The goal of this rule is to provide maximum human health protection by reducing the lead and copper levels at consumers' taps to as close to the MCLG as is feasible. To accomplish this goal, EPA is requiring water systems to: (1) Install or improve corrosion control to minimize lead and copper levels at the tap while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulation (i.e., optimal corrosion control); (2) install treatment, if necessary, to reduce the lead and copper levels in source water entering the distribution system; (3) replace lead service lines that contribute more than 0.015 mg/L to lead in drinking water if corrosion control and/or source water

treatment does not bring lead levels below the lead action level, and (4) conduct public education if lead levels are above the action level. Systems that can demonstrate that lead and copper levels are already minimized would not be required to install additional treatment. Unless otherwise stated, each of the provisions in this rule applies to community and non-transient, non-community systems (hereafter referred to as either public water systems, water systems, or systems). The requirements of this rule do not apply to transient, non-community water systems because lead and copper in drinking water are not considered acute contaminants and, therefore, the transient populations affected by these systems would not be at risk from short term exposure (see 52 FR 25690 for a complete discussion on not including transient systems). In making any determinations under this rule, EPA expects that states would provide for public participation in accordance with applicable provisions of state law.

1. Final Action Levels

The "no-action level" concept was introduced in the proposal as a method to limit the number of public water systems that would need to make a detailed demonstration that they have optimal corrosion control treatment. Many commenters thought the term "no-action levels" should be changed to "action levels" as this more accurately portrays the response required of the water systems. The final rule, therefore, use the term "action levels" (ALs) in place of "no-action levels."

The final lead action level is exceeded if the level of lead in more than 10 percent of the targeted tap samples is greater than 0.015 mg/L (90th percentile). The copper action level is exceeded if the level of copper in more than 10 percent of targeted tap samples is greater than 1.3 mg/L (90th percentile). The 90th percentile can be calculated by first arranging the results of all lead and copper samples taken during a monitoring period in ascending order from the sample with the lowest contaminant level to the sample with the highest contaminant level. Each sample should be assigned a number, ascending by single digits from number 1 for the sample with the lowest contaminant level. The number assigned to the sample with the highest contaminant level should be equal to the total number of samples taken. The total number of samples taken during each monitoring period should then be multiplied by 0.9 to arrive at the sample number that represents the 90th

percentile, as indicated in Table 5. Systems required to collect only five samples per monitoring period should average the fourth and fifth samples to arrive at a 90th percentile value.

TABLE 5.—90TH Percentiles for Different Sample Sizes

| Number of samples required per monitoring period | Sample indicating 90th percentile value |
|--|---|
| 100..... | 90th highest sample. |
| 60..... | 54th highest sample. |
| 40..... | 36th highest sample. |
| 30..... | 27th highest sample. |
| 20..... | 18th highest sample. |
| 10..... | 9th highest sample. |
| 5..... | Average of 4th and 5th sample. |

Systems required to collect 100 samples per monitoring period, for example, would exceed the lead action level if the level in the 90th sample exceeded 0.015 mg/L. Systems that take more than the minimum number of required samples would determine the 90th percentile value using the following equation:

$$(\text{Number of samples}) \times (0.9) = \text{sample corresponding to the 90th percentile}$$

For a system that collects 120 samples, the 90th percentile lead value would be the 108th highest sample (120×0.9).

The Agency has decided to adopt the 90th percentile value instead of an average or median value because this method does not require assumptions concerning values less than the lead practical quantitation level (PQL) of 0.005 mg/L. The available data generally indicate that lead in drinking water is log-normally distributed (Schock et al. 1988; Marcus, 1990a, 1990b), resulting in the majority of lead values for a typical system being below the PQL. The assumption regarding values below the PQL (i.e., equal to the PQL, one-half the PQL, or zero) could have a significant impact on whether the system's average value is above or below the action level. Adopting an action level defined as the 90th percentile does not require any assumptions concerning values below the PQL because only values at and above 0.015 mg/L are needed to judge whether the action level is exceeded. In addition, the Agency is concerned about the high lead levels that may be present in some systems and believes an action level using the 90th percentile value is more sensitive to these outliers than an average or median value. Using the 90th percentile is consistent with recommendations by EPA's Science Advisory Board (SAB) (EPA, 1988d),

which reviewed the monitoring protocol for the proposed lead and copper rule on October 14, 1988. SAB recommended that EPA consider using percentiles rather than an average value since assumptions regarding the underlying distribution of water lead levels (e.g., normally distributed versus log-normally), or assumptions about values below the maximum detection limit (MDL) or the PQL, would not be required.

a. *Action Level For Lead in School Drinking Water.* In January 1989, EPA published a manual, "Lead in School's Drinking Water", to assist school officials in identifying whether a school had a problem with lead in drinking water, the steps to reduce or eliminate this problem, and information on training personnel in sampling and remedial programs. As a part of this program, EPA recommended that schools collect 250 ml first-draw samples from water fountains and outlets and that the water fountains and/or outlets be taken out of service if the lead level exceeded 0.020 mg/L. The sampling was designed to pinpoint specific fountains and outlets that required remediation (e.g., water cooler replacement).

As discussed above, the final rule establishes a lead action level of 0.015 mg/L at the 90th percentile. The action level in the final rule is based on 1 liter first-draw samples collected from numerous targeted sampling sites throughout a distribution system and is designed to identify system-wide problems and not problems in single outlets. This is quite different from the sampling conducted in schools where EPA is concerned with locating individual outlets that require remediation. The school sampling protocol maximizes the likelihood that the highest concentrations of lead are found because the first 250 ml are analyzed for lead after overnight stagnation (usually much longer than the 6 hour minimum specified for this regulation). Consequently, the two lead action levels differ because of the different problems they seek to detect and the different monitoring protocols used in the two situations.

EPA continues to recommend that schools take action at individual outlets with lead levels greater than 0.020 mg/L. EPA will make an effort to ensure that schools, laboratories, States, and consumers understand the distinction between the action level under this rule and that applicable to public schools. EPA will assess its 1989 guidance regarding the school action level to

determine whether revisions are warranted.

2. Corrosion Control Requirements (Sections 141.81 and 141.82)

Since most of the lead and copper found in drinking water is caused by corrosion of materials containing lead and copper in the distribution system and in the plumbing systems of privately owned buildings, the Agency believes that the most important element of the final treatment technique is corrosion control treatment. The proposed rule would have required water systems to install "optimal" corrosion control treatment. The idea of "optimizing" corrosion control treatment, as discussed in the August 1988 proposal, created concern among water systems. They feared that EPA intended to force water systems to reduce the corrosivity of their water toward lead and copper without regard for either the other types of material found in the distribution system (e.g., iron, galvanized steel) or other treatment processes undertaken by water systems (e.g., disinfection, filtration) or other secondary effects (e.g., phosphate problems, zinc in wastewater treatment sludge).

EPA agrees that water systems should design corrosion control in the context of other treatment processes and should consider other materials within the distribution system. Designing treatment processes without considering these factors could cause unintended secondary effects (AWWA-RF, 1990; Schock, 1990). Because of these concerns, the Agency has changed its definition of optimal corrosion control to the corrosion control treatment that minimizes lead and copper levels at users' taps, while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulation. Further, in identifying optimal corrosion control treatment, both the water system and the State are required to consider the constraints that would limit or prohibit the use of alternative corrosion control treatments, and any other potentially adverse effects on other water quality treatment processes. Thus, the final rule allows systems the flexibility to account for other aspects of water quality that can be affected by corrosion control treatment. This will help ensure that public health gains associated with reduced lead exposure are not offset by increased risk of adverse effects due to other contaminants.

Water systems are required to perform various steps to meet the final corrosion control treatment requirements. The specific requirements

and time allotted for achieving each of the steps have been differentiated for large, medium, and small size systems. Dates for each requirement are included in Table 6. Compliance with the corrosion control portion of the treatment technique is determined by

whether a system has successfully demonstrated that it optimized corrosion control and has completed the steps outlined below by the dates specified in this table. The corrosion control treatment requirements are contained in two sections of the final rule: §§ 141.81

and 141.82. Section 141.81 contains the timetables for systems to complete corrosion control treatment requirements; the details of each step listed in § 141.81 are described in § 141.82.

TABLE 6.—TIMING FOR CORROSION CONTROL TREATMENT REQUIREMENTS

[System Size (persons served)]

| Treatment requirements | >50,000* | 3,301 to 50,000 | <3,300 |
|---|----------|---|---|
| Begin initial tap sampling..... | 1/1/92 | 7/1/92..... | 7/1/93. |
| System recommends CCT to State..... | 7/1/94 | 6 months after > AL..... | 6 months after > AL. |
| Results of CC studies to State..... | 7/1/94 | If State requires, 18 months after..... | If State requires, 18 months after. |
| State approves/designates treatment..... | 1/1/95 | Either 18 months after > AL or 6 months after CC studies completed. | Either 24 months after > AL or 6 months after CC studies completed. |
| Complete installation of CCT..... | 1/1/97 | 24 months after State designates treatment..... | 24 months after State designates treatment. |
| Results of followup monitoring..... | 1/1/98 | 12 months after CCT installed..... | 12 months after CCT installed. |
| State review of results and designate WQPs..... | 7/1/98 | 6 months after follow-up monitoring completed..... | 6 months after follow-up monitoring completed. |
| Additional monitoring..... | 7/1/99 | 12 months if > AL after follow-up monitoring..... | 12 months if > AL after follow-up monitoring. |

AL—Action Level; CCT—Corrosion Control Treatment; CC—Corrosion Control; WQPs—Water Quality Parameters.

* Dates are included for large systems because they are all required to complete these treatment steps, whereas the timing for smaller systems depends on when the action level is exceeded.

Public water systems are not required to complete the actions described below if they can demonstrate that they have already optimized corrosion control. Water systems can demonstrate that they have optimized corrosion control by satisfying one of the following criteria:

- (1) For small and medium-size systems only, if they meet the lead and copper action levels for two consecutive 6 month monitoring periods.
- (2) For any size system, demonstrating to the satisfaction of the State that the system has conducted activities equivalent to the corrosion control requirements needed to demonstrate that the system has installed optimal treatment.
- (3) For any size system, demonstrating that the difference between the 90th percentile tap water lead level and the highest source water lead concentration is less than the lead PQL (0.005 mg/l) for two consecutive 6 month monitoring periods.

Systems attempting to demonstrate that they have already evaluated the effectiveness of corrosion control and installed optimized corrosion control treatment are required to provide the following information to the State in support of this determination (Section 141.81(b)(2)).

- A report explaining the test methodologies used (i.e., pipe rig/loops, metal coupon tests, pilot-scale studies, or documented analogous treatments with other systems of similar size, water chemistry, and configuration) to evaluate the various corrosion control treatment options, the results of all tests conducted, and the rationale for the

system's selection of the optimal corrosion control. The system should have evaluated the effectiveness of minimizing lead and copper levels through adjusting alkalinity and pH, calcium hardness, and/or the addition of phosphate or silicate-based corrosion inhibitors or a combination of the treatments. Systems that have not conducted evaluative tests for all these corrosion control treatments must document why they were unable to evaluate these treatments.

- The results of all test samples collected for lead and copper and for each of the water quality parameters in § 141.87(c) in studies used to evaluate the various corrosion control treatment options.
- A report explaining how the treatment has been installed and how it is being properly maintained and operated to insure minimal lead and copper concentrations at consumers' taps. To satisfy this provision, a system must show that the appropriate chemical dosages indicated by the evaluative studies are being added and that the associated values for the water quality parameters of concern, whether this be pH, alkalinity, calcium and/or orthophosphate or silica residuals, are being maintained throughout the distribution system. To successfully demonstrate that the appropriate water quality parameters are being maintained within an acceptable range of values to minimize lead and copper levels at the tap, the system must collect tap samples in the field before and after installing treatment.

- The results of tap water samples for lead and copper taken at least once

every 6 months for 1 year after corrosion control has been installed. The purpose of collecting these samples is to determine whether corrosion control has been effective in reducing lead and copper levels. The samples must be collected at targeted sampling sites as defined in § 141.86(a) and be 1-liter in volume and have stood in the pipes for a minimum of 6 hours.

Systems may also show that they have optimized corrosion control by demonstrating that the difference between the 90th percentile lead and highest source water samples is below the PQL for lead (0.005 mg/L) for two consecutive 6-month monitoring periods. For example, a large system would be deemed to have optimized corrosion control if its 90th percentile tap water lead level is 0.017 mg/L and the highest source water sample is 0.013 mg/L (difference 0.004 mg/L). EPA has included this provision because in these cases, very small amounts of lead will have been contributed by corrosion of distribution system materials, (as discussed in Section V(A)(3), the PQL is the lowest concentration that can be reliably achieved by well-operated laboratories within specified limits of precision and accuracy during routine laboratory operating conditions). Past practice with corrosion control treatment has generally demonstrated the ability to make gross reductions in lead levels, but the Agency doubts whether systems could produce quantifiable improvements in lead levels when corrosion is introducing such small amounts of contamination. In the example noted above, however, the

primary source of contamination is source water, and source water treatment would be necessary to minimize levels at the tap. Thus, lead levels should be adequately reduced at the tap without requiring the system to install corrosion control treatment in an instance where EPA doubts that such treatment could further reduce lead levels.

a. *Water Systems Serving Greater Than 50,000 People (Large Systems)*. All public water systems serving more than 50,000 people (large systems) are required to complete all of the actions described below, unless they are deemed to have already optimized corrosion control as discussed in Section IV(C)(2) above.

i. *Conduct Initial Tap Sampling* (§ 141.81(d)(1)). All large systems are required to collect lead and copper samples for two consecutive 6-month periods, in accordance with the requirements contained in § 141.86(c) of the rule, and submit the results to the State. During the same two 6-month monitoring periods, large systems are also required to sample for pH, alkalinity, calcium, temperature, and conductivity, and phosphate and silica if phosphate or silicate-based inhibitors are used, in accordance with the requirements in § 141.87(b). Initial tap sampling must begin by January 1, 1992, and be completed by January 1, 1993.

ii. *Conduct Studies/Recommend Treatment to State* (§ 141.81(d)(2)). All large water systems are required to evaluate the effectiveness of each of the following treatments and, if appropriate, combinations of the treatments to identify optimal corrosion control for their system. The results must be submitted for review to the State by July 1, 1994.

(1) Alkalinity and pH adjustment.

(2) Calcium hardness adjustment.

(3) Addition of phosphate- or silica-based inhibitor at a concentration sufficient to maintain an effective residual concentration in test samples.

After analyzing the data generated during each evaluation, the water system shall recommend to the State the treatment option that constitutes optimal corrosion control treatment for that system and shall provide a rationale for its selection.

iii. *State Designation of Optimal Corrosion Control* (§ 141.81(d)(3)). By January 1, 1995, the State is required to review the different treatments evaluated by the system and either approve the treatment identified by the system as optimal or designate an alternative treatment.

iv. *Installation of Optimal Corrosion Control* (§ 141.81(d)(4)). By January 1,

1997, large water systems must install and properly operate the State-designated corrosion control treatment.

v. *Follow-up Monitoring* (§ 141.81(d)(5)). By January 1, 1998, large water systems must conduct follow-up tap sampling for lead and copper and the applicable water quality parameters at the same locations used for initial sampling during two consecutive 6-month monitoring periods.

vi. *State Designation of Optimal Water Quality Parameters* (§ 141.81(d)(6)). States are given until July 1, 1998 to review the system's installation and operation of corrosion control treatment, and after reviewing the results of tap water and water quality monitoring, the State is required to designate optimal water quality parameters, including:

(1) A minimum value or a range of values for pH measured at each entry point to the distribution system.

(2) A minimum pH value, measured in all tap samples, equal to or greater than 7.0, unless the State determines that meeting such a level is not technologically feasible or is not necessary for the system to optimize corrosion control.

(3) If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for the inhibitor, measured at each entry point to the distribution system and in all tap samples, that the State determines is necessary to form a passivating film on the interior walls of the pipes of the distribution system.

(4) If alkalinity is adjusted as part of optimal corrosion control treatment, a minimum concentration or a range of concentrations for alkalinity, measured at each entry point to the distribution system and in all tap samples.

(5) If calcium carbonate stabilization is used as part of corrosion control, a minimum concentration or a range of concentrations for calcium, measured in all tap samples.

The values for the applicable water quality control parameters listed above shall be those that the State determines reflect optimal corrosion control treatment for the system. The State may designate values for additional water quality control parameters that the State determines to reflect optimal corrosion control for the system. The State shall notify the system in writing of these determinations and explain the basis for its decisions.

vii. *Continued Operation and Monitoring* (§ 141.81(d)(7)). All systems are required to maintain the water quality parameter values designated by the State in all samples collected under § 141.87(d).

viii. *Modification of State Treatment Decisions* (§ 141.82(g)). Upon its own initiative or in response to a request by a water system or other interested party, a State may modify its determination of the optimal corrosion control treatment. A request for modification by a system or other interested party is required to be in writing, explain why the modification is appropriate, and provide supporting documentation. The State may modify its determination where it concludes that such change is necessary to ensure that the system continues to optimize corrosion control treatment. A revised determination should be made in writing, set forth the new treatment requirements, explain the basis for the State's decision, and provide an implementation schedule for completing the treatment modifications.

ix. *Treatment Decisions by EPA in Lieu of the State* (§ 142.19). The final rule allows the EPA Regional Administrator to review treatment determinations made by a State and issue Federal treatment determinations if he or she finds that: (1) A State has failed to issue a treatment determination by the applicable deadlines contained in § 141.81, (2) a State has abused its discretion in a substantial number of cases or in cases affecting a substantial population, or (3) the technical aspects of a State's determination would be indefensible in an expected Federal enforcement action taken against a system.

b. *Water Systems Serving 50,000 or Fewer People (Medium and Small Systems)*. All water systems serving 50,000 or fewer people (medium systems—3,301 to 50,000; small systems—3,300 or less) are required to conduct tap sampling and, if they exceed the lead or copper action level, complete the remaining steps outlined below.

i. *Initial Tap Sampling* (§ 141.81(e)(1)). All medium and small water systems are required to monitor for lead and copper at targeted sampling sites until the system exceeds the action levels or becomes eligible for reduced monitoring. Medium-sized and small systems can demonstrate that they have optimized corrosion control and no further action is required, by meeting the requirements in § 141.81(b) and discussed in Section C(2), above. Medium-size systems are required to begin initial tap monitoring by July 1, 1992. Small systems are required to begin initial tap monitoring by July 1, 1993.

All medium-size and small systems that exceed the lead or copper action levels are also required to sample for the following parameters during the same 6-

month monitoring period in which the action level(s) was exceeded: pH, alkalinity, calcium, temperature, and conductivity, and phosphate and silica if orthophosphate- or silicate-based inhibitors are used, every 6 months in accordance with the requirements in § 141.87 of the rule.

ii. System Recommendation on Optimal Treatment (§ 141.82(a)). Based upon the results of tap sampling, medium and small water systems exceeding the lead or copper action level have 6 months from the date they are above the action levels to recommend to the State installation of one or more of the corrosion control treatments listed in § 141.82(c) that they believe constitute optimal corrosion control for that system:

(1) Alkalinity and pH adjustment.

(2) Calcium hardness adjustment.

(3) Addition of phosphate- or silica-based inhibitor at a concentration sufficient to maintain an effective residual concentration in test samples.

iii. State Decision To Require Corrosion Control Studies or Corrosion Control Treatment (§ 141.81(e)(2)). Within 12 months after a system exceeds the lead or copper action level, the State may require the system to perform corrosion control studies. If the State does not require the system to perform such studies, the State is required to specify optimal corrosion control treatment within 18 months for medium-sized systems and 24 months for small systems from the date the system exceeds the action level(s). States are required to analyze all of the water system's monitoring results and approve the corrosion control option recommended by the system or designate an alternative optimal corrosion control treatment for the system.

iv. Conduct Corrosion Control Studies (§ 141.81(e)(3)). All medium-sized and small water systems required to conduct corrosion control studies have 18 months in which to complete the studies and submit the results to the State for review. Systems required to conduct corrosion control studies are required to follow the same procedures discussed above in Section (a)(ii) with regard to large systems. All medium-sized and small systems required to conduct corrosion control studies must submit their evaluations to the State along with a recommendation on the corrosion control treatment each system will install system-wide.

v. State Designation of Optimal Corrosion Control After Corrosion Control Studies (§ 141.81(e)(4)). If a medium-sized or small system conducts corrosion control studies, the State has 6

months to review the different treatments evaluated by the system and either approve the treatment identified by the system as optimal or specify an alternative treatment.

vi. Installation of Optimal Corrosion Control (§ 141.81(e)(5)). Medium and small water systems must install and properly operate the State-designated corrosion control treatment within 24 months of the State determination.

vii. Follow-up Monitoring (§ 141.81(e)(6)). Water systems must conduct follow-up tap sampling at the same locations used for initial sampling during two consecutive 6-month monitoring periods within 36 months after the State designates optimal corrosion control.

viii. State Designation of Optimal Water Quality Parameters (§ 141.81(e)(7)). States are given 6 months to review the system's installation of corrosion control treatment to determine whether the system has installed the optimal corrosion control treatment designated by the State and to designate values or ranges of values for applicable water quality parameters. The requirements for States are the same as stated for large systems in section (a)(vi), above.

ix. Continued Operation and Monitoring (§ 141.81(e)(8)). All systems are required to maintain the water quality parameter values designated by the State in all samples collected under § 141.87(d).

x. Modification of State Treatment Decisions (§ 141.82(g)). The requirements are the same as for large systems discussed above.

xi. Treatment Decisions by EPA in Lieu of the State (§ 142.19). The requirements are the same as for large systems discussed above.

3. Source Water Treatment Requirements (§ 141.83)

Water systems that exceed the lead or copper action levels are required to perform one or more of the following 6 actions to satisfy the source water treatment requirements:

(1) Monitor for source water lead and copper in accordance with the requirements in § 141.88 of the rule (all systems that exceed the lead or copper action levels) and recommend source water treatment to the State within 6 months after exceeding the lead or copper action level (§ 141.83(b)(1)).

(2) States are required to review the results of all source water samples and determine whether source water treatment is necessary to minimize lead or copper levels in water delivered to users' taps (§ 141.83(b)(2)).

(3) Systems are required to install the State-approved/designated source water treatment (§ 141.83(b)(3)).

(4) Systems are required to conduct follow-up tap water and source water monitoring (§ 141.88).

(5) States are required to review all the source water samples and designate the maximum permissible lead and copper concentrations for finished water entering the distribution system (§ 141.83(b)(4)).

(6) Systems required to maintain the State-designated maximum permissible lead and copper concentrations in source water (§ 141.83(b)(5)).

4. Public Education Requirements (§ 141.85)

All public water systems that exceed the lead action level are required to deliver a public education program as long as the action level is exceeded.

5. Lead Service Line Replacement Requirements (§ 141.84)

All public water systems that exceed the lead action level at the tap after installation or improvement of corrosion control and/or source water treatment are required to replace the lead service lines they control unless the lines are contributing less than 0.015 mg/L to drinking water.

D. Determination of Best Available Technology

The SDWA directs EPA to establish an MCL as close as "feasible" to the MCLG for a contaminant, or a treatment technique that will prevent adverse effects to the extent "feasible." Section 1412(b) (4) and (7). Feasibility for purposes of establishing an MCL or treatment technique means "feasible with the use of the best technology, treatment techniques, and other means, which the Administrator finds, after examination for efficacy under field conditions, and not solely under laboratory conditions, and are available (taking costs into consideration)." Section 1412(b)(5). Thus the Agency is required to demonstrate that the treatment requirement(s) is/are "feasible."

In selecting "best available technology" (BAT), EPA evaluates the ability of the technology to reduce the level of the contaminant, and the technological and economic feasibility of the technologies being considered. In assessing technological feasibility, EPA considers whether a technology has been shown to be effective through demonstrated full-scale use by public water systems, is compatible with other water treatment processes, and is

generally available throughout the United States.

When considering affordability of NPDWRs, EPA assesses whether the technology is reasonably affordable by regional and large metropolitan water systems (EPA is using a system size of 50,000 to 75,000 persons as a size cutoff to define large or regionalized water systems). This standard was established when the SDWA was enacted in 1974 ([see H.R. Rep. No. 93-1185 at 18 [1974] and reaffirmed when the Act was amended in 1986 (see 132 Cong. Rec. S6287 [May 21, 1986] [statement of Sen. Durenberger]). EPA also gives additional consideration to the total national costs to comply with the regulation.

Each of the four treatment technologies (corrosion control, source water reduction, public education, and lead service line replacement) identified as a part of the treatment technique are evaluated below in terms of their technological and economic feasibility and their ability to effectively reduce contaminant levels.

E. Corrosion Control Treatment

1. Available Treatments

The proposal presented three general corrosion control treatments available to public water systems to minimize lead and copper corrosion by-products at the tap: pH adjustment, pH adjustment in conjunction with alkalinity adjustment, and addition of corrosion inhibitors. Commenters raised three general issues with these corrosion control treatments: (1) The effectiveness of the different corrosion control treatments to reduce lead and/or copper levels; (2) the potential adverse secondary effects from corrosion control treatment; and (3) the need for assistance in developing corrosion control strategies.

a. *Cost and Effectiveness of Corrosion Control Treatment.* Many commenters stated that pH and alkalinity adjustment and addition of inhibitors are effective for reducing lead and copper levels at the tap, the treatments are generally available, and the costs are reasonable. Other commenters asserted that EPA had presented limited or unconvincing evidence that the corrosion control treatments cited are effective for reducing tap water lead and copper levels to the proposed action levels (average of 0.010 mg/L for lead and 1.3 mg/L for copper in 95 percent of samples). Several commenters stated that corrosion control may be effective for reducing the corrosion of lead pipes, but there is little evidence that corrosion control is effective in reducing

dissolution of lead from solder, fixtures, or faucets.

It is important to recognize that unlike control technologies to treat source water contamination, control of corrosion byproducts does not involve removal of contaminants directly. Rather, corrosion control involves a variety of practices to prevent the contaminants from entering drinking water. The Agency acknowledges that precisely quantifying the effectiveness of corrosion control treatment under different water quality and distribution system configurations is difficult. The complexities involved in determining the appropriate treatment require that treatment decisions take into account the unique properties of the water used by a particular system and the physical configuration and material composition of the distribution system through which the water flows to consumers. These problems are discussed in more detail in section (b) below. Nevertheless, the Agency believes the data presented below demonstrate that proper application of pH adjustment in conjunction with alkalinity adjustment, calcium hardness adjustment, and the addition of corrosion inhibitors is effective for reducing lead and copper levels at the tap and that the cost (see Section X) to large metropolitan water systems to install and maintain the technologies is reasonable.

The Agency disagrees that there is little evidence that corrosion control is effective in reducing the dissolution of lead from lead solder. Data collected in the field and laboratory (Lyon and Lenihan, 1977; Oliphant, 1983; EPA, 1988; AWWA-RF, 1990) and laboratory (Schock and Wagner, 1985; AWWA-RF, 1990) indicate that increasing Ph can substantially reduce lead dissolution from lead solder. Brass faucets and fixtures have recently been identified as a potentially significant source of lead in drinking water (Schock and Wagner, 1985; Schock and Neff, 1988; Gardels and Sorg, 1989; AWWSC, 1989), and consequently, little research has been conducted on effective treatment methods for minimizing the rate of dissolution from these faucets. Data from a limited number of locations indicate that while new brass faucets can contribute substantial amounts of lead to first-draw water for the first few weeks or months after installation, the rate of lead dissolution will rapidly decline to a low level and ultimately stabilize (PMI, 1990). Until additional data can be collected that provide a clearer indication of the rate of dissolution from brass faucets under a variety of water conditions, the extent to

which faucets contribute to total tap water lead levels will remain difficult to quantify. EPA has sought to ensure that lead problems due to faucets are detected and addressed by requiring systems to minimize lead levels in first-flush water. In addition, EPA will shortly publish an Advanced Notice of Proposed Rulemaking for a TSCA Section 6 action to restrict the future use of fixtures with lead.

In addition, EPA has been working with the National Sanitation Foundation (NSF) to establish performance standards for newly manufactured brass faucets and fixtures. Only those faucets that are tested to show minimal leaching of lead will be certified by NSF. Some manufacturers are beginning to investigate lead-free metal alloy faucets, but it appears that it will be several years before these faucets are in widespread use. Until then, EPA believes that compliance with this final rule, as well as with NSF standards, will minimize lead exposure from brass faucets. The NSF standard will be part of a voluntary certification program for manufacturers of plumbing products and is expected to be adopted by most, if not all, States.

The preamble to the proposed rule presented information from several public water systems that collected lead tap samples before and after either raising pH, or raising pH in conjunction with adjusting alkalinity. Several commenters stated that the data presented did not demonstrate that the corrosion control treatments were effective because the majority of the data (Boston and Bennington) were from systems with lead service lines and that the systems had very high lead levels, which are not representative of the lead levels found throughout the country. They stated that the effectiveness of corrosion control in systems with lead levels in the range usually found—0.015 mg/L to 0.030 mg/L—was not proven. In addition, they criticized the use of the Seattle data because the samples were not collected in the same manner as required by the proposed rule.

EPA acknowledges that the Boston and Bennington data presented in the proposal came from homes with lead service lines and that the lead levels in many of the homes had very high lead levels before installation of corrosion control treatment. The data from Boston and Bennington, however, cannot be discounted simply because the systems have lead service lines. EPA estimates that about 20 percent of all public water systems, and about 30 to 35 percent of the systems that will initially exceed the lead action level, have some lead

service lines (EPA, 1991a). Thus, a large number of systems affected by this rule contain lead service lines. Data from other systems with lead service lines such as Fall River, New Bedford, and Chatham, Massachusetts, also had very high lead levels (EPA, 1991b).

As has been widely documented, the corrosion control interventions in Boston and Bennington were effective (Karalekas et al., 1976, 1978, 1983; EPA, 1988f, 1991b; AWWA-RF, 1990). The 90th percentile lead levels in Boston were reduced from 0.110 mg/L (average of 0.058 mg/L) before pH and alkalinity adjustment, to 0.047 mg/L (average of 0.030 mg/L) 3 years after installation of treatment (Marcus, 1990a). Bennington reduced its 90th percentile lead levels from 0.148 mg/L (average of 0.105 mg/L) to 0.026 mg/L (average of 0.014 mg/L) 3 years after treatment (Marcus, 1990a). In Fall River, MA, the 90th percentile lead level was reduced from 0.250 mg/L (average 0.091 mg/L) before pH adjustment to 0.176 mg/L (average 0.034 mg/L) after treatment (Marcus, 1990a).

EPA also recognizes that the samples in Seattle were not collected exactly as the sampling protocol in the final rule. The final rule requires a 1000 ml first-draw sample, and Seattle used the first 250 ml for microbiological analyses and the next 1000 ml for lead analysis. Nevertheless, the data are useful for determining the relative effectiveness of corrosion control treatment. Reductions in lead levels of about 60 percent after installation of treatment were obtained: for the Cedar River supply the 90th percentile lead level was reduced from 0.025 mg/L (average 0.010 mg/L) before treatment to 0.009 mg/L (average 0.004 mg/L) after treatment; the Tolt River supply showed reductions in the 90th percentile lead values from 0.025 mg/L (average 0.010 mg/L) to 0.011 mg/L (average 0.004 mg/L) (EPA, 1991b).

Several water systems have conducted sampling before and after application of inhibitors following initial sampling of 94 water districts in early 1988. The American Water Works Service Company (AWWSC) began an

investigation into the effect of zinc orthophosphate on three districts (230, 340, and 130). Nine sites were sampled before and after treatment in District 230, four sites in District 340, and five sites in District 130. Average lead levels in first-draw tap samples in District 230 were reduced from 0.040 to 0.005 mg/L (88 percent reduction), District 340 showed reductions from 0.053 to 0.005 mg/L (87 percent reduction), and average first-draw lead levels in District 130 were reduced from 0.090 to 0.012 mg/L (91 percent reduction) (AWWSC, 1989). In Fairbanks, Alaska, morning first-draw tap samples were collected from 15 sites before, and 1 month after, treatment with sodium polyphosphate. Average lead levels were reduced from 0.077 to 0.035 mg/L (56 percent reduction) (AWWA-RF, 1990). These data and the data in Table 7 indicate that the addition of corrosion inhibitors can be effective for reducing lead levels in drinking water.

TABLE 7.—RELATIVE EFFECTIVENESS OF CORROSION CONTROL TREATMENTS

| Corrosion control treatment | No. of systems | Percent of systems with 90th percentile levels below (mg/L) | | | | |
|--|----------------|---|-------|-------|-------|-------|
| | | 0.005 | 0.010 | 0.015 | 0.020 | 0.030 |
| Systems without Pb service lines: ¹ | | | | | | |
| No treatment..... | 6 | 15 | 25 | 37 | 50 | 75 |
| pH < 8..... | 11 | 21 | 34 | 49 | 67 | 87 |
| pH > 8..... | 9 | 36 | 73 | 88 | 94 | 98 |
| Inhibitors..... | 13 | 34 | 65 | 80 | 88 | 95 |
| Systems with Pb service lines ² | | | | | | |
| pH > 8..... | 5 | 16 | 20 | 24 | 28 | 38 |
| Inhibitors..... | 6 | 17 | 22 | 28 | 34 | 48 |

¹ First-draw samples from the following studies:

—28 systems from the American Water Works Service Company survey

—8 systems for the Technical Support Division (TSD/ODW) survey

—3 systems from public comments on the 1988 proposal.

² Data from service line samples from 11 systems, collected prior to proposal.

Several commenters were concerned that the singular reference to zinc orthophosphate in the proposed definition of corrosion inhibitors could be construed as an endorsement of this inhibitor at the expense of excluding many other effective inhibitors (e.g., polyphosphate, orthophosphate, blends of ortho- and polyphosphates, silicates, or sodium and zinc hexametaphosphate). Although the 1988 proposal identified zinc orthophosphate as the most effective inhibitor based on the available data, the Agency did not intend to imply that zinc orthophosphate was the only inhibitor a water system could use. The Agency has, therefore, deleted the reference to zinc orthophosphate for the rule's definition of corrosion inhibitor. To the extent that

other inhibitors are able to reduce lead levels, they need to be considered.

Many commenters suggested that silicate-based inhibitors should be allowed, stating that they are effective in reducing lead and copper levels. Little research has been done with silicate-based inhibitors, and EPA is not aware of a water system that has used these inhibitors system-wide to reduce lead and copper levels (AWWA-RF, 1990). Some success was obtained, however, at a relatively high SiO₂ in pipe loop experiments by EPA (Schock, 1989). Water systems are permitted to test the effectiveness of silicate-based inhibitors during their corrosion control studies. Likewise, States are free to approve/designate silicate-based inhibitors if it can be determined that they are the most effective inhibitor for reducing the

dissolution of lead and copper bearing materials.

EPA also analyzed data received during the public comment period and data received prior to the 1988 proposal to compare the effectiveness of available corrosion control treatments in reducing lead levels. These data confirm EPA's conclusion at proposal that implementation of corrosion control treatment can effectively reduce lead levels at the tap. The three primary sources for these analyses were the American Water Works Service Company Lead Survey, the EPA Office of Drinking Water's Technical Support Division Lead Survey (TSD), and the pre-proposal and public comment data base. EPA analyzed the three data sets in a paper "Influence of Plumbing, Lead Service Lines, and Water Treatment

Levels at the Tap" (EPA,1990e). This paper was made available for public review and comment through a Federal Register notice, published on October 19, 1990 (55 FR 42409). No comments were received on the analyses during the public comment period. The data and analyses are also discussed in the Occurrence and Treatment Support Document (EPA,1991b). A brief summary of the analyses is presented below along with the results in Table 7.

The majority of the systems in these data bases did not collect samples before and after installation of treatment. In an attempt to utilize this information, EPA screened the data that were collected using, as close as possible, the compliance monitoring criteria for the final rule: 1-liter first-flush samples (stagnation time of at least 6 hours) from homes with copper plumbing older than 5 years (to account for the effects of the 1986 ban on lead solder). Only systems with nine or more targeted samples were included in the analyses to increase the confidence in the estimates. Data from homes and systems with lead service lines were assessed separately from those without lead service lines. After applying these criteria to the data, 39 systems without lead service lines and 11 systems with lead service lines remained. Data from dozens of other utilities did not meet the criteria because collection methods consistent with the final rule were not used. For example, some systems did not collect 1-liter samples or collected samples after a standing time of only 2 hours.

The data from the 39 systems without lead service lines were divided into one of four "treatment" strata: (1) use of corrosion inhibitors, (2) pH adjusted to at least 8.0 at the treatment plant, (3) pH adjusted to between 7.0 and 8.0 at the plant, and (4) no treatment but pH was above 7 at the plant. The results given in Table 7 represent comparative estimates of treatment performance rather than precise predictions of systems' ability to meet the action level of 0.015 mg/L. The actual "pass/fail" rates among the entire water supply industry are expected to be different for a number of reasons, among which are the following:

- A relatively small number of systems are represented and are limited to mostly medium (and a few large) size systems, concentrated in the mid-Atlantic and Ohio River Valley.
 - Data represent single samples.
- Other information indicates

considerable temporal variability at the same tap. In addition, the majority of data were collected between January and March (AWWSC, 1989). Lead levels are generally lower in cold months; consequently, projected performance based on these data would tend to be overestimated.

- The range of important water quality parameters (e.g., alkalinity, hardness) of the raw water in these systems is relatively narrow. For example, most systems with pH \geq 8.0 had total alkalinities in raw water between 20 and 50 mg/L as CaCO₃ (alkalinity can range from less than 10 mg/L to over 500 mg/L). Because the data are not representative of the range of water quality characteristics present throughout the United States, it is difficult to extrapolate, especially to large systems where the variability in pH can be significantly greater than in smaller systems.

- Only data from homes with plumbing older than 5 years at the time samples were taken were analyzed. The "greater than 5 years of age" stratification was used because selecting homes that would match the final targeting criteria exactly (homes with plumbing 5-10 years old) would have limited the analyses to less than 10 systems, which would have been insufficient to generate meaningful results. EPA chose to limit the analysis to houses with plumbing older than 5 years (as opposed to analyzing data from houses with plumbing of any age) to standardize the group of houses analyzed. Moreover, the age range reflects the fact that homes sampled under the final rule will likely have lead solder older than 5 years because of the effects of the 1986 SDWA lead solder ban. Lead levels in homes fitting the targeting criteria in the final rule (homes built after 1982, i.e., plumbing between 5-10 years of age) would be expected to be higher than in homes aggregated in the "older than 5 year" category since this latter category could have included much older homes with dissipated lead solder. This is another factor that tends to make performance projections based on these data optimistic.

- None of these systems were specifically trying to minimize lead or copper levels, although they were trying to reduce corrosion to some degree. This would tend to underestimate system performance projections based on these data.

Despite the data limitations, EPA believes the results in Table 7 represent trends indicative of the efficacy of the different treatments. Among systems with non-lead service lines, the data indicate that systems using corrosion inhibitors and maintaining a pH above 8.0 (at plant) would have a much higher likelihood of meeting the lead action level of 0.015 mg/L compared to systems in the other treatment strata. These data support conclusions discussed earlier that increasing pH and/or alkalinity, or adding a corrosion inhibitor, can effectively reduce lead levels in tap water.

The costs of pH adjustment, alkalinity adjustment, and corrosion inhibitor addition are summarized in Table 8. EPA believes the costs of these methods are reasonable and the methods are generally available for use by water systems. Costs may vary from those shown depending on local circumstances, but based on available information, the costs are representative of typical systems using these corrosion control treatments.

The corrosion control cost estimates were derived using the same assumptions and models as used for the proposed rule (adjusted for the new flow rates) with capital costs amortized over 20 years at a 10 percent interest rate and updated to reflect December 1988 engineering fees, contractor overhead and profit, and power, fuel, labor, and chemical costs. EPA also revised assumptions regarding flow rates to calculate all inorganic technology costs (EPA, 1987d) that result in increased cost estimates for corrosion control. A more detailed discussion on the procedures used in developing the cost estimates for these treatments can be found in the August 1988 proposal and in Lead and Copper in Drinking Water as a Result of Corrosion: Evaluation of Occurrence, Cost, and Technology (EPA, 1991b).

Several commenters submitted information on treatment costs for their systems. Unfortunately, the majority of systems did not present sufficient detail on critical elements, such as system design, flow rate, or chemical dosages, to enable EPA to compare the commenter's costing methodology with EPA's, or for EPA to modify its cost models as suggested by some commenters. The treatment costs from the few systems that did supply sufficient information generally supported EPA's estimates.

TABLE 8.—CORROSION CONTROL TREATMENT COSTS ¹

| | Population served | | | >1 million |
|---|-------------------|------------------|-------------------|---------------|
| | <100 | 3,301- 10,000 | 50,001- 75,000 | |
| Capital Costs (\$ millions) | | | | |
| pH adjustment: | | | | |
| lime..... | 3 | 152 | 518 | 978 |
| caustic soda..... | 3 | 44 | 93 | 731 |
| calcite beds ² | 13 | | | |
| Alkalinity adjustment: | | | | |
| soda ash..... | 3 | 56 | 119 | 1185 |
| sodium bicarbonate..... | 3 | 54 | 110 | 965 |
| Corrosion inhibitor (e.g., zinc orthophosphate)..... | 5 | 80 | 119 | 312 |
| Total Production Costs (cents/1000 gallons or \$/household/year) ³ | | | | |
| pH adjustment: | | | | |
| lime..... | 86 | 12 | 3 | 1 |
| caustic soda..... | 66 | 6 | 3 | 3 |
| calcite beds..... | 114 | | | |
| Alkalinity adjustment: | | | | |
| soda ash..... | 81 | 8 | 4 | 3 |
| sodium bicarbonate..... | 86 | 9 | 5 | 5 |
| Corrosion inhibitor (e.g., zinc orthophosphate)..... | 95 | 6 | 1 | 1 |

¹ Reference: EPA, 1991b.

² Systems serving greater than 500 people do not typically use calcite beds for adjusting pH.

³ The cost per household per year can be calculated by multiplying production costs by 100. This assumes water consumption of 100,000 gallons per household per year.

Several commenters objected to using tap samples for measuring the effectiveness of corrosion control. These commenters were concerned that it would be difficult to ascertain whether a reduction in lead levels, measured at the tap after installing corrosion control, is a result of treatment or simply due to the aging of solder. They argued that water systems should be allowed alternative methods, such as the use of pilot plant studies or pipe loops to show the effectiveness of corrosion control.

EPA agrees that water systems should use pipe loops, metal coupon, partial system tests, or other evaluative schemes to assist in determining the most effective corrosion control treatment. The Agency encourages water systems investigating different corrosion control treatments to first conduct research in the laboratory, whenever possible, before implementing system-wide corrosion control, and it anticipates that the majority of systems serving greater than 50,000 people will follow such procedures. Although pipe loop and pilot plant studies can assist in planning a treatment strategy and predicting trends, they cannot be expected to predict the precise lead and copper levels at the tap for numerous reasons including: (1) The aging effects of pipe scales, (2) the nature of preexisting pipe deposits not governed by lead or copper chemistry alone, (3) differences in surface chemistry between new and used pipes or faucets, and (4) disturbances of deposits when pipe from the field is pulled and used in the laboratory tests. Thus, relying solely on laboratory studies to predict the

effectiveness of corrosion control treatment would not indicate the levels of lead or copper at taps. Because of these problems and because EPA's goal is to reduce exposure to lead or copper in drinking water, it is essential to collect tap samples to determine if lead and copper levels at the tap decrease or increase after application of full-scale treatment and not to rely solely on laboratory studies to determine the effectiveness of treatment. Tap sampling after installation of corrosion control treatment is also necessary to evaluate whether lead service line replacement or additional public education is required.

In terms of commenters concerned with the ability to differentiate between the effects of treatment and the aging of lead solder, the Agency believes that this should not be a problem because the final rule does not require systems to sample at homes with lead solder less than 5 years old, but only requires that lead solder have been installed after 1982. This is 4 years before the enactment of the lead ban in section 1417 of the SDWA and 6 years before the ban was to have been enforced by States. EPA believes that this criterion for monitoring will help assure that sites with the most recently installed lead solder (before the material was banned) are sampled and the potentially higher lead levels associated with these sites will be greater than 5 years old, the effects on lead levels will be more readily associated with treatment as opposed to the aging effects of solder.

The data presented above show that increasing pH, and/or increasing pH in

conjunction with alkalinity, or adding corrosion inhibitors can greatly reduce the levels of lead in tap water. These treatments have been used for many years by water systems to reduce corrosion in water distribution systems and the costs of these treatments are reasonable for large water systems (less than \$6 per household per year). EPA, therefore, concludes that this treatment technology is feasible within the meaning of 1412(b)(5) of the SDWA. The data also indicate that the precise treatment efficacy of the different treatments will vary considerably between systems and even within systems, thereby reinforcing EPA's conclusion, discussed in Section IV(B), above, that it is not feasible to establish a single number as reflecting application of the best available treatment.

b. *Secondary Effects of Corrosion Control.* Numerous commenters stressed that corrosion control treatment must be designed and implemented to optimize overall water quality, not just to reduce lead and copper corrosion by-products. They contended that pH adjustment may result in a net decrease in public health protection due to increased levels of trihalomethanes and other disinfection by-products, increased precipitation of iron and manganese, and increased corrosion of galvanized piping in some water systems. Other commenters stated that an increase in pH could reduce the effectiveness of corrosion inhibitors. In addition, some commenters stated that phosphate-based inhibitors may promote bacterial and algal growth in reservoirs and other

parts of the water supply system and may have potential impacts on wastewater sludge disposal, especially the accumulation of zinc in wastewater sludge resulting from the use of zinc orthophosphate. Finally, a number of commenters were concerned about the secondary effects associated with adding sodium salts to the water supply to increase alkalinity. They contend that although the amount of sodium would be small, it could have substantial adverse impacts on people who are hypertensive or at high risk of heart attack, heart failure, stroke, and kidney damage.

EPA recognizes that adverse secondary effects on the quality of water and the potential for reduced public health protection can occur in the process of installing corrosion control treatment for lead or copper (AWWA-RF, 1990; Schock, 1990). For example, the adjustment of pH or alkalinity or the addition of phosphates can affect coagulation (a process by which materials suspended in water are concentrated for easy removal). Adverse impacts on coagulation can increase turbidity and impair effective removal of organic matter during sedimentation and filtration, which can interfere with disinfection and increase trihalomethane formation in the distribution system (AWWA-RF, 1985, 1990). Trihalomethanes are formed by the reaction of free chlorine and certain organic precursors (i.e., humic or fulvic acids). To minimize TTHM formation, systems using surface water sources should assure maximum TTHM precursor removal by optimizing the clarification process prior to increasing the pH. Systems using groundwater sources with high concentrations of TTHM precursors may need to install treatment to enhance removal of such precursors (e.g., membrane filtration) or use alternative disinfectants to free chlorine (e.g., chlorine dioxide or ozone followed by chloramines) in order to achieve adequate disinfection, minimize TTHM formation, and control corrosion at the same time.

Adjustment of pH may also alter the effectiveness of disinfectants. For instance, if systems use chlorine for disinfection, elevation of pH should be delayed, to the extent possible, until just prior to when the water enters the distribution system. This will maximize the contact time during which disinfection with chlorine is most efficient (since chlorination is most effective at low pHs), while also optimizing corrosion control in the distribution system.

EPA believes that increased precipitation of iron and manganese

may be a problem for some systems, especially those that had precipitation problems before installing corrosion control treatment. Even though there are no NPDWRs for iron and manganese, systems and States should be aware that adjusting pH or increasing hardness, for example, may exacerbate iron and manganese problems and should factor in these problems, if possible, when determining the most appropriate treatment for the system. The Agency does not believe the corrosion of galvanized pipe will be a problem. Available data indicate, in fact, that the corrosion rate from galvanized pipe either decreases as pH is increased from 7.0 to 8.0 or that there is little change in the corrosion rate (Trussels and Wagner, 1985).

EPA agrees that phosphate-based inhibitors may be a problem in certain situations and recommends that water systems use other methods of corrosion control in these situations. The 1990 AWWA-RF Lead Control Strategies lists factors to consider before using phosphate-based inhibitors. For example, systems that have a problem with eutrophication of receiving waters, such as reservoirs, may need to consider whether adding additional phosphate into the system will exacerbate the problem and trigger other associated problems with turbidity, taste, and odor. In addition, the presence of phosphates may be undesirable for selected industrial users and to aquatic ecosystems.

EPA is also aware of potential problems with the use of zinc orthophosphate, such as wastewater treatment effluent guidelines for zinc, or problems with the reuse of wastewater sludge. Restrictions on wastewater treatment discharges and associated costs of removal, even though not the direct responsibility of the public water system, are important considerations. Water systems should be aware of limits on effluent standards and work with local wastewater treatment authorities to protect against any unintended problems that could be avoided with other corrosion control treatment methods, such as using silicate-based inhibitors or adjusting pH or alkalinity. EPA is also aware of limitations caused by precipitation of zinc that could result in turbid water or filter clogging, especially in hot water systems (AWWA-RF, 1990; Schock, 1990). Again, systems should be aware of these problems and attempt to minimize precipitation of zinc whenever possible.

EPA does not believe that the addition of sodium salts at the concentrations

required for corrosion control or source water reduction poses a health risk to individuals on a limited sodium diet. The National Inorganics and Radionuclides Survey (EPA, 1988a) indicated that sodium concentrations in drinking water supplies range from 1 mg/L to 1540 mg/L, with a median of 16.6 mg/L and an average of 57 mg/L. The vast majority of sodium intake, however, comes from sources other than drinking water. The typical American diet contains several thousand milligrams per day of sodium.

EPA estimates that typical sodium concentrations average 10 mg/L when either sodium hydroxide or sodium carbonate are used by water systems (EPA, 1990g). This amount of sodium is very small compared to the intake from other dietary sources and, therefore, does not present a public health concern. EPA recommends a sodium limit of 20 mg/L in drinking water (45 FR 57332) because at higher levels it is difficult to maintain a severely restricted sodium diet. Water systems with sodium levels above 20 mg/L are required to inform local health authorities (40 CFR 141.41) so that physicians can advise their patients accordingly. A more detailed discussion of the relationship between sodium in drinking water and elevated blood pressure is included in the *Federal Register* notice that removed sodium from the list of 83 contaminants included in the 1986 amendments to the SDWA (53 FR 1892).

Because of the many problems discussed above, EPA concurs with commenters that corrosion control treatment must be designed and implemented in the context of the other drinking water regulations (e.g., surface water treatment, disinfection by-products) and, when possible, other water treatment processes (wastewater treatment). The regulation takes these problems into account by defining "optimal corrosion control" as the treatment that minimizes the corrosivity of water without causing violations of other NPDWRs. The definition will allow States to take into account the secondary effects of corrosion control treatment that might adversely affect the ability of systems to comply with other MCLs or treatment techniques. Moreover, it is because of these potential site-specific problems that the determination of optimal corrosion control must necessarily be made on a case-by-case basis. The regulation, therefore, provides systems and States with flexibility to take these factors into account in determining and implementing the best treatment approach for each system.

c. Technical Assistance with Corrosion Control Treatment. Numerous commenters stated that they do not have the expertise to design and maintain an effective corrosion control program and requested assistance from EPA. EPA understands these concerns, especially for small systems, and is developing a guidance manual to assist water systems in evaluating alternative approaches for corrosion control treatment and in addressing secondary impacts on water quality. When completed, the manual will be available at all EPA Regional Offices and through the National Technical Information Service. In addition, EPA will be working with the Association of Metropolitan Water Agencies, the American Water Works Association, and the National Rural Water Association to assist water systems, especially small water systems, with information, training, seminars, and other guidance on available corrosion control treatments. Finally, the 1990 American Water Works Association Research Foundation has recently published *Lead Control Strategies (AWWA-RF, 1990)*, a manual that should be consulted for strategies for designing an effective corrosion control program and dealing with the secondary impacts of treatment.

2. Rationale for Final Corrosion Control Treatment Approach and Summary of Changes from Proposal

In the proposed rule, the Agency would have required systems serving more than 3,300 persons that exceeded the lead or copper action levels to submit for State approval a treatment plan that would have included schedules for conducting appropriate corrosion control studies and implementing full-scale corrosion control treatment. Systems serving 3,300 or fewer persons exceeding the action level would have been required to implement a treatment plan specified by the State. Like the proposal, the final rule includes system-by-system determination of the appropriate treatment contingent on State review. However, the following changes have been made to assure timely implementation of treatment, provide greater flexibility for States in determining the appropriate course of action for medium and small systems, and assure the greatest feasible public health protection:

(1) The pH action level has been deleted, but systems optimizing corrosion control are required to maintain minimum pH values as a component of optimal corrosion control treatment.

(2) The lead and copper action levels that will trigger corrosion control treatment have been modified.

(3) An alkalinity action level has not been included, but systems adjusting their alkalinity are required to maintain minimum concentrations of alkalinity specified by the State.

(4) Systems using calcium carbonate stabilization as a part of corrosion control are required to maintain a minimum calcium concentration in all tap samples.

(5) Systems using a corrosion inhibitor are required to maintain a residual concentration sufficient to form a passivating film on the interior walls of the pipes in the distribution system.

(6) A schedule for evaluation and implementation of treatment is included in the regulation instead of being established by the States in each treatment plan.

(7) All small and medium-size systems that exceed either action level, in addition to all large water systems required to evaluate alternative corrosion control treatments, must submit a recommendation to the State regarding optimal corrosion control treatment.

(8) Flexibility has been granted to States in determining whether medium-size and small systems perform detailed corrosion control studies.

(9) More detailed guidelines are included to assist States in designating optimal corrosion control.

(10) Authority for EPA to review State corrosion control determinations has been added.

The reasons for each of these changes are discussed below.

a. Action Levels. As discussed earlier, action levels were introduced in the proposal as a method to limit the number of public water systems that would need to complete a detailed demonstration that they have installed corrosion control treatment to minimize lead and/or copper levels at taps. Many commenters supported the concept of action levels, but several disagreed on how they should be used in determining compliance. One commenter argued that the action levels function as an MCL and that EPA does not have the authority to establish MCLs, or in this case action levels, at consumer taps. Other commenters supported action levels if they were used as screens or as triggers to evaluate whether corrosion control is needed, but not used to determine compliance with the rule.

EPA disagrees with commenters who argued that the action levels function as MCLs. Under the SDWA, if a water system exceeds an MCL, it is in

violation of the NPDWR (unless it has obtained a variance or exemption under section 1415 or 1416), and the system must provide public notification under section 1413. Water systems that exceed the action levels, however, are not in violation of the treatment technique. Rather, exceedance of the action level(s) is merely a trigger for medium and small systems to implement optimal corrosion control (unless they can demonstrate to the State that they have already optimized corrosion control) and systems of all sizes to implement source water monitoring and possible treatment, public education, and possible lead service line replacement. Since the compliance status of a water system depends upon whether it performs the treatment steps established in the rule, and not upon whether it meets the action levels, the action levels are not equivalent to MCLs.

i. pH Action Level. The proposed rule would have required water systems to collect pH samples along with lead and copper samples and to install optimal corrosion control treatment if the pH in more than 5 percent of their samples collected at the tap were below 8.0. EPA also solicited comment in the preamble to the proposal on the alternative of deleting the pH action level and using pH of 8.0 as a guidance level. Under this alternative, only systems above the lead or copper action levels would have been required to monitor for pH and would have been required to examine the effect of increasing pH above 8.0 as part of the optimization demonstration.

EPA received comments both for and against retaining the pH requirement. A few commenters supported the pH action level because it would require more systems to install treatment and thus provide greater public health protection. Several commenters supported the use of a pH action level, but argued that a more reasonable minimum pH value would be 6.0, 6.5, or 7.0. Many commenters who disagreed with the pH requirement contended that PWSs should not be required to adjust their pH unless there is a demonstrated lead or copper problem within the system.

Some commenters stated that raising the pH to above 8.0 could have adverse effects on the quality of drinking water, such as causing greater difficulty in meeting the turbidity MCL, reducing the effectiveness of chlorine as a disinfectant, increasing disinfection by-products such as trihalomethanes, and increasing scaling that could damage distribution systems and residential plumbing. In addition, commenters were concerned because corrosion inhibitors

work best at pH below 8.0, and in some cases at pH closer to 7.0.

Other commenters contended that pH below 8.0 can be an indicator of corrosive water, but there is little evidence to support a direct relationship between pH levels and high lead and copper levels. These commenters noted that other factors, such as alkalinity, hardness, temperature, chlorine content, and additional site-specific conditions, must also be considered.

EPA agrees that many systems maintaining a pH below 8.0 will not have a lead problem, especially if the lead solder ban has been enforced, there are no lead service lines in the distribution system, or the system is using corrosion inhibitors. EPA also agrees with commenters that adjustment of pH to greater than 8.0 may, in some cases, result in adverse secondary effects on drinking water quality that could potentially affect public health and that corrosion inhibitors work better when pH is below 8.0. For these reasons, EPA has decided to delete pH as an action level that would, in and of itself, trigger detailed demonstrations of optimal corrosion control treatment regardless of levels at the tap.

EPA noted in the preamble to the proposal that the alternative of deleting pH as an action level and requiring treatment only where the average lead action level was exceeded would likely result in fewer systems' performing treatment than would have been required under the proposed rule, and could potentially result in less public health protection (53 FR 31547). The impact of modifying the use of pH is not substantial under the final regulation as compared with the proposed rule because (1) all large systems are required to optimize treatment regardless of pH levels, and (2) the lead action level of 0.015 mg/L (90th percentile) applicable to small and medium systems contained in the final rule is more stringent than the proposed average of 0.010 mg/L. In addition, as discussed further in section 2(a)(ii), below, the Agency believes that it is appropriate to base treatment requirements for small and medium systems on the actual lead and copper levels. As long as these levels are met by systems of these sizes, the Agency believes that public health is being protected and that the triggering of more detailed demonstrations of optimal corrosion control is not warranted.

EPA continues to believe that pH is an important facet of corrosion control treatment and disagrees with commenters who contend that there is limited evidence linking increased pH with a reduction in lead levels. The

corrosivity of acidic water toward lead plumbing materials is well documented (EPA, 1982a; Hoyt et al., 1979; O'Brien et al., 1976; Lyon and Lenihan, 1977; Gregory and Jackson, 1984; AWWA-RF, 1985, 1990). Experience in the field, pilot plants, as well as laboratory tests, indicate that raising pH is an effective method to reduce water corrosivity and lead and copper levels at taps and is often the least costly and most easily implemented method of reducing the corrosivity of water. Data from Boston, Bennington, and Fall River clearly demonstrate that raising pH can significantly reduce lead levels at the tap. The AWWSC survey showed lower average first-draw lead levels at sites with higher pH: 0.019 mg/L for sites with pH below 7.0; 0.013 mg/L at sites with pH between 7.0 and 7.5; 0.012 mg/L at sites with pH between 7.5 and 8.0; and 0.005 mg/L at sites with pH greater than 8.0 (AWWSC, 1989). Finally, the analysis in Table 7 indicates that systems with pH greater than 8.0 at the plant have substantially lower 90th percentile lead levels (0.016 mg/L) than those with pH below 8.0 (0.032 mg/L). These data indicate that increasing pH can reduce tap lead levels, which is consistent with predictions of numerous laboratory investigations.

EPA agrees that other water quality parameters besides pH must be considered when attempting to design a program to control corrosivity (AWWA-RF, 1990; Schock, 1990) and is, therefore, requiring sampling, where appropriate, for alkalinity, calcium, conductivity, water temperature, and inhibitor residuals (phosphate, silica). Sampling for these additional water quality parameters will assist water systems and States when deciding on the best corrosion control strategy and when evaluating the efficacy of corrosion control treatment on overall water quality.

Rather than having pH alone be a factor in determining whether a system must make a detailed optimization demonstration, pH adjustment is required as part of the optimization process for those systems required to install treatment. Specifically, the final rule (§ 141.82(f)) requires that optimal corrosion control approved or designated by the State include pH adjustment to at least 7.0 in all tap samples and that the State establish a minimum value or a range of values for pH measured at each entry point to the distribution system.

EPA selected a level of 7.0 instead of 8.0 because this constitutes only a minimum requirement. EPA anticipates that States will require many systems to adjust their pH to levels higher than 7.0

to optimize treatment and that systems conducting corrosion control studies will find that raising pH above 7.0 will be needed to minimize lead and copper levels at the tap. However, for some small and medium-size systems, the adjustment of pH to greater than 7.0 may alone be sufficient to reduce lead and copper to below the action levels. Requiring pH adjustment to at least 7.0 will ensure that all systems operate at the minimal pH level associated with reduced lead or copper levels at the tap. Adjusting pH to at least 7.0 is a basic step to ensure neutral conditions at a minimum. Such an adjustment generally precedes proper corrosion inhibitor application or other water quality treatment strategies.

Maintaining a pH value above 7.0 at taps will require many water systems to raise the pH at the treatment plant above 7.0. The exact pH level required at the plant will depend on several factors including, but not limited to, configuration of the distribution system, buffering capacity of the water, and temperature. To maintain a pH of 7.0 throughout the distribution system, water systems may be required to adjust the alkalinity of their distributed water to ensure the water is well-buffered and, thus, more resistant to pH change as it travels to the outer reaches of the distribution system.

In recognition of commenters' concerns regarding potential problems associated with pH adjustment, the final rule waives the requirement for pH adjustment to above 7.0 in tap samples if the State determines that this step is not technologically feasible or it is not necessary to optimize corrosion control. EPA included this provision in the final rule because of concerns raised by commenters that raising pH above even 7.0 may, in some cases, be counterproductive to optimizing corrosion control. This may be true for some systems using corrosion inhibitors depending on the overall water chemistry, even though EPA believes that inhibitors for controlling lead and copper require a pH of at least 7.0 and usually somewhat higher (AWWA-RF, 1990). Another potential situation where raising pH above 7.0 may cause problems is when a system has very hard water ($\text{CaCO}_3 > 125$ mg/L and total dissolved solids > 200 mg/L). In this situation, raising pH above 7.0 may cause problems with excess calcium carbonate precipitation, which can clog pipes and decrease the effectiveness of disinfection. Finally, pH adjustment may reduce the disinfection efficiency of free chlorine or increase TTHM formation. In these cases, systems will need to

evaluate whether raising pH to 7.0 would cause them to exceed the TTHM standards or reduce their disinfection efficiency. In most cases, however, adjusting pH above 7.0 should not cause the problems described above and waivers will not be necessary.

In addition to maintaining a pH of 7.0 in tap samples, systems that install corrosion control treatment will be required to maintain pH above a minimum value, or within a range of values designated by the State at each entry point to the distribution systems. This requirement is to ensure that systems maintain appropriate pH control in source water and within the distribution system (as identified in corrosion control studies or designated by the State) and that needed adjustments to treatment are routinely monitored.

ii. Lead Action Level. [A]. Action Level of 0.015 mg/L in No More Than 10 Percent of Tap Samples for Small and Medium-Sized Systems. EPA proposed two lead action levels: an average lead concentration in targeted tap samples of 0.010 mg/L that would trigger installation or improvement of corrosion control and public education, and an action level of 0.020 mg/L (in more than 5 percent of the targeted samples) that would trigger public education. EPA also solicited comments on alternative lead action levels of 0.020 mg/L and 0.030 mg/L which, if exceeded in 5 percent or more of tap samples, would have triggered treatment. Some commenters agreed with the proposed action levels, but the majority of commenters disagreed for two reasons: (1) two lead action levels were confusing and should be replaced by one number, and (2) EPA had not provided sufficient documentation to justify the action levels from either a technical or a health-based perspective. Several commenters contended that the action levels should be generally achievable by water systems and suggested numbers ranging from an average of 0.015 mg/L, to 0.030 mg/L in at least 95 percent of samples, to a maximum value of 0.050 mg/L.

EPA agrees that two lead action levels are potentially confusing and, therefore, has adopted only one: 0.015 mg/L in no more than 10 percent of tap samples. The lead action level will trigger corrosion control for systems serving fewer than 50,000 people (unless they can demonstrate to the State that they have already optimized corrosion control), as well as source water monitoring and possible treatment, public education, and lead service line replacement requirements for all

systems. Systems serving greater than 50,000 people are required to optimize corrosion control regardless of tap lead levels.

In selecting the action level for medium and small systems, EPA has taken into consideration the technical feasibility of achieving this level. In addition, EPA wanted to ensure that more detailed optimization demonstration efforts would be made and appropriate treatment undertaken where necessary to ensure adequate public health protection.

With regard to technical feasibility, EPA evaluated the available data on the ability of corrosion control to reduce lead levels at the tap. In the preamble to the proposed rule, EPA stated that available data indicated that the proposed action level of 0.010 mg/L (average) was achieved by systems with pH greater than 8.0 and total alkalinity greater than 30 mg/L. EPA has obtained additional data, put out for public comment in an October 19, 1990, Federal Register notice (55 FR 42409) and discussed below, which the Agency believes supports revising the action level to 0.015 mg/L in no more than 10 percent of first-draw tap samples.

EPA believes that comments that the Agency had not sufficiently demonstrated the achievability of the proposed action level misconstrue the nature of the action level as it functions in the treatment technique. These commenters took the position that EPA is under a legal duty to demonstrate that the action level is "feasible," in the same manner the Agency would be required to demonstrate the feasibility of an MCL for a contaminant. As discussed above, however, an action level does not determine the compliance status of a system as does an MCL, but merely serves as a surrogate for a detailed optimization demonstration. Failure to meet the level only indicates whether further action must be taken by the system to demonstrate that it has optimized corrosion control. If a system, fails to meet the action level (either initially or after installation of treatment), it is not in violation of the rule, as long as corrosion control has been optimized. Therefore, EPA does not believe that the statutory standard that Congress established for MCLs applies to the Agency's selection of an action level. In addition, as discussed in detail in section IV(B), above, EPA has established a treatment technique because it is not feasible to select any precise contaminant level as reflecting optimal corrosion control treatment. Thus, EPA's selection of the lead and copper action levels is not based upon a

precise statistical analysis of the effectiveness of treatment as reflected in the available treatment data. Rather, it reflects EPA's assessment of a level that is generally representative of effective corrosion control treatment and that is, therefore, useful as a tool for simplifying the implementation of the treatment technique.

Data collected from 39 medium size systems are summarized in Table 7. These data and EPA's analyses were made available for public comment in an October 19, 1990 Federal Register notice (55 FR 42409). Table 7 summarizes the percentage of the systems in the database that would have been able to meet various action levels ranging from 0.005 to 0.030 mg/L in 90 percent of tap samples. While these data are of limited use as a basis for making broad-based estimates of treatment efficacy (discussed above), the data are useful as general indicators of the range of levels systems have achieved with various treatment measures in place. Of those systems without lead service lines that had a pH greater than 8.0, the percentage of systems that would have met action levels between 0.005 and 0.030 mg/L in 90 percent of samples ranged from 36 percent to 98 percent. Systems with lead service lines had substantially higher tap water levels and substantially lower pass rates.

Eighty percent of the systems with pH > 8.0 would have met an action level of 0.015 mg/L. The values for systems using corrosion inhibitors were similar (they ranged from 34 percent to 95 percent; 80 percent would have met a level of 0.015 mg/L). The data show that fewer systems achieved these levels where pH was less than 8.0 (percentages ranged from 21 percent to 87 percent, with 49 percent meeting an action level of 0.015 mg/L). Systems with lead service lines had substantially higher levels at the tap (only 24 percent and 28 percent of systems met action level of 0.015 mg/L with the use of pH/alkalinity adjustment and corrosion inhibitors, respectively).

Based on these data, 90th percentile levels in the range of 0.010 mg/L to 0.020 mg/L appear reasonably representative of the lead levels that can be achieved by systems after installation of corrosion control treatment. These levels were achievable by the majority of systems in this data base with treatment in place. Within the 0.010 mg/L to 0.020 mg/L range, EPA believes that a 90th percentile level of 0.015 mg/L provides the best measure of effective treatment. A large majority of the systems with treatment in place (88 percent with pH adjustment and 80

percent with corrosion inhibitors) are able to achieve 0.015 mg/L. Moreover, approximately one-half of the systems that adjusted their pH but remained below 8.0 (49 percent) were also able to achieve this level. The levels achieved by this subgroup of systems may reflect the performance of those systems for which corrosion control treatment effectiveness is constrained by high alkalinity/low pH conditions, or where the use of corrosion inhibitors is not possible because of water quality constraints.

Systems with optimal treatment were also able to achieve a level of 0.010 mg/L at the 90th percentile (73 percent with pH/alkalinity adjustment and 64 percent with use of corrosion inhibitors), but the number of systems were fewer than those able to achieve a level of 0.015 mg/L. In addition, significantly less than one-half of the systems (34 percent) were able to achieve a 90th percentile lead level of 0.010 mg/L where pH was adjusted to below 8.0. Therefore, a level of 0.010 mg/L may be lower than can generally be achieved by systems where treatment is constrained by high alkalinity/low pH conditions.

While a 90th percentile lead level of 0.020 mg/L was achieved by a large majority of systems operating under a wide variety of conditions, EPA did not believe it was necessary to select this higher level given that an action level of 0.015 mg/L is supported by the available data and would trigger detailed optimization steps and thereby potentially contribute to greater public health protection than a level of 0.020 mg/L.

EPA recognizes the difficulty associated with extrapolating generalized estimates of treatment performance based upon the data cited above, which are collected from relatively few, like-sized systems operating under relatively favorable natural water quality conditions. EPA has data from two large cities (Seattle and Boston) that have measured tap water lead levels before and after corrosion control efforts. These data showed vastly contrasting results (Seattle achieved 0.011 mg/L at the 90th percentile but this level could have been higher if first draw liter samples were analyzed for lead; Boston achieved only 0.047 mg/L at the 90th percentile). Neither was attempting to minimize lead levels to the final lead action levels, so it is possible that additional treatment would reduce lead levels further. Thus, the actual percentage of systems able to meet the action levels after treatment may be lower or higher than the estimates based upon the data

summarized in Table 7. Nonetheless, given the information on corrosion control treatment performance at this time, the Agency believes the data provide the best basis for establishing the action level that will trigger treatment for medium and small systems.

EPA also believes that an action level of 0.015 mg/L is appropriate because it will trigger treatment when appropriate to protect public health. EPA's goal is to minimize lead exposures among sensitive populations. Young children are the most susceptible to lead toxicity, and, on a body weight basis, absorb more lead from drinking water than other age groups. As discussed in Section III, one benchmark the Agency is using to measure progress toward the goal of reducing lead exposure among sensitive populations is the number of children with blood lead (PbB) levels above 10 $\mu\text{g}/\text{dL}$ from all sources. Among young children not exposed to excessive paint lead hazards from deteriorating older homes, or from highly contaminated soils, EPA estimates that about 3.5 percent have blood lead levels above 10 $\mu\text{g}/\text{dL}$ due to lead exposure from air, food, soil, dust, and water. The Agency estimates that efforts by water systems to meet a lead action level of 0.015 mg/L at the 90th percentile will reduce exposures among millions of people nationwide, and specifically reduce the percent of children not exposed to excessive paint lead hazards, or highly contaminated soils, with PbB levels above 10 $\mu\text{g}/\text{dL}$ by half, from 3.5 percent to approximately 1.6 percent. This was estimated by assuming that the distribution of blood lead levels is log-normally distributed with a geometric standard deviation of 1.42 (EPA, 1986a) and that the average blood lead level in children not exposed to excessive lead paint or highly contaminated soils will be 4.5 $\mu\text{g}/\text{dL}$ to 4.7 $\mu\text{g}/\text{dL}$ after the rule is fully implemented (EPA, 1991a). The procedure for deriving these estimates is briefly explained in section X (benefits analysis) of the preamble. A more detailed discussion can be found in the Regulatory Impact Analysis completed for the rule (EPA, 1991a). More extensive efforts to reduce lead levels in drinking water, possible especially among some larger systems, could reduce lead exposures further. The Agency concludes that given these projected exposure reductions, an action level of 0.015 mg/L at the 90th percentile will provide substantial health protection for young children.

It must be recognized that in requiring water systems to minimize lead levels in

drinking water to the maximum extent feasible, the problem of excessive exposures among many children will not be solved. Hundreds of thousands, possibly millions, of children will continue to have high level exposures to lead in paint, house dusts, and soils that require continued coordinated efforts by Federal, State, and local governments, as well as medical and public health professionals and parents.

The final action level of 0.015 mg/L in the 90th percentile of tap samples is significantly more stringent than the proposed average level of 0.010 mg/L. EPA estimates that this action level will require about 40,000 systems to install corrosion control treatment as compared to 26,000 systems if the final rule had adopted the proposed average of 0.010 mg/L, and 43,000 systems if the final rule included both the lead and pH action levels proposed by EPA (EPA, 19881, 1991a). The final level is comparable to the level of 0.020 mg/L measured in the 95th percentile. EPA has chosen to express the final action level as a 90th percentile value (as opposed to 95th) to simplify the rule's implementation. It would have been complicated for systems to interpolate the results of monitoring to determine the 95th percentile (e.g., 95th percentile of 30 samples would have been the 28.5 highest sample), whereas the 90th percentile is easily calculated. As discussed further in the relevant sections below, the action level of 0.015 mg/L also operates as a trigger for all systems for source water monitoring and possible treatment (unless they can demonstrate to the State that they have already optimized corrosion control), lead service line replacement, and public education.

[B]. Treatment Requirements for Large Water Systems. Under the proposed rule, the action levels would have been applicable to all systems and would have triggered corrosion control treatment for any system that exceeded such levels. EPA proposed the action levels as a means of limiting the number of systems required to demonstrate that they had optimized corrosion control. After reviewing the public comments on the proposal, EPA published a notice in the *Federal Register* on October 19, 1990, (55 FR 42409) soliciting further public comment on an option that would have continued the action level approach for all systems serving fewer than 50,000 persons but would have required all systems serving greater than 50,000 persons to make a detailed demonstration of optimal corrosion control without regard to whether the system exceeded the action levels.

Because of the potential for substantially increased health benefits, several commenters on the October notice supported the option of requiring all large systems to evaluate whether they can further reduce their lead levels even if they are below the action levels. Other commenters, however, opposed the option. First, they argued that the requirement would constitute differential protection because individuals in small or medium-sized systems would not be afforded the same level of health protection. Second, they argued that requiring all large systems to install treatment would create a number of technical problems and impose a significant financial burden, especially for those systems that either have multiple groundwater sources, blend waters from multiple sources, or provide water to multiple distribution systems. Finally, several commenters maintained that the costs of installing treatment for large systems would outweigh the benefits.

About 800 water systems nationwide serve more than 50,000 people or approximately 56 percent of the U.S. population. As discussed in section III, there is no apparent threshold for several health effects associated with lead, and the Agency's goal is to reduce childhood lead exposure as much as possible. Even small reductions in lead exposures are beneficial, as reflected in the RIA results summarized in section X. While not all large water systems will be able to reduce lead levels if they already meet the action levels, EPA believes it is feasible for these systems to evaluate whether such reductions are possible.

The final rule adopts the option discussed in the October 19, 1990, **Federal Register** notice (55 FR 42409) and requires all large systems serving greater than 50,000 persons, to demonstrate to the satisfaction of the State that they have optimized corrosion control treatment. EPA recognizes that in many cases, requiring these systems to attempt to reduce lead levels even when 90 percent of tap samples are below 0.015 mg/L (90th percentile) is pushing the limits of corrosion control treatment technology. However, of all public water systems, the systems in this size category possess the greatest technological capabilities and access to technical support and other resources that would enable them to perform the sophisticated treatment manipulations that might further reduce lead levels.

EPA believes that it is appropriate to retain a lead action level of 0.015 mg/L for small and medium systems since this level, as discussed above, is reasonably

representative of optimal corrosion control treatment and these less sophisticated systems would probably not be capable of further reductions in lead levels. Moreover, the function of an action level as a surrogate for optimal corrosion control to make implementation of the rule administratively workable, is most compelling with regard to small and medium systems because they comprise approximately 99 percent of the community and non-transient, non-community water systems nationwide (78,000 of 79,000). Requiring all of these systems to make detailed corrosion control demonstrations without regard to tap levels would impose an unworkable administrative burden upon States without necessarily increasing public health protection over what would be achieved with the use of the action levels. This burden would be exacerbated by the fact that smaller systems generally will require the most extensive input from States in evaluating, selecting, and overseeing implementation of optimal corrosion control treatment. In fact, abolishing the action level might actually reduce public health protection because the States would be diverted from focusing their limited resources on those systems with higher tap levels, which are most in need of implementing effective treatment.

Large systems, by contrast, comprise a very small portion of the community and non-transient, non-community systems nationwide. Therefore, the administrative burden associated with States' reviewing optimal corrosion control demonstrations for these systems is substantially smaller than would be associated with determining treatment for smaller systems. Moreover, the burden on States for reviewing optimal treatment for large systems is further reduced since these more sophisticated systems generally require less technical support than would smaller systems. For these reasons, as well as the large number of persons served by these systems that might benefit from further lead reductions, EPA believes that it is appropriate to require all large systems to demonstrate to the State that they have optimized corrosion control regardless of their lead levels.

Commenters are incorrect that EPA has established differential treatment requirements based on system size. The approach EPA has taken is simply to establish a presumption, supported by available data, that small and medium systems will have optimized corrosion control treatment if they meet the action

levels. For the relatively few large systems, EPA is not establishing a different treatment standard, but is merely requiring these systems to make a more detailed technical showing, based upon their greater technical sophistication and operational expertise, that they have in fact optimized corrosion control treatment. Thus, all size systems are uniformly required to optimize corrosion control treatment. The only difference between large systems and the smaller systems is that large systems are required to make this demonstration based upon a detailed technical study of the circumstances of its system, whereas EPA is allowing medium and small systems to make the demonstration by showing that its tap levels meet the level which the best available data indicated is generally reflective of optimal corrosion control in some systems.

iii. Copper Action Level. The copper action level in the proposal was 1.3 mg/L in no more than 5 percent of samples collected from targeted homes. Several commenters stated that these levels were reasonable and achievable by water systems. Other commenters disagreed with the action level because they did not believe it was needed to protect public health and suggested that copper remain a secondary drinking water standard. Still other commenters suggested that the copper action level be calculated in the same manner as the lead action level (e.g., average, same percentile).

As discussed in section III(B) of the preamble, EPA believes copper is a health concern above 1.3 mg/L. The Agency agrees with commenters that copper and lead action levels should be expressed in the same statistical form to avoid confusion. Therefore, EPA is finalizing the copper action level as proposed at 1.3 mg/L in no more than 10 percent of samples (rather than in 5 percent of the samples as contained in the proposal). This action level will trigger corrosion control for small and medium-size systems. In addition, exceedance of this level triggers source water monitoring and possible treatment.

iv. Alkalinity Action Level. EPA requested comments on the option of including an alkalinity action level in the preamble to the 1988 proposed rule. Under the proposed option, systems would have been required to install corrosion control treatment if the total alkalinity level in 5 percent or more of samples was below 30 mg/L. Systems would have been required to reduce the corrosivity of their water until it was above 30 mg/L or to demonstrate to the

State that they had minimized corrosivity. Many commenters stated that there is a lack of evidence linking alkalinity levels to lead or copper levels at the tap. Many of these commenters suggested that alkalinity be considered in the evaluation of the appropriate corrosion control treatment to install, but that alkalinity not be used as an action level.

EPA agrees that there are insufficient data to directly link high alkalinity levels alone with lower lead and copper levels. The Agency believes, however, that the alkalinity of the water is important to consider when designing a corrosion control treatment program. The final rule, therefore, does not establish a specific alkalinity action level but instead requires water systems to measure for alkalinity before and after installation of treatment (if alkalinity is adjusted). In addition, the rule requires the State to establish a minimum value or range of values for alkalinity measured at each entry point to the distribution system and in all tap samples. Systems would be required to meet these minimum values to be in compliance with the corrosion control portion of the treatment technique. In addition, systems that adjust their hardness as part of corrosion control treatment are required to maintain a minimum or range of concentrations for calcium in all tap samples.

v. Inhibitor Residual Concentration. The proposed rule did not establish any specific requirements for systems to maintain a minimum inhibitor residual concentration, but the proposal did discuss the use of corrosion inhibitors as an alternative to pH and alkalinity adjustment. Inhibitors work by forming a protective film on the surface of a pipe that provides a barrier between the water and the pipe. The 1984 document "Corrosion Manual for Internal Corrosion of Water Distribution Systems" (EPA, 1984) identifies three basic requirements for effective formation and maintenance of a protective film by a corrosion inhibitor. First, it is important to build up a protective coating on the pipes as fast as possible. This may require that the inhibitor dosage start at two to three times the normal inhibitor concentration. Second, the inhibitor should be fed at a constant concentration. Any interruption in the feed could cause the protective film to be re-dissolved. Third, flow rates must be sufficient to continuously transport the inhibitor to all parts of the distribution system.

Because of these basic requirements, EPA decided that it was important for

systems using corrosion inhibitors to maintain a minimum residual concentration for the inhibitor that the State determines is necessary to form a passivating film on the interior walls of the pipes in the distribution system. The minimum concentration is important to monitor because of concern, discussed above, with the re-dissolving of the protective film if a sufficient dosage is not maintained and to ensure that the film needed to protect the pipes from the water is being formed throughout the system.

b. *Modification of Treatment Plan Approach.* The proposed rule would have required systems serving 3,300 or more people that failed to meet the lead (0.010 mg/L average) or copper (1.3 mg/L in 95th percentile) action level to develop and submit a treatment plan to the State within 1 year after the end of the initial monitoring period. The treatment plan was to contain the specific steps that a water system would take to ensure that either the action levels were met or optimal corrosion control treatment and/or public education were implemented. These systems would have been required to include in their treatment plan the following steps: (1) Design and implementation of pipe loop, laboratory, pilot scale and/or field studies, (2) analysis of the data generated in these studies to estimate optimal operating conditions to minimize lead and copper corrosion, (3) installation of the treatment in the entire water supply system, (4) monitoring to evaluate the effectiveness of the treatment, (5) additional adjustment of the treatment if action levels continue to be exceeded, and (6) submission to the State of all data collected and an analysis demonstrating that the corrosion control treatment being applied was optimal (i.e., that lead levels were minimized) if after installation and adjustment of treatment any of the action levels continues to be exceeded. Systems would have been required to complete installation of any treatment required by the plan within 3 years after approval of the plan. For systems serving fewer than 3,300 people, States would have been required to specify the required treatment if any of the action levels was exceeded.

Commenters objected to the treatment plan requirements for two general reasons: (1) States should not be required to develop treatment plans for small systems because State engineering staffs would be developing plans and then reviewing, approving, and monitoring the effectiveness of their own treatment plans; and (2) there

would be insufficient time or resources to develop and/or implement the corrosion control treatment plans. Other commenters supported EPA's contention that small systems do not have the expertise or resources to develop their own plans and that the States should be given the flexibility to develop treatments that are practical for small systems.

EPA agrees with commenters that States should not have to develop treatment plans for water systems serving fewer than 3,300 people without the benefit of initial recommendations from the systems regarding corrosion control treatment. EPA believes that requiring States to develop treatment plans for small systems could delay implementation of the final rule because of the large volume of treatment plans required and the substantial commitment of time and resources needed to develop the plans. EPA believes the responsibility for initially developing a treatment plan should be placed on the water system because of its familiarity with the system. The Agency believes the appropriate State role is in approving the plan. The final rule, therefore, requires all systems to recommend the corrosion control treatment, if any, that they believe will minimize lead and copper levels at the tap. States may approve the treatment proposed by the water system or require the system to install an alternative treatment that the State, based on data submitted by the system, determines to be optimal treatment.

EPA understands commenters' concerns that many small systems may not have the expertise to develop their own treatment plans. The Agency accordingly plans to develop guidance and conduct workshops across the country to help small systems develop corrosion control treatment strategies that are affordable and will effectively minimize lead and copper levels at the tap. EPA continues to believe that the States' role in approving a system's recommended treatment remains necessary because optimal corrosion control treatment is system-specific and must take into account the unique circumstances of each system. The expertise States develop in reviewing the treatment recommendations of large systems will be useful as they oversee implementation of corrosion control treatment among smaller systems and require necessary modifications to assure that treatment remains optimal.

EPA is sensitive to commenters' concerns that development and implementation of treatment plans can be time-consuming and could potentially

delay implementation of the rule. For this reason, the Agency has made modifications to the final rule that should expedite implementation. Systems serving greater than 50,000 persons are required to conduct corrosion control studies prior to the State taking any action. Moreover, instead of requiring upfront State approval of treatment plans, the final rule sets out timetables for systems and States to perform the various steps involved in evaluating treatment alternatives, selecting the best treatment option, and implementing and evaluating treatment. These schedules are discussed in detail below. EPA believes that breaking out the various steps in the process will enhance prompt implementation of the regulation, since it will not be necessary for systems to await up-front approval of a treatment plan before any action is taken. In addition, the schedules contained in the rule stagger the various steps that States and systems will take, thus reducing the potential for a backlog of unapproved plans.

c. Schedule for Completing Corrosion Control Steps. In the proposed rule, the schedule for conducting corrosion control studies and for installing treatment full-scale would have been determined in the context of the treatment plan approved or specified by the State on a system-by-system basis. Comments on the proposal raised concerns about the potential for inequities among systems that might be subject to different schedules depending upon the particular State that was approving or (in the case of small systems) specifying the treatment plan. Based on concerns expressed by commenters, the final rule specifies schedules that must be met by systems and States when implementing the treatment technique requirement. Other than ensuring prompt implementation of treatment and greater assurance of expeditious public health protection, this approach has additional advantages over the proposed approach: (1) it will eliminate potential inequities among systems that might receive different implementation schedules solely because they operate in different States; and (2) milestones provide better oversight by both the States and EPA, enhance enforceability, and will result in the installation of more effective treatment. EPA requested comments in an October 19, 1990, *Federal Register* notice (55 FR 42409) for completing these steps.

Several commenters stated that the time frames in the 1990 notice for completing the different steps were

reasonable. Others believed the time frames were far too short and should be extended by another 2-5 years. Still others believed the compliance schedules were too long and should be shortened considerably. One commenter stated the compliance schedules were in direct violation of the statutory requirement that all NPDWRs shall be effective within 18 months after promulgation and that if EPA intends on establishing extended compliance schedules, it must be accomplished pursuant to a variance or an exemption, or through the process of negotiating Consent Agreements in enforcement cases.

EPA disagrees that the implementation schedule should be extended another 2-5 years. Extending the schedules would expose children to potentially high lead levels in drinking water unnecessarily. EPA also disagrees that the schedules established are too long. The Agency believes the schedules established in the final rule are reasonable considering the complex nature of the treatments for reducing lead in drinking water. Finally, EPA disagrees that the schedules proposed in the October notice contravene the statutory requirements that the final rule must take effect 18 months after the date of its promulgation.

Section 1412(b)(10) states, "National primary drinking water regulations promulgated under this section (and amendments thereto) shall take effect eighteen months after the date of their promulgation." This rule complies with the mandate in this section by making the treatment sections effective eighteen months from the rule's promulgation date. As discussed below, EPA established the treatment schedules in the final rule to reflect the time periods during which it is feasible for systems to take the many complex treatment steps necessary in the evaluation and installation of corrosion control treatment, as well as the feasible schedule for systems to replace lead service lines. EPA does not believe it is reasonable to read section 1412(b)(10) as precluding EPA from establishing schedules for the implementation of a treatment technique where the Agency determines that such schedules are necessary for the treatment to be "feasible" within the meaning of section 1412(b)(5). Corrosion control is by its nature a lengthy and involved process of evaluating, installing, reevaluating, and adjusting the effectiveness of treatment. Based upon the experience of systems that have attempted corrosion control treatment, it would simply not be possible for systems to complete these

technically complex steps within eighteen months after promulgation. Moreover, because of the number of lead service connections which can be present in a system, and the cost associated with their removal, EPA does not believe that it would be feasible to require replacement in merely eighteen months from promulgation.

Commenter's constricted reading of section 1412(b)(10) could lead to two anomalous results, which EPA believes could not have been intended by Congress. First, while the commenter's position is presumably based upon the belief that EPA should require the treatment steps to be completed more quickly so as to better protect public health, limiting EPA to adopting treatment requirements that can feasibly be implemented in eighteen months could lead to the anomalous result of precluding the Agency from establishing any treatment technique requirements which would require greater than eighteen months to implement. EPA does not believe that this was Congress's intent. Rather, EPA believes that it is required by the statute to adopt a treatment technique that protects public health to the extent "feasible," and that the Agency is therefore authorized to adopt a NPDWR that includes a series of treatment steps extending beyond eighteen months after promulgation where the Agency determines that such steps will reduce exposure to contaminants and that the treatment steps are feasible within the meaning of the statute. Otherwise, the contaminant problems which are most widespread and complex and which therefore require the greatest time to address would be beyond the Agency's ability to rectify, and this result would be directly at odds with the goals of the SDWA. The alternative implication of the commenter's position is that section 1412(b)(10) was intended by Congress to override the requirement in section 1412(b)(7) that a treatment technique be "feasible" and thereby authorize EPA to require PWSs to implement all treatment steps without regard to feasibility within eighteen months. Such a result would directly contradict the requirement in section 1412(b)(7).

EPA believes the more straightforward reading of section 1412(b)(10) is that Congress intended that EPA should not make MCLs and treatment techniques effective until eighteen months after promulgation in order to provide public water systems sufficient time to take the necessary steps to comply with the rule. This provision effectively constrains the Agency's authority under the

Administrative Procedure Act, 5 U.S.C. 553(d) to make rules effective 30 days after their publication in the **Federal Register**. On its face, the only requirement in section 1412(b)(10) is that the NPDWR become effective eighteen months after promulgation. The rule fulfills this requirement. See § 141.80(a)(1) of the rule.

The schedule specified in the final rule for completing each corrosion control step is summarized in Table 6. The time to complete corrosion control treatment steps varies according to system size (e.g., large, medium, or small). While the actual steps that systems must follow differ in some respects, they can be summarized as follows: (1) The system recommends corrosion control treatment, or conducts corrosion control studies and then submits recommended treatment to the State; (2) the State approves/designates optimal treatment; (3) the system installs treatment and collects follow-up tap samples; and (4) the State reviews results and designates optimal water quality parameters.

i. Time Allowed for Systems to Recommend Treatment to State. Small and medium-sized water systems are given 6 months from the date they exceed the lead and/or copper action levels to recommend to the State what they believe constitutes optimal corrosion control treatment. EPA believes systems will need this time to analyze the monitoring data generated during initial monitoring, document why they have chosen the treatment, and submit the results to the State.

ii. Time Allowed to Conduct Corrosion Control Studies. Systems required to perform corrosion control studies (i.e., large systems, and medium and small systems if required by the State) have 18 months from the date they complete monitoring (large systems) or are instructed by the State to conduct such studies (medium and small systems) to submit the results with recommended treatment options to the State. The Agency believes this provides a reasonable period of time for systems to complete these studies. In addition, since large systems are required to conduct these studies regardless of their lead or copper levels (unless they have already optimized corrosion control), they should begin planning the studies immediately. Such action will provide an additional 20 months before the studies are required to begin.

iii. Time for State Approval/Designation of Treatment. All systems are required to submit the monitoring results from lead and copper tap sampling, for the water quality parameters, and for source water

monitoring to the State to assist the State in either approving the treatment suggested by the system or in designating another treatment. States are given different schedules to review and approve the treatment depending on the system size: 6 months for large systems, 18 months after a medium-sized system exceeds one of the action level(s) (or 6 months after corrosion control studies completed), and 24 months after a small system exceeds the action level(s) (or 6 months after corrosion control studies completed). EPA has staggered the schedules for systems of different sizes to account for three factors: (1) The number of systems in each size category (the smaller size categories have more systems, thereby requiring more time for States to specify treatment); (2) the relative technical sophistication of the systems (more time may be required for States to approve or specify treatment for smaller, less sophisticated systems); and (3) the desirability of having States gain experience with larger systems before reviewing treatment for medium and small systems.

For large systems, States are given 6 months to review the data submitted by the systems and either approve the treatment recommended by the system or designate an alternative treatment. EPA believes that a 6-month period is necessary to encourage prompt State action in approving or designating treatment alternatives for large systems. EPA believes this period should be sufficient for State review because the large systems will have already conducted detailed corrosion control studies and have recommended the best treatment option based upon the studies. Moreover, there are only about 800 large systems in the country that potentially will be required to complete such corrosion control studies.

States are given 18 months from the date the system is above the action level to approve/designate treatment for medium-sized systems. This time is more than specified for large systems because there are more medium-size systems (6,800), which often have less technical expertise to make thorough demonstrations or recommendations and to install and maintain corrosion control treatment. For small systems, the rule allows States 24 months after exceedance of an action level to approve/designate treatment. EPA believes this period is appropriate to allow time for States to acquire experience from evaluating the corrosion control treatment alternatives submitted by large and medium-sized systems. Further, there are considerably more small systems (70,000), and the

level of technical involvement States will have to provide smaller, less technically capable systems will tend to be much greater.

iv. Time to Install Treatment and Complete Follow-up Monitoring. For all size systems, the rule provides that treatment must be installed within 24 months after the State approves/designates treatment. EPA believes this amount of time is needed to install corrosion control treatment because the effort involves locating funding, obtaining the necessary permits, designing the treatment to integrate into existing treatment processes, purchasing the necessary equipment, construct treatment facilities if needed, and training operators. EPA also believes that this period is necessary to allow sufficient time for treatment to be installed, adjusted as necessary, and for effects on lead and copper levels at the tap to be adequately reflected as demonstrated in cities where the lead levels gradually decreased over 1-2 years after corrosion control treatment was installed (i.e., Boston and Bennington; see section IV(E)(1)).

Systems are required to complete follow-up tap sampling for lead and copper, as well as all other appropriate water quality parameters, after installation of optimal corrosion control treatment during a complete calendar year (two 6-month monitoring periods). Sampling is needed over a complete year to determine the extent to which seasonal variations alter the effectiveness of the treatment and to ensure that treatment has stabilized.

v. Time for State Review of Results and Designation of Optimal Water Quality Parameters. After installation of treatment by a water system, a State has 6 months to review the tap sampling results and specify the optimal water quality parameters under which the system must continue to operate. EPA believes this period is appropriate because States will be familiar with the system and its treatment approach and substantial experience will have been gained by the system during the treatment process.

EPA notes that while the rule establishes uniform periods for States to review the treatment results and specify the optimal water quality conditions, this does not mean that States will be performing their revisions for all systems simultaneously. States will review treatment for medium-size and small systems on a staggered schedule since the treatment requirements start when a system exceeds one of the action levels, and on a fixed date.

d. *Corrosion Control Studies.* The proposed rule would have required systems serving more than 3,300 persons to include in their treatment plan proposed studies (pipe-loop, laboratory, pilot scale and/or field studies) to evaluate the effectiveness of treatment alternatives for reducing lead levels in first-draw samples. The final rule requires large water systems to conduct comparative corrosion control studies and small and medium-sized systems to conduct these studies if required by the State.

EPA has deleted the mandatory requirement that all systems serving more than 3,300 people perform treatment studies. The Agency agrees with concerns raised by commenters that many medium-size systems may not have the technical capabilities to successfully complete such studies. Studies will still be required to be performed by the approximately 800 large systems (the most sophisticated); States can consider on a case-by-case basis whether to require medium and small systems to perform such studies. Without well-trained personnel capable of designing and overseeing proper conduct of the studies, such evaluations may not yield reliable determinations of corrosion control treatment efficacy.

Improperly conducted tests or inappropriate installation and maintenance of corrosion control can result in transient increases in lead levels or increased risks associated with disinfection and disinfection by-products, as well as other adverse water quality conditions. Skilled personnel are required to continually monitor and analyze the results of the research. Some medium and small systems may have limited access to the resources and the specialized professional engineering support needed to conduct these studies. In contrast, systems serving greater than 50,000 people are generally associated with a city or county with an established administrative structure that enables water systems to more easily raise funds for needed personnel and equipment to study and install corrosion control treatment. The technical difficulty associated with conducting detailed corrosion control studies is reflected in their high costs, which can range from \$50,000 to \$200,000 for laboratory or field studies. EPA believes that large systems have the ability to reliably conduct the necessary studies to minimize lead and copper levels without causing reductions in overall water quality, as is evident by corrosion control studies now underway in Philadelphia, New York, and Los Angeles.

Because improperly conducted studies may not yield meaningful results or could inadvertently contribute to installation of inappropriate treatment, EPA has left it to State discretion whether to require medium-sized and small systems to conduct such studies. States are in the best position to evaluate the technical capabilities of individual systems and determine whether these studies are feasible. EPA anticipates that few small systems will be required to conduct corrosion control studies, but has decided to include this provision for small systems in case future technical innovations make it possible for small systems to simply and inexpensively conduct reliable studies.

The purpose of the studies is to identify the water quality parameters that will produce optimal corrosion control. All large water systems are required to evaluate the effectiveness of each of the following treatments and, if appropriate, combinations of the treatments to identify optimal corrosion control:

- (1) Alkalinity and pH adjustment.
- (2) Calcium hardness adjustment.
- (3) Addition of phosphate- or silica-based inhibitor at a concentration sufficient to maintain an effective residual concentration in test samples.

After analyzing the data generated during each evaluation, the water system shall recommend to the State, with an accompanying rationale, the treatment option that they believe would constitute optimal corrosion control treatment for that system.

Systems must do the following when conducting corrosion control studies to identify optimal corrosion control treatment:

- The system shall collect lead, copper, pH, alkalinity, calcium, temperature, and conductivity samples in the test systems and, depending on the water treatment being applied, phosphate (if a phosphate-based inhibitor is used) or silica (if a silica-based inhibitor is used). To reduce the potential variability in the levels of these constituents, the system should attempt to establish fixed sampling points and fixed volumes for each constituent and to use the same analytical procedures (i.e. instrument, preservation) for each constituent. In addition, the system should collect a sufficient number of samples from the test systems before and after installation of the treatment to enable statistical comparisons between the treatments.
- The water system should identify any chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment.

These constraints should be documented with data that demonstrate that the treatment has adversely affected other water treatment processes when used by another system with comparable water quality characteristics, and/or with data demonstrating that the water system has previously attempted to evaluate the treatment and has found it to be ineffective or has adverse effects on other water quality treatment processes.

- The system shall evaluate the effect of the chemicals used for corrosion control treatment on other water quality treatment processes (i.e., disinfection, trihalomethane formation, potential corrosion of other materials).

The tests comparing the various corrosion control treatment options may consist of: Pipe rig/loop tests, metal coupon tests, or partial-system tests, or evaluation based on documented analogous treatments with other systems of similar size, water chemistry, and configuration. The final rule does not allow a water system to evaluate effectiveness of different corrosion control treatments by installing treatment full-scale because of concern that experimentation within the distribution system could disturb protective coatings on pipe surfaces or otherwise adversely affect water quality.

The 1990 AWWA-RF document (AWWA-RF, 1990) suggests that regardless of what type of test system is chosen for the corrosion control studies, four criteria should be met to provide the greatest likelihood of successfully extrapolating the results of the test data to the field:

- Metal specimens exposed to the water must be representative of the metal piping or material in the actual water system.
- Water quality in the test system must be the same as in the distribution system.
- Flow velocity and residence times should be representative of those found in the full-scale system.
- The duration of the test must allow for development of the pipe films or scales that control corrosion.

The most common methods for assessing pipe loop data include weight loss analysis for corrosion rate measurements, metals uptake evaluations, measurement of corrosion by-products concentrations from pipe loops designed to simulate household plumbing, and examination of pipe scales or films (AWWA-RF, 1990). A more detailed discussion of the methods for evaluating corrosion control alternatives for lead and copper will be

included in EPA's Corrosion Control Guidance Manual.

e. State Approval/Designation of Corrosion Control Treatment. Under the final rule, States will review optimal corrosion control treatment in a two-stage process. They will initially determine the treatment or combination of treatments (i.e., pH/alkalinity adjustment, calcium hardness adjustment, and/or addition of corrosion inhibitors) based upon corrosion control studies and other relevant information that constitutes the most appropriate treatment for that system. The level of generality in this initial State determination reflects the fact that systems will in most cases be taking their first steps at adjusting water quality conditions to reduce corrosivity.

The State's initial determination may simply be approval of the system's recommendation for optimal corrosion control. However, if the State determines that an alternative treatment is more appropriate for reducing lead and copper levels, the State shall designate this treatment.

The State shall notify water systems of its decision on optimal corrosion control treatment in writing and explain the basis for this determination. The water systems shall provide any additional information by the date specified by the State.

f. Installation of Treatment. As discussed above, all systems are given 24 months to install the corrosion control treatment approved/designated by the State. EPA expects that most water systems will need to fine-tune the treatment to account for normal differences between laboratory pipe loop studies or pilot plant designs and full-scale operations. The installed treatment must also be adjusted for seasonal variations in water quality which can affect water corrosivity. Lead levels are expected to fall gradually as a protective film builds up on the inside of pipes. Systems are encouraged to conduct sampling during this period of stabilization to evaluate whether lead levels are decreasing.

To demonstrate the effectiveness of corrosion control treatment, follow-up monitoring is required at the same sites used for initial monitoring of lead and copper and the appropriate water quality parameters. Similar sites that meet the targeting criteria for lead and copper could be substituted if the original sites become inaccessible.

g. State Designation of Optimal Water Quality Parameters. Within 6 months of receipt of the follow-up monitoring data, States are required to determine whether the system has installed optimal corrosion control treatment

approved previously by the State and based upon a review of all information regarding a particular system, will specify the values for the water quality parameters under which the system is required to operate. At this point, the State will be making a determination different from its previous action in approving or designating optimal treatment. Initially, States determine the general type of treatment (or combination of treatments), such as pH adjustment or use of corrosion inhibitors, that the data indicate will result in lead and copper reductions at the tap. After the system has installed treatment and collected additional monitoring information, States will have significantly more information on the effects of water quality adjustment on lead and copper levels at the tap. EPA believes that it will be appropriate at this time for States to specify in greater detail the values for water quality parameters that would, based upon the available information, constitute optimal corrosion control for a system. EPA anticipates that States will designate a range of values for many of the water quality parameters instead of designating one minimum value for each. A range for each value is appropriate given the inherent variability in water quality over time and the fact that control of lead corrosion may be optimal within minimum and maximum values of pH, alkalinity, and other interactive parameters. Once the State specifies values of water quality parameters under which a system must continue to operate, these parameter values become the enforceable requirements of the NPDWR. Failure to comply with these State-specified values will constitute a violation of this NPDWR.

The specific requirements required of States have been outlined in section IV(C)(2) of the preamble, and the rationale for each of the requirements has been discussed in section IV(E)(2). A more detailed discussion of each of these requirements will be included in the Corrosion Control Guidance Manual.

h. Modification of Optimal Water Quality Parameters. Under the final rule, a State may, on its own initiative or in response to a request from a system or other interested party, modify its determination of the optimal corrosion control parameters under which a system is required to operate. Such modification may become appropriate when a system either changes its water source or uses a new source, other treatments are installed to meet other NPDWRs such as the disinfection by-product rule, or because adjustments to

ongoing corrosion control are required to ensure optimal effectiveness.

3. Responsibility for Corrosion Control Treatment

The proposed rule would have required water systems to adjust corrosion control treatment to account for any blending of water from different sources. In addition, because retailers may add or blend sources of water provided by wholesalers, the preamble to the proposal stated that ultimate responsibility for the degree of corrosivity of the water would rest on retailers instead of the wholesalers. Several commenters did not believe EPA should require water systems to adjust corrosion control treatment but instead should allow States to take blending of source water into consideration when approving treatment programs. Several commenters agreed with holding retailers responsible for the corrosivity of the water because they have the option of not purchasing corrosive water from wholesalers. Others disagreed, stating that retailers should not be held responsible for the quality of water obtained from wholesalers because often retailers do not own any treatment equipment, or property where treatment could be performed.

Section 1411 of the SDWA provides an exemption for public water systems from NPDWRs if the system: (1) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities), (2) obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply, (3) does not sell water to any person, and (4) is not a carrier which conveys passengers in interstate commerce.

The public comments have indicated that the particular logistical problems faced by wholesalers and retailers in designing and implementing effective corrosion control treatment are very fact-specific. Therefore, EPA does not believe that it would be appropriate to establish on a national basis that retailers must in every case be ultimately responsible for effective corrosion control treatment. In most cases, it appears that it will be necessary for wholesalers and retailers to coordinate their efforts in order to optimize corrosion control. Moreover, EPA does not believe that it would be appropriate in this case to exempt categorically an entire class of systems (either wholesalers or retailers) which qualify as public water systems under the SDWA and therefore are subject to this NPDWR. However, under the final rule, States have substantial flexibility

in determining what constitutes optimal corrosion control treatment taking into account the particular circumstances of individual systems. Where necessary, States should therefore approve treatment alternatives that allocate responsibility among retailers and wholesalers according to the steps that each entity performs. Thus, where a system is required to complete the corrosion steps of the final rule (i.e., small or medium-size systems exceeding the action level and all large systems), EPA would anticipate that both the retailer and the wholesaler would submit a treatment recommendation to the State under § 141.82 (a) or (c). EPA encourages retailers and wholesalers to coordinate their technical inquiry so as to ensure that all facets of treatment are addressed in their recommendations. The State can then approve or designate alternative treatment that allocates responsibility among the systems that will result in delivery of minimally corrosive water to the consumer. The Agency believes that it is reasonably clear how other responsibilities besides corrosion control under the final rule should be allocated: tap monitoring and lead service line replacement and public education would be performed by the retailer; source water monitoring and treatment would be performed by the wholesaler.

F. Source Water Treatment Requirements

The proposed rule would have required water systems to meet a lead MCL of 0.005 mg/L and a copper MCL of 1.3 mg/L at entry points to the distribution system. EPA determined that these levels were achievable with application of the following centralized treatment technologies: coagulation/filtration, ion exchange, lime softening, and/or reverse osmosis.

Several commenters questioned the need for an MCL for lead in source water when the major source of lead is from corrosion by-products and argued for establishing a treatment technique only. Other commenters stated that the performance data do not indicate that the proposed treatments would achieve the proposed lead MCL of 0.005 mg/L. They thought the lead MCL was too low and was not needed to protect public health, and they suggested alternatives ranging from 0.010 mg/L to the current MCL of 0.050 mg/L. They contended that several of the treatments have demonstrated effectiveness only in laboratory studies and not under field conditions, which they contended is required by the SDWA. Other commenters argued that several of the treatments (reverse osmosis, ion

exchange) will increase water corrosivity, while others stated that several of the treatments are cost-effective only for large systems.

1. Source Water MCL

As discussed earlier, the final rule does not include an MCL for source water, but instead requires water systems exceeding the lead and/or copper action level to collect source water samples and submit these results to the States. Systems are required to recommend whether they will install coagulation plus filtration, ion exchange, lime softening, and/or reverse osmosis, or not install any source water treatment. EPA is adopting this approach based on commenters' concerns that setting both an MCL for levels in source water and treatment technique requirements for corrosion by-products would result in unnecessary confusion without achieving any greater degree of health protection (see discussion in section IV(B)).

2. Technological and Economic Feasibility of BATs

The Agency does not believe that the SDWA requires field testing as a prerequisite to establishing BAT for a contaminant. While the treatments proposed as BAT for source water are not currently in full-scale use to treat specifically lead and copper, they are demonstrated technologies currently in use to treat a variety of drinking water contaminants including inorganics. The 1986 amendments to the SDWA changed the criteria for evaluating feasibility from "best technologies generally available" to the "best available technology" and added the requirement that BAT must be tested for efficacy under field conditions, not just under laboratory conditions. The legislative history explains that Congress removed the term "generally" to assure that MCLs "reflect the full extent of current technology capability." (S. Rep. No. 56, 99th Cong., 1st Sess. at 6 [1985]). Read together with the legislative history, EPA has concluded that the statutory term "best available technology" is a broader standard than "best technologies generally available" and that this standard allows EPA to select a technology that is not necessarily in widespread full-scale use for removing a specific contaminant. As long as it has been tested beyond the laboratory under full-scale conditions for other contaminants, and performance of the technology for lead and copper may reasonably be projected based upon other available treatment data (i.e., laboratory or pilot scale), EPA believes the technology can be established as

BAT. The flaw in commenters' interpretation of section 1412(b)(5) is that many of the 83 contaminants for which Congress required EPA to establish NPDWRs by June 19, 1989, had never before been regulated by EPA or treated by public water systems. Thus, for many of the contaminants that Congress required EPA to regulate, the data that commenters assert is a prerequisite to selecting a technology as BAT does not yet exist.

Commenters' arguments suggest that Congress required EPA to regulate many new contaminants within 3 years of the 1986 amendments but effectively precluded EPA from selecting any technologies as BAT as the basis for the regulations. Therefore, EPA believes it is appropriate to rely on pilot plants and laboratory studies to project the removal efficiencies for lead and copper that would be achieved by technologies that have been in full-scale use by public water systems for other similar contaminants. A detailed discussion of the efficiencies of each of the treatments can be found in the 1988 proposal and in the "Technology and Costs for the Removal of Lead and Copper from Potable Water Supplies" (EPA, 1991e).

a. *Effect of BATs on Corrosivity.* EPA recognizes that in some cases reverse osmosis and ion exchange may increase water corrosivity, but does not believe this warrants rejecting them as BATs for source water. Rather, EPA has taken into account the site-specific considerations that may affect which of the BATs is best for a particular system by providing discretion for systems to recommend, and States to determine the technology best suited for a particular system.

States will consider the recommendation made by a system regarding what source water treatment, if any, the system believes will be most effective at reducing contaminant levels. States and systems should consider whether the source water treatment being considered will increase water corrosivity and the impact this may have upon the system's ability to comply with the corrosion control requirements of the rule. Systems should plan their treatment approach carefully to ensure that gains made through reduction of contaminants in source water are not offset by increases in corrosion by-products. EPA believes considerations on whether to install source water treatment are best weighed on a case-by-case basis by each system and State as they develop the best overall treatment approach to reduce lead and copper tap levels to the maximum extent feasible.

b. *Costs of Treatments.* Several commenters stated that only large systems could afford to install source water treatments. While the costs of installing these treatments may be high for some small systems, the SDWA contemplated these situations and established a procedure to allow States to exempt public water systems from treatment technique requirements due to compelling factors (see SDWA section 1416(a) and section VII of the preamble).

The capital and production costs of removing lead and copper from source water and the associated waste disposal costs are summarized in Table 9. It is important to note that the costs for source water treatment are premised on the assumption that a system will be required to construct a new treatment unit. In many cases, especially for large systems, this may not be necessary because they may already have the source water treatment technology in place. The assumptions and procedures for calculating the treatment costs have been slightly modified from the proposal. In September 1989, EPA

revised flow assumptions in calculating all inorganic technology costs (EPA, 1987d) to more accurately reflect current industry conditions. The net effect of these changes is to increase the cost to remove lead and copper per gallon of water delivered. The revised costs for selected size systems are summarized in Table 9.

Otherwise, in estimating costs, EPA has used the same assumptions as the proposal. A more detailed discussion of the efficiencies of the treatments and the procedures used in developing the cost estimates for these treatments can be found in the August 1988 proposal, and in the "Technologies and Costs of the Removal of Lead and Copper From Potable Water Supplies" (EPA, 1991e) and in "Technologies and Costs for the Treatment and Disposal of Waste By-products From Water Treatments for Removal of Inorganic and Radioactive Contaminants" (EPA, 1986c).

In evaluating the costs of BAT, EPA has followed the guidance in the legislative history, and considered the costs to regional and large metropolitan

water systems (50,000–75,000 people and greater). The Agency has concluded that these treatments are affordable for such systems (household costs are less than \$180 per year). The cost estimates in Table 9 include the least cost waste disposal alternative. EPA believes systems will generally choose the least cost alternative, but the Agency recognizes that there may be situations where this may not be possible. EPA therefore also estimated the treatment costs that would be incurred by large systems (50,000–75,000) using the full range of waste disposal alternatives, including the high cost technologies. Incurring such waste disposal costs would increase annual household costs as follows: for coagulation/filtration from \$50 to \$70; for lime softening from \$93 to \$120; for reverse osmosis from \$190 to \$320; and for ion exchange from \$54 to \$70. Even with these higher costs, EPA concludes that the source water treatment technologies designated in the final rule are affordable.

TABLE 9.—SOURCE WATER TREATMENT COSTS: LEAST COST WASTE DISPOSAL ALTERNATIVE ¹

| Population served | Contaminant/technology | | | |
|---|------------------------|--------------|---------------|------------|
| | <100 | 3,301–10,000 | 50,001–75,000 | >1,000,000 |
| Capital costs (millions of dollars) | | | | |
| Ion Exchange | 0.18 | 1.0 | 7 | 130 |
| Reverse osmosis: | | | | |
| —Lead | 0.12 | 3.2 | 23 | 450 |
| —Copper | 0.12 | 2.7 | 19 | 400 |
| Lime softening | 0.30 | 3.6 | 12 | 140 |
| Coagulation/filtration | 0.28 | 2.5 | 10 | 140 |
| Production costs (cents/1,000 gallons or \$/household/year) ² | | | | |
| Ion Exchange | 1500 | 100 | 54 | 38 |
| Reverse osmosis: | | | | |
| —Lead | 1200 | 290 | 180 | 140 |
| —Copper | 1100 | 240 | 150 | 120 |
| Lime softening | 2600 | 260 | 93 | 60 |
| Coagulation/filtration: | | | | |
| —Lead | 2400 | 160 | 50 | 24 |
| —Copper | 2500 | 170 | 52 | 26 |

¹ Treatment Costs: EPA, 1991e. Waste Disposal Costs: EPA, 1986c. Least cost waste disposal alternatives assumed to be drying lagoon and land disposal for lime softening, direct discharge to sanitary sewer for coagulation/filtration, discharge to POTW for ion exchange, and direct discharge for reverse osmosis.

² Household costs per year calculated by multiplying production costs by 100. This assumes water consumption of 100,000 gallons per household per year.

3. Final Requirements

a. *Monitoring for Source Water/Treatment Recommendations.* All water systems exceeding the lead or copper action levels after initial tap monitoring are required to collect source water samples in accordance with the requirements in § 141.88 of the rule and submit the results to the State.

Within 6 months of exceeding the lead or copper action level, systems are required to recommend to the State in writing the specific source water treatment, if any, they propose to install and operate (e.g., reverse osmosis, ion

exchange, coagulation plus filtration, or lime softening). Systems may recommend that no treatment be installed if it can demonstrate that source water treatment is not necessary to minimize lead and copper levels at users' taps. EPA believes 6 months is sufficient for systems to determine what, if any, source water treatment is needed because the treatment options are well defined and additional sampling or studies are not required.

b. *State Determination of Source Water Treatment.* Within 6 months after submission of the monitoring results, the State should evaluate the results of all

source water samples submitted by the water system and the treatment recommendation from the system to determine whether source water treatment is necessary to minimize lead or copper levels in water delivered to users' taps. If the State determines that treatment is needed, the State shall either require installation and operation of the source water treatment recommended by the system (if any) or require the installation and operation of another source water treatment from among the following: ion exchange, reverse osmosis, lime softening, or

coagulation/filtration. Upon request, the water systems shall provide the State with additional information to aid in its review by the date specified by the State in its request. The State shall notify the system in writing of its determination and set forth the basis for its decision.

There may be some cases, however, where a State finds that source water treatment will not result in minimizing lead and copper levels at the tap, such as where source water treatment could actually increase tap levels as a result of increasing water corrosivity. In these cases, EPA would expect the State to first determine whether alternative source water treatment could effectively reduce levels without causing additional corrosion problems. In the rare case where no appropriate source water treatment could be applied, the State could determine that installation of source water treatment was not necessary, and the system would seek reductions through application of corrosion control treatment without source water treatment.

c. Installation of Treatment. Water systems that are required to install and operate source water treatment are given 24 months to complete installation of the treatment. EPA believes this will give systems enough time to find the capital, if needed, and complete installation. Water systems are then required to collect follow-up source water samples and tap samples for lead and copper within 12 months of completing the installation of source water treatment.

d. State Review of Treatment. All water systems are required to submit their follow-up source water samples to the State for review. The State is required to complete its review of the source water samples and determine whether the system has installed and is operating the source water treatment designated by the State. After reviewing all available information, the State must establish maximum permissible lead and/or copper levels in source water that water systems are required to maintain. States are given 6 months to complete the process and must notify the system in writing and explain the basis for its decision.

e. Continued Operation and Maintenance. Water systems are required to maintain the lead and copper levels below the maximum permissible concentrations designated by the State at each sampling point. A water system would be in violation of the treatment technique if the level of lead or copper at any sampling point is greater than the maximum permissible concentration designated by the State.

In conclusion, the Agency believes that ion exchange, reverse osmosis, lime softening, and coagulation/filtration fulfill the requirements of the SDWA as BAT for the removal of lead and copper in source water. These treatment technologies are readily available and have high efficiencies for lead and copper removal from source water, their costs for large public water systems are reasonable, and they are compatible with other water treatment processes in different regions of the United States.

G. Public Education Requirements

The proposed rule would have required water systems that exceeded one or both of the action levels for lead (either the average or the maximum) to conduct a public education program to help people reduce their exposures to lead in drinking water. Water systems would have been required to design public education programs to meet three performance standards: program content, program delivery, and program evaluation. Many commenters supported public education but had suggestions for improvements. Others disagreed with the public education requirements for two general reasons: (1) Public education is not a legitimate treatment technique because it is not effective in reducing lead levels; and (2) responsibility for developing, implementing, and evaluating public education programs should be the responsibility of the States or Federal Government, not water systems.

1. Authority To Require Public Education

Several commenters opposed the public education requirements, stating that public education is not authorized under the SDWA as a legitimate treatment technique because it does not reduce the level of lead and/or copper in drinking water.

EPA believes it has the authority to establish public education as a means to reduce the public's exposure to drinking water contaminants. Section 1412(b)(7)(A) of the SDWA states that " * * * the Administrator shall identify those treatment techniques which, in the Administrator's judgement, would prevent known or anticipated adverse effects on the health of persons to the extent feasible." The public education program included in the final rule can prevent adverse health effects by supplying people with information on ways to reduce the amount of lead in the water consumed. Moreover, section 1412(b)(5) expansively defines "feasible" as "feasible with the use of the best technology, treatment technique and other means which the

Administrator finds * * * are available." This statutory language gives the Administrator broad discretion to select any technology, technique, or other means the Agency finds would prevent adverse effects of drinking water contaminants. Given this language, EPA does not believe the statute can reasonably be interpreted so as to preclude EPA from establishing public education as a component of a treatment technique under the Act. A large portion of the lead problem in drinking water will be rectified by water systems in minimizing the corrosivity of their water, controlling source water contamination, and removing problem lead service lines under their control. EPA does not intend the public education program to be a substitute for these actions. However, there are situations where elevated lead levels will persist at consumers' taps during or even after these efforts. In these cases, it will be important for consumers to take actions in their homes (such as flushing tap water or replacing fixtures) to reduce their exposures to lead. The public education requirements are envisioned as a supplemental program either while the PWS is working to reduce lead levels through corrosion control, source water treatment, or lead service line replacement, or after such actions fail to meet the lead action level.

2. Effectiveness of Public Education

Many commenters contended that the proposed public education requirements would not be effective in reducing exposure to excess levels of lead in drinking water. Other commenters were concerned that the public education requirements duplicated the special one-time public notification requirements, which many commenters found ineffective.

To evaluate the effectiveness of public education in reducing consumers' exposure to lead in drinking water, EPA in cooperation with the Raleigh, North Carolina, Department of Public Utilities, conducted a pilot city-wide media campaign in the winter of 1989 (EPA, 1990h). The pilot program used a variety of communication tools, including printed materials, media coverage, and presentations and speeches, to provide members of the community with information on the health effects of lead, possible household sources of lead contamination, and actions that individuals can take to reduce their exposure to lead in drinking water.

Two evaluation studies were conducted to measure the program's success. Study 1 was designed to evaluate the success of the overall

public media information campaign. A pre-test of consumers' attitudes, knowledge, and behavior with respect to lead in drinking water was taken before the public education project began, and a post-test was conducted after completion of the project. Study 2 was designed to evaluate the success of additional educational efforts in targeted Raleigh neighborhoods and to compare the effectiveness of treatments on different socioeconomic groups. Study 2 compared groups in both suburban and urban areas (treated group) receiving the information versus people receiving no information (control group).

Evaluation of the public media campaign indicates that the project successfully provided relevant information to the community and increased reported behaviors that reduce exposure to lead in drinking water. In addition, the Department of Public Utilities reported receiving a large number of requests for tap water lead tests during the period covered by the pilot program. These results indicate that a public education program that both describes the dangers of lead in drinking water and details practical methods of reducing lead ingestion can successfully change behavior that can reduce exposure to lead in drinking water.

In general, the results of both studies suggest that the more frequently an individual is provided with information on lead in drinking water, the more likely he or she will take some action to reduce his or her exposure. Mass media coverage (especially newspaper and television) appeared to be the most efficient and effective method of providing information to the general public, although the evaluation of the media campaign suggests that urban populations may benefit more from radio-based, rather than print-based media. The studies suggest that public community meetings may require more resources than are warranted by the number of people who generally attend such gatherings. The studies also suggest that mail distribution is as effective as door-to-door distribution. The Raleigh pilot project also demonstrated that significant resources are necessary to conduct a public education program because a successful media campaign will require a sustained effort over a long period of time. Overall, it appears that regardless of the specific communication methods used, repeating the message is the best way to ensure that people act to reduce their exposure to lead in drinking water.

EPA does not believe the public education program is redundant with the special lead public notification requirements. The public education program will be an ongoing requirement for as long as the lead action level is exceeded. This is different from the special lead notification requirement, which was a one-time notice. The public education program requires considerably more interaction between the PWS and its customers to educate them about lead in drinking water.

In conclusion, EPA believes public education is an effective method for reducing exposure to lead in drinking water by raising consumers' awareness of the problem and, consequently, modifying behavior that reduces their exposures. The Raleigh project and other programs, such as the State and EPA radon programs and efforts to educate residents near Superfund sites, have shown that well-designed and effectively implemented programs can change the knowledge and/or behavior of audiences and thereby reduce individual exposures. EPA estimates that the annual household costs in systems that are affected will range from \$0.08 to \$2.24 (\$0.37 for systems serving 50,000 to 75,000 people) (EPA, 1991a). EPA believes these costs are reasonable.

3. Responsibility for Development and Evaluation of Program

Several commenters contended that water systems should not be responsible for developing a public education program and do not have the qualified personnel to develop or evaluate such a program. They believed public education should be a joint effort by many parties, with the responsibility for developing a public education program left with Federal or State government, which has trained personnel and resources.

EPA agrees with these comments. To ensure that consistent and accurate information is disseminated to the public across the country, EPA believes that the most effective use of resources is for EPA to work with States and local governments to develop a national public education program, and for the water systems to work with the States, local health departments, and other interested groups to implement such a program.

To help ensure that public education will result in positive behavioral adjustment to reduce lead exposures and the potential cost of such a program to water systems, EPA has developed camera-ready print materials and model public service announcements for radio

and newspaper for water systems to use (see § 141.85 (a) and (b)).

EPA also agrees with commenters that the majority of water systems do not have the expertise to conduct an effective evaluation of their public education program. Evaluating the success of a public education program is difficult and requires behavioral and statistical analyses that go beyond normal water system expertise. EPA believes that the resources that would have been spent on evaluating a public education program can be better used for implementing the program. Thus, the final rule does not require water systems to evaluate the effectiveness of the public education program. EPA envisions conducting evaluations of public education programs over time in different areas of the country to assist in revising the public education program if needed.

4. Content of Public Education Program

Many commenters supported using public education as a means to reduce exposure to lead and copper, but suggested various ways to improve the requirements. The content of the public education materials required to be delivered by public water systems are contained in § 141.85 (a) and (b) of the final rule.

a. Flushing Water. One area of special interest was whether to advocate flushing of taps as a method of reducing lead levels in water consumed by the public. The majority of commenters were proponents of instructing customers on tap flushing, but others stated that flushing should not be included in the public education program because it contradicts good water conservation practices. These commenters suggested using bottled water while lead is being removed from the distribution system.

EPA shares the concerns of commenters regarding the possible wasting of water when flushing taps but does not believe that these concerns justify requiring the use of bottled water. EPA estimates that about 40,000 public water systems throughout the country may initially exceed the lead action level (see section X). Supplying the 130 million people served by these systems with bottled water during the various stages of treatment would be an exorbitant and unnecessary expense. The public education materials developed by EPA continue to recommend flushing of first-draw water when needed, but are careful to explain the need to utilize the first-flush water for nonconsumptive purposes, such as cleaning, washing dishes, watering

plants, etc. and to keep a bottle of flushed water in the refrigerator.

b. *Supplemental Testing Program.* The proposal would have required water systems to offer a program to sample, or arrange to have sampled by a certified laboratory, the water of any customer who requests such a test. Several commenters supported this requirement, with a few stating that the water test should be free.

EPA continues to believe that such a program is an excellent method to increase the effectiveness of the public education program and, therefore, is requiring water systems to offer all customers the opportunity to have their household water tested for lead or to arrange for testing by a certified laboratory. In this way, customers gain access to reliable water sampling services and are not subject to repeated trial-and-error in finding reasonably priced, qualified sampling services. The system is not required to pay for collecting or analyzing the sample, nor is the system itself required to collect and analyze the samples. EPA has developed a list of certified laboratories to test for lead in each State. This list is available at the EPA Regional Offices and State Health Departments responsible for implementing and enforcing this rule.

EPA disagrees with commenters who believe the testing must be supplied free by water systems. This would entail a substantial cost to water systems, and EPA believes it is better that water systems direct their resources toward minimizing lead and copper levels if a problem has been found in a system, rather than spending money on additional testing. Some systems do provide this service without cost, however, and EPA encourages others to consider it.

5. Delivery of Public Education Program

The proposal would have required a water system to deliver the public education program to the entire population and to target the program to high-risk segments of the population four times per year for as long as the system exceeded the action level. Several commenters stated that a targeted public education program would be more effective than using bill stuffers to inform all customers about lead in drinking water. Others agreed that public education is important, but suggested that the program be repeated either annually or biannually instead of quarterly. Still others complained that the requirements were vague and confusing and requested clarification.

The proposed rule listed several means by which water systems could

deliver the public informational materials, including public service announcements on television, radio, and in newspapers, public meetings, notices in water bills, and local telephone hotlines. With the exception of public meetings and hotlines, the final rule retains the program delivery components discussed in the proposal.

EPA has not included public meetings in the final delivery requirements given the findings of the Raleigh study, discussed above, that this forum was not the most effective means for disseminating information to the public. Systems are encouraged to hold such meetings if they are felt to be effective in a particular community. While EPA continues to encourage communities to establish local telephone hotlines, this has not been included as a mandatory requirement in the final rule. Given the resources and expertise associated with running such a hotline, such a measure would not be appropriate for all systems.

With regard to the other delivery components, the final rule details more specifically than the proposal the measures which systems must take to deliver public education and the frequency of program delivery. This information will provide clearer guidance to public water systems on what constitutes an acceptable and effective program and will ensure that the public receives uniform and adequate information nationwide.

The proposed rule would have required systems to deliver public education materials at least once per quarter. Many commenters contended that such a frequency would be too burdensome and recommended annual or biannual delivery. In response to these concerns, the frequency of program delivery for each component of the public education program has been reduced to every 6 months or once every year, as discussed further below. The Agency also believes that reducing the frequency of program delivery and concentrating the efforts toward the most effective media could help prevent the public from "tuning out" a message repeated too often. EPA does not believe that this reduced frequency will impair the effectiveness of the program. Rather, because the final rule requires public water systems to deliver public education materials through a variety of means, EPA believes that the overall effectiveness of the program will be enhanced. This approach is consistent with the results of the Raleigh study, which indicated that repetitive exposure to the information through a variety of media was important to program effectiveness.

The final public education program requires water systems to begin delivering the public education program within 60 days of failing to meet the lead action level based on tap samples collected during a single monitoring period. This should provide adequate time for systems to act, because the systems will not have to develop their own materials but can use those prepared by EPA. Water systems are required to deliver the information specified below within 60 days of exceeding the lead action level. (1) Information notices must be inserted in each customer's water utility bill containing the language specified by EPA in section 141.85(a) of the rule, along with the following warning on the water bill itself in large print:

SOME HOMES IN YOUR COMMUNITY
HAVE ELEVATED LEAD LEVELS IN
DRINKING WATER. LEAD CAN POSE A
SIGNIFICANT RISK TO YOUR HEALTH.
PLEASE READ THE ENCLOSED NOTICE
FOR FURTHER INFORMATION.

This language must be included in all customers' water utility bills at least once every 12 months subsequent to the initial distribution and for as long as the lead action level is exceeded.

(2) The information contained in § 141.85(a) must be sent to the editorial departments of the major daily and weekly newspapers circulated throughout the community and must be sent every 12 months subsequent to the initial distribution, for as long as the lead action level is exceeded.

(3) Pamphlets and/or brochures that contain the information in section 141.85(a) (2) and (4) must be delivered to facilities where children and pregnant women frequently visit (e.g., public schools and/or local school boards; city or county health departments; Women, Infants, and Children programs and/or Head Start programs; public and private hospitals and/or clinics; pediatricians; family planning clinics; and local welfare agencies). The water system is required to deliver the brochures and pamphlets to these locations every 12 months subsequent to the initial distribution for as long as the lead action level is exceeded.

(4) A public service announcement containing the information in § 141.85(b) must be submitted to at least five of the local radio and TV stations with the largest audiences that broadcast to the community served by the water system. The water system is required to submit the public service announcement every 6 months subsequent to the initial distribution for as long as the lead action level is exceeded.

The initial communication is needed to inform the general public of steps they may take to reduce their exposures. Repeating the information every 6 or 12 months is needed to remind homeowners that they should still be aware of potential problems. EPA agrees with commenters that young children and pregnant women should be targeted and, therefore, is requiring water systems to deliver information to locations frequently visited by these sensitive populations as outlined above. Guidance to assist water systems in implementing a successful public education program can be found in "A Primer: Developing a Community-Based Public Education Program on Lead in Drinking Water" (EPA, 1990i). Copies will be available from EPA Regional Offices and State Health Departments.

In communities where a significant proportion of the population speaks a language other than English, public education materials prepared for distribution through print or electronic media must be communicated in the appropriate language. To further facilitate the dissemination of public information concerning lead and copper in drinking water, the PWS should enlist the support of local elected public officials, the professional staff in local departments of public health and environmental protection, and members of both the business and academic communities.

6. Non-Transient, Non-Community Water Systems

The proposed rule would have required NTNCWS to publicly post informational posters on lead in drinking water in a public place, hold at least one public meeting annually to educate water consumers about lead in drinking water to answer any questions on the subject, and distribute brief informational pamphlets at least quarterly.

Several commenters argued that NTNCWS deliver water to different customers than community water systems and that the public education requirements were excessive. They recommended substantial reductions in these requirements. EPA agrees with commenters that NTNCWS deliver water to people whose exposure patterns are different than community water systems and has accordingly modified the public education program to better serve that constituency's needs.

The final rule requires NTNCWS to deliver the information contained in § 141.85(a) (1), (2), and (4) of the final rule within 60 days of exceeding the

lead action level. The information is required to be delivered as follows:

(1) Posters hung in a public place or common area in each of the buildings served by the system.

(2) Pamphlets and/or brochures distributed to each person served by the NTNCWS.

NTNCWS are required to deliver the materials at least once during each calendar year in which the system exceeds the lead action level for as long as the lead action level is exceeded.

H. Lead Service Line Replacement

While the proposed rule did not contain provisions that would have required the replacement of lead service lines, the preamble to the proposal discussed in some detail, and solicited comment on, a lead service line replacement program that the Agency was considering adopting. The program adopted in the final rule resembles in large part the program discussed in the preamble to the proposal. The Agency did not formally propose lead service line replacement because of difficulties with quantifying on a national basis the contributions of lead service lines to lead levels at the tap, because of difficulties in estimating changes in lead levels after corrosion control treatment and lead service line replacement, and because of the potential risks associated with partial pipe replacement.

While there continues to be limited quantitative information regarding contributions from lead service lines to levels at the tap, EPA believes that a lead service line replacement program, as structured in the final regulation, will be an effective means for reducing excessive lead exposures. As discussed further below, the final rule requires systems to institute a replacement program if, after installing optimal corrosion control treatment (and when applicable, source water treatment), the system continues to exceed the lead action level. Replacement of individual lines in the system may be waived where the lead concentration in the service line sample is below 0.015 mg/L. EPA believes that the current lack of extensive data should not delay implementation of the lead service line replacement program. This is because information necessary to determine levels at the tap attributable to lead service lines will be collected on a case-by-case basis, and replacement of service lines will occur where lines are shown to contribute to elevated levels at the tap.

1. Comments on Lead Service Line Program

Numerous commenters supported a removal program proposing different ideas on how it should be implemented. Some commenters suggested requiring the removal of only those service lines that contribute lead above a specific level, such as 0.020 mg/L. Other commenters supported the removal of lead lines if the removal program was extended over 20-30 years, while others advocated removal as lead services are encountered during routine replacement of water lines.

Numerous commenters opposed requiring lead service lines replacement based on one or more of the following beliefs: (1) EPA does not have the authority to require replacement of lead service lines that are not under the water system's ownership or control; (2) the costs derived from lead service line replacement would outweigh the benefits, especially considering that water systems can only replace the portion of the line that they own/control and that may vary from system to system; (3) other methods, such as corrosion control, public education, or enforcing the lead ban, would be more effective for reducing an individual's exposure to lead from drinking water compared to partial lead line replacement; and (4) implementation would be a burden because records do not exist to locate lead lines and because monitoring lead lines will be difficult.

2. Authority to Replace Service Lines

EPA acknowledges that ownership and/or control of lead service lines is often split between the public water system and the property owner. Depending on State law or regulations, or local ordinances, some public water systems control and/or own connections up to the property line, others control and/or own the service line and other connections up to the building (especially if the water meter is located inside the building), and still others control and/or own the service connections only up to the curb.

A recent survey conducted by the American Water Works Association (AWWA, 1989, 1990) indicates that there are approximately 10 million lead service connections currently in use in the United States and that about 20 percent of all public water systems have some lead service connections. The actual number of lead service lines as a percentage of total service connections varies from system to system. EPA estimates, based on the AWWA survey,

that the average length of a lead service line is 42 feet. About 70 percent of systems indicated that they own part of the service connection, 20 percent reported they owned no part, 9 percent reported ownership over only the gooseneck/pigtail, and 1 percent reported ownership over the entire service connection. According to the survey, ownership is determined in the majority of systems by ordinance (72 percent), with about 10 percent determined by informal agreements, 6 percent by contract, and 6 percent by either building codes or building codes and ordinance (EPA, 1990c).

A study discussed in the preamble to the proposal evaluated the extent of authority over service connections in publicly owned water systems in Boston, Chicago, Dallas, Denver, the District of Columbia, Los Angeles, New York, Pittsburgh, San Diego, and San Francisco, and other investor-owned utilities in various States. In the majority of cases evaluated, the water system was found to retain access to virtually all property serviced by the system and to reserve the right to perform work on privately owned service lines (usually at the expense of the property owner). To varying degrees, most of the systems also require property owners to meet certain specifications relating to service line location, size, and material composition. For investor-owned utilities, access to privately owned service connections is often restricted by municipal ordinance.

The study concluded that to the extent public water systems prescribe standards for construction, repair, and maintenance of service lines and reserve the right of entry onto private property to perform necessary work, it could be argued that the entire service line is under the system's control.

As discussed in the preamble to the proposal, requiring lead service line replacement involves determining the obligation of the public water system where jurisdiction over the service line is split between the water system and the user. Because the SDWA defines "public water system" as including "distribution facilities under the control of the operator" (SDWA section 1401(4)), the Agency concluded that it had the authority to hold public water systems responsible only for conditions under their "control." As noted above and discussed in the preamble to the proposal, where ownership is split between the utility and the user, utilities sometimes retain authority to prescribe the standards for construction, repair, and maintenance of service lines, and a right of entry to perform work deemed

necessary (usually billing the user for the work on its portion of the line). Based upon this authority of public water systems, the preamble to the proposal discussed the option of establishing a rebuttable presumption that the entire lead service line was owned or controlled by the water system and, therefore, could be replaced by the system. This presumption could have been rebutted by the public water systems' citing appropriate legal authority (such as local ordinances, State statutes, or contractual provisions) limiting its control or ownership.

As noted elsewhere in today's notice, EPA believes its authority to impose regulatory requirements on public water systems extends only to those distribution facilities under the control of the system. Therefore, under the final rule, systems replacing lead service lines are required to replace the portions of lines that are under their control. Control is defined in § 141.84(e) of the final rule as being indicated by one of the following forms of authority: authority to set standards for construction, repair, or maintenance of the line, authority of the system to replace, repair, or maintain the service line, or ownership of the line. The final rule includes essentially the same substantive criteria for determining control as was discussed at proposal, including the "rebuttable presumption" procedure. The rebuttable presumption assumes that the water system controls and, therefore, can replace the lead components up to the wall of the building served (building inlet). As in the proposal, this presumption could be rebutted by the water systems by citing local ordinances or State statutes, or in the case of private systems, the contract between the systems and their customers, that limit the extent of control of the water system.

EPA decided to include a definition of "control" in the final rule to explain clearly the extent of public water systems' responsibilities under the lead service line replacement program. The statutory term, "control," is not defined in the SDWA, and the legislative history does not contain any guidance as to what Congress intended by the use of this term. EPA believes that, in the context of lead service line replacement, it is reasonable to interpret "control" to include those authorities listed in § 141.84(e) of the final regulation. Water systems generally retain authority to specify standards for construction, maintenance, and composition of service lines to be able to safeguard the integrity of the distribution system and, thereby to ensure the delivery of safe

water to the consumer. Where a lead service line is demonstrated to be contributing to elevated lead levels at the tap, such a condition is similarly threatening the quality of the water consumed by the public. The Agency believes, moreover, that it is reasonable to interpret "control" as being present in cases where a system has authority to replace or repair or maintain the line since lead service line replacement under the final rule is a form of "repair" or "maintenance" which is necessary to prevent further exposures to elevated levels of lead. Thus, EPA believes that requiring public water systems to replace problem lead service lines that the systems "control" (as the term is defined in the rule) is consistent with the underlying purpose of the SDWA to protect public health as well as with practices of the water supply industry designed to maintain the integrity of water distribution systems.

Systems that do not replace the entire service line are required to submit to the State within the first year of their replacement schedule a letter demonstrating that their control is limited (see section VI(C)(1) of the preamble), so that States can review whether the system's interpretation correctly interprets relevant legal authority (see § 141.90(e)(4)). EPA believes that allowing States to review a system's basis for contending that its control is limited is important to ensure that systems apply correctly the regulatory definition of control to the specific facts of their system. In order not to delay prompt implementation of service line replacement and not to burden the States unduly, the final rule does not require States to affirmatively approve the system's interpretation of its legal authority prior to commencement of replacement. However, the State may determine that a system has incorrectly interpreted the extent of its "control" over lead service lines as the term is defined in the final rule. In these cases, the State is required to make its determination in writing and explain the basis for its decision. The system is then required to replace the portion of the lead line under the system's control as determined by the State.

Where a system's control does not extend to the entire service line, the rule requires systems to offer to replace the portion of the line controlled by the homeowner. The rule, however, does not explicitly address how the costs of replacing the homeowner's portion of the service line should be allocated. In the study discussed above, most cities charged the customer for work on

privately owned piping. Systems may choose to incur the costs of replacing the entire line and spread the costs across the ratepayers, if the system believes that this would be appropriate. The incremental cost of replacing the privately controlled portion of the service line should not be substantial, however, since the largest component of the cost is the expense of mobilizing the equipment and labor to the replacement site, a cost that would be incurred by the system anyway. Because this provision of the rule does not impose any additional costs upon the system, and systems are required to replace only portions of lines they control, the Agency believes that the requirement for systems to offer assistance with replacement of privately controlled service lines is an efficient and effective means of maximizing the public health benefits achieved by the rule.

EPA has also adopted a second rebuttable presumption, discussed in the preamble to the proposal, that lead service lines must be replaced unless they contribute less than a specified amount of lead, although, as discussed below, the level requiring replacement has changed.

3. Cost and Effectiveness of Lead Service Line Replacement

EPA believes that corrosion control will remain the primary method for the majority of water systems to reduce lead levels. Although corrosion control has been shown to be effective in minimizing the corrosion of lead service lines by "insulating" the interior surface of the lines, the chemical reactions responsible for formation of these protective deposits are reversible (over days-months) if the passivation layers on the lines are not maintained. The buildup of these protective films can vary from one house to another depending on plumbing age, physical disturbances such as ground freezing or nearby road repair, and the length and diameter of the pipe.

a. *Contributions of Service Lines to Lead Levels at the Tap.* While corrosion control can be an effective treatment for preventing or slowing the dissolution of lead from lead service, in many cases it will not be sufficient to reduce lead levels below the action levels. Data from Boston, MA, Bennington, VT, and Fall River, MA, cities that contain relatively large numbers of lead service lines, illustrate that high levels that would not be protective of public health persisted despite significant reductions in lead levels achieved with corrosion control treatment. Results summarized in Table 7 also indicate that systems with lead service lines have substantially higher

lead levels than those without. These results further suggest that many systems with lead service lines may not be able to reduce lead at the tap to levels below the action level using corrosion control alone. In addition, Table 10 indicates that lead levels in homes with lead service lines compared to homes without lead service lines, in the same system, had higher lead levels. EPA believes that the information presented in Tables 7 and 10 suggests that lead service lines can contribute significant amounts of lead at consumers' taps.

TABLE 10.—AVERAGE LEAD LEVELS (MG/L) BY TYPE OF SERVICE LINE (EPA, 1990d)

| City | Pipe type | Number of samples | First draw | Fully flushed |
|----------------|---------------|-------------------|------------|---------------|
| Bridgeport. | Lead..... | 10..... | 12 | 7 |
| | Non-Lead..... | 12..... | 7 | 5 |
| Champaign. | Lead..... | 6..... | 18 | 16 |
| | Non-Lead..... | 16..... | 3 | 4 |
| Chicago .. | Lead..... | 512 (FD)..... | 13 | 9 |
| | | 466 (FF)..... | | |
| | Non-Lead..... | 110..... | 5 | 4 |
| Fairfield... | Lead..... | 19..... | 15 | 7 |
| | Non-Lead..... | 19..... | 7 | 5 |
| Louisville. | Lead..... | 51 (FD)..... | 11 | 11 |
| | | 49 (FF)..... | | |
| | Non-Lead..... | 10 (FD)..... | 10 | 2 |
| | | 18 (FF)..... | | |
| New Haven. | Lead..... | 5..... | 215 | 34 |
| | Non-Lead..... | 14..... | 10 | 34 |
| Newport | Lead..... | 41..... | 10 | |
| | Non-Lead..... | 448..... | 11 | |
| Phila/ Suburb. | Lead..... | 290..... | 12 | |
| | Non-Lead..... | 22..... | 6 | |

FD—First-draw, FF—fully flushed

b. *Partial Lead Service Line Replacement.* As discussed above, only that portion of the lead service line controlled by the PWS is required to be replaced by the system. Many commenters did not believe that replacing only that portion of the lead service line under their control would be an effective method for reducing lead levels at the tap and that replacing only part of the service line could actually increase the lead levels at the tap because of the disruption of the protective coating on the inside of the pipe.

In practice, EPA believes that many systems required to replace lead lines will receive consent to remove any privately controlled portions since it is in homeowners' interest to remedy completely this source of lead in their drinking water. In those cases where the water system cannot obtain permission to remove the entire line, EPA still believes there are benefits to partial replacement.

Partial removal of a lead service line will reduce the likelihood of exposure to lead from drinking water because there will be a smaller volume of water in contact with the lead service line. For example, a lead service line 40 feet in length and 3/4 inch in diameter will contain about 4 liters of water, and a service line 20 feet in length and 3/4 inch diameter will contain about 2 liters of water. If the lead concentrations in the service line are the same (i.e., 0.020 mg/L), consumers are more likely to consume water with elevated lead levels from longer lines because a larger volume of water will have elevated lead levels. Data collected by Pocock (1980) from over 2,000 homes in the United Kingdom support the view that the likelihood of elevated lead levels varies in relation to the length of the lead service line. The study found that within pH ranges reflecting relatively low corrosive water, tap water lead levels were significantly related not only to the presence of lead piping, but to the length of the piping as well. These findings are also consistent with Kuch and Wagner's (1983) mass transfer modeling, which predicted the dependence of lead levels on the length and diameter of a lead pipe (i.e., higher lead with longer lead pipe).

EPA shares the concern of commenters that partial replacement could increase lead levels, but believes that increased levels, if they occur, will be temporary and will decrease over time. One study cited in the proposal (Britton and Richards, 1980) showed a temporary rise in lead levels at the tap. One week after service line replacement the lead levels were as low as 0.1 mg/L and as high as 4.25 mg/L. Of the 10 samples collected, only one measured (4.25 mg/L) was above 0.1 mg/L; two were above 0.05 mg/L; and the remaining seven were below 0.05 mg/L. Two months after replacement, lead levels further declined to concentrations ranging from 0.05 mg/L to 0.2 mg/L. Four months after replacement, lead levels declined even further; 9 of the 10 samples were below 0.05 mg/L, and the 10th was below 0.09 mg/L. The Agency believes that the temporary rise in lead levels indicates not only the presence of lead materials in the distribution system (i.e., service lines, probably lead pipe), but also poor corrosion control. As noted by the authors, pH adjustment had only recently been implemented in the area and any passivation films on the interior walls of the pipe were probably thin. By the time replacement would be required under the final rule, corrosion control will have been fully implemented and should therefore

reduce the potential for temporary increases in lead levels. This provides another justification for requiring lead service line replacement only after corrosion control treatment has been optimized.

Data collected since the proposal from Newport News as reported in the American Water Works Association report "Lead Service Line Replacement: Benefit-to Cost Analysis" (AWWA, 1990), indicate that replacement of service lines can result in temporary increases in lead levels. However, these increases lasted only 1-2 weeks and followed replacement of lines that initially had low levels (indicating an effective passivation film). Replacement of lead service lines with lead levels above 0.015 mg/L generally resulted in decreased levels immediately after removal, followed by substantial decreases after 2 weeks.

Newport News Waterworks began a program in 1987 to replace existing lead service lines in their system. Samples were collected at the meter, before and immediately after the service line was replaced, and 2 weeks after the replacement. The results in Table 11 indicate that of the nine locations sampled, four sites had initial lead levels above 0.015 mg/L, one site had lead levels between 0.010 to 0.015 mg/L, and four sites had lead levels below 0.005 mg/L. Immediately after removal of the lead lines, the lead levels in three of the four locations with initial lead levels above 0.015 mg/L declined, and all four locations showed substantial reductions when sampled 2 weeks after replacement.

TABLE 11.—LEAD LEVELS IN HOMES BEFORE AND AFTER REPLACEMENT OF LEAD SERVICE LINES IN NEWPORT NEWS, VA (AWWA, 1990)

| Location | Lead levels (ppb) | | |
|----------|--------------------|-------------------------------|-----------------------------|
| | Before replacement | Immediately after replacement | 1-2 weeks after replacement |
| 7..... | 4 | 88 | 1 |
| 10..... | 4 | 16 | 2 |
| 11..... | 1050 | 6 | 4 |
| 14..... | 2 | 106 | 2 |
| 16..... | 4 | 10 | 4 |
| 18..... | 37 | 44 | <1 |
| 19..... | 2350 | 45 | 6 |
| 21..... | 76 | 66 | 13 |
| 25..... | 13 | 27 | 6 |

EPA conducted a study on the effects of partial lead service line replacement on seven homes in Oakwood, Ohio (EPA, 1991c). First-draw samples and service line samples were taken before

and after replacement. First-draw and service line samples were taken (two to four samples collected at each home) during a 1 week period before the service lines were replaced, and follow-up samples were collected over a 2 week period (one to three samples were collected at each home), after service line replacement. Only that portion of the lead service line owned by the water utility, main to curb, was replaced, even though four homes had lead service materials from the main to the house. The water system offered to replace the section of the service line owned by the homeowner, curb to house, but all four homeowners declined the offer. The results presented in Table 12 indicate that the lead levels in service line samples before and after replacement were very similar, and were below 0.015 mg/L, with one exception. Even though the results indicate very little change in lead levels before and after service line replacement and some increases in some cases, these data are not directly relevant to the replacement requirements in the final rule since levels at these lines were already below the replacement level in the final rule of 0.015 mg/L and would not be required to be removed under the final rule. These data do appear to indicate, however, that requiring replacement of lines where tap levels are already low (i.e., below 0.015 mg/l) might not result in improvements in lead levels.

TABLE 12.—LEAD LEVELS IN HOMES BEFORE AND AFTER REPLACEMENT OF LEAD SERVICE LINES IN OAKWOOD, OH (EPA, 1991c)

| Location | Lead levels (ppb) | |
|----------|--------------------|-----------------------------|
| | Before replacement | 1-2 Weeks after replacement |
| 4..... | 9 | 6 |
| 5..... | 6 | 3 |
| 6..... | 10 | 4 |
| 7..... | 8 | 22 |
| 8..... | 9 | 11 |
| 11..... | 10 | 7 |
| 12..... | 6 | 8 |

To ensure that increased exposures do not occur because of partial line replacement, systems are required to notify affected residents that the system is replacing the lead line and that the potential exists for increased lead levels during an interim period after removal. Systems are also required to collect a lead service line sample from the consumer's tap within 14 days after replacing the line to determine whether any increase has occurred. The purpose of collecting the follow-up sample is to

inform residents of precautions that may be needed temporarily such as flushing water at taps to avoid potential increases in lead levels.

In conclusion, while partial replacement could in some cases result in transitory increases in lead levels at the tap, EPA believes that such increases will be minimized due to the fact that effective corrosion control should be in place by that time, and because homeowners will be informed of necessary precautions. Finally, even if temporary increases do occur, EPA believes that such concerns are outweighed by the importance of having lead levels reduced over the long term. Except at extremely high exposure levels not found in drinking water (exceptions may occur where there is stagnant water in a lead-lined water cooler), lead is primarily of concern because of its capacity to accumulate in the body and result in chronic health effects, rather than acute toxicity. Thus, EPA believes that it is most important that longterm exposures to elevated levels due to lead service lines are avoided, even if this can mean short-term exposures in some cases to higher levels immediately after partial replacement.

c. *Current Replacement Programs and Cost.* EPA estimates that about 8,300 of the 15,000 water systems with lead service lines will be required to replace some lead service lines after corrosion control has been installed. Costs are estimated to range from about \$900 to \$1800 dollars per line depending on the local circumstances and the replacement method (EPA, 1991a). Most of these expenses will be fixed costs associated with mobilizing utility work crews and preparing the site to replace the line. Consequently, the costs of replacing lead service lines of different lengths will be comparable. The annual increase in household water bills for large metropolitan water systems (over 50,000) is estimated to range from \$2 to \$9 (EPA, 1991a). EPA believes that these costs are reasonable.

Costs for lead service line replacement could be substantially lower in the future than those estimated above with more widespread use of low cost pipe replacement technology currently available. This new technology can pull old pipes out without excavating entire streets. The only constraint on the use of this technology is that it cannot be used in clay soils or "river rock." EPA estimates that such conditions exist in less than 25% of the U.S. Assuming that such technology will be used for replacement of 75% of the problem lead service lines, annual

household costs estimated for large systems would be reduced to as low as <\$1 to \$4 (EPA, 1991d).

Several cities currently have programs to accelerate the replacement of lead service lines. Since the early 1960s San Francisco, California, has replaced about 10,000 lines, representing 95 percent of the lead service lines at a cost of approximately \$1200-1400/line. The service line from the water main to the water meter is replaced with polybutylene, copper, or ductile iron, depending on line diameter. In 1964, Akron, Ohio, began replacing each year about 1,000 lead and galvanized steel service lines from the water main to the curb. In all of these cases, the service line replacement was funded by operating revenues paid by the customers. Washington, D.C., has replaced an estimated 500 service lines with a program in which the city will replace its portion of the lead service lines provided that the building owner pays for replacement of his or her portion (AWWA-RF, 1990).

EPA believes corrosion control will reduce the leaching of lead from lead service lines in many cases, but high lead levels will persist in some cases and service lines will need to be replaced. EPA believes that available information suggests that the replacement of lead service lines is effective in reducing lead levels at the tap and that the costs are reasonable for large metropolitan water systems. The technology to replace lead service lines is available, and many cities across the country have been implementing lead service line replacement programs. The Agency will, during the next 3 years, use the data from these systems to assess fully the effectiveness (i.e., in terms of lead levels at the tap or other potential effects) of the lead service line replacement requirements in this regulation, and consistent with this review, make changes, if appropriate, to the service line replacement requirements described below.

4. Final Replacement Program

The lead service line program discussed in the preamble to the proposal would have required systems to replace all lead service lines that contribute measurable lead levels (i.e., 0.003 mg/L) after corrosion control was implemented where the levels of lead in 5 percent of service line samples collected at the tap exceeded 0.020 mg/L. All lead services would have been required to be replaced within 15 years from the date the replacement program was triggered.

The lead service line replacement program in the final rule is premised on

five principles: (1) Corrosion control can reduce lead levels from lead service lines in some instances, but high lead levels may persist after treatment; (2) water systems should only be responsible for removing that portion of the lead lines they control; (3) a system is triggered into a lead service line replacement program if the system exceeds the lead action level after installing corrosion control and/or source water treatment; (4) a system is not required to replace individual lead service lines if the service line sample is 0.015 mg/L or less; and (5) water systems must each year replace 7 percent of their total number of lead service lines in place at the beginning of the program (i.e., complete replacement over 15 years). The first two principles have been discussed in the previous section. The final three requirements and the rationale for the remaining components are discussed below.

a. Criteria for Triggering Replacement Program. All public water systems that exceed the lead action level in tap water samples after installation or improvement of corrosion control or source treatment (whichever treatment is installed later), or during any subsequent monitoring period, are required to initiate a lead service line replacement program. Obviously, no such program would be required in communities where no lead service lines have been used.

The Agency decided to use the lead action level to trigger lead service line replacement for consistency with other components of the treatment technique (i.e., corrosion control for small and medium systems, source water treatment, and public education). Given the technical complexity of this regulation, and the large number of water systems possessing varying degrees of technical expertise subject to these regulatory requirements, the Agency believes it is extremely important that the requirements be easily implemented by the industry and understood by the public. Use of a single action level for all the regulatory requirements helps achieve this objective. Moreover, for reasons explained elsewhere in this preamble, the Agency believes that use of 0.015 mg/L as a trigger for action will ensure substantial public health protection.

After a water system is triggered into the lead service line replacement program, it is required to take three steps: (1) Complete a materials evaluation, if this has not already been done, to identify all homes or buildings served by lead service lines, (2) establish a replacement schedule for replacing lead service lines, and (3)

replace all lead service lines controlled by the system except for those that do not contribute more than 0.015 mg/L. Water systems with lead service lines may simply choose to remove them without conducting any monitoring. This could reduce the monitoring costs for systems, especially if a system believes that lead levels from the service lines are likely to exceed 0.015 mg/L.

b. Materials Evaluation. One year after a water system is triggered into the replacement program, it is required to submit to the State a revised materials evaluation identifying the total number of lead service lines in its distribution system. EPA believes that 1 year is more than an adequate period of time since water systems should have obtained this type of information either when they were required to determine whether their distribution system contained lead or copper pipes (§ 141.42(d)), or when they established their sampling pool for tap monitoring under this rule (see § 141.86(a)). EPA understands that some cities may have very poor records of lead service line location and may not be able to initially identify each line. However, systems are not required by the final rule to provide this information until 8-10 years from today (i.e., after installation of corrosion control and/or source water). Given this extended period, EPA anticipates that even those systems with poor records initially should be able to locate their lead service lines and that systems with monitoring results indicating that lead service lines may be a problem should plan this work accordingly.

c. Replacement Schedule. The lead service line replacement program discussed in the preamble to the proposed rule would have required replacement of all lead service lines on a schedule to be determined in each system's treatment plan, but in no case more than 15 years. Some commenters argued that the maximum period was too short and that lines should only be replaced in accordance with system's routine maintenance activities. EPA does not believe it would be appropriate to allow systems to replace lines as part of normal maintenance since this could take as long as 50 years before all the problem lead lines are replaced in some systems. EPA believes that it is necessary to accelerate the rate at which systems would otherwise replace lead service lines in order to ensure that public health will be adequately protected.

EPA received other comments arguing that the maximum replacement schedule discussed in the proposal was either too short or too long. Commenters suggested

alternative schedules ranging from 10 years to 30 years. While these commenters disagreed with a maximum 15-year replacement schedule, they did not articulate why it would be feasible for systems to replace lines in a shorter period of time, or why it would only be feasible for systems to replace lines on a longer schedule. Indeed, it is difficult to determine a uniform, national replacement schedule applicable to all public water systems because the circumstances faced by systems can vary substantially, depending upon the number of lead lines in a system and system size. EPA estimates that lead service lines can comprise between 10 and 50% of the total service lines in systems which have them. In some systems, this percentage may be even higher. Large systems with few lines would be capable of replacing the lines on the fastest schedule, whereas a system comprised of a high percentage of lead lines would take the longest period of time to complete replacement. A city like Chicago, which required use of lead service lines until 1986, would require the longest period of time to feasibly replace all of its lead lines.

EPA considered alternative ways of taking into account both system size and the number of lead service lines in establishing a replacement schedule. One such alternative would have required systems to replace the number of lead service lines each year which corresponds to a fixed percentage of the total number of lines (lead and non-lead) in the system. For example, if 10% of the total number of lines were required to be replaced each year, a system with a total of 10,000 lines and 5,000 lead lines would be required to replace 1,000 lines per year (10% of 10,000), leading to replacement of all lines within 5 years. A system of the same size with all lead lines would be given a longer period of time (10 years) to complete replacement under the above scenario. While such an approach would take into account the various factors affecting the feasibility of replacement schedules for individual systems, it can yield inappropriate results in the case of the larger systems, which may be required to complete replacement on an inordinantly fast schedule which would not be feasible (e.g., a city containing a total of 200,000 lines and 50,000 lead lines would be required to replace all the lead lines within only 2 and 1/2 years).

After considering the public comments and the difficulties associated with establishing a uniform replacement requirement for all systems, EPA has decided to retain the approach

discussed in the proposal of establishing a maximum replacement schedule of 15 years for all systems. Under the proposed rule, the exact schedule for each system would have been established by the State in each treatment plan for the system. The final rule does not provide for the establishment of treatment plans, as discussed above; the rule simply requires States, and EPA in states without primacy, to place systems on a replacement schedule shorter than 15 years where this is feasible. States will be in the best position to assess the factual circumstances of each individual system to determine the schedule which the system can feasibly meet. In no case, however, can a system take more than the maximum 15-year schedule contained in the final rule.

Water systems required to conduct a lead service line replacement program are therefore required to replace each year at least 7 percent of the total number of lead service lines with lead concentrations above 0.015 mg/L. For example, a system that has a total of 10,000 lead service lines would be required, at a minimum, to replace 700 lead service lines per year (unless the systems could demonstrate that specific lines had concentrations less than 0.015 mg/L, as discussed below). Addressing and, if necessary, replacing all lead lines would, therefore, take 15 years unless the State specified a shorter schedule.

d. Replacement of Individual Service Lines. In the preamble to the proposed rule, the Agency considered a lead service line replacement program that would have contained a rebuttable presumption that all lead service lines contribute measurable amounts of lead to the tap and, therefore, should be replaced. That presumption could have been rebutted if the system conducted monitoring that compared a lead service line sample with a fully flushed sample and found that the service line contributed to no measurable increase in lead levels at the tap. The Agency continues to believe that a rebuttable presumption that all lines should be removed is appropriate, but has changed the lead level at which systems will be allowed to avoid replacing specific service lines.

The proposal would have required the replacement of a service line if it contributed lead levels of 0.003 mg/L or more. Several commenters stated that this was unreasonable and that a higher trigger level should be established. EPA agrees that a higher trigger level is appropriate and has selected 0.015 mg/L for an individual line for three reasons: (1) It is consistent with the lead action

level that triggers the system into lead service line replacement, as well as other components of the treatment technique; (2) use of a low trigger level may not reliably indicate whether the source of the lead contamination is the service line versus other components of the distribution system; (3) some data indicates that partial replacement of lines where the levels are already below 0.015 mg/L may not consistently reduce those levels; and (4) replacing lines where the level is above 0.015 mg/L provides substantial public health protection.

The first reason for requiring replacement of only those lines contributing above 0.015 mg/L is administrative simplicity. The lead service line replacement program, as well as public education, source water monitoring, and corrosion control for small and medium-sized systems, are triggered by exceedance of the action level of 0.015 mg/L at the 90th percentile. The Agency believes that using the same number as a trigger for removing lead service lines will be less confusing to the public and the regulated community and will enhance expeditious compliance with the rule, thereby improving the rule's effectiveness in protecting public health.

The second reason for using 0.015 mg/L as a trigger for lead service line replacement is recognition of the difficulties in ascertaining whether the service line is actually a significant source of lead contamination. Determining the concentration of lead in drinking water attributable to service lines on a case-by-case basis is complicated by differences in interior plumbing configurations and varying lengths of lead service lines. EPA believes that a trigger level as low as 0.003 mg/L (which is lower than the PQL for lead), and even somewhat higher values, would not provide a reliable indication that the service line (as opposed to other components of the distribution system, such as interior plumbing or brass faucets) was contributing lead to tap levels. The Agency believes it is appropriate to have a reasonable degree of certainty that the service line is, in fact, contributing to elevated levels of lead at the tap (after corrosion control and source water treatment have addressed all other sources of contamination within the PWS's control) before requiring systems to incur the costs of replacing the line. The higher the amount of lead detected in a service line sample, the greater certainty that the line is the source of the lead problem. Also, as noted above, EPA conducted a

study on lead levels before and after partial pipe replacement which showed inconsistent results when the initial levels were below 0.015 mg/L. In sum, given the uncertainties associated with determining whether low levels of lead in service line samples are attributable to service line contamination and whether replacement can further reduce already low tap levels, the benefits in terms of ease of implementation associated with a consistent action level, as well as the substantial public health protection provided by an action level of 0.015 mg/L (see discussion in section IV(E)(2)(a), above), the Agency has selected 0.015 mg/L to trigger replacement of individual lead service lines.

Thus, under the final rule, the rebuttable presumption in favor of replacing lead service lines would operate as follows. As discussed above, a system is required to replace annually the number of lead service lines equal to seven percent of the total number of such lines identified in the system's materials evaluation. The system may seek to rebut the presumption requiring replacement of this number of lines by taking a service line sample at each site scheduled for replacement. If the concentration in the service line sample is less than or equal to 0.015 mg/L, then the system is not required to replace that individual line. However, the system may count that service line towards the seven percent replacement requirement which it is required to meet that year. Thus, in effect, the rule requires systems either to replace and/or rebut the presumption for replacement (by demonstrating that levels are below 0.015 mg/L) for a total of seven percent of its lead service lines each year.

e. Discontinuing Replacement Program. Under the final rule, water systems can discontinue the lead service line program if they can demonstrate that the lead levels in first-draw water at the tap are below the lead action level for two consecutive 6 month monitoring periods. It is conceivable that systems, through improvement of corrosion control or source water treatment, or because they obtain an alternative source of water that is naturally less corrosive, can achieve the action level even though they had previously exceeded it. The Agency decided to require systems to meet the action level during the monitoring

periods conducted over the course of an entire year in order to ensure that the lower levels genuinely reflect a lowering of lead levels and not normal variability in lead levels at the tap. If a system subsequently exceeds the action level again during any single monitoring period, then it would have to recommence the replacement program.

f. Annual Letter Certification Process. For each year of the lead service line replacement program, each water system must submit a letter certifying that they have completed replacement, or monitored lead levels to rebut the replacement presumption, for at least seven percent of their service lines. The annual letter must include information on the number and location of each lead service line scheduled to be replaced during the most recent year, the service lines that were replaced, and the lines where service line samples were collected. The information must include the lead concentrations and the date and methods used to collect the samples. EPA believes that this information is necessary to ensure that the system is properly conducting the lead service line program.

V. MONITORING

A. Analytical Methods

1. Analytical Methods for Lead and Copper

The 1988 notice proposed the graphite furnace atomic absorption technique (GFAA) for conducting compliance monitoring for lead and either the GFAA, direct aspiration atomic absorption technique (DAAA), or the inductively coupled plasma (ICP) technique for conducting compliance monitoring for copper. Neither the DAAA nor the ICP technique were proposed for lead because the method detection limits for these two techniques were too high. All of these analytical methods were considered technically and economically feasible. On October 19, 1990, EPA published a **Federal Register** notice (55 FR 42409) soliciting comment on several new methods for lead and copper along with updates on the methods in the proposal. The new methods for lead and copper included a new inductively coupled plasma mass spectrometry (ICPMS) technique and the graphite furnace platform atomic absorption technique (GFPAA). In addition, the notice proposed analytical methods for calcium, conductivity, alkalinity, orthophosphate, silica, and

water temperature and updated methods for pH, which are discussed in section 6, below.

Several commenters supported EPA's decision not to approve the DAAA or the ICP technique for lead in the proposal. Other commenters expressed concern that very few laboratories, other than State laboratories, currently had the analytical equipment or capability to test for lead at the MDL or PQL and that the costs for these lead analyses would be excessive. EPA received no substantive comments on the new methods proposed in the October 19, 1990, **Federal Register** notice (55 FR 42409).

EPA is concerned that the increase in the number of samples requiring analyses may require certification of more laboratories. Based on EPA's most recent Water Supply Performance Evaluation Studies (WS #22 and 23) EPA estimates that there are about 400 laboratories nationwide that currently have the capability to analyze for lead using the GFAA technique within #30 of the Practical Quantitation Level (PQL). However, a large majority of these systems are not EPA- or State-certified laboratories and some may need to obtain certification before completing analysis for lead. Because of this concern, the final rule is phasing in the monitoring requirements by system size to ease the burden on analytical laboratories and to allow some States the opportunity either to expand their current laboratory capacity or initiate a program to certify independent laboratories to analyze for lead (see section C(1)(c) below for a discussion of phased-in monitoring).

The cost for analyzing lead and copper is estimated at about \$15 per metal per sample, with collection costs of \$20. The proposal estimated the cost of analyzing lead and copper samples at about \$6 to \$30 per metal per sample. EPA changed its cost estimates based on public comments, although contacts with several school districts and laboratories across the country indicate that lead samples can be analyzed for as low as \$5. EPA concludes that the analytic methods listed in table 13 are both technically and economically feasible for routine use in compliance monitoring for lead and copper. These methods are therefore designated as the prescribed analytical methods for conducting monitoring under the final rule.

TABLE 13.—ANALYTICAL METHODS

| Contaminant | Methodology * | Reference (Method Number) | | | |
|---|---|---------------------------|-------------------|-----------------|-------------------------------------|
| | | EPA ¹ | ASTM ² | SM ³ | USGS ⁴ |
| Lead..... | Atomic absorption; furnace technique..... | 239.2 | D3559-85D | 3113 | |
| | Inductively-coupled plasma; mass spectrometry..... | ⁶ 200.8 | | | |
| Copper..... | Atomic absorption; platform furnace technique..... | ⁷ 200.9 | | | |
| | Atomic absorption; furnace technique..... | 220.2 | D1688-90C | 3113 | |
| | Atomic absorption; direct aspiration..... | 220.1 | D1688-90A | 3111-B | |
| | Inductively-coupled plasma..... | ⁵ 200.7 | | 3120 | |
| pH..... | Inductively-coupled plasma; mass spectrometry..... | ⁶ 200.8 | | | |
| | Atomic absorption; platform furnace..... | ⁷ 200.9 | | | |
| Conductivity..... | Electrometric..... | 150.1 | D1293-84B | 4500-H | |
| | Conductance..... | 150.2 | | | |
| Calcium..... | EDTA titrimetric..... | 120.1 | D1125-82B | 2510 | |
| | Atomic absorption; direct aspiration..... | 215.2 | D511-88A | 3500-Ca-D | |
| Alkalinity..... | Inductively-coupled plasma..... | 215.1 | D511-88B | 3111-B | |
| | Titrimetric..... | ⁵ 200.7 | | 3120 | |
| | Electrometric titration..... | 310.1 | D1067-88B | 2320 | |
| Orthophosphate, unfiltered, no digestion or hydrolysis..... | Colorimetric, automated, ascorbic acid..... | 365.1 | | 4500-P-F | I-1030-85 |
| | Colorimetric, ascorbic acid, two reagent..... | 365.3 | | | |
| | Colorimetric, ascorbic acid, single reagent..... | 365.2 | D515-88A | 4500-P-E | I-1601-85 I-2601-85 I-2598-85 |
| | Colorimetric, phosphomolybdate; automated-segmented flow; automated discrete..... | | | | |
| Silica, filtered..... | Ion Chromatography..... | ⁸ 300.0 | D4327-88 | 4100 | I-1700-85 I-2700-85 |
| | Colorimetric, molybdate blue; automated-segmented flow..... | | | | |
| | Colorimetric..... | 370.1 | D859-88 | | |
| | Molybdosilicate..... | | | 4500-Si-D | |
| | Heteropoly blue..... | | | 4500-Si-E | |
| Temperature..... | Automated method for molybdate-reactive silica..... | | | 4500-Si-F | |
| | Inductively-coupled plasma..... | ⁵ 200.7 | | 3120 | |
| | Thermometric..... | | | 2550 | |

¹ "Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, OH (EPA-600/4-79-020), Revised March 1983. Available from ORD Publications, CERL, EPA, Cincinnati, OH 45268.

² Annual Book of ASTM Standards, Vol. 11.01, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

³ "Standard Methods for the Examination of Water and Wastewater," 17th edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1989.

⁴ "Methods for the Determination of Inorganic Substances in Water and Fluvial Sediments," 3rd edition, U.S. Department of Interior, U.S. Geological Survey, 1989.

⁵ "Determination of Metals and Trace Elements in Water and Wastes by Inductively-Coupled Plasma Atomic Emission Spectrometry," Revision 3.2, August 1990, U.S. EPA, EMSL, Cincinnati, OH 45268.

⁶ "Determination of Trace Elements in Water and Wastes by Inductively-Coupled Plasma-Mass Spectrometry," Method 200.8, August 1990, Revision 4.3, U.S. EPA EMSL, Cincinnati, OH 45268.

⁷ "Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry," Method 200.9, August 1990, U.S. EPA EMSL, Cincinnati, OH 45268.

⁸ "Determination of Inorganic Ions in Water by Ion Chromatography," Method 300.0, December 1989, U.S. EPA EMSL, Cincinnati, OH 45268.

⁹ For analyzing lead and copper, the technique applicable to total metals must be used and the samples must not be filtered.

2. Method Detection Limits for Lead and Copper

The 1988 proposal and the October 19, 1990, Federal Register notice (55 FR 42409) estimated Method Detection Limits (MDL) for lead and copper. Generally, the MDL is defined as the minimum concentration of a substance that can be measured and reported with 99-percent confidence that the true value is greater than zero. The MDL approach involves the determination of method detection limits using a procedure defined in Appendix B to 40 CFR Part 136.

The MDLs for the approved methods in the proposal were estimated to be 0.001 mg/L for GFAA (lead and copper), 0.020 mg/L for DAAA (copper only), and 0.002 mg/L for ICP (copper only). The MDLs for the new methods proposed in

the 1990 notice were estimated to be 0.001 mg/L for GFPA (lead and copper) and 0.001 mg/L for ICPMS (lead and copper).

There were no comments on the method detection limit for copper discussed at proposal. Some commenters supported the MDL for lead stating that it is technically feasible to measure lead in drinking water down to a level at or below 0.001 mg/L using the GFAA technique. Other commenters, however, indicated that the MDL of 0.001 mg/L was derived in a single laboratory and should be developed using laboratories representative of those actually performing lead analyses on a routine basis.

EPA believes commenters are confused on the purpose of the MDLs. Unlike Practical Quantitation Levels (PQLs), the MDLs established by EPA are not designed to be met by routine

laboratory analysis and are not necessarily reproducible over time in a given laboratory. The MDL is a result of measurements made by an experienced laboratory under controlled research-type conditions. In contrast, the PQL represents a level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions.

In general, MDLs are used for two purposes: (1) When estimating PQLs if data from interlaboratory studies, such as performance evaluation studies are not available and (2) when States allow compositing of samples. The 1988 proposal used the MDL for lead to establish the PQL and allowed compositing of five source water samples only if the laboratory completing the analyses was able to measure down to the lead and copper MDLs. As discussed in more detail

below, the PQL estimated at proposal of 0.005 mg/L, using the "5 times the MDL" method, was confirmed by performance evaluation studies published in an October 19, 1990, Federal Register notice (55 FR 42409). The final rule continues to require systems that are compositing five samples to have the samples analyzed in laboratories that are able to measure levels down to the MDLs.

Another commenter stated that it was impossible to provide meaningful comment on the MDL for lead because EPA had failed to provide an adequate description of how the MDL was derived. This same commenter argued that EPA did not consider other studies indicating that the MDL for lead should be 0.003 mg/L. In addition, several commenters stated that the MDL for lead was derived using a different acid cleaning procedure and digestion procedure than required by the analytical method proposed for approval (Method 239.2-GFAA).

Contrary to commenters' claim, EPA did use Method 239.2 (GFAA) correctly in the MDL study. The samples were digested as required by this method, and the acid cleaning procedures were consistent with the requirements of Method 239.2. Note 5 of Method 239.2 states "since glassware contamination is a severe problem in lead analysis, all glassware should be cleaned immediately prior to use, and once cleaned, should not be open to the atmosphere except when necessary." The glassware was soaked for 2 hours before being used in the MDL study. This does not represent a modification of the method; this is merely a recommendation and clarification for laboratories where low-level contamination could be a problem.

EPA believes that an adequate description of how the MDL was derived in the proposal was available in the docket material supporting the proposal (EPA, 1988i). However, to ensure that all interested parties had an opportunity to adequately comment on the derivation of the MDL, notice of the availability of the memorandum describing the analysis was published in an October 19, 1990, Federal Register notice (55 FR 42409). EPA received no substantive comments on this memorandum in the October 1990 notice.

EPA disagrees with the commenter who stated that an MDL of 0.003 mg/L is more appropriate. The studies cited by the commenter were designed to provide information on the accuracy and precision of the GFAA and were not intended for calculating an MDL for lead. Both studies used spiked lead concentrations not within the range

needed to calculate an MDL using the procedure listed in 40 CFR part 136, appendix B. The MDL for lead in the proposal was calculated using this procedure and was derived using samples containing 0.002 mg/L and 0.004 mg/L and analyzed using Method 239.2 (GFAA). Using the procedures in 40 CFR part 136, appendix B resulted in a calculated MDL in the range of 0.0007 mg/L to 0.0008 mg/L. Since the MDL was determined by a single laboratory, the MDL for using Method 239.2 (GFAA) was conservatively rounded to 0.001 mg/L (EPA, 1988i).

After reviewing all comments and evaluating the available data, EPA continues to believe that the detection limits listed in Table 14 are appropriate.

TABLE 14.—DETECTION LIMITS FOR LEAD AND COPPER

| Contaminant and analytic method | Detection limit (mg/L) |
|--|------------------------|
| Copper | |
| Atomic absorption; furnace..... | 0.001 |
| Atomic absorption; direct aspiration..... | 0.020 |
| Atomic absorption; platform furnace..... | 0.001 |
| Inductively coupled plasma..... | 0.001 |
| Inductively coupled plasma; mass spectrometry..... | 0.001 |
| Lead | |
| Atomic absorption; furnace..... | 0.001 |
| Atomic absorption; platform furnace..... | 0.001 |
| Inductively coupled plasma; mass spectrometry..... | 0.001 |

3. Practical Quantitation Levels for Lead and Copper

The 1988 proposal estimated PQLs for lead and copper of 0.005 mg/L for lead and 0.050 mg/L for copper. The PQL is the lowest concentration that can be reliably achieved by well-operated laboratories (EPA and State laboratories) within specified limits of precision and accuracy during routine laboratory operating conditions. The PQL may be determined through either interlaboratory performance evaluation studies (PE studies) or it may be estimated if adequate data are not available from interlaboratory studies. If data from PE studies are available, the PQLs are set at a concentration where at least three-quarters of the EPA and State laboratories involved in the PE studies are able to measure within a specified acceptance range of the true value. In cases where PE studies are unavailable or inadequate, EPA believes that a PQL set at "5 to 10 times" the

MDL achieved by good laboratories is generally a fair expectation for routine operation of most qualified State and commercial laboratories. The use of "5 times the MDL" instead of "10 times the MDL" to set the PQL may be appropriate when other considerations suggest that the PQL should be lower (see EPA, 1987a and 50 FR 46902, November 13, 1985, for a detailed discussion of MDLs and PQLs). EPA estimated the copper PQL at proposal at 0.050 mg/L, based on performance evaluation data. The proposed PQL of 0.005 mg/L for lead was estimated by multiplying the MDL by 5 (EPA 1988j).

There were no major comments on the PQL for copper. Several commenters opposed the PQL for lead, stating that multiplying the MDL by 5 to estimate the PQL is both unsubstantiated and arbitrary. Other commenters opposed the lead PQL because they claim that the majority of laboratories, especially commercial laboratories, cannot reliably achieve 0.005 mg/L within the specified acceptance limits (± 30 percent) and that EPA should consider the capabilities of commercial laboratories when deriving the PQLs and not rely solely on EPA and State laboratories. Another commenter stated that EPA had not provided adequate information to comment properly on how the PQL was derived and that EPA had not considered performance data from three studies (MS 31, WP #12-17, and EPRI RP1851) that indicate the appropriate PQL is approximately 11 to 30 times the MDL (0.011 mg/L to 0.030 mg/L; MDL assumed to be 0.003 mg/L).

The PQL in the proposal was estimated using the "5 to 10 times the MDL" criterion because the lowest lead value tested in the available PE studies at the time of the proposal was 0.0117 mg/L. Since the proposal, two Water Supply PE studies (WS #22 and 23) have confirmed the proposed lead PQL of 0.005 mg/L. The analysis of these studies was included in a paper "Use of Water Supply Performance Evaluation Data to Calculate Laboratory Certification Criteria and Practical Quantitation Limits for Inorganic Contaminants" (EPA, 1990j) that was included in an October 19, 1990 Federal Register notice (55 FR 42409). The two PE studies evaluated the ability of EPA and State laboratories and non-EPA and State laboratories to analyze low-level lead samples (0.00528 mg/L and 0.0088 mg/L) using the GFAA. The results of these studies are summarized in Table 15.

TABLE 15.—PERFORMANCE OF LABORATORIES USING GRAPHITE FURNACE ATOMIC ABSORPTION FOR LEAD (WS #22 AND 23)

| True/value (mg/L) | Number of laboratories | Percentage of labs within ± 30 percent of the true value using graphite furnace AA |
|----------------------------|------------------------|--|
| EPA/State Laboratories | | |
| 0.00528..... | 46 | 85 |
| 0.00880..... | 33 | 94 |
| Non-EPA/State Laboratories | | |
| 0.00528..... | 457 | 74 |
| 0.00880..... | 363 | 86 |

The Agency believes that the results of these new PE studies confirm the appropriateness of the proposed PQL of 0.005 mg/L; more than 80 percent of the approved EPA and State laboratories were within ± 30 percent of 0.00528 mg/L using GFAA. In addition, almost 75 percent of the nonapproved EPA and State laboratories came within ± 30 percent of 0.00528 mg/L. Based on this information, EPA does not agree with commenters' claims that laboratories will not be able to reliably achieve the PQL of 0.005 mg/L within the specified acceptance limits (± 30 percent).

EPA also disagrees that the PQLs should be based on data from all laboratories rather than just EPA or State laboratories. EPA and State laboratory data have been used to calculate the PQL because they represent a stable group of laboratories. The use of data from EPA and State laboratories possible bias by results from laboratories that are not yet certified for drinking water (see 52 FR 25699-700, 53 FR 31550-51, and 54 FR 22100-01 for more complete discussion on using EPA and State laboratories).

In addition, EPA does not believe that the studies cited by the commenter claiming the PQL should be between 0.011 to 0.030 mg/L are adequate to establish PQLs. The values calculated from the data in MS #31 and WP #12-17 required extrapolation of the regression equations since the lowest concentrations evaluated in these data sources were 0.0109 mg/L and 0.0433 mg/L, respectively. The EPRI Study (RP 1851) had different problems. First, the only value below 0.010 mg/L was a blank value. The incorporation of the results at this concentration (0.0 mg/L) significantly biased the regression equations. Also, the EPRI study for lead by GFAA involved only 26 laboratories. The participants were generally utility companies which may, or may not, meet EPA's drinking water certification

criteria. Finally, three of these laboratories dropped out during Round 2 and did not submit data on the analysis of lead samples in reagent grade water. For these reasons, the PQLs calculated by the commenter cannot be viewed with any degree of reliability since they involved either extrapolation of regression equations or the use of data that biased the regression equations.

EPA also disagrees with commenters who stated that using the "5 to 10 times the MDL" criterion to estimate the PQL for drinking water contaminants is arbitrary and unsubstantiated. EPA continues to believe that for some contaminants it is valid to set the PQLs at "5 to 10 times" the MDL. In fact, a PQL for lead 5 times the MDL is supported by the data discussed above.

After careful review of all comments and in light of the additional PE studies that confirm the PQL discussed for lead at proposal, EPA continues to estimate the PQLs at 0.005 mg/L for lead and 0.050 mg/L for copper.

4. pH Methods

The 1988 rule proposed approval of the electrometric method for measuring the pH of drinking water in field samples. pH meters would have been required to provide accurate results within ± 0.1 pH units, and the pH analyses were to be conducted by certified samplers. The preamble to the proposal stated that the pH meter must provide accurate and reproducible results within ± 1 pH unit. This was a typographical error and should have read ± 0.1 pH unit. The proposed rule, however, correctly indicated ± 0.1 pH units as the acceptance limits to be achieved by this method. See proposed § 141.86(a) (4) (i) (C).

Several commenters agreed that the electrometric method for measuring pH is the most precise and accurate method for measuring pH but indicated that it requires careful calibration of the equipment, which may be beyond the capabilities of many technicians responsible for field analysis. These commenters suggested that colorimetric methods be allowed, arguing that it is sufficient for potable water analysis, because the interference of sample color and turbidity are normally not present. Other commenters expressed concern with requiring field measurements of pH samples because of the difficulty in obtaining accurate pH readings, especially with low alkalinity waters. They suggested that pH analysis should only be conducted at approved laboratories and not in the field.

EPA agrees that accurate field measurements of pH can be difficult for

many of these reasons, but believes that the pH measurements should be as accurate as possible since compliance status for some systems depends upon precise measurements of pH levels at the tap (i.e., where the State has specified a pH range as representative of optimal corrosion control under § 141.82(f) of the final rule and the requirement that all systems have raised their pH above 7.0 in all tap samples after installation of treatment). Calibration of the pH meter, even though difficult, should be a basic element in any operator certification program or program for field technicians. The use of colorimetric methods, as suggested by several commenters, is suitable for rough estimation, but because of potential problems with interferences due to color, turbidity, salinity, colloidal matter, various oxidants and reductants, it may not be accurate. Contrary to commenters' statements, it cannot be assumed that sample color and turbidity will not interfere with potable water analysis. Many systems continue to have intermittent problems with "red water" due to corrosion of iron pipes or presence of iron in raw water and have difficulties meeting the current turbidity limits. The major cost to a system for pH measurements is associated with purchasing the pH meter, which can range from \$100 to \$1,000.

EPA believes pH measurements should be made in the field because of the potential for chemical changes to the sample if it is either cooled or warmed. If pH samples are not analyzed soon after collection, especially in warmer temperatures, there may be carbonate or bicarbonate precipitation that would tend to increase the pH. Temperature differences of more than 5 to 10° C cause significant pH changes (AWWA-RF, 1990). It is possible to correct for temperature changes experienced between the field and laboratory, but it is not possible to compensate for any associated chemical changes. Because of the importance of accurate and reliable methods, the Agency continues to believe that the electrometric method is the best method for measuring pH and that the colorimetric methods, although simpler and less expensive, would not provide accurate results. Therefore, the final rule requires pH samples to be measured by the electrometric method in the field.

The final rule also requires large systems and those small- and medium-sized systems that fail the action level to measure for pH at each entry point to the distribution system. EPA is recommending, but not requiring, that

systems use EPA Method 150.2 (pH, Continuous Monitoring [Electrometric]) for measuring samples at the entry points. This method offers the advantage of a continuous measure of pH, which could dramatically reduce the time and resources needed to measure for pH.

5. Total Alkalinity Methods

The titrimetric method to measure total alkalinity was not in the 1988 proposal, but EPA requested comment on the methods in the preamble and requested comment on these methods and the electrometric titration method in an October 19, 1990, **Federal Register** notice (55 FR 42409). There were no comments on the use of this method in the 1988 proposal nor on the methods in the October 1990 notice. Therefore, the methods for total alkalinity described in Table 13 is finalized.

6. Methods For Other Water Quality Parameters

Several methods for measuring calcium, conductivity, orthophosphate, silica, and water temperature were proposed in an October 19, 1990, **Federal Register** notice (55 FR 42409). A list of the methods are included in Table 13. There were no substantive comments on the methods proposed in the October 1990 notice, and therefore, EPA is requiring systems to use the methods listed in Table 13 to complete analyses for conductivity, calcium, orthophosphate, silica, and temperature.

B. Laboratory Approval

The 1988 proposal requested comment on acceptance limits for laboratory approval for lead and copper. In order to be approved for lead and copper analysis, laboratories would have been required to be within ± 30 percent at ≥ 0.005 mg/L for lead and ± 10 percent at ≥ 0.05 mg/L for copper. EPA did not receive any comments opposing the proposed laboratory certification requirements for copper and, therefore, is finalizing these requirements, as listed in Table 16.

Several commenters expressed a concern that the acceptance limits for lead were very narrow. EPA believes that the results from the two PE studies described previously indicate that the majority of laboratories participating in the PE studies are able to reliably achieve the ± 30 percent acceptance limits for lead. Therefore, EPA is finalizing the acceptance limits of ± 30 percent for lead.

The proposed rule would have required pH samplers to be certified. Several commenters did not believe that this was necessary because the

calibration and use of a pH meter is relatively simple and certification efforts should be handled by the State as a part of existing program training. EPA agrees with these commenters and, therefore, is not requiring pH samplers to be certified.

TABLE 16.—LABORATORY CERTIFICATION CRITERIA FOR LEAD AND COPPER

| Contaminant | Acceptance limits |
|-------------|--|
| Copper..... | ± 10 percent at ≥ 0.050 mg/L. |
| Lead..... | ± 30 percent at > 0.005 mg/L. |

The final rule does not require laboratories to be certified to test for pH and water temperature because they are measured in the field. Laboratories are also not required to be certified to test for calcium, orthophosphate, silica, alkalinity, or conductivity because these parameters are generally used to assist water systems and States in determining the best corrosion control treatment to install.

C. Tap Water Monitoring

The final rule requires water systems to (1) monitor for lead and copper in household tap water; (2) monitor for lead and copper at each entry point to the distribution system to determine the potential for source water contamination if tap lead or copper levels are above either action level; and (3) monitor lead service lines to determine whether they need to be removed. In some cases, monitoring for water quality parameters such as pH, calcium, and alkalinity at taps within the distribution system (e.g., coliform sites) and at the entry point(s) to the distribution system are required to help determine compliance with the treatment technique requirements and to assist in evaluating the effectiveness of corrosion treatment. The tap monitoring protocol for lead and copper is designed to identify the contributions of different sources of lead and copper to drinking water: source water, lead service lines, lead and copper interior piping, lead solder, and fixtures and faucets. As discussed below, the monitoring requirements for community and non-transient, non-community water systems vary slightly to reflect the circumstances and capabilities of these systems.

EPA notes that 40 CFR 141.29 allows a State to modify the monitoring requirements imposed by specific regulations when a public water system supplies water to one or more other public water systems if the interconnection of the systems justifies treating them as a single system for

monitoring purposes. EPA does not believe that modification by States of the monitoring requirements of this rule, as provided in # 141.29, would be appropriate because the primary source of high lead or copper levels at the tap is materials within the distribution system itself. Treating multiple water suppliers as one system would not distinguish between the different systems that may have different amounts of lead or copper materials in the distribution system and thus require different treatment strategies to reduce these levels. This contrasts with other contaminants where the contaminant level is uniform throughout the distribution system. EPA does not envision situations where multiple water systems should be considered as one system for purposes of § 141.29 and, therefore strongly discourages States from allowing this modification to the monitoring requirements.

One commenter argued that the proposed monitoring requirements would fail to meet the statutory standard of "assur[ing] a supply of drinking water which dependably complies with" maximum contaminant levels [SDWA section 1401(l)(D)] and that the Agency would violate the SDWA by taking into account the cost and ease of implementation of the monitoring requirements. EPA believes that this commenter inaccurately characterizes the monitoring protocol adopted in this rule and incorrectly construes the Agency's authority to establish monitoring requirements under the Safe Drinking Water Act.

The monitoring provisions of the final rule impose comprehensive and substantial new requirements on public water systems, both in terms of the extent and frequency of monitoring and the rigorous protocol that must be followed in selecting sample sites and collecting samples. In establishing these requirements, EPA sought to ensure that they were reasonable and implementable but were also rigorous enough to identify water systems with significant lead and copper problems. While the monitoring requirements in this rule are, in general, significantly more comprehensive than requirements established for other drinking water contaminants, EPA believes this approach is justified by the unique nature in which corrosion by-products enter drinking water and the significance of lead and copper as contaminants of public health concern.

EPA's approach is fully consistent with the letter and intent of the SDWA. While the language in section 1401(l)(D) relied upon by the commenter refers to

monitoring in conjunction with establishment of an MCL and not a treatment technique, the rule nonetheless contains "criteria and procedures to assure a supply of drinking water which dependably complies with" the requirements of this NPDWR. As discussed elsewhere in this preamble, the rule helps assure that systems are performing "optimal corrosion control" in part by requiring systems to conduct comprehensive tap sampling at homes specifically targeted for their potential to contain elevated levels of lead and copper. Moreover, the rule contains other procedures to ensure that excessive lead and/or copper levels would be detected in monitoring by requiring, for example, sampling of the first liter of water from the tap after water has been standing for at least 6 hours, conditions under which higher than average contaminant levels are likely to occur. Targeting monitoring to worst-case conditions will help systems and States evaluate the reductions in contaminant levels achieved through treatment and determine when "optimal" treatment is being maintained to the degree most protective of public health. EPA believes that given the difficulties associated with accurately characterizing lead and copper levels at the tap, the final monitoring protocol will "assure a supply of drinking water which dependably complies with" the treatment components of this rule.

The commenter is also incorrect in arguing that the statute and legislative history of the SDWA do not support the notion that monitoring requirements are to be determined taking into account their cost. Section 1445 of the SDWA authorizes the Agency to require public water systems to "conduct such monitoring * * * as the Administrator may reasonably require by regulation." In discussing the Administrator's authority under this provision, Congress stated that "[s]uch requirements must, of course, be reasonable." H.Rep. No. 93, 93rd Cong., 2d Sess., reprinted in A Legislative History of the Safe Drinking Water Act, Senate Committee on Environment and Public Works, No. 97-9, 97th Cong., 2d Sess., at 573. EPA believes that it would be unreasonable to impose monitoring requirements on public water systems without consideration of their cost or other practical considerations limiting the systems' ability to implement them effectively. In addition to being contrary to the language and legislative history of section 1445 of the statute, the commenter's approach would be inconsistent with section 1412, which provides that EPA shall establish

"feasible" national primary drinking water regulations, taking into account the costs of such requirements. See section 1412(b)(5). Since monitoring requirements are part of national primary drinking water regulations (see Section 1401(1)(D)), it would be incorrect to argue that Congress required consideration of cost in establishing certain components of NPDWRs, yet intended to preclude consideration of cost with regard to other components.

EPA also wishes to clarify, as requested by this commenter, that the Agency is promulgating the monitoring and analytical methods requirements contained in §§ 141.86 through 141.89 of this rule (as well as the reporting and recordkeeping requirements in sections 141.90 through 141.91) pursuant to both sections 1445 and 1412 of the SDWA. Although Section 1412(b) provides that NPDWRs (as described in Section 1401) shall take effect 18 months after their promulgation, under Section 1445, there is no such limitation for monitoring, reporting, and recordkeeping compliance. To allow these requirements to be effective 30 days after promulgation of this rule, EPA is promulgating these provisions of the rule under section 1445. Effective 18 months after promulgation, these requirements will also be deemed effective under section 1412.

1. Sample Site Location

The proposed rule would have required water systems to collect samples from high-risk residences most likely to have lead problems. High-risk residences were defined to include those residences that were at the ends of the distribution system and either (1) had lead service connections and/or lead interior plumbing or (2) had lead solder that was less than 5 years old.

The proposal would have required water systems to conduct a materials evaluation to identify an adequate number of these high-risk residences. The materials evaluation would have included review of records to identify materials installed in the water distribution system and individual homes, existing water quality information, and design plans of the distribution systems. EPA has adopted essentially the same approach for selecting sampling sites as contained in the proposed rule.

a. Sampling at High-Risk Houses. Numerous commenters disagreed with the proposed requirement to monitor at high-risk residences. They argued that these locations would not represent system-wide lead problems and that system-wide treatment would be required based on one or two samples

exceeding the action levels. Commenters suggested that samples should be collected at representative sites throughout the distribution system as determined by the State. Other commenters suggested that EPA should target high-risk populations instead of high-risk sites.

EPA acknowledges that the requirement to monitor at high-risk locations is different from the monitoring requirements specified in most other NPDWRs. Nevertheless, EPA believes that the requirement to collect samples from locations that are most likely to have high concentrations of lead and copper in drinking water is reasonable and necessary given the nature of the problem of corrosion by-products. Other contaminants regulated under the SDWA usually do not require monitoring at high-risk locations or at residential taps, since the occurrence of the contaminant will usually not change as it travels through the distribution system. In contrast, lead and copper levels in drinking water are not distributed uniformly. If random samples throughout the distribution systems were allowed to be collected, or if samples were collected from outdoor taps (e.g., fire hydrants) or at the end of a system's control (e.g., water meter), areas with serious lead and copper problems in household drinking water could be missed. EPA believes that these high-risk locations should be accounted for in a monitoring plan to better ensure that high levels of lead are detected and that the system institutes treatment that provides uniform and adequate levels of public health protection throughout the distribution system. EPA emphasizes, moreover, that the purpose of monitoring at taps before and after corrosion control treatment is to identify the need for additional treatment and to ensure that adequate treatment is installed. Targeting monitoring towards high-risk locations means that the detected levels will likely be higher than if sampling were randomly distributed. This does not mean, however, that systems are "disadvantaged" by detection of these higher levels because compliance with the rule is not based on whether a system achieves any particular tap levels of lead and copper. Rather, the requirement of the rule in terms of corrosion control treatment is that systems "optimize" such treatment. Targeting monitoring to locations likely to have higher lead and copper levels will help systems and States determine when levels have been reduced to an optimal extent.

Numerous commenters expressed concern with a system being required to install expensive treatment based on one or two samples, from unrepresentative sites, exceeding the action level. They believed it was unfair to require the majority of customers to pay to correct problems that were not system-wide but instead concentrated in a relatively small part of the distribution system. They were also concerned that installing treatment based on samples from high-risk sites could cause other unintended problems in other sections of the distribution system.

As discussed in section IV(E), the action levels in the final rule are based on the 90th percentile lead or copper level. Basing the action level on the 90th percentile allows systems to have several sample values above the action level and still not trigger system-wide treatment (systems over 100,000 people can have 10 samples above the action level, while systems serving less than 500 people can have 1 sample above the action level without triggering action). More importantly, EPA believes any lead and copper problems found in the sites selected for sampling represent a wider problem within the system. This is especially true in light of several changes to the proposed site selection procedures, described below, which increase the number of eligible sites for sampling. EPA acknowledges that the number of high-risk sites within different systems will vary, but in many systems, they can comprise a substantial proportion of the sites, especially for systems with lead service lines. EPA estimates that about 20 percent of all public systems have some lead service lines and that lead service lines comprise between 15 percent to 80 percent of all service lines in these systems (EPA, 1991a).

There will be situations where the system is not able to locate sufficient number of high-risk homes. For example, EPA estimates that about 16 percent of public water systems are mobile home parks (EPA, 1991a), which, in many cases, use plastic pipes and will not have used either lead solder or lead service lines. Another case may be in systems where there has been no new construction or renovations within the past 5 to 10 years and no lead service lines were used. In these situations, the system is required to collect samples from public buildings or from homes with lead solder installed prior to 1983, or in the case of mobile homes, from any site within the distribution system (Section (d) contains a complete discussion on alternative sampling sites).

Finally, EPA believes that customers who do not benefit directly from reduced exposure to lead and copper will still realize indirect benefits from decreased health costs within the community and direct material benefits from corrosion control treatment (see section X for discussion on benefits).

Other commenters suggested that the sampling program should be targeted towards high-risk populations (i.e., infants, pregnant women) and not high-risk sites. EPA agrees that high-risk populations should be protected but believes targeting high-risk sites is a more effective approach for reducing exposure to these high-risk populations. EPA has no reason to believe that people at greatest risk are not distributed equally among high-risk sites. By selecting high-risk sites, EPA is ensuring that action is taken if there is a lead or copper problem within the system. Targeting populations would not guarantee that a lead or copper problem within the system is identified and corrective action is taken. Also, high-risk populations are continually changing (pregnant women give birth, infants grow up), making it necessary to continually change the sampling group. This would be impractical and would increase the difficulties with the implementation of the final rule.

For the reasons discussed above, EPA believes that the use of high-risk sites is reasonable and will generally reflect problems not only in the small subset of sites used to determine if treatment is necessary but also will reflect wider problems in the distribution system.

b. *Targeting Criteria.* High-risk locations for the final rule include (1) those locations that contain copper pipes with lead solder installed after 1982 or lead pipes and/or (2) locations with lead service lines. The changes from the proposal and the reasons are discussed in the subsequent sections.

i. *End-of-Distribution System.* Many commenters disagreed with the requirement in the proposal that samples had to be collected from sites at the end of the distribution system. They stated that requiring sampling at these locations could exclude problem areas, such as older inner cities, which have lead service lines but would not qualify as sample sites because they are not located at the end of the distribution system. Other commenters contended that only under certain conditions and in certain systems will there be any differences in water quality at the end of the distribution system and that requiring monitoring at these points complicates sample collection with no obvious benefits.

At the time of proposal, EPA did not have any field data demonstrating that sites at the ends of the distribution had higher lead levels than other sites. However, the Agency decided to propose this requirement because of concern that it may be difficult to maintain elevated pH levels at the farthest reaches of the distribution system, and, in the absence of sufficiently high doses of corrosion inhibitors, it may be difficult to maintain an adequate coating on the interior surface of service lines and pipes throughout the distribution system. Consequently, it was thought that sites at the ends of the distribution system may be more likely to receive water that is more corrosive.

The Agency still does not have any specific data indicating that sites at the ends of the distribution system will necessarily have higher lead levels than other sites. In fact, data from Seattle, Washington, demonstrates that lead levels at the ends of the distribution system can actually be lower than in other areas of the distribution system (EPA, 1991b). EPA believes that for the majority of systems with well buffered water, the requirement to collect samples at the ends of the distribution system simply complicates locating sampling sites and could result in water systems overlooking sites that should be targeted (e.g., inner city dwellings and buildings). Also, several commenters on the proposal stated that for systems with asbestos-cement or cement-mortar lined pipes, pH might rise toward the ends of the distribution systems. Given these uncertainties, EPA believes it is a better use of limited public water systems resources to concentrate their efforts on identifying sites that contain leaded materials (including lead service lines in older, urban areas) rather than locating sites at the ends of the distribution system. Therefore, EPA has decided to eliminate the requirement to collect samples at the ends of the distribution system and is allowing water systems to select sites throughout the distribution system that meet the targeting criteria described above.

ii. *Lead Solder/Lead Pipes.* Several commenters disagreed with the requirement in the proposal to collect samples from homes with lead solder less than 5 years old. They argued that when the rule becomes effective, there would be very few, if any, homes with legally installed lead solder because of the 1986 lead ban; any lead solder less than 5 years old would have been installed illegally and water systems should not be the de facto enforcer of the lead ban. Other commenters were

concerned that they would need to continually substitute new sample sites when the age of the initial sample sites passed 5 years or when homeowners change their plumbing in an attempt to rectify a lead or copper problem.

EPA agrees that very few sites will have lead solder less than 5 years old when the rule becomes effective because of the lead solder ban of 1986, because EPA is planning to reinforce that ban with a Federal ban on solder under section 6 of the Toxic Substance Control Act (TSCA), and because systems are not required to begin monitoring until 1992 (large systems begin January 1992, medium systems begin July 1992, and small systems begin July 1993). The final rule takes this into account by requiring systems to collect samples from locations that contain copper pipes with lead solder installed after 1982. EPA believes that this will give the majority of water systems a large enough pool of sites from which to collect samples yet still target sampling to those locations which had lead solder installed in the period just preceding enactment of the lead solder ban. For example, if a State's lead ban became effective in January 1988, the water system could include homes with lead solder installed between January 1983 and January 1988. If the lead ban was effective in the State prior to 1983, the water system could collect samples from homes with lead solder installed as close as possible to the effective date. Of the 54 States and Territories, two had a lead ban in effect prior to 1986, 11 prior to 1987, 23 prior to 1988, 47 prior to 1989, and 53 by 1990 (EPA, 1990k). Thus, for the majority of States (43), water systems will be able to select sampling sites built between January 1983 and January 1988, which EPA believes will provide an adequate number of high-risk homes.

EPA does not believe it would be appropriate to require systems to target sampling exclusively to those sites where lead solder has been installed illegally after the lead ban was enacted. Requiring the collection of samples from sites with illegally installed lead solder would require the water system to inspect every site built after the effective date of the lead ban to determine if the site had lead solder. This would be impractical and could significantly delay the implementation of the final rule. In contrast, the majority of homes constructed between 1983 and the effective date of the lead ban in the State will more than likely have used lead solder. EPA encourages water systems to inspect sites constructed after the effective date of the lead ban in

the State if they suspect that these homes have illegally installed lead solder, but is not now requiring PWS to include these types of sites in their sample pool.

Finally, requiring systems to collect samples from locations with lead solder installed after 1982 will eliminate the problem of constantly substituting homes with lead solder less than 5 years old. In terms of homeowners replacing their plumbing to rectify problems, EPA encourages homeowners to rectify problems if present, but believes that the majority of homeowners will opt to flush their water to protect themselves instead of replacing their plumbing while they wait for centralized treatment to take effect. EPA requires systems to identify more sample sites than needed to complete their initial sampling pool in case the system cannot gain access to enough homes or because homes may drop out of the sample pool.

The proposed rule would have required water systems with lead service connections to collect 50 percent of the system's samples from sites served by lead service connections and 50 percent from sites with interior lead plumbing or lead solder. If a system had no lead service connections, then 100 percent of the samples were required to be collected from sites with interior lead plumbing or lead solder. Many commenters were confused about this requirement and requested clarification. Other commenters argued that the percent of lead service connections sampled should be proportional to the number of lead service connections within the system.

To comply with this component of the monitoring requirements, water systems should first determine if they have lead service lines. If a system does not contain lead service lines, it should collect 100 percent of its samples from sites with either lead solder or lead interior pipes. EPA estimates that about 75 percent of all public water systems will fall into this category. If a system contains lead service lines, it is required to collect 50 percent of its samples from sites with lead service lines and 50 percent of its samples from sites with lead solder or interior lead pipes. Water systems unable to locate enough sites with lead solder or lead interior pipes to comprise 50 percent of their sample pool are required to complete their sample pool with sites served by lead service lines. Likewise, water systems unable to locate enough sites served by lead service lines to make up 50 percent of their sample pool are required to complete their pool with sites that contain lead solder or lead interior

pipes. For example, if a system is required to sample at 100 sites but can only locate 20 sites that have lead solder or interior lead pipes, they should collect the remaining 80 samples from sites served by lead service lines. Water systems are required to exhaust possible sample sites from these categories before they select Tier 2 sites (discussed below).

EPA considered requiring water systems to collect samples at sites served by lead service lines in relative proportion to the total number of lead service lines within the system, but does not believe this is necessary or practical. Where lead service lines are present, EPA estimates that the percent of these lines as a percentage of the total number of service lines range from almost 90 percent for the very small systems to about 15 percent for larger systems (EPA, 1991a). This indicates that systems containing lead service lines will have a sufficient number of these sites to complete their sampling pool. Determining the percentage of lead service lines would require systems that have not completed a materials evaluation of their entire system to complete a survey prior to collecting the samples. This could take at least 1 year and could consequently postpone implementation of the final rule. As will be discussed, water systems are only required to identify a sufficient number of sites to perform the required tap sampling and do not have to conduct a complete materials evaluation of the entire system.

c. Materials Evaluation/Phased-In Monitoring. The proposed rule would have required water systems to complete their materials evaluation and to begin monitoring at different times depending on system size. Systems serving more than 3,300 people would have been required to complete their materials evaluation and begin monitoring 3 months after publication of the final rule; those serving from 500 to 3,300 people were to begin 15 months after publication, and those serving less than 500 people were required to begin 27 months after publication. Also, systems would have been required to identify a sampling pool that included 50 percent more sites than the number required for monitoring each monitoring period.

Several commenters supported phasing-in monitoring, especially for small systems. Others believed that it is unrealistic for systems serving more than 3,300 people to obtain an adequate pool of high-risk sites in the time allotted because the records to identify these sites are missing or inadequate.

Other commenters stated that a materials evaluation, regardless of the time allowed, was impossible because the records to identify high-risk locations do not exist.

EPA understands commenters concern with the potential inadequacy of records needed to identify high-risk locations and the need for additional time to locate these sites. EPA has maintained the phased-in monitoring by system size but has changed the system size categories to be consistent with the corrosion control treatment requirements and has increased the time allowed for systems to complete the materials evaluation. The time allowed for large systems to complete the materials evaluation has been changed from 3 months to 8 months, for medium systems from 3 months to 14 months, and for small systems from 15 months (systems serving between 500 to 3,300 people) or from 27 months (systems serving fewer than 500 people) to 26 months. The only group of systems that will have a shorter time frame to complete their materials evaluation and begin monitoring are those systems serving less than 500 people (26 months instead of 27 months in the proposal). The time was shortened for these systems to be consistent with the size divisions adopted for corrosion control. The Agency believed adopting different system size categories for monitoring and treatment would be confusing and cause problems in implementation. EPA does not believe this minor change will cause problems for these systems in locating the required number of sites.

The Agency believes that the additional time for locating monitoring sites provided by the final rule should be adequate. It should be clarified that the materials evaluation is not required for the entire system but only to identify a sufficient number of sites to perform the required tap sampling. For example, the largest size systems (those serving more than 100,000 persons) are only required to identify a sufficient number of sites so that they can sample at 100 locations. Smaller size systems are required to sample at fewer sites (see Table 18). While systems will likely need to identify more sites than these in order to assure that the number of available sites (taking into account any difficulties in entering sites) is sufficient, the total number of sites to be located is still relatively small. Given the relatively few sites that need to be located, EPA believes that the time periods for systems to obtain this information are reasonable. Moreover, community water systems have been required to obtain this information under 40 CFR 141.42(d)

since 1980. Larger systems are given less time to identify the required number of sites, because larger systems have more staff to help identify sampling sites. In addition, larger systems have generally been more involved in the rulemaking process and are therefore more prepared to implement the regulations in a shorter time period. Some larger systems have, in fact, completed much of this preliminary work and are moving ahead in advance of the final rule.

The Agency also recognizes that some systems have not maintained adequate records of lead service lines or lead solder. In these cases, systems can use other simple methods for gathering information. Systems can begin to look at the material composition of service lines during the course of their normal activities such as reading of water meters or other maintenance or repair work. Sometimes, neighborhoods with houses built at the same time will have similar materials used in service lines. If the system discovers that a lead line in one neighborhood, it may be worthwhile to check on the composition of service lines in nearby houses. Another method for identifying potential sites when no records exist is to ask for volunteers in the community whose homes were built after 1982 or who believe they may have a lead service line. The water system can then arrange a time to visit these sites to determine whether they have lead solder or lead service lines. To assist these systems further, EPA is developing a guidance manual that provides information for identifying high-risk sites. The manual will describe where systems can obtain the needed information to assist in identifying high-risk sites, methods for locating these sites, and procedures for establishing a reliable and accurate recordkeeping system to catalog the sites.

EPA also decided to phase-in monitoring because of concerns expressed by commenters with the lack of certified laboratories for analyzing inorganic samples (lead) in some areas of the country. For example, several States (i.e., Mississippi, Indiana, Texas, Louisiana, Arkansas, South Carolina, and Oklahoma) have only one State-certified laboratory to complete all drinking water analysis of inorganic samples (ASDWA, 1991). It is estimated that in EPA Region VI alone (Texas, Arkansas, Louisiana, New Mexico, Oklahoma), the number of samples required over the 3 year implementation period to complete initial monitoring will increase from 4,000 inorganic samples to almost 300,000 inorganic samples. Nationally, it is estimated that about 400,000 lead and copper samples

are required to be collected by community water systems the first year after publication of the rule, 1 million samples the second year, and 570,000 samples the third year (EPA, 1991a). Because of this enormous increase in the number of samples required to be collected, it is necessary that States be given time to determine whether to increase their laboratory capacity or develop a laboratory certification program, both of which will take time. In addition, the final rule requires water systems to collect samples for other water quality parameters, such as alkalinity, calcium, and orthophosphate, which will cause further pressure on these laboratories.

d. Sampling Tiers. The proposed rule would have required systems to collect samples from one of three tiers of sampling sites depending on the ability of the water system to locate the required number of sites in each tier. The first tier required all samples to be collected at single family residences located at the ends of the distribution systems with either lead solder less than 5 years old or with lead interior pipes or lead service lines. Water systems that could not locate enough sampling sites meeting these targeting criteria were allowed to include sites located elsewhere within the distribution system (not only from locations at the ends of distribution system) that had lead solder less than 5 years old or sites that had lead interior pipes or were served by lead service lines (Tier 2). If the system could still not locate enough sampling sites using these criteria, they were required to add to the sampling group residences at the ends of the distribution system irrespective of the age of the lead solder (Tier 3). Finally, the proposed rule requested comment on allowing systems to include non-residential locations in their sample pool as a last resort. These non-residential locations would have been required to have plumbing with a configuration and daily water use patterns similar to those found in single-family residences.

i. Tier 1 Sampling Sites. Several commenters disagreed with the requirement to monitor only at private homes and argued that water systems should be allowed to collect samples at non-residential locations, such as libraries, fire stations, or public buildings. They were concerned with collecting samples from private residences early in the morning and argued that including non-residential sites would make sample collection easier without eliminating the requirement to collect first-draw samples.

EPA has maintained the three-tiered approach for collecting samples but has changed the requirements for each tier. The first tier in the proposal required all samples to be collected at single family residences located at the ends of the distribution systems with either lead solder less than 5 years old or with lead interior pipes or lead service lines. As discussed previously, the requirement to collect samples from sites at the ends of the distribution system has been eliminated, and systems are required to collect samples from sites with lead solder installed after 1982. EPA is also changing the requirement that only sites being used as single-family residences be included in the sampling pool. EPA agrees that certain non-residential locations can be included in the Tier 1 sampling pool at the discretion of the water system, as long as the non-residential locations have been constructed as single-family residences, and the water system can ensure that the standing time of water at the non-residential location is at least 6 hours. Locations such as libraries, for example, should be excluded if they were not constructed as single-family residences.

EPA believes that allowing these alternative non-residential sites to be included in the sampling pool will ease sample collection while retaining the approach of targeting high-risk locations. Ensuring a standing time of at least 6 hours will be easier in these non-residential sites since the majority of non-residential locations will be closed during the night-time hours. Water utility personnel can meet individuals in these non-residential locations upon their arrival at work.

ii. *Tier 2 Sampling Sites.* Other commenters complained that they could not locate enough high-risk locations because of no new construction or no history of lead service lines in the system. EPA believes that the majority of water systems will be able to locate enough sites meeting the Tier 1 targeting criteria, especially since certain non-residential locations will be allowed in the sampling pool. Water systems asserting that they cannot locate enough sites to meet the Tier 1 targeting criteria are required to report this finding to the State as follows:

(1) The system must document via the materials evaluation that lead service lines, or interior lead piping was never used in the system or have all been replaced, or enough sites with these characteristics cannot be located.

(2) The system must demonstrate that lead solder was never used in construction of residences and other buildings in the system or that the

system cannot locate enough homes with lead solder installed after 1982.

Water systems are then required to add to the sampling pool, as equally distributed as possible, buildings, including multiple-family residences, that contain either (1) lead interior pipes or have had lead solder installed after 1982 and/or (2) are served by a lead service line.

The Tier 2 requirements in the final rule are different than those in the proposal. The proposal would have required water systems to add residences within the distribution system not located at the ends of the distribution system. This does not apply to the final rule, as discussed previously. Instead of requiring systems to select these sites, EPA decided to require systems to select sites from buildings, including multi-family residences that comply with the targeting criteria for Tier 1 locations. When sampling at these sites, water systems should refer to the document "Suggested Sampling Procedures to Determine Lead in Drinking Water in Buildings Other Than Single Family Homes" (EPA, 1988k). Such buildings were selected for Tier 2 sampling because they can represent high-risk sites. They are not included in Tier 1 sampling (except for those communities where more than 20 percent of buildings were multiple-family dwellings) because of the wide variation in the plumbing configurations of multiple-family dwellings and other buildings. Systems might find it convenient to conduct such sampling at public buildings where they can gain easy access.

iii. *Tier 3 Sampling Sites.* The proposal would have allowed systems that could not locate enough Tier 2 sampling sites to add residences at the ends of the distribution systems irrespective of the age of the lead solder. There were no major comments on this provision. Since the final rule does not require water systems to collect samples at the ends of the distribution system, it requires water systems that still cannot locate enough sample sites in Tiers 1 and 2 to select single-family residences with lead solder installed prior, to January 1983.

e. *State Review of Monitoring Results.* The proposal did not require State approval of monitoring plans, but States would have had the authority to disapprove any monitoring plan that did not meet the targeting requirements. A number of commenters suggested that this requirement should be changed and that States should be required to review and approve sampling sites to ensure that they are selected properly. EPA

does not agree that States should be required to approve monitoring plans prior to initiating sampling. Requiring States to review each plan would entail an inspection of each site to determine that the water supplier has chosen the correct sites. EPA does not think this is an effective use of limited resources and would detract from other important tasks that the State needs to complete, such as review of the corrosion control efforts of the water suppliers. Such up-front review could also result in delays in monitoring and implementation of the treatment technique. Water systems are, however, required to submit a letter to the State certifying that all samples are collected at targeted sites or document why they cannot collect samples from targeted sites. After review of the monitoring data, States may require systems to conduct additional monitoring if they find the systems have not conducted sampling correctly. Samples collected at sites not meeting the targeting criteria may not be used in calculating the 90th percentile lead and copper levels.

2. Sample Collection

The 1988 proposal would have required systems to collect either a 1-liter morning first-draw (MFD) sample and/or a 1-liter service line (SC) sample. An MFD sample was defined as a sample collected at a consumer's tap that had been standing in the interior plumbing for 8 to 18 hours and was collected without prior flushing. The SC sample was defined as a water sample that had been standing for 8 to 18 hours in a lead service line and collected in any one of the following ways: (1) Direct sampling of the service line, (2) tap sampling based on a temperature change in the water or, (3) a tap sample after flushing a volume of water equal to that contained in the pipes leading from the tap to the service line. In a residence with both lead solder less than 5 years old and a lead service line, both types of samples could have been collected and counted as two sites. The samples were required to be collected by the water system.

To ensure that a system could collect an adequate number of samples from high-risk locations, the proposal would have required that the system's sampling pool contain a number of eligible sample sites at least 50 percent greater than the number of samples that must be collected during each monitoring period. For example, if a system was required to collect 100 samples during each monitoring period, they would have needed 150 eligible sampling sites in the sampling pool.

Systems were allowed to include apartments and other multiple family dwellings where these comprised more than 20 percent of the housing served by the community.

Many commenters disagreed with first-draw tap sampling stating that (1) they should not be held responsible for the elevated lead and copper levels found in first-draw tap samples because such levels are caused by conditions beyond their control (e.g., homeowner plumbing), (2) water systems have no authority to enter homes to collect tap samples and face the potential liabilities of utility personnel entering homes, (3) customers would not cooperate with first-draw tap sampling, and water systems could not verify whether the samples were first-draw, (4) first-draw water is not representative of the water consumed by individuals, and (5) collection of service connection samples is not reliable.

a. Responsibility for Lead Levels at the Tap. EPA agrees with commenters, as stated previously, that the Agency cannot promulgate a rule that holds water systems responsible for conditions in those portions of the distribution system that are outside of the systems control (e.g., homeowner plumbing). However, as discussed earlier, if water systems do not collect first-draw tap samples for lead and copper, they would have no indication of the lead and copper levels to which their users are being exposed and thus could not rectify that portion of the problem that is under their control (corrosivity of the water, lead service lines). For the majority of contaminants, monitoring at consumer's taps is not critical since the level of the contaminants leaving the water treatment plant will not change as it travels through the distribution system. In fact, for some contaminants, the level at the tap may even be lower than at the entry point to the distribution system because of dilution or volatilization of contaminants from water. Also, as discussed previously, simply because the rule requires tap sampling does not mean that public water systems are being held responsible for conditions beyond their control. Tap sampling is necessary to ensure that public water systems are optimizing corrosion control, which is within their control.

b. Authority and Liability for Entering Homes To Collect Tap Samples. Many commenters stated that they had no authority to enter homes to collect tap samples. EPA agrees that water systems do not have the authority to enter homes without the homeowner's consent. Many commenters erroneously assumed that

the proposal gave water systems the authority to enter homes unannounced. The rule in no way gives the water system the authority to enter a private residence without obtaining homeowner permission.

Numerous commenters expressed concern with the potential liability of utility personnel entering homes to collect samples. As discussed below, water systems can use homeowners to collect samples, eliminating the need for utility personnel to enter homes. Even if utility personnel do enter homes to collect samples, however, EPA believes the concern with utility personnel liability is unfounded. As discussed above, utility personnel are only allowed in a private residence to collect samples with the consent of the homeowner. After gaining entry into a home, EPA has no reason to presume that utility personnel will act inappropriately. It has been customary for decades for gas and water utility personnel to enter homes with homeowner permission.

c. Cooperation With First-Draw Tap Sampling. A major concern expressed by commenters was that customers would not cooperate in collecting first-draw tap samples because of homeowners' apprehension in allowing water utility personnel to enter their homes early in the morning to collect samples. To avoid this problem, several commenters suggested that homeowners be allowed to collect the first-draw tap samples. These commenters contended that participants could be trained in the proper collection methodology and that the reliability of the lead and copper samples would not be jeopardized. In addition, they suggested that there would not be a significant reduction in accuracy if the samples were acidified after collection by utility personnel. Other commenters, however, did not believe customers should be allowed to collect samples because the water system could not verify if the samples were collected properly (e.g., minimum standing time, collection point) and because of potential problems with customers handling the nitric acid needed to stabilize the samples.

i. Collection of Samples. EPA agrees with those commenters who believe that water systems should be given the option to allow customers to assist in collecting lead and copper samples as this will help ensure that sampling will occur at targeted, high-risk locations. EPA believes customers can be easily instructed on how to properly collect samples, as is evident by the numerous sample collection programs that have successfully used customers. For

example, the data from Boston, Bennington, and the AWWSC survey discussed earlier were from samples collected by customers; after collecting the sample in accordance with the procedure provided by the water supplier, the customer placed the sample outside for collection by water utility personnel. This reduces the potential inconvenience of entering homes. In addition, as discussed later, first-draw samples do not necessarily have to be collected in the morning but can be collected in the afternoon upon returning from work. The customer can arrange with the water utility personnel to meet them at their home at a prearranged time to collect the sample. Finally, EPA understands commenters concerned with ensuring that customers have properly collected samples but anticipates that customers willing to participate will collect the samples correctly, if given proper instruction, because they want to know their tap water lead and copper levels. If a system is concerned about this, then they can collect the samples themselves.

EPA also agrees with commenters that acidifying samples after collection by water utility personnel does not significantly reduce the accuracy of the samples. EPA has recently completed work that corroborates an earlier study by Miller (1985). The samples in the EPA study were collected in previously unused, high-density polyethylene containers with polyethylene or polypropylene caps and held up to 14 days. The samples were then acidified with reagent grade nitric acid (0.5 mL acid per 100 mL samples), mixed, and held an additional 28 hours and then analyzed. The results indicate that the lead samples may be held up to 14 days prior to acidification with no loss of lead recovery (EPA, 1990). If a water system chooses to allow homeowners to collect lead and copper samples, the system must certify that it has supplied the customer with detailed instructions on the required collection procedure.

Also, in cases where a system chooses to have customers perform sampling, the rule provides that the results shall be accepted by the systems as valid and may not be challenged in any subsequent administrative or civil enforcement proceeding or citizen suit on the grounds that errors were committed by the customer during sampling. EPA believes that this provision will assure finality to sampling results and will prevent systems from questioning results in an enforcement proceeding even though the systems had chosen to have customers conduct the sampling. This provision does not

constrain the discretion or authority of systems since they can choose to conduct the sampling themselves if they are concerned about the accuracy of customer sampling.

ii. *Standing Time.* Numerous commenters were critical of the 8 to 18 hour standing time requirement proposed by EPA and suggested eliminating the standing time requirement. They indicated that the 8 to 18 hour standing time would be impossible to verify because of leaking faucets, home ice makers, sprinkler systems, or the unintended use of water during the evening, and the only way to ensure an 8 to 18 hour standing time would be to shut off service to the customer. Others were concerned with the costs of overtime pay for utility personnel as they would be required to be at customers' homes early in the morning to collect the standing samples.

The Agency agrees that the 8 to 18 hour standing time requirement may have made it more difficult for some systems to collect samples and, thus, is reducing the minimum required standing time to 6 hours. The change of the minimum standing time to 6 hours is based on data received that indicates a negligible difference in lead levels at the tap between standing times of 6 versus 8 hours (AWWSC, 1989). The Agency, does not believe that eliminating the standing time requirement would be prudent because the standing time of the water in plumbing pipes is one of the most important determinants of lead and copper levels found at the tap and because a significant portion of drinking water consumption is standing water. Controlling the standing time of the water in the pipes is also important for reducing the variability in tap samples. Lead levels show a rapid increase within the first few hours of standing in the pipes and then a slower increase until the equilibrium solubility is approached (Kuch and Wagner, 1983; Schock and Wagner, 1985). Thus, controlling the standing time of the water in pipes for all sites will further decrease variability in lead and copper levels.

Several commenters were also concerned about difficulties in verifying if the samples had been standing in the pipes for 8 to 18 hours. EPA understands commenters concerns, but based on information from numerous water systems that have successfully collected first-draw tap samples from residences during the last 10 years, EPA believes that most systems can find a sufficient number of volunteers who are willing to participate and who, if properly instructed, will conform to the standing

time requirement of 6 hours. The Agency anticipates that individuals willing to participate will welcome information about the quality of drinking water in their individual homes. Reduction in the standing time requirement will also help alleviate potential problems with customers conforming to the sampling requirements. EPA believes that systems will not need to shut off the customers' service to ensure a standing time of 6 hours.

Systems concerned about the overtime costs of collecting samples should consider allowing homeowners to collect samples and for utility personnel to pick up the samples outside the homes during their normal working hours. Systems using nonresidential locations can have their water utility personnel meet individuals at these locations upon their arrival at work to collect the samples. In both cases, utility personnel could collect the samples during their normal working hours and avoid the costs of overtime pay.

d. *First-Draw Samples.* The proposal would have required water systems to collect 1-liter morning first-draw and, if required, lead service line samples from the cold water kitchen tap of each residence monitored in the sampling group during each monitoring period. Several commenters suggested deleting the word morning from the definition, because it places an unnecessary restriction on the time of day that the sample can be collected. EPA agrees with these commenters and has changed the definition to first-draw sample. This allows flexibility to obtain samples either in the morning or in the evening.

Many commenters argued that EPA should not use first-draw water because it is not representative of the water consumed by individuals. EPA considered a variety, of approaches for the tap sampling protocol, including first-draw and partially flushed samples. While EPA recognizes that the levels of lead and copper in first-draw water may not be representative of the levels in all water consumed by people, the Agency decided to adopt this sampling protocol for several reasons.

First, as discussed above, EPA believes that the best measure to adequately assess the degree to which a system has minimized corrosivity for lead and copper is through measurement of firstdraw lead and copper levels at the tap over time and the correlation between these levels and the values for associated water quality parameters (e.g., calcium, pH, alkalinity). Lead and copper levels in first-draw samples are likely to be higher than in partially or fully flushed tap samples. EPA believes

it is critical, however, to collect first-draw samples to better ensure that high lead and copper levels are detected if they occur and that the system institutes treatment that provides uniform and adequate levels of public health protection to all people within the system.

Second, even though there are no precise estimates of how much first-draw water is consumed by individuals, there is the potential for consumption of first draw water both in the morning and in the evenings upon returning from work or school. Moreover, the absorption of lead in drinking water is highest when taken on an empty stomach (James et al., 1985), which could very likely be the case for individuals consuming first-draw water in the morning or upon returning from work. This is of special concern for young children who absorb a much higher percentage of lead than adults and who drink more water as a body-weight basis, especially infants dependent on formula. Also, studies have documented a high correlation between first-draw water lead levels and blood lead, indicating that first draw sampling is a reasonable surrogate for peoples exposure to corrosion by-products in drinking water. Because of this, EPA believes it is prudent to assess the likelihood of this exposure when determining if action by water systems is needed. Finally, most of the data obtained by EPA with which to select appropriate action levels and estimate treatment performance is based upon first-draw sampling, making use of this sampling protocol under the rule appropriate.

The proposed rule solicited comment on whether 1 liter or 500 ml was the appropriate sample volume. In addition, the proposal requested comment on an alternative approach of collecting a 1 liter sample and then transferring the sample to a 500 ml bottle for shipment and analysis. Many commenters supported the 1 liter volume requirement, stating that it provides a better characterization of the home plumbing system, including the faucet, and because the health effects data are based on a 1 liter daily consumption by a child. Others supported reducing the sample size to 500 ml to alleviate problems both in the distribution and pickup of samples. Others supported the alternative of collecting a 1 liter tap sample but shipping a 500 ml or 125 ml sample for analysis to decrease the shipping and laboratory storage costs. Others, suggested collecting a 125 ml sample to obtain data on lead leaching

of faucets, followed immediately by a 1-liter sample.

EPA decided to retain the 1 liter sample volume because compared to a 125 or 500 ml sample, a 1 liter sample volume provides a better representation of typical drinking water consumption for an individual and a more accurate portrayal of an individual's exposure to lead and copper in drinking water. Also, a 1 liter sample represents the lead and copper contribution from not only the faucet but also from the interior plumbing of the home. This is important when evaluating the effectiveness of corrosion control because a smaller water volume would only be representative of a small portion of the household plumbing and would not indicate if corrosion control treatment was more generally effective. EPA decided not to require a 125 ml sample followed by a 1 liter sample because of concern with the added burden of collecting another sample without any demonstrated benefits. EPA decided not to allow the alternative of collecting a 1 liter sample and transferring it to a 500 ml bottle for shipment and analysis because of continued concern with lead adhering to containers and because of potential problems with errors when transferring the sample to a smaller bottle.

e. Lead Service Line Samples. Several commenters questioned the reliability of collecting samples from lead service connection, particularly goosenecks and pigtails, from the tap using either the temperature change method or flushing a volume of water equal to that contained in pipes leading from the tap to the service connection and collecting the next 1 liter sample. They stated that the temperature change technique is a crude method with only limited application (i.e., the method is unreliable during warmer seasons and in warmer climates; unheated or cold basements with exposed plumbing would also introduce error). Others stated that it would be impossible to accurately estimate the volume of water needed to be flushed to collect a service connection sample, especially in situations where there are only pigtails or goosenecks. Finally, other commenters stated that even though direct sampling of the connection would be more accurate, it is not feasible because it could involve digging in the street, which would be costly, or in the case of tapping, could introduce fresh lead into the connection.

EPA agrees that there may be problems in collecting service connection samples and has decided to eliminate the requirement that systems

initially collect service connection samples along with first-draw samples. EPA believes that this will make sample collection easier and will allow homeowners to more easily participate in sample collection while still ensuring that systems with lead or copper problems are identified. The rule retains the requirement that homes with lead service lines be included in the targeted monitoring. Samples from these homes would have to be first flush. Data from numerous systems with lead service lines indicate that the first-draw samples are as high or higher than service line samples in the majority of systems with lead service lines (EPA, 1991b; Marcus, 1990a). For example, in Louisville, Kentucky, the 90th percentile lead level in first-draw samples was 0.013 mg/L while the 90th percentile lead level in service line samples was 0.012 mg/L. In Bennington, Vermont, the 90th percentile lead level in first-draw samples three years after installation of corrosion control treatment was 0.026 mg/L while the 90th percentile lead level in service line samples was 0.021 mg/L. In Boston, Massachusetts, the 90th percentile lead level in first-draw samples 3 years after installation of corrosion control treatment was 0.047 mg/L, while the 90th percentile lead level in service line samples was 0.038 mg/L.

Data also show that first draw samples at taps served by lead service lines are higher than those that are not served by lead service lines (see Table 10 and EPA, 1991b). Thus, it appears that contributions from lead service lines are reflected in first-draw samples. Because of this, and because first-draw sampling is logistically more practical, EPA is requiring that the action level for lead service line replacement be triggered based on first-draw samples. First-draw samples will provide an indication of whether lead levels are above a level of concern and whether lead service line replacement is warranted.

EPA continues to believe, however, that systems required to conduct a lead service line replacement program should collect service line samples to determine whether replacement of individual lines is required. EPA believes it is critical to accurately characterize the lead levels in individual service lines to avoid replacing lines unnecessarily and to avoid allowing lines that are above 0.015 mg/L to remain in the ground. For this reason, it is important that utilities carefully consider the most appropriate sampling approach for characterizing the lead levels in service lines. With the exception of multifamily structures, the

final rule allows service line samples to be collected using any one of the methods described in the following paragraphs.

EPA acknowledges that there may be problems with collecting samples using the temperature change method, especially in situations described by commenters previously or when only goosenecks or pigtails are present. EPA continues to allow the temperature change method to be used for collecting service line samples, but systems and States should be aware of the limitations of this method (to be discussed in more detail in the corrosion control guidance manual) and act accordingly. The temperature change method is only allowed in single-family structures since EPA believes that this method can provide a fairly reliable representation of the lead service line contribution to drinking water in such structures with limited plumbing connections. In multifamily dwellings or other buildings, however, the temperature change of water is not always easy to detect and cannot be used as a reliable method to isolate lead service lines.

The Agency believes that the best method for collecting service line samples in most cases is to directly sample the service line. However, direct sampling may not be possible where there is no direct access to the line; in these situations, the other two collection methods are recommended. In addition, installation of a tap directly into the service line could disturb the pipe conditions and induce additional corrosion activity due to galvanic reactions.

EPA agrees with commenters that sampling of lead goosenecks and pigtails, where no lead service line is present, is particularly problematic. Such connections are generally two feet in length and only hold approximately 200 ml of water (in contrast to lead service lines, which average 40 feet in length and can hold much larger volumes of water). Because such a small volume of water is held in these connections, it would be difficult for tap sampling to pinpoint the contribution of lead, if any, which goosenecks and pigtails make to levels at the tap. Tapping directly into a gooseneck or pigtail is not advisable because it could dislodge lead materials and, unlike lead service lines, there is generally not an accessible tap into the connection. In addition to the problems associated with monitoring lead contributions from goosenecks and pigtails, the Agency has not identified any data to indicate that such connections, independent of actual

lead service lines, contribute measurably to lead levels at the tap. All data discussed in previous sections regarding elevated lead levels in homes and in systems with lead service lines were from sites with actual lead lines rather than lead goosenecks or pigtails alone.

Because of these concerns, the final rule does not require monitoring or replacement of lead goosenecks and pigtails that are not used in conjunction with a lead service line. EPA does not believe that such locations would in fact reflect "high risk" sites where EPA anticipates elevated levels might be present and where monitoring should therefore take place. EPA has concluded that it would not be appropriate to require systems to replace lead goosenecks and pigtails which are not connected to, or are not used in conjunction with a lead service line because available information does not document that they contribute measurably to tap lead levels. However, where such connections are associated with a lead service line which is required to be replaced under the rule, systems will also be required to replace the gooseneck or pigtail connected to the line. EPA is concerned that failure to replace the gooseneck and pigtail in these instances would result in dislodged lead where the line is severed from the gooseneck or pigtail. Such an additional step also involves minimal additional cost to the system, since it is already replacing the service line itself.

f. Use of Multifamily Residences. The proposal would have allowed water systems to include apartments and other multifamily housing where such housing constitutes more than 20 percent of the housing served by the community and if these locations conformed to the targeting criteria. Several commenters supported this provision stating that including these locations may make sampling easier in locations where there are very few single-family residences.

EPA continues to believe that this provision is appropriate in areas where a large percentage (more than 20 percent) of the structures served by the system consist of multi-family housing. It is important to ascertain the exposure and effects of corrosion control on these populations where they constitute a sizable portion of the community and not simply concentrate the efforts on single-family residences.

3. Frequency and Number of Samples

The frequency and number of samples required in the proposal varied on the basis of system size. States would have been allowed to reduce the monitoring frequency and the number of samples

collected during each monitoring period for systems serving more than 3,300 people that met the action levels for 4 quarters or had not departed from the operating parameters specified by the State after implementation of a State-approved treatment plan. Systems serving fewer than 3,300 people would not have been eligible for reduced monitoring. The proposal also would have phased in monitoring over several years, depending on system size. A discussion of the phased-in monitoring requirements is included in section C(1)(c), above.

After reviewing all public comments and available data, EPA has changed the dates for beginning initial monitoring, the sampling frequencies, and the number of samples collected during each monitoring period (Tables 17 and 18). The specific changes from the proposal and the rationale for the changes are explained below.

TABLE 17.—STARTING DATES FOR MONITORING

| System size | Monitoring to begin no later than |
|--------------|-----------------------------------|
| > 50,000 | January 1, 1992. |
| 3,301-50,000 | July 1, 1992. |
| < 3,300 | July 1, 1993. |

TABLE 18.—NUMBER OF SAMPLES AND FREQUENCY OF SAMPLING FOR LEAD AND COPPER ¹

| Population | Initial/followup monitoring (Minimum # samples/6 months) | Reduced monitoring ² (Minimum # samples/year or 3 years) |
|-------------------|--|---|
| > 100,000 | 100 | 50 |
| 10,001 to 100,000 | 60 | 30 |
| 3,301 to 10,000 | 40 | 20 |
| 501 to 3,300 | 20 | 10 |
| 101 to 500 | 10 | 5 |
| < 100 | 5 | 5 |

¹ Systems are not required to conduct sampling (unless required by the State) during State review of treatment, corrosion control evaluations, or installation of corrosion control or source water treatment.

² Systems are allowed to reduce the number of samples collected and the frequency of collecting the samples to once a year if they meet the lead and copper action levels for two consecutive 6 month monitoring periods (small- and medium-sized systems only) or if they can demonstrate that they have optimized corrosion control and are maintaining the water quality parameters established by the State under § 141.82(f) (all systems). Systems are allowed to reduce the frequency of sampling to once every 3 years if they meet the lead and copper action levels for three consecutive, 1 year monitoring periods (small- and medium-sized systems only) or if they can demonstrate that they have optimized corrosion control and are maintaining the water quality parameters established by the State under § 141.82(f) for three consecutive, 1 year monitoring periods (all systems).

a. Frequency of Initial Tap Sampling (§ 141.86(c)). The proposed rule would have required systems serving more than 3,300 people to collect samples from targeted sites once every 3 months (quarterly) until the system met all action levels for at least 1 year or until the system completed implementation of a State-approved treatment plan. Systems serving between 500 and 3,000 people would have been required to collect samples from each targeted site for 1 year during July, August, or September and then repeat the sampling every 2 years. Systems serving less than 500 people would have been required to collect samples from each targeted site for 1 year during July, August, or September and then repeat the sampling every 5 years.

Several commenters agreed with the proposed requirements for frequency of sampling while others stated that the sampling frequency should be changed. They suggested sampling frequencies ranging from one sample per month, to coincide with bacteria tests, to once every 5 years. Several other commenters noted that cooperation by consumers will decrease with repeated sampling. One water system stated that, based on their experience, they can get 90 percent customer cooperation for home sampling on a one-time basis, but the participation rate drops to 50 percent if they must take repeat samples, and well below 20 percent if sampling continues. Other commenters stated that the reduced frequency of sampling for small systems puts a lesser premium on the health of residences and users of these systems, relative to the larger systems.

EPA is concerned that customer participation might drop the more frequently they are asked to repeat sampling. Therefore, the final rule requires all water systems to collect initial samples from targeted sites once every 6 months (twice a year), rather than the proposed quarterly frequencies for systems serving more than 3,300 people. EPA does not believe that requiring less frequent sampling for systems serving more than 3,300 people compromises the monitoring program because the number of samples required to be collected remains the same. The difference from the proposal is that the number of sample sites has been doubled. Doubling the number of sample sites will increase the representativeness of the sampling program while ensuring that any seasonal differences in lead and copper levels are captured by the twice a year sampling. EPA also agrees that for systems serving fewer than 3,300 people, more frequent monitoring than proposed

will provide a better indication of the lead and copper problem. Therefore, the final rule increases monitoring frequencies for these size systems from annually to twice per year. Increasing the frequency of sampling for systems serving less than 3,300 people will better ensure that these systems accurately measure the lead or copper levels in their drinking water.

b. *Monitoring During and After Completion of Corrosion Control Treatment Requirements.* Several commenters argued that systems should not be required to conduct monitoring during the period in which they are installing corrosion control treatment. EPA agrees with these comments (for the reasons discussed below) and, therefore, does not require systems to collect samples once they begin performing the corrosion control treatment requirements of the rule (i.e., recommend treatment to State, State review, installation of treatment). Systems completing the corrosion control treatment requirements are allowed to cease monitoring until after the system has installed the optimal corrosion control treatment specified by the State. EPA does not believe that it would be appropriate to require systems to perform monitoring during the initial stages of researching and installing corrosion control treatment. The initial stage in corrosion control treatment for large systems and those medium-sized systems designated by the State is the completion of corrosion control studies (see § 141.82(c)). Since these studies will generally occur in the laboratory or on a pilot-plant scale, tap monitoring would not aid the system or the State in deciding the optimal treatment for that system. For those systems not required to perform corrosion control studies, the State will approve or designate treatment for the system based upon other available information, including the initial tap monitoring results and a system's proposed treatment (see § 141.82(d)). EPA believes that the monitoring data yielded by initial tap monitoring required by the rule should provide the State adequate information to approve or designate optimal corrosion control treatment in most cases. Any State that needs additional monitoring data to decide upon optimal corrosion control treatment can require the system to provide it (see § 141.86(g)).

Additionally, the Agency does not believe that it would be appropriate to require all systems to continue conducting monitoring while the system is in the process of installing the corrosion control treatment specified by the State. Experience has shown that it

generally takes several months after treatment has been installed and adjusted for the lead and copper levels to stabilize. Therefore, after corrosion control treatment is installed, systems are required to conduct monitoring during two 6 month monitoring periods. In any case, some systems may find it advantageous, and States may require systems, to collect additional tap samples during the course of installing treatment in order to gauge the effectiveness of treatment.

Based upon the results of the follow-up monitoring conducted by systems, States will be reviewing the data and specifying the range of water quality parameter values that constitute optimal corrosion control treatment (see § 141.82(f)). The rule does not require systems to continue monitoring while States are making this determination, unless required to do so by the State, since States are in the best position to determine whether additional monitoring information would be useful.

After the State designates optimal corrosion control treatment, systems are required to continue monitoring on a biannual basis (i.e., during each 6 month monitoring period beginning on the date on which the State specifies optimal water quality parameters). Systems are required to continue this monitoring until they are eligible for reduced monitoring frequency under § 141.86(d)(4).

c. *Number of Samples.* The proposal would have required water systems to collect the following number of samples: 50 per quarter (200 per year) for systems serving more than 100,000 people; 30 per quarter (120 per year) for systems serving between 10,001 and 100,000 people; 20 per quarter (80 per year) for systems serving between 3,301 to 10,000 people; 10 per year repeated every 2 years for systems serving between 501 to 3,300; and 10 per year repeated every 5 years for systems serving less than 500 people.

Many commenters stated that they would not be able to locate enough sample sites because of difficulties in gaining access to targeted high-risk homes and because consumers would either not participate or their participation would dramatically drop if asked for repeated samples. EPA believes that water systems will be able to locate a sufficient number of tap sampling sites, especially since the final rule, as discussed previously, provides greater flexibility than the proposal in the sites that are allowed to be included in the sample pool.

Some commenters suggested that a much smaller number of samples would

indicate if a problem existed and that the large number of samples will require an excessive amount of time to schedule and collect and be too costly for small systems. Other commenters, however, believed that the number of sampling sites required was inadequate to accurately detect a lead problem, especially for small systems, and suggested that the number of samples required for all systems should be at least 30 samples per sampling period to ensure that the monitoring accurately reflects tap lead levels. One commenter argued that EPA needed to require more samples to ensure that the results would, based on statistical confidence limits, reliably predict whether the levels found in sampling accurately reflected the tap levels throughout the system.

Table 18, presented previously, lists the number and frequency of samples that are required. EPA understands commenters' concerns with the number of samples but believes there is a sound basis for requiring the specified numbers. There is a high degree of variability in lead levels between and within systems as well as between individual taps. As a result, a sufficient number of samples is required in order to be confident that the measured lead levels are accurately assessed. This contrasts with other contaminants where variability is relatively small, and large numbers of samples are not required.

EPA believes that the number of samples required in the final rule sufficiently accounts for the variability in lead and copper levels, and reflects system-wide contaminant level distributions. Where contaminant levels are highly variable, as with lead and copper, it is impossible to design a selective monitoring protocol that will reflect with complete confidence the levels throughout the entire system. By its very nature, requiring sampling at fewer than all households means that there may be some high levels that are not reflected by those houses sampled. Similarly, the greater the number of samples, the greater the degree to which variability among all households will be reflected. However, requiring sampling at every household is not feasible, and increasing the number of samples has costs in terms of identification of sampling sites as well as sampling and testing. The costs of monitoring for lead and copper are relatively high, compared to other drinking water contaminants (EPA is estimating that the typical sample collection costs for a lead and copper sample is \$20 per sample), because the majority of

samples for lead and copper must be collected in the field. Further, some water systems may not be able to take advantage of economies of scale by pooling samples when conducting analysis, because lead and copper samples must be first-draw and as such the number of samples collected each day will be small. This limits the number of samples that can be analyzed together, thus limiting the water system's ability to decrease costs. Another concern is the limits of available analytical capacity among certified laboratories.

The requirements of the final rule seek to strike a balance between the competing needs of ensuring the representativeness of sampling results and the ensuring that the sampling requirements are reasonable and implementable by public water systems. EPA has analyzed whether the number of samples required in the final rule is sufficient and is satisfied that sufficient monitoring will be conducted to reflect, with a reasonable level of confidence, the levels throughout the system (EPA 1991g). Moreover, EPA has sought to increase the degree to which the sampling will "catch" high levels in the system by requiring sampling at high-risk sites. The number of samples required by the final rule will, in EPA's judgement, sufficiently account for variability at taps while at the same time being reasonable for systems to implement.

After considering all these factors, EPA believes that the sampling scheme developed for the final rule requires sufficient sampling to take into account the variability in lead tap levels and the cost of sampling. The total number of samples per year that systems serving more than 3,300 people must collect is the same as the proposal. However, the number of sites each system must sample has doubled because, as explained above, the sampling frequency has been reduced from quarterly to once every 6 months (e.g., 200 samples are required per year (from 100 sites) for systems serving more than 100,000 people).

EPA agrees that the number of samples required for small systems in the proposal would have been inadequate to accurately characterize a lead or copper problem if it existed and has increased the number of samples for systems serving between 501 and 3,300 people from 10 per year to 40 per year (20 samples during each 6 month monitoring period). In addition, the "less than 500" system size category in the proposal has been broken into two system sizes: those serving between 100

and 501 people and those serving less than 100 people. The number of samples required for systems serving from 101 to 500 people has been increased from 10 samples per year to 20 samples per year (10 samples during each 6 month monitoring period). The number of samples required for systems serving less than 100 people has remained at 10 per year (5 per 6 month monitoring period). EPA understands commenter's concerns with the potentially high costs of sampling for small systems but believes the increased number of samples is necessary to ensure that lead and copper levels are reasonably well represented. Given the relatively high degree of variability in lead levels, collection of too few samples can result in false conclusions regarding the need for treatment. Increased sampling helps increase the likelihood that the true need for treatment is accurately characterized. For most systems, collecting more samples will be far less expensive than undertaking corrosion control and/or source water treatment, which they could otherwise be required to install based on an inappropriately small sample size.

Finally, several commenters requested clarification of the procedure for collecting samples when the system has multiple treatment plants. Commenters were concerned that they would be required to collect the required number of samples for each treatment plant, which they believed would be very expensive and time consuming. The final rule requires a system to collect the specified number of samples (see Table 18) from the entire system and not from each individual treatment plant. The system should, however, collect samples from locations that are representative of the distribution system.

d. *Reduced Monitoring* (§ 141.86(d)(4)). The proposal would have allowed States the discretion to reduce the monitoring frequency for systems serving more than 3,300 people to a minimum of one sample set per year taken during July, August, or September. Systems serving more than 100,000 people would have been required to collect 50 samples during this 3 month period, systems serving between 10,001 to 100,000 people would have been required to collect 30 samples; and systems serving between 3,301 and 10,000 would have been required to collect 20 samples. Reduced monitoring would not have been allowed for systems serving fewer than 3,300 people.

Many commenters believed that the number and frequency of samples should be reduced or totally discontinued if the action levels for lead

and copper are met. Other commenters believed that States should be given the flexibility to determine when to reduce monitoring for systems. Still others believed systems serving fewer than 3,300 people should be allowed to reduce the number and frequency of sampling. Several other commenters asked for clarification of the requirement to collect reduced samples during July, August, or September.

EPA agrees that water systems should be allowed to reduce the number of samples and frequency of sampling if certain conditions are met, but under no circumstances should a system be allowed to entirely discontinue sampling. The Agency believes that continued monitoring is required to ensure that low levels of lead and copper are maintained after installation of treatment. If levels of these contaminants increase, the water system as well as the consumer should be aware of this increase and take appropriate actions to remedy the problem.

Regarding the timing of reduced sampling, the proposal would have required that sampling occur during July, August, or September. This proposed requirement was based on studies that showed an increase in lead solubility at increased temperatures (Moore, 1973; Britton and Richards, 1981). The field data at the time of proposal were equivocal regarding whether lead levels were higher in the summer months compared to the winter. For example, the average tap lead levels in New Bedford, Massachusetts, were higher during January and March compared to July and August: 0.067 mg/L during January and March 1978, 0.034 mg/L during April and May 1978, and 0.035 mg/L during July and August 1978. In contrast, data from Chicago indicate that little change was seen in the average tap lead levels between the summer and winter months: 0.012 mg/L from October to December 1985, 0.009 mg/L from January to March 1986, 0.011 mg/L from April to June 1986, and 0.014 mg/L during July 1986. Data received since the proposal from Newport News, Virginia, indicate the average lead levels were slightly higher during July, August, and September than other periods: 0.016 mg/L from July to September 1988, 0.006 mg/L from October to December 1988, 0.007 mg/L from January to March 1989, 0.010 mg/L from April to June 1989, and 0.012 mg/L from July to September 1989 (Marcus, 1990a). Although the field data regarding the effects of temperature on tap lead levels are inconclusive, several studies indicate a potential increase in the solubility of lead at increased

temperatures. Therefore, the Agency has decided to retain the requirement that tap samples collected during reduced monitoring must be collected during the summer months. To help ensure that adequate time is available to collect samples during this period, EPA has decided to add June as an acceptable month for reduced monitoring. Requiring sample collection during this set time period should control some of the seasonal variability in lead and copper levels at the tap, which will allow more reliable comparisons of data from different years.

The final rule allows systems to reduce monitoring under two circumstances. First, small- and medium-size systems may reduce the frequency of monitoring if they meet the lead and copper action levels during each of two consecutive 6-month monitoring periods (see § 141.86(d)(4)(i)). EPA has modified this provision from the proposal, which would have required systems that met the action levels to request that the State reduce the required monitoring frequency. EPA received comments by the States generally arguing that the proposed rule would place too great a strain on limited State resources. Since small- and medium-sized systems meeting the action levels during a year of monitoring are believed to have optimized treatment and thereby are providing effective public health protection, the Agency believes that requiring State approval prior to reducing monitoring frequency would not be a constructive use of limited State resources.

The second instance in which systems may reduce monitoring frequency is where the system can demonstrate that it has maintained the range of water quality parameters reflecting optimal corrosion control treatment designated by the State during each of two 6 month monitoring periods (see § 141.86(d)(4)(ii)). Any system, including large systems, may reduce monitoring under this provision contingent upon State approval. EPA believes that State approval in this instance is appropriate because a system would be eligible for reduced monitoring even if it exceeds the lead or copper action level. EPA believes the State should review the request in order to ensure that the system has installed optimal treatment and that public health is being adequately protected.

Finally, § 141.86(d)(4)(iii) of the rule allows systems to further reduce the frequency of monitoring from annually to once every 3 years if the system

meets the criteria discussed above during 3 consecutive years of annual monitoring. This further reduction would be allowed under the same conditions discussed above (i.e., small- or medium-sized systems that meet the action level, or any size system that maintains the optimal water quality parameters and obtains approval from the State). The Agency believes that systems that meet the action levels and/or the optimal range of water quality parameters over an extended period of time should be allowed the opportunity to further reduce monitoring frequency in order to avoid incurring unnecessary monitoring costs.

e. Two-Stage Sampling Plan. EPA requested comment on an alternative sampling plan based on a double sampling scheme developed by Dodge and Romig (1959). The plan used a two-tiered approach and would have required systems to first obtain a small number of samples and then, based on the outcome of the initial sampling, the systems would have been either relieved of further sampling for that monitoring period or required to obtain additional samples during that monitoring period to determine whether the system needed to take further action.

Several commenters supported the two-tiered approach, stating that it would reduce the number of samples required to be collected, while others argued that States should be given the discretion to determine whether to use the two-tiered approach or the proposed monitoring scheme. Other commenters opposed the two-tiered approach on the grounds that the number of required samples would increase for most small systems and that the small reduction in the number of samples for large systems would not be worth the complications, which would cause implementation and enforcement problems for primacy agencies and significantly increase the burden on limited State resources.

EPA agrees with the concerns expressed by commenters opposed to the two-tiered sampling scheme and, therefore, the Agency has decided not to adopt this approach in the final rule. While the two-tiered monitoring scheme may have reduced the number of samples required for some systems, the Agency does not believe it would be wise to adopt an approach that many systems and States would find too complicated to implement and enforce.

4. Monitoring for Water Quality Parameters

The proposal would have required water systems to collect the same number of pH samples at the same

location and time as lead and copper samples, and would have required pH samples to be analyzed in the field by certified pH samplers. The proposal requested comment on allowing systems serving fewer than 3,300 people to collect pH samples and send them to a certified laboratory for analysis instead of performing the analysis in the field. The proposal also requested comments on the requirement that water systems meet a specific alkalinity value in their water. In addition, in an October 19, 1990, Federal Register notice (55 FR 42409) the Agency solicited comment on requiring water systems to measure several other water quality parameters to assist in the determination of corrosion control treatment, including calcium, conductivity, orthophosphate, and silica.

Many commenters on the 1988 proposal supported the collection of pH samples, but were concerned with the requirement that pH samples be collected at each sample site as this would preclude homeowners from assisting in the collection of lead and copper samples because of the requirement for certified pH samplers. As discussed earlier, the proposed pH action level has been eliminated along with the requirement for certified pH samplers. Systems are still required to collect pH samples (but not at sites targeted for lead and copper monitoring), as discussed below, and are required to measure pH in the field immediately upon collection of the sample for the reasons stated in section V(A)(4), above.

Several commenters on the 1988 proposal did not support an alkalinity action level but did state that alkalinity was important to consider when evaluating what corrosion control treatment to install. EPA has not included an alkalinity action level in the final rule for the reasons discussed in section IV(E)(2) of the preamble. EPA agrees with commenters that it is important to measure alkalinity to assist in determining what corrosion control treatment to install and, therefore, has included alkalinity monitoring during initial monitoring and, if a water system adjusts alkalinity as part of treatment, during subsequent monitoring.

Many commenters on the August 1988 proposal and the October 1990 notice of data availability argued that many factors influence water corrosivity and suggested that parameters, such as alkalinity and calcium, are important to consider when designing a corrosion control program. Other commenters on the October 1990 notice opposed the

requirement to collect the additional water quality parameters because this would increase sampling costs without a well-defined purpose. They suggested that the decision whether to require additional sampling should be at the discretion of the State.

EPA recognizes that many factors influence water corrosivity and because of this has decided to require all large water systems, and small and medium-sized water systems above the lead and/or copper action level, to measure for several water quality parameters, in addition to lead and copper, at each entry point to the distribution system and at taps.

EPA understands that requiring sampling of these additional parameters will increase the costs of sampling but believes this cost is small given the amount of information it will provide to water systems and States when evaluating the most appropriate corrosion control treatment to install. EPA has attempted to reduce the costs of monitoring for these parameters by not requiring small and medium-sized systems to collect any water quality parameters unless they are above the action levels. Also, water systems are required to sample for all the water quality parameters listed in § 141.87(b) only during initial monitoring. After initial monitoring, systems are only required to collect those samples that are relevant to their specific treatment.

EPA agrees that States should be given some discretion in deciding what water quality parameters are to be sampled. However, EPA believes certain parameters, such as pH, alkalinity (if adjusted as part of corrosion control), inhibitor residuals (if inhibitors are used), and calcium (if calcium carbonate stabilization is used), are critical to measure in evaluating the performance of systems and for determining compliance with the treatment requirements of the final rule.

EPA believes there are several reasons for requiring systems to measure these water quality parameters as discussed in the following paragraphs:

(1) The values for the water quality parameters will assist water systems and States in determining the most appropriate corrosion control treatment for a system. For those systems conducting corrosion control studies, the information will provide valuable insight into the corrosion control treatments to be evaluated by the system. Also, as with any study evaluating the effectiveness of alternative interventions, it is important

to establish baseline values with which to compare the various alternatives. The final rule requires systems conducting corrosion control studies to evaluate the effectiveness of the existing treatment program along with several different alternative treatments. The establishment of the baseline values will assist in this process.

For those small and medium-sized water systems that exceed the lead or copper action level but are not required to conduct corrosion control studies, the measurement of these values is critical for determining what corrosion control treatment they will install. Without this information, water systems, and eventually States evaluating whether the treatment is appropriate, would have no idea of the existing water quality conditions within the system and what treatment limitations may exist.

(2) The water quality parameters are also needed to determine compliance with the final rule. After installation of optimal corrosion control treatment, States are required to designate, and systems are required to maintain, at each entry point to the distribution system: (a) a minimum value or a range of values for pH, (b) a minimum concentration or a range of concentrations for alkalinity (if alkalinity is adjusted as part of optimal corrosion control treatment), and (c) a minimum concentration or a range of concentrations for orthophosphate or silica (if a phosphate-based or silica-based inhibitor is used, respectively).

In addition, after installation of optimal corrosion control treatment, States are required to designate, and systems are required to maintain at taps: (a) A pH of 7 or greater in all tap samples collected, (b) a minimum concentration or a range of concentrations for alkalinity (if alkalinity is adjusted as part of corrosion control), (c) a minimum concentration or a range of concentrations for orthophosphate or silica that the State determines is necessary to form a passivating film on the interior walls of the pipe (if a phosphate-based or silica-based corrosion inhibitor is used), and (d) a minimum concentration or range of concentrations of calcium measured in the field (if calcium carbonate stabilization is used as part of corrosion control).

a. *Initial Monitoring for Water Quality Parameters.* All large water systems, and those small and medium-sized systems that exceed the lead or

copper action level, are required to measure for pH, alkalinity, conductivity, temperature, and calcium at each entry point to the distribution system and at taps. These systems are also required to measure for orthophosphate if an inhibitor containing a phosphate compound is used and silica when an inhibitor containing a silicate compound is used. Systems are required to collect two samples from each entry point to the distribution system once every 6 months. The sample points should be representative of each source after treatment. Systems are required to collect two samples every 6 months from taps that are representative of the water quality throughout the distribution system taking into account the number of persons served, the different sources of water, and the different treatment methods employed by the system. Systems should attempt to collect the two samples as far apart in time as possible to capture any seasonal changes that may occur. The tap samples are not required to be collected from sites targeted for lead and copper sampling or from first-draw water. Water systems are encouraged to collect these samples from the same sites used for coliform sampling. These sites offer the advantage of being located throughout the distribution system and do not require water systems to find additional sites for collecting pH samples. Water systems are also encouraged to collect tap samples and entry point samples at the same approximate time within the monitoring period so that correlations can be drawn that are not distorted by seasonal effects.

EPA is requiring that pH and temperature be analyzed in the field at the time of sampling (see discussion in section V(A)(4)). The other measurements can be analyzed in the laboratory. The number of samples required for the water quality parameters are fewer than for lead and copper, given that these parameters do not vary within a distribution system to the same extent as lead and copper and therefore fewer samples are required to accurately characterize their distribution in a system (EPA, 1991b). The number of water quality parameter samples required to be collected in the field are shown in Table 19. For example, systems serving more than 100,000 people are required to locate 25 sites and collect two samples per site every 6 months.

TABLE 19.—NUMBER OF SITES AND SAMPLING FREQUENCY FOR WATER QUALITY PARAMETERS COLLECTED AT TAPS¹

| Population | Initial and followup monitoring (Minimum # sites/ Minimum # samples every 6 months) | Reduced monitoring (Minimum # sites/ Minimum # samples every year or every 3 years) |
|-------------------|---|---|
| > 100,000 | 25/50 | 10/20 |
| 10,001 to 100,000 | 10/20 | 7/14 |
| 3,801 to 10,000 | 3/6 | 3/6 |
| 501 to 3,300 | 2/4 | 2/4 |
| 101 to 500 | 1/2 | 1/2 |
| < 100 | 1/2 | 1/2 |

¹ Water systems are required to collect different water quality parameters depending on whether it is initial or follow-up/reduced monitoring. For initial monitoring, systems are required to measure pH, alkalinity, conductivity, water temperature, calcium, orthophosphate when an inhibitor containing a phosphate compound is used, and silica when an inhibitor containing a silicate compound is used. For followup/reduced monitoring, systems are required to measure for pH and alkalinity, calcium if calcium carbonate stabilization is used as part of corrosion control, orthophosphate when an inhibitor containing a phosphate compound is used, and silica when an inhibitor containing a silicate compound is used.

EPA believes it is important that systems measure the water quality parameters from each entry point to the distribution system and at the tap as close together in time as feasible to ensure that factors, such as changes in temperature or flow rates, do not interfere with the results. The purpose of sampling at both locations is for a system and the State to have an indication of water quality changes as water travels throughout the system. If the difference in the values between the plant and the field is small, it is a good indication that the levels for the parameters are being maintained throughout the system. On the other hand, if there is a large difference in the values or if they are volatile over time, this could indicate that the system may need to adjust its treatment to stabilize water quality or maintain higher values for parameters at the treatment plant. For example, if the pH in the water entering the distribution system is 7.8 but the average pH value in the field is only 6.8, this may require a system to raise its pH or adjust the alkalinity or calcium to provide more buffered water to reduce the fluctuations in the pH levels. Also, if a phosphate-based inhibitor is being used and there is little or no detectable phosphate residual in field measurements, this may indicate that the dosage rate for the inhibitor may need to be increased or a supplemental treatment station may need to be located in those areas that have low residuals.

b. *After Installation of Corrosion Control Treatment.* All large systems and those medium and small systems

continuing to exceed the action level after installation of corrosion control treatment must collect follow-up water quality samples within 36 months from the date the State designates the optimal corrosion control treatment to install. Systems installing the State-designated treatment are required to collect the following water quality parameters at taps twice every 6 months: pH and alkalinity, calcium if calcium carbonate stabilization is used as part of corrosion control, orthophosphate when an inhibitor containing a phosphate compound is used, and silica when an inhibitor containing a silicate compound is used. The number of samples and sampling frequency required to be collected are the same as for initial monitoring (see Table 19). EPA believes that these samples, in conjunction with the lead and copper samples, are necessary to determine the effectiveness of corrosion control treatment and to determine whether additional adjustments in treatment are necessary or feasible. States can require systems to measure for additional water quality parameters, such as conductivity, but the Agency believes the decision to measure these additional parameters is better made by the State on a case-by-case basis.

All systems are required to conduct biweekly measurements at each entry point to the distribution system for the following: (1) pH, (2) alkalinity concentration and a reading of the dosage rate of the chemical used to adjust alkalinity when alkalinity is adjusted, and (3) a reading of the dosage rate of the corrosion inhibitor if used, and the concentration of orthophosphate or silica (whichever is applicable). EPA believes requiring biweekly measurements is important to evaluate the fluctuations of these parameters and to assist in establishing the minimum values or range of values at each entry point that systems are required to maintain to be in compliance with the treatment technique (§ 141.82(f)). To reduce the burden of collecting daily measurements, EPA recommends that systems install a continuous pH monitoring device and dosage meters for alkalinity and inhibitors. The devices can be mounted to provide easy access and produce accurate and reliable results for an extended period of time.

c. *After State Specifies Optimal Water Quality Parameters.* All large systems, and those small and medium-sized systems still above the lead and/or copper action levels after follow-up monitoring are required to continue monitoring for lead and copper and for the same water quality parameters at the same locations and frequencies as

for follow-up monitoring. EPA believes it is important for systems to continue monitoring at the same frequencies for one more year after the State designates the optimal water quality parameters (except where a small or medium-size system meets the action levels) to ensure the system is maintaining the values determined to be optimal for that system.

d. *Reduced Monitoring.* As noted above, small or medium-sized system below the lead or copper action levels are not required to monitor for other water quality parameters as long as the action levels are met and may begin reduced monitoring for lead and copper after meeting the action levels for 1 year. All other systems must continue to monitor for the same water quality parameters at each entry point to the distribution system and at taps at the same frequencies, as discussed in Section (a), previously, and in § 141.87(e) of the final rule. Water systems that maintain the range of values in the field for the water quality parameters reflecting optimal corrosion control during each of two consecutive 6-month monitoring periods after the State specifies optimal corrosion control can reduce the frequency of field sampling as specified in Table 19. Water systems can further reduce the frequency of field monitoring for the optimal water quality parameters to once every 3 years if they maintain the range of values designated by the State during 3 consecutive years of monitoring.

5. Monitoring for Lead and Copper in Source Water

The proposed rule would have required water systems to sample source water as it enters the distribution system after treatment to determine compliance with the MCLs for lead and copper. As discussed earlier, the final rule does not specify MCLs for lead and copper at the entry points to the distribution system but is still requiring water systems exceeding the lead or copper action levels measured at the tap to monitor at entry points to the distribution system. The purpose of sampling at the entry point is to assist systems in designing an overall treatment plan for reducing lead and copper levels at the tap and to assist the State in determining whether source water treatment is necessary to minimize lead and copper levels at the tap. The final rule adopts the same approach as the proposal in terms of sample location and number of samples. Changes have been made to sampling frequency requirements in order to integrate sampling timing with the

treatment technique approach contained in the final rule and to make the final monitoring requirements as consistent as possible with existing protocols for other inorganic contaminants.

The proposal would have required groundwater systems to monitor annually at each entry point to the distribution system and surface water systems to monitor quarterly at each entry point to the distribution system. To reduce the number of samples required to be collected, States would have had the discretion to identify representative wells for sampling (if there is no treatment or blending) for systems with multiple wells drawing from the same aquifer. In addition, systems would have been allowed to composite samples from up to five sources. Finally, the proposal would have allowed States the discretion to allow one additional sample to be collected within 2 weeks from the date the MCLs were exceeded.

Several commenters suggested that the monitoring frequencies were excessive and that EPA should adopt the same sampling frequencies as for other inorganics (i.e., once every 3 years for groundwater systems and annually for surface water systems). EPA agrees and has adopted these sampling frequencies, as discussed below, for those systems that are above the lead or copper action levels at the tap but are not required to install source water treatment or for those systems that have installed treatment and meet the State-specified permissible levels.

Commenters generally supported the idea of reducing the number of samples required by allowing States to identify representative wells for sampling (if there is no treatment or blending) for systems with multiple wells drawing from the same aquifer. EPA has eliminated this provision in the final rule to be consistent with the monitoring requirements for the other inorganic contaminants (§ 141.23(a)(3)). The provisions in this section allow systems that blend water from different sources to reduce the number of samples by sampling at an entry point to the distribution systems after the different sources are combined.

Commenters also supported the idea of allowing composite samples from a maximum of five sampling points. The final rule gives States the discretion to reduce the number of samples that must be analyzed by allowing compositing in the laboratory of up to five samples. However, States and systems should be aware that if the lead or copper level in the composite sample indicates that one or more of the samples is greater than or equal to the MDL for lead or copper,

then each of the entry points represented in the composite sample must be resampled individually for whichever contaminant exceeded the MDL. For compositing to be allowed, the laboratory must be able to measure levels down to 0.001 mg/L for lead and 0.050 mg/L for copper.

Numerous commenters stated that EPA should allow additional samples if the initial sample is above the MCL. These commenters stated that it is unreasonable to find an entire water system in non-compliance based on one sample and that the potential for laboratory error is increased because the MCL was proposed at the PQL. Even though EPA is not promulgating MCLs for lead or copper, systems are still required to collect source water samples, and therefore the Agency believes that where results of sampling indicate an exceedance of maximum permissible source water levels established under § 141.83(b)(4), the State should be allowed to require that one additional source water sample be collected as soon as possible after the initial sample was taken (but not to exceed 2 weeks) at the same sampling point. If a State-required confirmation sample is taken for lead or copper, then the results of the initial and confirmation sample shall be averaged. In addition, States have the discretion to delete results of obvious sampling errors.

a. *Final Requirements.* The requirements regarding sample location, collection methods and the number of samples are the same as those applicable to other inorganic source water contaminants (see § 141.88(a) of the final rule, incorporating by reference the general inorganic sampling requirements of § 141.23). Systems required to collect source water samples should collect the samples at every entry point to the distribution system that is representative of each well after treatment. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. Systems that draw water from more than one source and combine the sources before distribution must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

By making the source water monitoring consistent with existing requirements for other inorganics, the Agency has sought to minimize any confusion and keep the sampling protocols for all of the inorganic contaminants regulated by EPA as

simple as possible. This approach is consistent with suggestions by commenters.

With regard to sampling frequency, the monitoring provisions in the final rule require source water monitoring under the following circumstances: (1) Initial monitoring after the system exceeds the lead or copper action level at the tap (§ 141.88(b)), (2) follow-up monitoring after the system installs source water treatment (if such treatment is required by the State) (§ 141.88(c)), (3) routine monitoring after the State specifies maximum permissible source water levels (§ 141.88(d)) or if a system is above the lead or copper action level at the tap but is not required to install source water treatment, and (4) reduced monitoring frequency for systems complying with the State-specified maximum levels (§ 141.88(e)). The Agency has structured monitoring in this way to provide the system and the State with the monitoring data necessary to make the treatment determinations called for during each step in the source water treatment requirements of the final rule. The Agency believes that requiring monitoring at the specified intervals (instead of the continuous monitoring contained in the proposed rule) will provide sufficient information on source water levels to assure that drinking water systems comply with the source water treatment requirements without imposing unnecessary monitoring requirements on systems. States retain the discretion to require any additional monitoring where it deems it necessary to designate or evaluate the system's source water treatment.

i. *Initial Monitoring.* Initial monitoring of source water is triggered if the system exceeds the lead or copper action level in tap samples. Systems that are below the action levels are not required to conduct source water sampling. Systems above the action levels are required to collect one sample from every entry point to the distribution system and make a recommendation to the State within 6 months after the action level was exceeded. Based upon the levels of lead and/or copper found during this monitoring, the State will make the determination under § 141.83 of the rule whether installation of source water treatment is required. The Agency believes that requiring collection of additional data is not warranted since source water lead and copper levels, unlike levels at the tap due to corrosion in the distribution system, are likely to be consistent over time. In cases where the State believes that more information would be useful, it may require the

system to perform additional monitoring.

ii. **Follow-up Monitoring.** If the State requires a system to install source water treatment, the rule requires the system to conduct two additional rounds of monitoring after installation of treatment is completed. The Agency does not believe that it is necessary to require monitoring during the period when treatment is being installed, since the effectiveness of treatment can only be gauged after installation is completed. However, systems may wish to conduct additional monitoring if they find this would be helpful in their design and installation of treatment.

iii. **Routine Monitoring.** Systems that are above the lead or copper action level at the tap but are not required by the State to install source water treatment, or systems where the State has specified maximum permissible source water levels, must continue source water monitoring (as long as the action level is exceeded) in accordance with § 141.88(d)(1). This provision requires systems using only groundwater sources to conduct sampling once during a 3-year "compliance period" (i.e., the compliance period which is in effect when the State specifies maximum permissible levels or makes the determination not to require source water treatment), and requires systems using surface water (or a combination of surface and groundwater) to conduct sampling annually. This monitoring is identical to that specified by the Agency for other inorganic contaminants in the "Phase II" rulemaking promulgated on January 30, 1991, (56 FR 3526). That regulation adopted a standardized monitoring framework to synchronize monitoring schedules for all systems within a 9-year compliance cycle (the first of which begins on January 1, 1993, and ends on December 31, 2001), which consists of three, 3-year compliance periods. Including the ongoing lead and copper source water monitoring frequency within the framework established for other inorganics is consistent with many commenters' recommendation that monitoring for lead and copper be consistent with existing monitoring protocols. A system that is subject to the general inorganic monitoring frequency requirements is not required to conduct source water monitoring if it meets the lead and copper action levels at the tap during the entire source water sampling period applicable to the system (i.e., during an entire compliance period for a system using only groundwater sources, and during an entire year for all other

systems). If the system exceeds the lead and copper action levels measured at the tap in some future sampling period, it is required to begin monitoring for source water again.

iv. **Reduced Monitoring.** As with other inorganics, if appropriately low levels have been maintained over an extended period of time, the Agency believes that systems should be allowed to reduce monitoring frequency accordingly. Systems become eligible for reduced source water monitoring frequency if they maintain levels below the maximum permissible concentrations specified by the State during three consecutive compliance periods (for groundwater systems) or 3 consecutive years (for surface water systems). Systems may reduce monitoring frequency to no less than once during each 9-year compliance cycle. A water system using a new source of water is not eligible for reduced monitoring until the levels are maintained below the maximum concentrations specified by the State during three consecutive monitoring periods (i.e., 3 years for groundwater systems and three compliance periods for other systems).

6. Monitoring Requirements for Non-Transient, Non-community Water Systems

a. **Source Water.** The proposed rule would have required non-transient, noncommunity water systems (NTNCWS) to monitor source water once every 5 years to determine compliance with the MCLs for lead and copper. NTNCWS were not eligible for reduced monitoring. Several commenters agreed with the requirements in the proposal for source water monitoring, while others stated that the requirements should follow the same requirements as for community water systems. EPA agrees with these latter comments and is requiring NTNCWS to follow the same sampling requirements as those for community water systems (§ 141.88). EPA believes this change is needed to provide individuals in NTNCWS the same level of assurance as those individuals in community systems that the lead and copper levels in their source water are accurately assessed. Also, the inorganic monitoring requirements for both community and NTNCWS are identical in the "Phase II" rulemaking promulgated on January 30, 1991 (56 FR 3526). The Agency believes it is important to be as consistent as possible with the monitoring requirements for other inorganic contaminants to reduce confusion and ease implementation of the final rule. This includes the

requirements for initial, followup, routine, and reduced monitoring.

b. **Corrosion By-Products.** To demonstrate compliance with the proposed treatment technique requirement, NTNCWS would have been required to monitor lead, copper, and pH at one tap annually during the months of July, August, or September in each building served by the NTNCWS. The monitored tap would have been required to be the tap most frequently used for water consumption, such as a kitchen tap. Under the proposal, NTNCWS would not have been eligible for reduced monitoring.

Many commenters stated that the monitoring requirements for NTNCWS should be the same as for a community water system. EPA agrees with these commenters. EPA believes it is important that NTNCWS accurately characterize the extent of lead or copper problems in their system and believes the sampling protocol for community systems will ensure that this is accomplished. Also, as stated above for source water, the Agency believes it is important that the final rule minimize potential confusion without compromising public health protection. Making the monitoring requirements the same for NTNCWS and community water systems simplifies the rule while insuring that the lead and copper levels are accurately characterized. The only difference between community water systems and NTNCWS is with regard to the targeting criteria for high risk sites. The criterion for NTNCWSs has two tiers instead of three because the majority of these systems are composed of buildings and not private residences.

NTNCWS are required to begin initial monitoring in accordance with Table 17 in the preamble and § 141.86(c) in the rule. The number of samples required and the frequency of sampling for NTNCWS are included in Table 18 in the preamble and § 141.86(c) in the rule. Systems should, if possible, sample at no more than one tap in each building. This will prevent oversampling at a small number of buildings that may have much lower lead or copper levels compared to other buildings in the NTNCWS.

VI. Public Notification and System Reporting and Recordkeeping Requirements

A. Introduction

Under the SDWA, public water systems are required to provide public notification for lead and/or copper under two situations. The first was a special one-time notification

requirement under section 1417(a)(2) of the SDWA. Public water systems were required to identify and provide notice to persons who may be affected by lead contamination in their drinking water, when such contamination resulted from either the use of lead in the construction materials of the system and/or corrosivity of the water supply sufficient to cause lead leaching from plumbing systems. This provision required notification even if the system was in compliance with the current MCL for lead. EPA published final regulations to implement this requirement of the SDWA on October 28, 1987 (52 FR 41534). Under those regulations, systems were required to begin providing notice to consumers by June 19, 1988.

The second type of public notification informs customers of violations of NPDWRs. On October 28, 1987, (52 FR 41534) EPA promulgated regulations to revise the public notification requirements (40 CFR 14.32). These regulations specify general notification requirements, including frequency, manner, and content of notices, and require the inclusion of EPA-specified health effects information in each public notice. The new public notification requirements divide violations into two categories (Tier 1 and Tier 2) based on the seriousness of the violations, with each tier having different public notification requirements. Tier #1 violations include violations of an MCL, a treatment technique requirement, or a variance or exemption schedule. Tier 1 violations contain mandatory health effects language specifying concisely, in nontechnical terms, the adverse health effects that may occur as a result of the violation. States and water utilities are free to add additional information to each notice, as deemed appropriate for specific situations. Community water systems with Tier 1 violations must notify the public by newspaper, mail, or hand delivery. Tier 2 violations include violating a monitoring requirement, failing to comply with a testing procedure prescribed by a NPDWR, and operating under a variance or exemption. Community water systems with Tier 2 violations are required to give newspaper notice repeated quarterly by mail or hand delivery, with additional notice required at State discretion. Non-transient, non-community systems may either notify in the same manner as CWSs or post a notice continuously.

B. Comments on Proposed Public Notification Requirements and EPA's Response

The 1988 proposal classified all violations of the lead or copper MCL or

the treatment technique requirements as Tier 1 violations. For Tier 1 violations, EPA proposed specific language that water systems would be required to deliver. Many commenters objected, stating that they have already complied with the proposed public notification requirements by providing the special one-time public notification requirements pursuant to the 1986 Amendments to the Safe Drinking Water Act and that they received little or no response to the public notice. Other commenters stated they should only be required to perform the public notification for violations of the MCL or treatment technique and not the action levels. Other commenters disagreed with the content of the lead notice stating that it is overly complex and would alarm, confuse, or otherwise elicit an adverse public reaction or would undermine PWS's credibility.

EPA believes these commenters confused the special one-time lead notification program with the mandatory public notification program for Tier 1 or Tier 2 violations. The 1988 proposal was addressing only the notification requirements for Tier 1 and Tier 2 violations. The special one-time notification requirements specified under section 1417(a)(2) of the SDWA have already been completed by most systems. Reporting Tier 1 and Tier 2 violations is required for all contaminants, not just lead and copper.

Many commenters were also confused regarding what would have constituted a violation of the proposed rule. The proposal would have required Tier 1 public notification only if the MCL or treatment technique were violated. It would not have required notification if the action levels were exceeded.

Accordingly, the final rule requires only Tier 1 notification for violations of the treatment technique requirements and not the action levels. The failure of a system to meet any of the requirements of sections § 141.81 through § 141.85, including the failure to comply with deadlines in those sections or with any requirements established by the State under those sections, is a Tier 1 violation and would require public notification in accordance with 40 CFR 141.32.

(1) Recommend the corrosion control treatment to be installed (§ 141.82(a)).

(2) Complete corrosion control studies (all large systems and small and medium-sized systems if required by the State) (§ 141.82(c)).

(3) Install State-designated corrosion control treatment (§ 141.82(e)).

(4) Maintain the State-designated water quality control parameters after

installation of corrosion control treatment (§ 141.82(f)).

(5) Recommend the source water treatment to be installed (§ 141.83(b)(1)).

(6) Install source water treatment, if required, (§ 141.83(b)(3)).

(7) Maintain the maximum permissible levels in source water (§ 141.83(b)(5)).

(8) Deliver a public education program, if required (§ 141.85).

(9) Implement a lead service line replacement program, if required (§ 141.84).

Failure to comply with the testing procedures and monitoring requirements in § 141.86, § 141.87, § 141.88, and § 141.89, are classified as Tier 2 violations. Violations of the reporting requirements (§§ 141.90 and 141.91) do not require public notification (52 FR 41534, October 28, 1987). All of the requirements of § 141.32 (the general public notification requirements, including the manner and frequency of notification) apply to violations of this final rule. The mandatory language to be included in the public notices for violations of the requirements of the lead and copper rule is specified in § 141.32.

Finally, many commenters were concerned that the content of the lead notice would alarm people and was overly complex. EPA agrees that the lead notification should not unduly alarm people, but believes that people should be aware of the potential health effects from lead. The Agency believes the language in the lead notice accurately portrays the health effects from lead, but has changed the lead notice from the proposal slightly by simplifying the language, deleting the reference to the MCL and adding information on the requirement to remove lead service lines.

C. System Reporting and Recordkeeping Requirements

The proposed rule would have required public water systems to maintain and report to the State the following information: (1) Results of all monitoring within 10 days from the end of each calendar quarter or year, whichever was applicable; (2) identification and location of sampling sites and the rationale for choosing the site; (3) progress in completing the treatment plan; (4) progress in completing the public education program; and (5) any other records, reports, or information as the Administrator deems necessary.

There were no substantial comments on the system reporting or recordkeeping requirements; therefore, the substance of the reporting and

recordkeeping requirements have not changed significantly. They have been modified in accord with the changes that have been made to the treatment section of the final rule, and are presented in greater detail to minimize confusion on the precise requirements. EPA has attempted to limit the required reporting to States to only information necessary in determining whether water systems are complying with the final rule.

1. System Reporting Requirements

The reporting requirements for all public water systems are specified in § 141.90 of the final rule. These reports are designed to document compliance with the treatment and monitoring requirements in § 141.81-141.89.

a. *Tap Monitoring.* The proposed rule would have required water systems serving more than 500 persons to report to the State the results of all required monitoring within 10 days of the end of each calendar quarter the system is in operation. Systems serving 500 or fewer persons would have been required to report the results of monitoring to the State within 10 days of the end of each calendar year. The proposal would have also required all systems to certify that the information submitted was accurate.

The final rule continues to require systems to report all the monitoring results within 10 days following the end of each applicable monitoring period, whether this is every 6 months, every year, or every 3 years. Systems are also required to calculate and report the 90th percentile lead and copper levels. The procedure for calculating the 90th percentile is included in section 141.80(c) of the rule. Reporting the 90th percentile levels will relieve the States from the burden of calculating these values from the large volume of monitoring data that will be reported and will consequently provide the States with the information regarding whether a system exceeds the action levels. In addition, the final rule requires systems to certify that each tap sample is 1 liter in volume and, to the best of their knowledge, has stood motionless in the service line or in the interior plumbing of a site for at least 6 hours. If residents collected samples, the water system must certify that they have informed those residents of the required sample collection procedures.

The Agency included these certification requirements to help ensure use of the proper sampling protocol contained in section 141.86 of the final rule. Where a system allows customers to perform tap sampling, the system obviously cannot certify as to the actual circumstances of the customer sampling. However, the Agency believes it is

important to ensure that the systems inform customers of the proper sampling methods. Therefore, the rule requires systems to certify that they have provided this information to all customers performing such sampling. As discussed previously (Section V(C)(2)), systems choosing to allow customers to perform sampling cannot challenge the sampling results based upon alleged errors by the customer in taking the samples. This provision will encourage systems to ensure the customer sampling is performed accurately and provide finality to sampling results in cases where the system has chosen to allow customers to perform the sampling.

The proposed rule would have required systems to report the identification and location of sampling sites, the first time the site is sampled, and the rationale for choosing the site. The final rule (§ 141.90(a)(1)(i)) adopts the same approach and requires all water systems to submit, along with the sampling results, the locations of each sampling site and the required criteria under which the site was selected. Any time the system samples a new location that has not been sampled previously, the system must designate the new site and explain why the sampling site has changed (e.g., inability to gain access to a previously sampled site).

The proposed rule would have also required water systems that could not identify a sufficient number of residences with the specified targeting criteria to submit a report documenting that lead pipe was never used or had been replaced and/or demonstrating that the community had effectively implemented and enforced for a minimum of 5 years a ban on lead solder or that no lead solder was ever used in the construction of residences. The final rule contains essentially the same provisions as the proposed rule in this respect.

Section 141.90(a)(2)-(4) requires community and non-transient, non-community water systems that have to select sampling sites for their targeted sampling pool from Tier 2 or Tier 3 sampling sites, to justify their selection. Valid reasons can include those which were contained in the proposed rule (e.g., that lead pipe was never used in the system and/or the lead solder ban has been effectively enforced for a minimum of 5 years, or that lead solder was never used). The final rule does not explicitly enumerate these bases because the Agency determined it was nearly impossible to identify every possible reason why a system could not collect a sufficient number of samples from Tier 1 or 2 sites.

Because systems are now required to measure certain water quality parameters, the final rule requires them to report the results of all tap samples for pH, alkalinity, and, where applicable, calcium, orthophosphate or silica, temperature, and conductivity within the first 10 days following the end of each applicable monitoring period. Systems are also required to report the results from all water quality samples collected at the entry points to the distribution system.

b. *Corrosion Control Treatment.* The proposed rule would have required systems to report their progress in completing the steps in the State-approved treatment plan. The corrosion control treatment requirements in the final rule are structured differently than the proposal, as explained earlier, and the final reporting requirements reflect the final treatment requirements. There are four major corrosion control reporting requirements for systems.

First, systems attempting to demonstrate that they have already optimized corrosion control and are therefore not required to complete the corrosion control steps in the rule must submit the information contained in § 141.81(b) (2) or (3), systems required to optimize corrosion control treatment must submit their recommendation regarding the treatment that they propose to install. Third, systems required to conduct corrosion control studies must submit the information required under § 141.82(c) (the required information is discussed in section IV(E)(2)(d) of the preamble). Fourth, systems are required to submit a letter certifying that the system has installed the State-designated corrosion control treatment.

c. *Source Water Monitoring for Lead and Copper.* The proposal would have required systems to report all source water monitoring results within 10 days after sampling was completed. The final rule adopts the same requirement. In addition, systems must report to the State if a source water sampling point has changed and the reasons for the change.

d. *Source Water Treatment for Lead and Copper.* The proposed rule did not have any reporting requirements for source water treatment. Because the final rule does not include MCLs for source water, it is necessary to include some reporting requirements to ensure that source water treatment, if required, is installed and maintained properly. There are two source water treatment reporting requirements for systems.

First, all water systems exceeding the lead or copper action level are required

to recommend in writing the source water treatment, if any, they will install and operate. Second, systems required to install source water treatment are required to submit to the State a letter certifying that the system has properly installed and is operating the State-designated source water treatment.

e. Lead Service Line Replacement.

The proposed rule did not contain any specific reporting requirements for lead service line replacement, but the preamble generally discussed the requirements of such a program. The final rule expands on these reporting requirements. A system is required to report the following information within 12 months after it exceeds the lead action level and every 12 months thereafter for Items 3 and 4 below:

(1) Demonstration in writing that it has identified the initial number of lead service lines in its distribution system at the time the replacement program begins.

(2) A schedule for replacing annually at least 7 percent of the initial number of lead service lines in its distribution system.

(3) Demonstration that it has replaced at least 7 percent of the initial number of lead service lines during the previous year in its distribution system.

(4) Demonstration that the individual lines not replaced have lead levels in the line of less than or equal to 0.015 mg/L.

The annual letter submitted to the State shall contain the following information:

(1) The number of lead service lines scheduled to be replaced during the previous year of the system's replacement schedule.

(2) The number and location of each lead service line replaced during the previous year.

(3) If measured, the water lead concentration measured and location for each lead service line sampled.

(4) The collection methods used to collect each sample.

(5) The date on which each lead service line sample was collected.

Systems that are not replacing the entire lead service line are required to describe to the State in writing the specific legal authority under which the water system claims that the lead service lines or portions of the lead service lines are beyond its control. This must be submitted to the State within 3 months after it exceeds the lead action level.

f. Public Education. The proposed rule would have required systems operating under an approved public education program to detail the system's progress in completing the public education

requirements (content, delivery, evaluation). The report was to include data indicating that as a result of the public education program, the user's knowledge about lead in drinking water enabled them to alter voluntarily their water use patterns to reduce consumption of lead-contaminated water. This information was to be collected during the evaluation stage of public education. Since the final rule does not require systems to either develop the content or evaluate the public education program, as discussed in section IV(G), the requirements to detail systems' progress in regard to the content and the evaluation of the public education program are not relevant.

The final rule does require water systems to submit a letter to the State by December 31st of each year demonstrating that the system has delivered the public education materials that meet the content and delivery requirements, as long as the system exceeds the lead action level. This list should include a list of all the newspapers, radio stations, television stations, and facilities and organizations to which the system delivered public education materials during the previous year.

2. Recordkeeping Requirements for Systems

The proposed rule required systems to maintain records of all information submitted to the State. The final rule also requires systems to retain for 12 years all sampling data and analyses, reports, surveys, letters, evaluations, schedules, State determinations, and any other information required by the rule.

VII. Variances and Exemptions

Under the Safe Drinking Water Act, States with primacy have authority to grant variances and exemptions from treatment technique requirements.

A. Variances and Exemptions From MCLs

Since the final rule does not establish an MCL for lead or copper, the rule and preamble do not address variances and exemptions from MCLs.

B. Variances From the Treatment Technique

Variances from treatment techniques may be granted to water systems that demonstrate to the State that treatment is not necessary to protect public health because of the nature of the raw water sources available to the system. Section 1415(a)(1)(B). In addition, the Administrator of EPA may grant variances from a treatment technique

upon a showing that an alternative treatment technique is as effective at reducing contaminant levels as the one promulgated by EPA. Section 1415(c)(3). The proposed rule would have allowed water systems to obtain a variance from the treatment technique requirements from the States under section 1415(a)(1)(B) if they could demonstrate that no plumbing materials containing lead had been used in the construction of any homes in the community or in any distribution facilities. Examples of these circumstances include new residential developments exclusively using plastic plumbing. EPA asked for comments on other conditions under which variances from the treatment technique might be appropriate.

Commenters generally agreed that systems should be given variances from the treatment technique if they could demonstrate that their system is lead-free. After further consideration, EPA continues to believe that because of the design of the final rule, the need for variances will be rare, and the only case where a variance from a treatment technique may be appropriate is when a system can demonstrate it is "lead-free." The Agency anticipates that few systems, however, would be able to make this demonstration, because even systems with plastic plumbing still use brass faucets, which can leach significant amounts of lead (Schock and Wagner, 1985; Schock and Neff, 1988; Gardels and Sorg, 1989; AWWSC, 1989). As discussed earlier, EPA is working to further restrict use of lead solder and to limit the amount of lead leached from fixtures and faucets, and prevent the introduction of new lead into the system. As these restrictions become effective, it may enable more systems to qualify for variances based on the lead-free demonstration. Some systems, such as newly created water systems, trailer parks or other small developments, as well as new facilities that treat their own water (e.g., factories, schools, hotels, recreation complexes) could be deemed by the State to be "lead-free." In any case, States continue to have the discretion under the SDWA to grant variances from the treatment technique.

Commenters suggested additional situations that they contended would warrant variances, including small systems subject to financial hardship, and variances from additional monitoring or treatment requirements if the action levels are met.

EPA believes many commenters were confused regarding the statutory standard for variances from treatment techniques as compared to exemptions from treatment techniques. The SDWA

does not allow variances for financial hardship, but instead provides water systems with the opportunity to apply for an exemption based on economic factors.

EPA disagrees that water systems should be allowed to receive a variance from monitoring if they meet the action levels. Systems are allowed to reduce the number of samples and frequency of sampling if they meet the action levels or can demonstrate that they have installed optimal corrosion control, but EPA does not believe it would be appropriate to allow systems to completely discontinue sampling. Because of seasonal effects or changes in other water treatment processes, corrosion control often requires adjustment to maintain stable performance. Variability in conditions could also cause a system that meets the action levels during one round of monitoring to subsequently exceed them. Continued monitoring is necessary to help systems maintain optimal corrosion control and to ensure that if a system subsequently exceeds the action level, corrective action is taken.

C. Exemptions From the Treatment Technique

Under section 1416(a), a State or EPA may grant an exemption extending deadlines for compliance with a treatment technique if it finds that (1) due to compelling factors (which may include economic factors), the water system is unable to comply with the requirement; (2) the exemption will not result in an unreasonable risk to human health; and (3) no reasonable alternative source of drinking water is available to the new system. A system granted an exemption may receive up to 3 years to install the required treatment technique if the system makes certain showings. Sections 1416(b)(2) (A) and (B). Systems with fewer than 500 service connections may obtain renewable 2 year extensions under certain conditions. Section 1416(b)(2)(C). As with variances, exemptions must include a compliance schedule and requirements for implementing necessary interim control measures.

In determining whether to grant an exemption, EPA expects the State to determine whether the facility could be consolidated with another system or whether an alternative source could be developed. Another compelling factor is the affordability of the required treatments. It is possible that very small systems may not be able to consolidate or find a low-cost treatment. EPA anticipates that States may wish to consider granting an exemption when the requisite treatment is not affordable.

Under section 1416(c)(3), States may not grant an exemption from the treatment technique if it will result in an unreasonable risk to health (URTH). The States determine the URTH level. EPA published a *Federal Register* notice on October 2, 1990, (55 FR 41205) requesting comment on "Guidance in Developing Health Criteria for Determining Unreasonable Risks to Health" (EPA, 1990n).

D. Point-of-Use (POU) and Point-of-Entry (POE) Devices and Bottled Water

The proposed rule would have given States discretion to allow the use of POU devices or bottled water to avoid an unreasonable risk to health, as a condition of receiving a variance or exemption from an MCL or treatment technique. Public water systems that used bottled water or POU devices as a condition of obtaining a variance or exemption would have been required to meet the requirements similar to those set out in § 142.62(g) and § 142.62(h), respectively. Several commenters supported the concept of allowing POU devices or bottled water as a means to avoid an unreasonable risk to health, but believed the requirements were so restrictive as to preclude the use of these methods.

Since the final rule does not contain an MCL, the use of POU/POE devices and bottled water as a condition for receiving a variance or exemption from an MCL is no longer relevant. With regard to the treatment technique contained in the final rule, EPA continues to believe that centralized corrosion control and/or source water treatment should be the primary means of reducing lead or copper levels, since these treatments most effectively reduce contaminant levels throughout the water system. EPA continues to believe, however, that States should have the discretion to require the use of POU/POE devices or bottled water, in appropriate circumstances, as a means of preventing an unreasonable risk to health through the granting of an exemption from the treatment technique.

The proposed rule would not have allowed the use of POE devices as a method to achieve compliance with the proposed rule because it was thought that (a) they do not prevent lead or copper from entering the water after it leaves the device; and (b) several of the treatment devices (reverse osmosis or ion exchange) can make water more corrosive, potentially resulting in higher lead levels at the tap.

EPA received a comment that asserted that POE devices should be allowed in certain circumstances such as where contamination enters drinking

water before the device (i.e., through source water or lead materials within the public water system's distribution system). EPA agrees and have changed the final rule to allow the use of POE devices as a condition for granting an exemption from the requirements for lead and copper in source water (§ 141.83) and lead service line replacement (§ 141.84). However, POE devices are not allowed in granting an exemption from the requirements in § 141.81 and § 141.82 because POE devices do not prevent lead or copper from entering the water as a result of corrosion of plumbing inside the building (i.e., after the device, which is installed at the entry point of the building). EPA remains concerned, however, that such devices could increase corrosion of materials inside buildings and has therefore included an additional provision in the rule that requires States to be assured that use of the device will not cause increased corrosion in buildings and thereby increase tap levels.

EPA does not believe that it would be appropriate for States to grant exemptions from the public education component of the treatment technique, since it is extremely important that the public get this information so that they can take appropriate measures to reduce their exposure if the system exceeds the action level. Moreover, EPA cannot envision why a system would be unable to comply with these requirements, the cost of which are small, and as a result be eligible for an exemption under the statutory standard in § 1416(a).

The use of bottled water may be especially relevant for very small systems (i.e., systems with less than 500 connections), where extensions may be granted for one or more 2-year periods and where bottled water or POU/POE devices protecting all users might be practicable. Public water systems that use bottled water or POU devices as a condition of obtaining an exemption are required to meet the requirements set out in § 142.62(f) and § 141.62(g). Public water systems that use POE devices as a condition for obtaining an exemption from the requirements in § 141.83 or § 141.84 are required to meet the requirements set out in § 141.62(h). EPA does not agree with some commenters who argued that the conditions for using bottled water and POU/POE devices are overly restrictive. The requirements in § 142.62(f) and § 141.62(g) are intended to ensure that use of these alternatives will continue to protect public health and to provide water of equivalent quality to that would be provided by a

traditional well-operated central treatment facility.

VIII. State Implementation (40 CFR Part 142)

Section 1413 of the Safe Drinking Water Act establishes requirements that a State must meet to have primary enforcement responsibility for public water systems ("primacy"). These include (1) adopting drinking water regulations no less stringent than the NPDWRs in effect under sections 1412(a) and 1412(b) of the Act; (2) adopting and implementing adequate procedures for enforcement; (3) keeping records and making reports available with respect to its activities as EPA may require by regulation; (4) issuing variances and exemptions (if allowed at all by the State) under conditions no less stringent than allowed by sections 1415 and 1416; and (5) adopting and being capable of implementing an adequate plan for the provision of safe drinking water under emergency situations.

40 CFR part 142 sets out the specific program implementation requirements for States to obtain primacy for the public water supply supervision (PWSS) program, as authorized under Section 1413 of the SDWA. Fifty-four out of 57 jurisdictions have applied for and received primary enforcement responsibility for this program. On December 20, 1989, EPA promulgated revisions to 40 CFR part 142 (54 FR 52126). The revisions established procedures and deadlines for: State submission of program changes; EPA review and approval or disapproval of State program changes; and the actions to be taken if States with primacy do not adopt new requirements pursuant to the schedule identified in the rule. The revision also changed the frequency of some State reporting requirements from annually to quarterly.

In addition to adopting the basic primacy requirements, States may be required to adopt special primacy provisions pertaining to a specific regulation. These regulation-specific provisions may be necessary where implementation of the NPDWR involves activities beyond those in the generic rule. States are required to include these regulation-specific provisions in an application for approval of their program revisions. The revisions to the State primacy requirements discussed in the December 20, 1989, notice apply to the final lead and copper rule, along with the special primacy requirements outlined below.

A. State Recordkeeping Requirements (§ 142.14)

The proposal would have required States to retain records of the following:

(1) Analytical results of tests, measurements and analyses to determine compliance, set forth in a form facilitating comparison with applicable operating parameters for source water treatment and corrosion control.

(2) Any State approvals, including approvals of treatment plans and the reasons for the treatment plans.

(3) Systems that have reduced their monitoring frequency for compliance with the MCLs and/or action levels.

(4) Systems required to increase the frequency of their monitoring and the new frequency of that monitoring.

(5) Determinations that systems have minimized the corrosivity of their water and the evidence supporting this determination, and the final approved operating parameters.

(6) Evaluations of public education programs and of any determination that a system is required to modify its public education program.

The majority of commenters recommended that the recordkeeping requirements be substantially reduced or eliminated. EPA disagrees. The Agency believes that the recordkeeping requirements in the proposal are essential for an effective State program and to facilitate effective Federal overview of State programs. The records document the progress of systems in complying with the rule and document the State determinations that are crucial for the effective implementation of the final rule. The recordkeeping requirements have been changed slightly to conform to the changes to the proposed part 141 requirements. Specifically, the final rule requires States to retain records of the most recent decision, determination, or designation that they have issued for the following:

(1) Records of the currently applicable or most recent State decisions, including all supporting information and an explanation of the technical basis for each decision, made under the following provisions of 40 CFR part 141, subpart I for the control of lead and copper.

Section 141.82(b)—Decisions to require water systems to conduct corrosion control treatment studies.

—Section 141.82(d)—Designation of optimal corrosion control treatment.

—Section 141.82(f)—Designation of optimal water quality parameters.

—Section 141.82(h)—Decisions to modify a public water system's

optimal corrosion control treatment or water quality parameters.

—Section 141.83(b)(2)—Determinations of source water treatment;

—Section 141.83(b)(4)—Designations of maximum permissible lead and copper concentrations in source water.

—Section 141.84(e)—Determinations that a system does not control the entire lead service line.

—Section 141.84(f)—Determinations establishing a shorter lead service line replacement schedule than required by § 141.84.

(2) Records of reports and any other information submitted by water systems under § 141.90.

(3) Records of State activities and the results verifying compliance with State determinations issued under §§ 141.82(f), 141.82(h), 141.83(b)(2), and 141.83(b)(4) and compliance with lead service line replacement schedules under § 141.84.

(4) Records of each system's currently applicable or most recently designated monitoring requirements. States are required to maintain the records in §§ 142.14(d)(8)(i) through 142.14(d)(8)(viii) until a new decision, determination, or designation has been issued.

EPA believes that it is important to retain records of the most recent monitoring results, because monitoring results are essential to Federal overview functions, such as onsite program management audits and data management verification efforts. The requirements that States provide documentation on the technical basis for each determination is essential to assist EPA compliance tracking systems and in coordinating technical assistance to States.

States are required to keep all records and reports and any other information submitted by public water systems pursuant to § 141.90 along with records of State activities to verify compliance with the water quality parameters issued under §§ 141.82(f), 141.82(h), 141.83(b)(2), and 141.83(b)(4) and compliance with lead service line replacement schedules under § 141.84. These records are also essential to Federal overview and verification of State program compliance status reports. Finally, the rule deletes the requirement to maintain records of State evaluations of public education programs, because a record of program violations, including violations of public education requirements, is the only aspect of public education needed by EPA in its overview role and that is

addressed in the generic violations reporting requirements.

B. State Reporting Requirements
(§ 142.15)

The proposal would have added to basic State reporting requirements under the primacy rule (54 FR 52126) special requirements to provide quarterly lists of systems that:

- (1) Were allowed to reduce their monitoring frequency.
- (2) Were required to increase their monitoring frequency.
- (3) Have demonstrated to the State that an insufficient number of residences were available for tap sampling.
- (4) Exceeded one or more action level(s) and the level(s) exceeded.
- (5) Received State approval for a corrosion control treatment plan, or have received a treatment plan from the State.
- (6) Successfully demonstrated that they have minimized the corrosivity of their water and the new operating parameters with which the system must comply.
- (7) Results of any evaluations of public education programs.

The majority of commenters claimed that the number of reports to be sent to EPA was excessive and should be either reduced or eliminated. One commenter suggested that the list of reports should be reduced to systems exceeding an action level and systems that have minimized corrosivity of their water.

EPA's role in State program oversight is to assure that States are generally managing their primacy responsibilities effectively. The overview process entails periodic reporting by States of basic program information and annual onsite management audits of State performance. The general primacy reporting provisions apply to all NPDWRs and include requirements to report violations of NPDWRs, enforcement actions against those violations, the issuance of variances and exemptions and a periodic summary of their status, and changes to the State inventory of public water systems. The program management audits include reviewing a sample of State case files and interviews with program managers and operations personnel at all levels. Information is obtained during these annual audits, which might otherwise need to be reported.

After reviewing its information needs and in response to public comments, EPA has determined that, except for several reporting requirements discussed below, the basic reporting requirements of the primacy rule (54 FR 52126) and program management audits

summarized previously are generally sufficient for purposes of routine program oversight. Accordingly, the Agency has deleted the first, second, and third reporting requirements described above, but has retained the remainder of the requirements from the proposal, though slightly modified, along with additional reporting requirements to conform to the changes in the Section 141 requirements from the proposal. The first reporting requirement is not necessary because the final rule establishes the minimum monitoring frequencies for systems conducting reduced monitoring. The second reporting requirement is not needed because the only situation that would have required increased monitoring under the proposed rule was when systems violated an MCL. Since the MCLs have been eliminated in the final rule, the need for this requirement is no longer necessary. The third reporting requirement is not needed because this information can be obtained during annual onsite audits of State programs. Finally, EPA has dropped the requirement for the State to report the results of evaluations of public education programs because the final rule does not include a requirement for systems to evaluate the effectiveness of such a program, for the reasons discussed in Section IV(G)(3).

States are required to report quarterly, through the Federal Reporting Data System (FRDS), the name and PWS identification number of each public water system:

- (1) That exceeds the lead and copper action levels and the date upon which the exceedance occurred.
- (2) That is required to complete the corrosion control evaluations specified in § 141.82(c) and the date the State received the results of the evaluations from each system.
- (3) For which the State has designated optimal corrosion control treatment, the date of the determination, and each system that has completed installation of treatment.
- (4) For which the State has designated optimal water quality parameters as required in § 141.82(f) and the date of the determination.
- (5) For which the State has required to install source water treatment under § 141.83(b)(2), the date of the determination, and each system that has completed installation of treatment.
- (6) For which the State has specified maximum permissible source water levels under § 141.83(b)(4).
- (7) That is required to begin replacing their lead service lines as specified in § 141.84 and the systems that reported

compliance with their replacement schedule under § 141.90(e)(2).

Because the success of this rule depends largely on the States' timely review and approval of corrosion control and/or source water treatment and operating parameters for systems, it is important for EPA to know when the State is having problems meeting the time frames for issuing those decisions. The purpose of these seven special reports is to provide timely tracking of corrosion control implementation by identifying, at each step of the treatment implementation process, which systems have met the implementation deadlines. Without these special reports, EPA would be unable to routinely track the rule's implementation.

C. Special State Primacy Requirements
(§ 142.16)

The proposed rule would have required State program revision applications to contain the text of the State statute or regulation describing the procedures and criteria each State would use to:

- (1) Determine the increased monitoring frequency with which a system must monitor, including the frequency after a system has exceeded the lead or copper MCL, and to include a procedure for notifying the system of the new monitoring requirements.
 - (2) Specify the elements that must be included in a materials evaluation to identify monitoring locations and specify how a system can demonstrate to the State that sufficient residences with the required characteristics for monitoring are not available.
 - (3) Evaluate treatment plans submitted by systems serving more than 3,300 persons to develop treatment plans for small systems (serving fewer than 3,300 persons), to approve treatment plans, and to evaluate treatment and public education performed by systems under the treatment plans.
 - (4) Determine that corrosivity has been minimized if the system is still not meeting the action levels after installing or improving treatment and a method of informing the system of its new approved operating parameters.
 - (5) Evaluate data submitted by a system on the effectiveness of its public education program and to determine whether the system must modify subsequent public education efforts.
 - (6) Provide PWSs serving 3,300 or fewer persons with treatment plans.
- Section 142.19(c)(1) of the proposed rule was incorrect. The Section should have read " * * * determining increased monitoring frequency (in accordance with § 141.86(c)(6) of this chapter)

* * * instead of " * * * determining increased monitoring frequency (in accordance with § 141.86(c)(4) and/or § 141.86(d)(4) of this chapter)." Section 141.86(c)(4) of the proposal pertained to reduced monitoring frequency if no violation of the MCL had occurred within the last 2 years, whereas § 141.86(c)(6) dealt with systems performing increased monitoring if they were in violation of the MCL. EPA's intention was to require States to have procedures or criteria for determining the increased monitoring frequency required of systems violating the MCLs because they were given flexibility to establish these frequencies. The Agency did not believe it was necessary to require States to have criteria or procedures for determining reduced monitoring as EPA established the monitoring frequencies that States, at a minimum, must follow. In addition, § 141.86(d)(4) of the proposed rule addressed reduced monitoring from the treatment technique portion of the rule. Again, the Agency did not believe it was necessary that the criteria or procedures for reducing monitoring were necessary because the rule established the minimum frequencies that systems must monitor for reduced monitoring.

Several commenters objected to requiring States to include specific procedures and criteria in statutes or rules. They proposed that States incorporate the procedures and criteria in guidance, which could still be approved by EPA. Other commenters stated that the special primacy requirements, in combination with the proposed primacy rule (now final), would be overly burdensome and impractical.

EPA agrees with commenters that it would impose unnecessary administrative burdens on States to require that criteria and procedures submitted with the primacy application be in the form of State statutes and/or regulations. The purpose of the special primacy requirements in § 142.16 of the final rule is to ensure that States implement the treatment technique requirements consistent with the requirements of the rule. EPA can exercise this oversight function equally effectively if the State's criteria and procedures are in the form of guidance as opposed to regulatory or statutory provisions. The Agency plans to review State submissions to ensure that they properly follow the requirements of the regulation. If a State subsequently fails to implement its program in accordance with the criteria and procedures upon which the Agency approved primacy to implement the lead and copper rule,

then the Agency can take appropriate action under its primacy regulations. Requiring States to adopt criteria and procedures by statute and regulation, therefore, would not advance the effectiveness of EPA oversight, while it would impose substantial additional burden upon States to obtain approval of authority to administer the lead and copper rule. Finally, for States that have not obtained primacy (Wyoming, Indiana), the Agency plans to make case-by-case treatment determinations based upon the regulatory provisions of part 141 as well as guidance documents discussed in section (IV)(E). Since the Agency will not be adopting criteria and procedures for implementing this rule in the form of regulations, the Agency does not believe that it is necessary or appropriate to require States to do so.

EPA has modified the special primacy requirements based on public comments and to conform to the changes in Part 141 from the proposed rule. The rule eliminates the proposed requirements for States to specify the procedures and criteria to determine the frequency with which a system must monitor after a system has exceeded the MCL, because the final rule does not include an MCL. EPA has also deleted the requirement for States to describe the elements of a materials evaluation and the method by which systems must demonstrate an insufficient number of residences with the required characteristics for monitoring, because the rule provides sufficient specification for water systems on the criteria to be followed in locating appropriate monitoring sites and the procedures for demonstrating why they are unable to locate a sufficient number of Tier 1 targeted sites. Finally, because the final rule does not include a requirement for systems to evaluate the effectiveness of their public education program, EPA has dropped the requirement that States provide procedures and criteria for evaluating data submitted by systems on the effectiveness of public education and determining if the system must modify subsequent public education efforts.

EPA believes that some special primacy requirements are needed to ensure the effectiveness of State programs. These requirements are especially important for lead and copper, since States are given discretion to make system-specific determinations regarding corrosion control and source water treatment. Therefore, the other requirements in the proposal have been retained, though slightly modified, to conform to the changes that have been made to Part 141 requirements in the proposal.

An application for approval of a State's program revisions must include a description of how the State will accomplish the following program requirements:

(1) Sections 141.82(d), 141.82(f), and 141.82(h)—Designating optimal corrosion control treatments, optimal water quality parameters, and modifications.

(2) Sections 141.83(b)(2) and 141.83(b)(4)—Designating source water treatments, maximum permissible source water concentrations of lead and copper, and modifications.

(3) Section 141.90(e)—Verifying compliance with lead service line replacement schedules and the water systems' demonstrations of limited control over lead service lines.

These procedures and criteria are methods of program implementation, which apply directly to the State, and are not enforceable provisions of the NPDWR. They represent conditions of State primacy, upon approval by EPA.

D. EPA Review of State Determinations (§ 142.19)

An October 19, 1990, Federal Register notice (55 FR 42409) requested comment on a procedure that would have given EPA the authority to review State determinations of what constitutes optimal corrosion control and source water treatment under limited circumstances. EPA Regional Administrators would have been authorized to rescind State treatment determinations and issue new or revised determinations with which the system must comply where (1) a State had failed to specify treatment requirements by deadlines specified in the regulation, (2) the Regional Administrator determined that a State had seriously abused its discretion in a substantial number of cases or in cases affecting a substantial population, or (3) EPA concluded that the technical aspects of a State's determination would be indefensible in an expected Federal enforcement action taken against a system. In each case, the Regional Administrator would have been required to provide an opportunity for the State, the affected system(s), and the public to review and comment upon EPA's proposed decision. EPA would have exercised this authority only where a State could not demonstrate that its determination(s) is(are) reasonable, based upon the provisions of the approved State program.

Commenters raised several objections to this proposal including the following (1) the provision would encourage EPA Regional Offices to become involved in activities that are part of State primacy.

(2) State resources would be diverted from program implementation to respond to EPA rescission notices, (3) the provision would put a burden of proof on States to defend their decisions against a subjective standard of reasonableness, (4) water systems that had already installed treatment could be required to adjust or install a different treatment that could be expensive and time consuming, (5) there would be conflict in implementation and enforcement between State determinations and EPA-revised determinations, and (6) EPA determinations to overturn State decisions should occur immediately following issuance of the State determination.

1. Current Regulatory Provisions Relating to EPA Review of State Decisions

Under the SDWA, States may grant variances to National Primary Drinking Water Regulations if water systems can meet certain conditions described in section 1415(1). To assure that States exercise the discretion within the limits of section 1415(a)(1)(F), EPA is authorized to revoke State issued variances and to reissue new variances, based on a finding that the State has abused its discretion in a substantial number of instances. EPA also conducts annual program management audits of each State program and may recommend adjustments to a State's program operations based on the results of that audit.

The Surface Water Treatment Rule (54 FR 27486) provides States with discretion in deciding which systems are required to install filtration treatment and establishing compliance schedules for these systems. To assure that States apply the decision criteria as described by the rule, § 142.80 establishes a process in which EPA can review State decisions and § 142.81 establishes a procedure for EPA to revoke State decisions and issue modified decisions, based on a finding that the State has abused its discretion. The "Phase II" rule (56 FR 3526) provides States with discretion based on a vulnerability assessment to grant waivers allowing water systems to reduce monitoring under the Standardized Monitoring Framework. To assure that States apply the waiver decision criteria as required by the regulation and as described in their federally approved primacy revision application, § 142.16(f) establishes a procedure for EPA to rescind State monitoring waiver determinations and require the affected systems to return to the uniform monitoring requirements.

The purpose of these procedures is also to provide EPA the option of taking corrective action, short of primacy withdrawal, where EPA believes the State program has abused the discretionary powers provided by EPA in specific regulations.

2. Response to Comments on October 19, 1990, Federal Register Notice

EPA understands commenters' concern with the Agency becoming unnecessarily involved with State decisions but believes EPA will rarely use this review procedure and that the availability of the procedure will not encourage Regional Offices to constantly question State decisions. EPA does not foresee reviewing State determinations unless the State decisions are unreasonable or if the State fails to make a credible demonstration that the decision was correct. States will be required to show that their designated application of the treatment technique is reasonable for the circumstances of the system to which it has been issued on the basis of the data and recommendations submitted by the system. So long as a State can make this demonstration, EPA will not exercise discretionary authority to review it. Although State resources will be diverted from other activities when a rescission notice is issued, EPA believes that the State resource diversion should rarely occur and in the appropriate cases, would be necessary to assure proper implementation of this rule.

EPA does not envision requiring systems to spend large amounts of resources to modify the State-approved/designated treatment or install entirely new treatment. The review provisions are mainly for when a State has failed to specify treatment requirements by the deadlines in the final rule or when State determinations on the appropriate treatment clearly fail to implement regulatory requirements. As noted above, if a State's application of the treatment technique is reasonable, EPA does not envision attempting to improve it. Review of State decisions will most likely occur when a backlog of determinations occur (i.e., a significant number of determinations have not been made within the regulatory time frames). Any Federal treatment decision will be made taking into account the existing treatment practices of a system.

EPA recognizes that different treatment decisions issued by States and Regional Administrators could confuse an individual water system as to which requirements must be met. Because of this potential ambiguity, the final order issued by the Regional

Administrator will supersede any inconsistent requirements established by the State with regard to the NPDWRs for lead and copper. In other words, the decision by the Regional Administrator on either the appropriate corrosion control or source water treatment will constitute the requirements of the NPDWRs for lead and/or copper until such time as the Regional Administrator issues a new order. The State primacy agency will still be responsible for all aspects of program implementation and enforcement, including the Regional Administrator's designated application of a treatment technique.

Several commenters suggested limiting the period of review and rescission to avoid wasted investments and confusion on the part of affected water systems. EPA agrees partially. The Agency believes it is impractical to limit the time required for initial review of the State determinations, because EPA will generally review State treatment decisions during the annual review procedure. Further, program guidance will instruct the Regional Administrators to encourage State administrators to consult with them regularly on problem corrosion control issues to resolve issues before they progress into formal EPA reviews. EPA does agree, however, that once the review process begins, a time limit within which EPA is required to act is warranted. The final rule requires the Regional Administrator to issue a final review order to rescind a State decision within 120 days after issuance of the proposed rescission order. This time period may be extended only for good cause.

Finally, the Regional Administrator and the State will have time to consult on a proposed rescission before EPA's final decision is issued. EPA guidance will instruct the Regional Administrators to initiate action only in those cases where the State determination(s) is(are) unwarranted and incorrect and to resolve the issues through negotiation if possible. Since the Regional Administrators will make every effort to reach an accord with State agencies, EPA believes that there will be few instances in which a Regional Administrator actually overturns a State decision.

3. Requirements for EPA Review of State Decisions on Corrosion Control and Source Water Treatment

Because the final rule provides States with discretion in designating the appropriate corrosion control and source water treatment, EPA wants to assure that State determinations fall

within the guidelines of the treatment technique. Consequently, the final requirements for EPA review of State decisions are basically unchanged from the October 19, 1990, proposal. Section 142.19 establishes a process for EPA to review and, if necessary, issue Federal corrosion control and source water treatment determinations, based on one of the three findings in Section 141.19(a).

a. *Proposed Review of State Determinations (§ 142.19(c))*. If the Regional Administrator finds that review of a State determination is warranted, he/she should issue a proposed review order containing the material cited in § 142.19(c)(1), provide notice of the proposal to the affected parties by publishing a copy of the proposed order in a newspaper of general circulation in the affected communities (§ 142.19(c)(2)(ii)), and mailing the proposed order to the affected water system(s) (142.19(c)(2)(i)). The Regional Administrator should also make available for public inspection all information submitted by the State to EPA and all other information or data used by EPA in developing the proposed order (§ 142.19(3)). EPA believes that this procedure is needed to ensure that all interested parties are given an opportunity to review all the pertinent information and to provide comments.

b. *Final Review Order (§ 142.19(d))*.

Based upon a review of all information obtained on the proposed review order, including public comments, the Regional Administrator is required to issue a final review order within 120 days after issuance of the proposed order. EPA believes that 120 days are needed to provide for meaningful State and public input and to adequately evaluate all the public comments and develop a final order. In some circumstances, it may be necessary to extend this time period. Thus, the rule provides that it can be extended for good cause.

The final order should contain a complete record of all the information supporting the determination, including all public comments and responses to those comments and any new points raised or new material supplied during the public comment period. The notice of the final order must be sent to the affected system(s), the State, and all parties who commented on the proposed order. As stated above, the final order from the Regional Administrator supersedes any inconsistent requirements established by the State with regard to the NPDWRs for lead and

copper and cannot be less stringent than those imposed by the State.

IX. Review by the Science Advisory and National Drinking Water Advisory Council

As required by Section 1412 (d) and (e) of the SDWA, EPA consulted with the National Drinking Water Advisory Council (NDWAC) and requested comments from EPA's Science Advisory Board (SAB) in the course of developing these MCLGs and NPDWRs. The NDWAC met several times during development of the final rule and endorsed the general approach adopted by EPA. SAB met on June 2 and 3, 1988, in Cincinnati, Ohio, to review the proposed rule. The SAB's comments have been considered and incorporated into the final rule together with the public comments received during the comment period. In addition, the SAB reviewed the data on the carcinogenicity of lead and submitted a report to the EPA Administrator on November 21, 1989 (EPA, 1989b). The report agreed with the Agency determination that lead was a Group B2 (probable) human carcinogen.

X. Impact of This Regulation

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and therefore subject to the requirement of performing a Regulatory Impact Analysis (RIA). This action is a major regulatory action, because it will have a major financial impact on the regulated community (i.e., more than \$100 million per year). Therefore, EPA completed an RIA that is available for review as part of the record for this rulemaking (EPA, 1991a). This regulation has been reviewed by the Office of Management and Budget, as required by Executive Order 12291.

1. Costs.

The proposal included estimated costs associated with treatment of source water and corrosion by-products, monitoring, public education, and State implementation. Numerous commenters argued that EPA's cost estimates were inaccurate and that EPA greatly underestimated the potential financial burden on water systems and their customers. Numerous water systems commented that they will not be able to raise the needed revenue to comply with the proposed regulations because of high unemployment in the area and/or a high proportion of elderly and/or poor people on fixed incomes. They stated that they

will either be forced out of business or have to raise water rates beyond the means of their customers. Other commenters claimed that the proposed regulation was not cost effective, stating that the rule would have a significant impact on water systems in terms of personnel and financial resources and would result in a minimal improvement in water quality and health.

In response to comments on the proposed rule, EPA made several changes in its analytical methodology which resulted in increased compliance cost estimates. These changes are highlighted below in the discussion of the individual components of the rule; a complete discussion on the changes is included in the RIA completed for the final rule (EPA, 1991a). Table 20 summarizes the estimated costs of the final rule. EPA understands commenters' concern with the potential financial burdens, especially for small systems and those with customers on fixed incomes, but believes the costs associated with the rule are reasonable. The Agency has reduced the costs of this regulation from the proposal by including the following provisions in the final rule.

1. Systems are only required to monitor source water if they are above the lead or copper action levels. Also, the source water monitoring has been coordinated, whenever possible, with monitoring for other inorganic contaminants.

2. Source water treatment is only necessary for those systems above the action levels at the tap and if treatment is deemed necessary by the State to reduce lead and/or copper below the action levels.

3. The initial tap monitoring frequency has been reduced from four times a year to twice a year.

4. pH and alkalinity action levels are not included in the final rule.

5. Systems are not required to develop their own public education materials or evaluate public education program as would have been required in the proposed rule.

6. The criteria for selecting sampling sites are more flexible than the proposal (i.e., homeowners can collect samples; sampling is allowed at nonresidential sites; minimum standing time has been reduced to 6 hours; and the requirement to collect samples from the ends of the distribution system has been eliminated).

7. Implementation of monitoring and treatment will be phased in over several years.

Table 20.—Summary Cost of Impacts of Final Lead and Copper Treatment Requirements (EPA, 1991a)

| | National Costs (\$M) | | | Average Annual Cost per family (\$/year) by System Size (people served) | | | |
|---|-------------------------|-------------------|--------------|---|---------|---------|-----|
| | No. of systems affected | Total capital | Total annual | 25-100 | 1K-3.3K | 50K-75K | <1M |
| Source water ¹ | 880 | 450..... | 90 | 1,250 | 118 | 19 | 11 |
| Corrosion control..... | 40,000 | 990..... | 220 | 217 | 16 | 3 | <1 |
| Lead line ² replacement..... | 8,300 | 1,500-6,250..... | 80-370 | 18-46 | 3-6 | 1-3 | 4-9 |
| Public education ³ | 40,000 | | 30 | 2 | <1 | <1 | <1 |
| State implementation..... | | 50 (initial)..... | 40 | | | | |
| Monitoring ⁴ | | | | | | | |
| —Source water..... | 40,000 | | <1 | <1 | <1 | <1 | <1 |
| —Corrosion control..... | 79,000 | | 27 | 9 | <1 | <1 | <1 |
| —Lead line replacement..... | 8,300 | | 12 | 10 | <1 | <1 | <1 |

Costs have been rounded to the nearest significant figure.

¹ Costs assume all systems with lead levels greater than 0.005 mg/L and/or copper levels greater than 1.3 mg/L in source water will be required to complete source water treatment. (see RIA for complete discussion)

² Range in costs reflect uncertainty in the number of lines that will be removed and costs for replacing an individual line (see RIA and EPA, 1991(d) for detailed discussion).

³ Household public education costs have been rounded to the nearest dollar.

⁴ Monitoring costs have been rounded to the nearest dollar.

a. *Source Water Treatment Costs.* The proposal estimated that about 950 systems would have been required to treat their source water to reduce lead and copper levels below the proposed MCLs of 0.005 mg/L for lead and 1.3 mg/L for copper. The capital cost of treatment was estimated at \$350 million with an annualized cost of \$60 million (EPA, 19881). These cost estimates were based on an analysis of the NIRS data (EPA, 1988a). Commenters did not provide any substantive comments on revising these cost estimates.

Based on a reanalysis of the NIRS data (EPA, 1990b, 1991a) in conjunction with the NOMS Survey (EPA, 1980), EPA now estimates that approximately 200 to 900 systems will be required to treat their source water at a national capital cost of between \$96 to \$447 million, total annualized national cost of between \$17 and \$94 million, and average annual household costs ranging from less than \$10 to over \$1,200, depending on system size. The reanalysis of the NIRS data was included in an October 19, 1990, Federal Register notice (55 FR 42409). EPA received no comments on the reanalysis.

The range of costs for source water treatment reflects the structure of the final rule, which allows States the discretion to determine if source water treatment is necessary. The upper bound costs and number of systems affected assume that States require all systems to install source water treatment if their lead levels are above 0.005 mg/L or copper levels are above 1.3 mg/L in source water. The lower bound costs and number of systems affected assumes that States require all systems to install source water treatment if their lead levels in source water are above 0.015 mg/L or copper levels are above 1.3 mg/L.

b. *Corrosion Control Treatment Costs.* The proposed rule estimated that about 53,000 systems would be expected to incur costs associated with corrosion control treatment (this included systems required to install treatment because they exceeded the lead, copper, or pH action level). The total capital cost for corrosion control treatment was estimated to be \$630 million and the annualized cost was estimated at about \$210 million (EPA, 19881). Several commenters submitted information on treatment costs for their systems. Unfortunately, the majority of these systems did not provide sufficient detail on critical elements, such as system design, flow rate, or chemical dosages, which would enable EPA to compare the commenters' asserted costs with EPA's or to modify the Agency's cost models. The treatment costs from the few systems that did supply sufficient information generally supported EPA's estimates of treatment costs. Several commenters stated that the original cost projections were underestimated because they did not include costs for maintenance and repair of clogged lines and increased pumping costs due to excessive scale formation due to excessive calcium carbonate precipitation associated with the proposed requirement for pH 8. Other commenters believed that the costs were underestimated because the costs of other treatments that would be needed as a result of changes in water chemistry, such as removal of TTHM precursors and iron and manganese removal, were not included.

The proposed rule did not require systems to raise their pH above 8 if they could demonstrate that it would cause precipitation problems. This demonstration, however, would have required water systems to spend

significant resources to demonstrate why raising the pH would cause precipitation problems even though the system may not have had a lead or copper problem. For this reason and for others discussed in section IV(2)(a) of the preamble, EPA has eliminated the pH action level. The Agency believes that eliminating the pH action level will reduce the likelihood of increased clogging of lines and scaling because systems are only required to raise their pH if they have a documented lead or copper problem. Also, the final rule requires systems and States to consider the effects of implementing corrosion control treatment on other water quality treatment processes when determining the most appropriate treatment strategy. EPA believes that the majority of systems and States are aware that excessive calcium carbonate precipitation can not only cause clogged pipes and scaling but can also increase turbidity and may reduce disinfection efficiency. Consequently, systems and States should consider this when evaluating what constitutes optimal corrosion control treatment. The costs of TTHM precursor removal and removal of iron and manganese were not included, because systems concerned with increased TTHM precursor formation, or precipitation of iron or manganese caused by increasing their pH, could avoid this problem by using corrosion inhibitors instead, which generally work at lower pH levels.

The proposed rule estimated that corrosion control studies would cost \$50,000. EPA increased the costs of corrosion control studies based on data from several water systems currently conducting such studies. Costs to conduct corrosion control studies are assumed to be \$200,000 for systems

servicing more than 1 million people, \$100,000 for systems serving between 50,000 to 1 million people, and \$50,000 for systems serving less than 50,000 people. In addition, EPA has used data received prior to the proposal along with data received during the public comment period from the American Water Works Service Company, 40 individual water systems, and data collected from nine systems by EPA's Office of Drinking Water Technical Support Division to revise its estimates of the number of systems required to conduct corrosion control. These data were discussed previously in section IV(E)(2) of the preamble to this rule, and included in the Treatment and Occurrence Support Document (EPA, 1991b). EPA now estimates that about 40,000 water systems would incur costs for corrosion control treatment at an estimated national capital cost of about \$990 million, a national annualized cost of about \$220 million per year, and annual household costs ranging from less than \$1 to \$217, depending on system size. These costs include the costs of corrosion control studies and the costs for installing corrosion control for solder and lead pipes.

c. Monitoring Costs. The proposal estimated that all 79,000 community and non-transient, non-community systems would incur monitoring costs. EPA estimated a national annualized cost for monitoring of about \$12 million per year (EPA, 1988). Several commenters stated that the costs of collecting first-draw samples and analyses of the samples would be more expensive than EPA assumed. Other commenters stated that EPA had not considered the costs of the materials survey and the costs for planning the monitoring and training staff.

EPA agrees that the cost estimates were underestimated and has revised its monitoring cost estimates. The proposed rule estimated that the cost for collection would be about \$5.50 per sample and \$8 to complete each analysis. Based on commenter's estimates, EPA has revised the costs to \$20 for collection of each sample and \$15 for the analysis of each sample for lead and \$15 per sample for copper. (These estimates are likely overestimates, especially for large systems. Informal communications with schools indicate that collection and laboratory analysis of water samples for lead costs between \$5 and \$10 per sample). EPA has also added the costs of monitoring the other water quality parameters required to be analyzed for the final rule (e.g., pH, calcium, alkalinity) along with the monitoring

costs associated with the lead service line replacement program, since these were not required in the proposal. Finally, EPA has added the costs for the materials evaluation, planning monitoring activities, and training staffs on the proper procedures for sample collection. Including these costs increases the annual monitoring costs to about \$39 million (\$0.5 for source water; \$20 million for tap monitoring; \$12 million for monitoring for lead service lines; and \$7 million to train staff and conduct a materials evaluation). The range of annual household costs varies depending on system size from \$0.01 to \$0.37 for source water monitoring, from \$0.01 to \$8.60 for tap monitoring, and from \$0.01 to \$9.81 for lead service line monitoring.

d. Public Education Costs. The proposed rule estimated that about 39,000 systems would have been required to conduct a public education program at an annualized cost of about \$12 million (EPA, 1988). Thirteen commenters provided their own cost estimates of conducting a public education program; the estimates ranged from \$0.01 to \$1.12 per person. The majority of these costs were estimated using information from the 1987 special lead public notification requirements and therefore are not appropriate for estimating costs for the final rule because public notifications were one-time costs and the public notification program was not as focused or demanding as the public education requirements in the final rule.

The national annualized costs of the public education program are now estimated to be \$30 million with the per household costs per year ranging from \$0.08 to \$2.24. As noted above, EPA estimates that about 40,000 systems will initially fail the lead action level and be required to conduct a public education program. After installation of corrosion control, EPA estimates that about 12,000 systems (8,000 with lead service lines) will remain above the lead action level and be required to continue the public education program. As discussed earlier, the final rule does not require water systems to develop nor evaluate the public education program, thus the costs for public education only include costs associated with the distribution of the public education materials. However, even though the requirements for public education have been reduced from the proposal, the estimated costs have increased. The proposal estimated that the public education program would continue for 10 years while the final rule assumes public education will continue for 25 years for those systems required

to conduct lead service line replacement and those that continue to exceed the lead or copper action levels. Also, the proposed rule assumed that systems would only be required to mail inserts in water bills, while the final rule assumes that systems would be required to mail inserts in water bills, provide public service announcements, and distribute brochures to locations identified as being high-risk. EPA believes these estimates better reflect the costs of a public education program.

e. Lead Service Line Replacement Costs. The proposed rule requested information on the cost of lead service line replacement and received comments from 17 water systems. The range of cost estimates from these commenters for replacing lead service lines ranged from \$400 to more than \$4,800 per line. On January 11, 1989, the American Water Works Association submitted a report and data to EPA from a nationwide survey on the occurrence of lead service lines and connections in water systems throughout the United States (AWWA, 1989).

Based on the AWWA survey, EPA estimates that about 8,300 systems will be required to replace some lead service lines (EPA, 1991a). The projected national capital cost of the lead service line replacement program is estimated to range from \$1.5 to \$6.2 billion, the national annualized costs range from about \$80 to \$370 million per year, and the annual household costs range from less than \$1 to \$46, depending on system size. The range of costs reflects uncertainty regarding the number of lead service lines that will ultimately be removed and the amount of lead that leaches from lead pipes, as well as the unit cost for replacing a lead service line. Lower bound cost estimates assume relatively widespread use of newly developed pipe replacement technology which can lower costs of replacing an individual pipe by as much as 75 percent. Depending on the assumptions regarding lead contributions from individual lines and the costs of replacing individual lines, the estimated monetized health benefits were either smaller or larger than estimated costs. A detailed discussion of the assumptions used to derive these costs can be found in the RIA supporting the final rule and EPA, 1991d.

The AWWA submitted a report "Lead Service Line Replacement: Benefit-to-Cost Analysis" (AWWA, 1990) as a public comment on an October 19, 1990, Federal Register notice (55 FR 42409). In its report, AWWA estimated that the present value costs of a 15-year mandatory lead service line replacement

program would be \$4.4 billion and the expected present value benefits would be \$104 million. They concluded:

* * * that there should NOT be an overall mandate from EPA or Congress to remove lead service lines. Rather, what is warranted is a systematic approach utilizing more cost effect (sic) approaches first (such as corrosion control). As a last resort, where the service line actually contributes to an elevated lead level, the lead service line should be replaced.

EPA agrees that a lead service line replacement program should not be initiated before corrosion control and/or source water treatment has/have been installed. In addition, EPA agrees that only those lead service lines contributing to elevated lead levels (above 0.015 mg/L) should be replaced (see section IV(H) in the preamble for a complete discussion of lead service line replacement program).

f. State Implementation Costs. The proposed rule estimated that State implementation costs would increase by about \$16 million as a result of the proposed rule. To derive the final cost estimates, EPA used information supplied by nine States during the public comment period, along with a 1988 survey of State primacy program resource needs, which was jointly conducted by the Association of State Drinking Water Administrators and EPA (EPA, 1989c). The latter survey consisted of sending a detailed 18-page questionnaire and a 38-page supplement to each State and territory in August 1988 to obtain an estimate of the staff and funding resources needed both to implement current drinking water programs and to meet the new requirements of the 1986 amendments to the SDWA. States were asked to estimate both resources needed on a temporary basis during the initial phase of implementation and resource needs on a permanent basis. Total State resource needs across the Nation were extrapolated from the States responding to the survey. The results from this survey were made available for public comment in an October 19, 1990, Federal Register notice (55 FR 42409). EPA received no substantive comments on the survey and therefore used the survey to predict the final State implementation costs of \$47 million (initial costs) and \$38 million (annual on-going costs) (EPA, 1991a).

2. Benefits

The SDWA does not direct EPA to consider benefits in establishing NPDWRs. EPA has established the requirements of the rule based upon the criteria contained in § 1412 of the statute. EPA is directed by Executive

Order 12291 to estimate both the benefits and costs of the rules that it promulgates. Accordingly, the Agency has estimated the benefits associated with this regulation.

In 1988, EPA estimated that corrosion control and source water treatment associated with the proposed regulation would reduce lead exposures for millions of people. The effects of the proposed rule were measured in terms of changes in blood lead levels among young children between the ages of 6 months and 5 years. According to these estimates, between 264,000 and 704,000 children would have had their blood lead levels reduced to below 10 µg/dL; between 88,000 and 176,000 would have had their blood lead levels reduced to below 15 µg/dL; and between 3,500 and 5,300 would have had their blood lead levels reduced to below 25 µg/dL (Marcus and Holtzman, 1988). In addition, the Agency estimated that the material benefits of the regulation may be as high as \$500 million per year.

Several commenters claimed that EPA overestimated the health benefits. They maintained that there were significant problems with the model that EPA used to predict the magnitude of blood lead improvement, including the following: (1) The blood lead coefficient of 0.20 µg/dL per µg/L of drinking water was based on infants aged zero to 6 months, yet EPA used this coefficient for children aged 6 months to 5 years, (2) use of worst-case lead occurrence data that are not representative of people's exposure, and (3) use of a questionable adjustment factor of 1.7 to convert national water data from partially-flushed daytime samples to first-draw samples. In response to public comments, EPA has made several changes in the methodology for estimating benefits and has monetized the health benefits for corrosion control, source water reduction, and lead service line replacement. The assumptions used in the benefits analysis are summarized below and are discussed in greater detail in the RIA supporting this rule.

a. Health Benefits From Corrosion Control/Source Water Reduction. EPA has made the following changes based on commenters' concerns: (1) Separate blood lead coefficients for infants up to 6 months of age, and for children aged 6 months to 7 years instead of using the same coefficients for all children, (2) data from partially-flushed taps to predict consumer exposure and the resulting benefits of the final rule are used instead of first-draw water, and (3) the adjustment factor to convert partially-flushed water to first-draw samples has been eliminated.

The methodology to predict health benefits has been improved substantially from the proposal by using the methodologies developed for other EPA regulatory reviews on lead (i.e., the lead-in gasoline phasedown (EPA, 1985), revisions to the lead NAAQS under the Clean Air Act (EPA, 1987b), and the regulation under the Clean Water Act for disposal of sewage sludge (EPA, 1989f). The model estimates the benefits of changing the nationwide blood lead distribution after installation, where necessary, of corrosion control and source water treatment.

Estimating benefits of the final rule requires assumptions about the pre- and post-water lead distributions. Pre-regulatory water lead exposures in the proposed rule were calculated using a survey conducted by Patterson (EPA, 1981). Several commenters criticized EPA for using this survey in the proposal to represent the nationwide water lead distribution because they claimed the data are not representative of population exposure. They stated that the survey was flawed because the sample homes had extremely hard water and that EPA had admitted that the data portray higher levels of lead than are found from other data sources. EPA decided to continue to use the Patterson data because the samples collected (partially flushed) are reasonably representative of average water consumption. The fact that the survey collected data from sites with hard water would, if anything, tend to produce lower lead levels. Most of the available literature indicates that harder water tends to produce lower lead levels (AWWA-RF, 1990).

The post-regulatory distribution of water lead levels was calculated by assuming that about 80 percent of water systems serving less than 50,000 people would be able to reduce their lead levels to 0.015 mg/L at the 90th percentile. This assumption was based on the data presented in Table 7 of the preamble, which indicates that about 80 percent of water systems with pH over 8.0, or that used corrosion inhibitors, were able to meet the lead action level. For those systems serving less than 50,000 people who are unable to achieve a 90th percentile water lead below 0.015 mg/L, it was assumed that their lead-reducing efforts would result on average, in a reduction of 0.010 mg/L of lead. This was based on experience in Seattle, Washington where the 90th percentile lead level started at approximately 0.025 mg/L, and after installation of corrosion control, dropped to about 0.010 mg/L to 0.015 mg/L. Two scenarios were developed for systems serving more

than 50,000 people because of the uncertainty in the number of large systems that meet the action level that would install treatment and the reduction in lead levels for those systems that did install treatment. Scenario I assumed that all large systems would be able to reduce their 90th percentile lead levels to 0.005 mg/L. Scenario II assumed that 50 percent of large systems would be able to reduce their 90th percentile lead levels to 0.015 mg/L, 25 percent to 0.10 mg/L, and 25 percent to 0.005 mg/L.

Changes in blood lead levels between the pre- and post-regulatory drinking water lead levels were calculated using water lead-blood lead relationships developed by EPA (EPA, 1986a) and updated by Marcus (1989a, 1989b, 1990b, 1990c) and Maes et al. (1991). Section III(A)(2) of the preamble discusses these studies.

The model first calculates blood lead levels among children and adult populations in the United States associated with the pre- and post-regulatory level of lead exposure from drinking water, along with exposures from other sources, such as air, food, soil, and dust. The results do not explicitly reflect children living in deteriorating old houses exposed to lead paint hazards and children with excessive exposure to soils highly contaminated by lead (e.g., from 50 years of deposition from automotive emissions). These children were not included in the analysis because a change in the lead NPDWR would not by itself eliminate their overwhelming risks from non-drinking lead sources. Nonetheless, these children would receive a marginal benefit from the reductions achieved by this rule.

Exposure to nondrinking water sources of lead was estimated by (1) adjusting mean blood lead levels in children and adults measured in the 1976-1980 NHANES II survey downward to account for the gasoline lead phasedown and the reduction of lead in the diet, and (2) subtracting the estimated contribution to blood lead levels from drinking water. EPA estimates that the geometric mean or average "baseline" blood lead levels attributable to sources other than drinking water is about 4.0 µg/dL for children and adults. Blood lead levels vary widely among individuals due to differences in exposure levels, behavioral patterns, physiological sensitivity, and nutrition. Capturing all of this variability is impossible in blood lead modeling; therefore, the Agency has established an approach that uses empirical, or measured, descriptions of

blood lead variability and applies it to average blood leads estimated under different regulatory scenarios. The variability of log-normal distributions can be represented by the geometric standard deviation (GSD). Nationwide population surveys (e.g., NHANES II) of blood lead distributions provide the best possible GSDs, which are estimated as 1.39 for adults and 1.42 for children (EPA, 1986a).

The second step in calculating benefits is to estimate the effects that the blood lead changes will have on different health endpoints that can be valued in monetary terms. The endpoints modeled for this analysis include benefits associated with changes in adult men's blood pressure (medication costs) and associated changes in risks of more serious cardiovascular outcomes: heart attack, stroke, and death. Low-level lead exposure is associated with various health effects in women and the fetus, which were not quantified. These effects include reduced gestational age and birthweight and slight increases in blood pressure. While reduced lead levels in drinking water will benefit women and their newborns, benefits were not estimated in this analysis because of (1) existing uncertainties in the dose-response relationship between blood lead and blood pressure in women, and (2) uncertainties in physiological transfer rates (i.e., biokinetics) of lead during pregnancy. The endpoints modeled for children include benefits associated with avoidance of elevation in children's erythrocyte protoporphyrin (screening costs and medical treatment) and deficits in IQ (costs associated with remedial education/lost earnings). It is important to note that the health endpoints valued in the benefits analyses do not include other serious effects associated with low-level lead exposures in children. Quantitative analysis of these effects was not conducted because of either incomplete biokinetic models to estimate exposures (e.g., early developmental delays associated with prenatal exposures) or because of a lack of monetized functions (e.g., deficits in auditory function and attention span, alterations in vitamin D metabolism).

EPA estimates that the annual health benefits of corrosion control and source water using Scenario I are approximately \$4.3 billion. The annual health benefits for Scenario II are approximately \$2.8 billion. EPA estimates that less than 1 percent of water systems will need to control source water lead levels. The benefits attributable to source water treatment

comprise a very small portion of the total estimates (see RIA for complete discussion).

Several assumptions regarding water lead exposure may tend to overestimate health benefits in this analysis: (1) starting baseline exposures do not account for the 1986 lead solder ban, which, despite current uncertainties regarding the extent of its implementation, will eventually and substantially reduce exposures independent of this rule; (2) standing, first-flush samples taken in "high-risk" houses (e.g., relatively new lead solder, lead service lines) will be required in this rule to determine compliance (this analysis assumes that PbW levels measured in high-risk homes will be found in all homes; and (3) it was assumed that 80 percent of small and medium systems can meet the lead action level, which, as discussed in section IV(E)(2) is probably optimistic given that these were well-managed, medium-sized systems with relatively non-corrosive or easily controlled source waters.

In contrast, health benefits may be underestimated in this analysis because several health effects associated with lead exposure were not quantified because of the lack of quantitative dose-response functions (i.e., reduced growth and impaired hearing for children, maternal lead effects on fetal and infant development). Also, benefits to children exposed to lead paint hazards and highly contaminated soils are not included in the main analysis.

Of the adult benefits, roughly 40 percent are attributable to reduced risk of death from heart disease associated with lead-induced blood pressure elevations. There is general agreement that the available data support a small but positive association between PbB levels and increases in blood pressure in adults. As discussed in the 1990 update to the Addendum to the 1986 Air Quality Criteria Document for lead (EPA, 1990a), * * * with regard to the effects of lead on blood pressure, the new information emerging since the preparation of the 1986 Addendum, overall, substantiates further the main conclusions stated in that Addendum. Sufficient evidence exists from both the four large-scale general population studies discussed above (NHANES II, BRHS, and the two Welsh studies) and numerous smaller-scale studies to conclude that a small but positive association exists between blood lead levels and increases in blood pressure.

Recent EPA regulatory analyses on lead have extended the blood lead/blood pressure relationship to quantify

consequent risks for these cardiovascular outcomes. The 1990 update to the Addendum (EPA, 1990a) concludes that:

* * * the implications of lead-induced blood pressure increases with regard to potential increased risk for other, more serious cardiovascular outcomes still remain to be more clearly delineated * * * essentially any increase in blood pressure carries with it likely increased risk (albeit however small) for stroke, heart attack, and/or associated mortality * * * projections of potential lead effects on such outcomes * * * are not unreasonable in view of the very large public health impacts; however, much caution must be exercised in accepting the validity of any specific quantitative estimates derived from such projections in view of the uncertainties associated with selection of the specific coefficients used for (1) blood lead blood-pressure relationships and (2) relationships between blood pressure increases and more serious cardiovascular outcomes.

b. *Health Benefits From Lead Service Line Replacement.* The proposed rule did not estimate the benefits of lead service line replacement. Many commenters, however, stated that the health benefits of lead service line replacement would be minimal because water systems can only replace that portion of the line under their control, which in most cases will be less than the full line. They contend that the limited data indicate that partial lead service line replacement may actually increase the lead levels at the tap and that it is highly unlikely that people actually drink the water standing in the line.

Because of the uncertainty in the available data, EPA estimated the benefits of lead service line replacement under a range of possible scenarios. Assumptions were made that 1) lead levels in water from a lead service line ("partially-flushed") would range between 20 and 40 ppb (after corrosion control), 2) lead levels in water from the main ("fully-flushed") passing through the lead service line would average approximately 10 ppb, and 3) people drink between 125 to 333 ml of partially-flushed and/or fully-flushed water per day. Reductions in exposures and monetized health benefits that would be expected to occur in those systems replacing lead service lines are estimated using the same methodology used to calculate benefits attributable to corrosion control. The results indicate that the national annualized benefits range from \$70 to \$171 million. The range in estimates reflects the use of combinations of the different assumptions described above. If children with high paint lead exposures were included in the analysis of houses whose lead service lines are replaced,

the national annualized benefits increase to \$80 to \$240 million (EPA, 1991d).

c. *Material Benefits.* The proposed rule cited several studies indicating that the material benefits of corrosion control alone would exceed the costs of implementing corrosion control treatment by more than two times. EPA continues to believe that both systems and customers will derive direct material benefit from corrosion control treatment. The systems will benefit from extended pipe life in the distribution systems, reduced leakage, and decreased pumping costs due to reduced tuberculation. Customers will also benefit from the extended pipe life in their portion of the service line, extended life of water-using appliances, decreased sewage treatment costs due to reduced metals in influent and sludge, reduced damage from leakage, reduced interim repairs, and reduced staining of clothing and fixtures.

The American Water Works Association Research Foundation recently evaluated the economic benefits of extended life of distribution and premise piping associated with general corrosion control (AWWA-RF, 1989). One case study evaluated by AWWA-RF (Vancouver, B.C.) indicated that under "reasonably conservative assumptions," net economic benefits derived from corrosion control would exceed costs by a factor of 4 to 13. Another study conducted in Seattle, Washington, found a benefit:cost ratio of about 5:1, based on several conservative assumptions. The majority of benefits in both studies were estimated to accrue to customers in terms of extended life of premise piping. Another case study in Northern Illinois evaluated by AWWA-RF indicated no expected material benefits of corrosion control because of existing noncorrosive water and a preponderance of cement line distribution pipes and copper or galvanized service/plumbing pipes.

B. *Regulatory Flexibility Analysis*

The Regulatory Flexibility Act (RFA) requires EPA to consider the effect of regulations on small entities. If there is a significant effect on a substantial number of small systems, the Agency must seek to minimize the effects. The Agency found in the preamble to the proposed rule that the rule would not have a significant effect on a substantial number of small entities. Several commenters disagreed with this characterization, stating that the proposed rule would severely impact small systems.

EPA has re-evaluated the impacts to small systems consistent with the

requirements of the Regulatory Flexibility Act, 5 U.S.C. 602 *et seq.*, and finds that today's action will not significantly affect a substantial number of small entities. Using the Small Business Administration's definition, a small water utility is one that serves fewer than 50,000 people. There are about 200,000 community and non-community water systems serving fewer than 50,000 people. This total includes approximately 120,000 systems that are classified as transient, non-community systems which include for example, restaurants, gas stations, etc. and which are not subject to the monitoring and treatment requirements of this regulation. In the preamble to the 1988 proposal, EPA incorrectly cited the total number of small water utilities as 78,000. Rather, this number represented the total community and non-transient, non-community water systems serving fewer than 50,000 people that are subject to the requirements of the final rule. This subset of systems affected by the rule was correctly analyzed in the RIA and identified in the RFA. Approximately 40,000 small community and non-community, non-transient water systems are likely to have contamination levels greater than the action levels and thus are required to treat their water. While this represents a substantial fraction of the total number of small systems (greater than 20 percent), the impacts of the regulation on them will not be significant.

Under the RFA, annual costs of compliance are to be compared to the existing cost of production. EPA has generally considered an increase in production cost of five percent or more as a significant impact. The approximate cost of producing water by all systems serving fewer than 50,000 people is \$9.6 billion per year, and the maximum annualized cost of the final rule will be about \$410 million, including monitoring. This amounts to 4.27 percent of water production costs for small systems. Therefore, although the rule will affect a substantial number of small systems, the average effect on small systems, as defined by the Small Business Administration, is not significant.

Nevertheless, EPA recognizes that, due to their inability to benefit from economies of scale, the cost impact of regulations tends to increase as the size of a system decreases. To prevent these regulations from placing an onerous burden on smaller systems, EPA has included numerous provisions that would reduce their costs and enhance their ability to comply. Among these provisions are the following:

1. The monitoring requirements of the rule are phased in over an extra 6 to 18 months for small systems.

2. Fewer samples are required for smaller systems than for large systems.

3. Systems serving less than 50,000 people are not required to conduct corrosion control studies except where specified by the State.

4. Systems under 50,000 are required to make detailed demonstrations of optimal corrosion treatment only if they exceed the action levels.

The Agency encourages States to provide technical assistance to small systems that need to install or improve corrosion control. The assistance could include tailoring the treatments they designate for small systems to the circumstances of individual public water systems. EPA will also assist systems through pollution prevention programs and the Agency's overall effort to reduce lead levels. Further, under the SDWA, exemptions are available for systems if they cannot afford to install best available technology to meet the requirements of the treatment technique requirement, provided there is no unreasonable risk to health. These exemptions may be extended for one or more two-year periods for systems with less than 500 connections.

C. Paperwork Reduction Act

The information collection requirements in this rule will be submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not effective until OMB approves them and a technical amendment to that effect is published in the *Federal Register*.

The public reporting burden on public water systems for this collection of information is estimated to average 3.9 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. This represents an increase from the 1-1.4 hours per response estimated in the preamble to the 1988 proposal. The increase is attributable to changes to the monitoring, reporting, and recordkeeping requirements.

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-223Y, 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, marked "Attention: Desk Officer for EPA."

X. References

The following references are referred to in this notice and are included in the public docket together with other correspondence and information. The public docket is available as described at the beginning of this notice. All public comments received on the proposal are included in the public docket.

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Dated: May 6, 1991.

F. Henry Habicht,
Acting Administrator.

List of Subjects in 40 CFR Parts 141 and 142

Administrative practice and procedure, chemicals, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements and water supply.

For the reasons set forth in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 141— NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g-1, 300g-2, 300g-3, 300-4, 300g-5 300g-6, 300j-4, and 300j-9.

2. Section 141.2 is amended by adding the following new definitions in alphabetical order and removing the existing definition of "maximum contaminant level" to read as follows:

* * * * *

§ 141.2 Definitions.

* * * * *

Action level, is the concentration of lead or copper in water specified in § 141.80(c) which determines, in some cases, the treatment requirements contained in subpart I of this part that a water system is required to complete.

* * * * *

Corrosion inhibitor, means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

* * * * *

Effective corrosion inhibitor residual, for the purpose of subpart I of this part only, means a concentration sufficient to form a passivating film on the interior walls of a pipe.

* * * * *

First draw sample, means a one-liter sample of tap water, collected in accordance with § 141.86(b)(2), that has been standing in plumbing pipes at least 6 hours and is collected without flushing the tap.

* * * * *

Large water system, for the purpose of subpart I of this part only, means a water system that serves more than 50,000 persons.

* * * * *

Lead service line, means a service line made of lead which connects the water main to the building inlet and any

lead pigtail, gooseneck or other fitting which is connected to such lead line.
* * * * *

Maximum contaminant level, means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.
* * * * *

Medium-size water system, for the purpose of subpart I of this part only, means a water system that serves greater than 3,300 and less than or equal to 50,000 persons.
* * * * *

Optimal corrosion control treatment, for the purpose of subpart I of this part only, means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while insuring that the treatment does not cause the water system to violate any national primary drinking water regulations.
* * * * *

Service line sample, means a one-liter sample of water collected in accordance with § 141.86(b)(3), that has been standing for at least 6 hours in a service line.
* * * * *

Single family structure, for the purpose of subpart I of this part only, means a building constructed as a single-family residence that is currently used as either a residence or a place of business.
* * * * *

Small water system, for the purpose of subpart I of this part only, means a water system that serves 3,300 persons or fewer.
* * * * *

3. In § 141.11, the introductory text of paragraph (b) is revised to read as follows:

§ 141.11 Maximum contaminant levels for inorganic chemicals.
* * * * *

(b) The following maximum contaminant levels for cadmium, chromium, mercury, nitrate, and selenium shall remain effective until July 30, 1992. The following maximum contaminant level for lead shall remain effective until November 9, 1992.
* * * * *

4. Section 141.32 is amended by adding paragraphs (e) (13) and (14) to read as follows:
* * * * *

§ 141.32 Public notification.
* * * * *

(e) * * *
(13) *Lead*. The United States

Environmental Protection Agency (EPA) sets drinking water standards and has determined that lead is a health concern at certain exposure levels. Materials that contain lead have frequently been used in the construction of water supply distribution systems, and plumbing systems in private homes and other buildings. The most commonly found materials include service lines, pipes, brass and bronze fixtures, and solders and fluxes. Lead in these materials can contaminate drinking water as a result of the corrosion that takes place when water comes into contact with those materials. Lead can cause a variety of adverse health effects in humans. At relatively low levels of exposure, these effects may include interference with red blood cell chemistry, delays in normal physical and mental development in babies and young children, slight deficits in the attention span, hearing, and learning abilities of children, and slight increases in the blood pressure of some adults. EPA's national primary drinking water regulation requires all public water systems to optimize corrosion control to minimize lead contamination resulting from the corrosion of plumbing materials. Public water systems serving 50,000 people or fewer that have lead concentrations below 15 parts per billion (ppb) in more than 90% of tap water samples (the EPA "action level") have optimized their corrosion control treatment. Any water system that exceeds the action level must also monitor their source water to determine whether treatment to remove lead in source water is needed. Any water system that continues to exceed the action level after installation of corrosion control and/or source water treatment must eventually replace all lead service lines contributing in excess of 15 (ppb) of lead to drinking water. Any water system that exceeds the action level must also undertake a public education program to inform consumers of ways they can reduce their exposure to potentially high levels of lead in drinking water.

(14) *Copper*. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that copper is a health concern at certain exposure levels. Copper, a reddish-brown metal, is often used to plumb residential and commercial structures that are connected to water distribution systems. Copper contaminating drinking water as a corrosion byproduct occurs as the result of the corrosion of copper pipes that remain in contact with water for a prolonged period of time. Copper is an

essential nutrient, but at high doses it has been shown to cause stomach and intestinal distress, liver and kidney damage, and anemia. Persons with Wilson's disease may be at a higher risk of health effects due to copper than the general public. EPA's national primary drinking water regulation requires all public water systems to install optimal corrosion control to minimize copper contamination resulting from the corrosion of plumbing materials. Public water systems serving 50,000 people or fewer that have copper concentrations below 1.3 parts per million (ppm) in more than 90% of tap water samples (the EPA "action level") are not required to install or improve their treatment. Any water system that exceeds the action level must also monitor their source water to determine whether treatment to remove copper in source water is needed.
* * * * *

5. The table in § 141.51(b) is amended by removing the paragraph designations, placing the contaminants in alphabetical order, and adding the following entries for copper and lead in alphabetical order:

§ 141.51 Maximum contaminant level goals for inorganic contaminants.
* * * * *

(b) * * *

Contaminant and MCLG in mg/L
* * * * *

| | |
|-------------|------|
| Copper..... | 1.3 |
| Lead..... | zero |
| * * * * * | |

6. A new subpart I is added to read as follows:

Subpart I—Control of Lead and Copper

- Sec.
- 141.80 General requirements.
 - 141.81 Applicability of corrosion control treatment steps to small, medium-size and large water systems.
 - 141.82 Description of corrosion control treatment requirements.
 - 141.83 Source water treatment requirements.
 - 141.84 Lead service line replacement requirements.
 - 141.85 Public education and supplemental monitoring requirements.
 - 141.86 Monitoring requirements for lead and copper in tap water.
 - 141.87 Monitoring requirements for water quality parameters.
 - 141.88 Monitoring requirements for lead and copper in source water.
 - 141.89 Analytical methods.
 - 141.90 Reporting requirements.
 - 141.91 Recordkeeping requirements.

Subpart I—Control of Lead and Copper

§ 141.80 General requirements.

(a) *Applicability and effective dates.*

(1) The requirements of this subpart I constitute the national primary drinking water regulations for lead and copper. Unless otherwise indicated, each of the provisions of this subpart applies to community water systems and non-transient, non-community water systems (hereinafter referred to as "water systems" or "systems").

(2) The requirements set forth in §§ 141.86–141.91 shall take effect. The requirements in §§ 141.81–141.85 shall take effect November 9, 1992.

(b) *Scope.* These regulations establish a treatment technique that includes requirements for corrosion control treatment, source water treatment, lead service line replacement, and public education. These requirements are triggered, in some cases, by lead and copper action levels measured in samples collected at consumers' taps.

(c) *Lead and copper action levels.* (1) The lead action level is exceeded if the concentration of lead in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with § 141.86 is greater than 0.015 mg/L (i.e., if the "90th percentile" lead level is greater than 0.015 mg/L).

(2) The copper action level is exceeded if the concentration of copper in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with § 141.86 is greater than 1.3 mg/L (i.e., if the "90th percentile" copper level is greater than 1.3 mg/L).

(3) The 90th percentile lead and copper levels shall be computed as follows:

(i) The results of all lead or copper samples taken during a monitoring period shall be placed in ascending order from the sample with the lowest concentration to the sample with the highest concentration. Each sampling result shall be assigned a number, ascending by single integers beginning with the number 1 for the sample with the lowest contaminant level. The number assigned to the sample with the highest contaminant level shall be equal to the total number of samples taken.

(ii) The number of samples taken during the monitoring period shall be multiplied by 0.9.

(iii) The contaminant concentration in the numbered sample yielded by the calculation in paragraph (c)(3)(ii) is the 90th percentile contaminant level.

(iv) For water systems serving fewer than 100 people that collect 5 samples

per monitoring period, the 90th percentile is computed by taking the average of the highest and second highest concentrations.

(d) *Corrosion control treatment requirements.* (1) All water systems shall install and operate optimal corrosion control treatment as defined in § 141.2.

(2) Any water system that complies with the applicable corrosion control treatment requirements specified by the State under §§ 141.81 and 141.82 shall be deemed in compliance with the treatment requirement contained in paragraph (d)(1) of this section.

(e) *Source water treatment requirements.* Any system exceeding the lead or copper action level shall implement all applicable source water treatment requirements specified by the State under § 141.83.

(f) *Lead service line replacement requirements.* Any system exceeding the lead action level after implementation of applicable corrosion control and source water treatment requirements shall complete the lead service line replacement requirements contained in § 141.84.

(g) *Public education requirements.* Any system exceeding the lead action level shall implement the public education requirements contained in § 141.85.

(h) *Monitoring and analytical requirements.* Tap water monitoring for lead and copper, monitoring for water quality parameters, source water monitoring for lead and copper, and analyses of the monitoring results under this subpart shall be completed in compliance with §§ 141.86, 141.87, 141.88, and 141.89.

(i) *Reporting requirements.* Systems shall report to the State any information required by the treatment provisions of this subpart and § 141.90.

(j) *Recordkeeping requirements.* Systems shall maintain records in accordance with § 141.91.

(k) *Violation of national primary drinking water regulations.* Failure to comply with the applicable requirements of §§ 141.80–141.91, including requirements established by the State pursuant to these provisions, shall constitute a violation of the national primary drinking water regulations for lead and/or copper.

§ 141.81 Applicability of corrosion control treatment steps to small, medium-size and large water systems.

(a) Systems shall complete the applicable corrosion control treatment requirements described in § 141.82 by the deadlines established in this section.

(1) A large system (serving >50,000 persons) shall complete the corrosion control treatment steps specified in paragraph (d) of this section, unless it is deemed to have optimized corrosion control under paragraph (b)(2) or (b)(3) of this section.

(2) A small system (serving <3300 persons) and a medium-size system (serving >3,300 and <50,000 persons) shall complete the corrosion control treatment steps specified in paragraph (e) of this section, unless it is deemed to have optimized corrosion control under paragraph (b)(1), (b)(2), or (b)(3) of this section.

(b) A system is deemed to have optimized corrosion control and is not required to complete the applicable corrosion control treatment steps identified in this section if the system satisfies one of the following criteria:

(1) A small or medium-size water system is deemed to have optimized corrosion control if the system meets the lead and copper action levels during each of two consecutive six-month monitoring periods conducted in accordance with § 141.86.

(2) Any water system may be deemed by the State to have optimized corrosion control treatment if the system demonstrates to the satisfaction of the State that it has conducted activities equivalent to the corrosion control steps applicable to such system under this section. If the State makes this determination, it shall provide the system with written notice explaining the basis for its decision and shall specify the water quality control parameters representing optimal corrosion control in accordance with § 141.82(f). A system shall provide the State with the following information in order to support a determination under this paragraph:

(i) The results of all test samples collected for each of the water quality parameters in § 141.82(c)(3).

(ii) A report explaining the test methods used by the water system to evaluate the corrosion control treatments listed in § 141.82(c)(1), the results of all tests conducted, and the basis for the system's selection of optimal corrosion control treatment;

(iii) A report explaining how corrosion control has been installed and how it is being maintained to insure minimal lead and copper concentrations at consumers' taps; and

(iv) The results of tap water samples collected in accordance with § 141.86 at least once every six months for one year after corrosion control has been installed.

(3) Any water system is deemed to have optimized corrosion control if it submits results of tap water monitoring conducted in accordance with § 141.86 and source water monitoring conducted in accordance with § 141.88 that demonstrates for two consecutive six-month monitoring periods that the difference between the 90th percentile tap water lead level computed under § 141.80(c)(3), and the highest source water lead concentration, is less than the Practical Quantitation Level for lead specified in § 141.89(a)(1)(ii).

(c) Any small or medium-size water system that is required to complete the corrosion control steps due to its exceedance of the lead or copper action level may cease completing the treatment steps whenever the system meets both action levels during each of two consecutive monitoring periods conducted pursuant to § 141.86 and submits the results to the State. If any such water system thereafter exceeds the lead or copper action level during any monitoring period, the system (or the State, as the case may be) shall recommence completion of the applicable treatment steps, beginning with the first treatment step which was not previously completed in its entirety. The State may require a system to repeat treatment steps previously completed by the system where the State determines that this is necessary to implement properly the treatment requirements of this section. The State shall notify the system in writing of such a determination and explain the basis for its decision.

(d) *Treatment steps and deadlines for large systems.* Except as provided in paragraph (b) (2) and (3) of this section, large systems shall complete the following corrosion control treatment steps (described in the referenced portions of §§ 141.82, 141.86, and 141.87) by the indicated dates.

(1) *Step 1:* The system shall conduct initial monitoring (§ 141.86(d)(1) and § 141.87(b)) during two consecutive six-month monitoring periods by January 1, 1993.

(2) *Step 2:* The system shall complete corrosion control studies (§ 141.82(c)) by July 1, 1994.

(3) *Step 3:* The State shall designate optimal corrosion control treatment (§ 141.82(d)) by January 1, 1995.

(4) *Step 4:* The system shall install optimal corrosion control treatment (§ 141.82(e)) by January 1, 1997.

(5) *Step 5:* The system shall complete follow-up sampling (§ 141.86(d)(2) and § 141.87(c)) by January 1, 1998.

(6) *Step 6:* The State shall review installation of treatment and designate

optimal water quality control parameters (§ 141.82(f)) by July 1, 1998.

(7) *Step 7:* The system shall operate in compliance with the State-specified optimal water quality control parameters (§ 141.82(g)) and continue to conduct tap sampling (§ 141.86(d)(3) and § 141.87(d)).

(e) *Treatment Steps and deadlines for small and medium-size systems.* Except as provided in paragraph (b) of this section, small and medium-size systems shall complete the following corrosion control treatment steps (described in the referenced portions of §§ 141.82, 141.86 and 141.87) by the indicated time periods.

(1) *Step 1:* The system shall conduct initial tap sampling (§ 141.86(d)(1) and § 141.87(b)) until the system either exceeds the lead or copper action level or becomes eligible for reduced monitoring under § 141.86(d)(4). A system exceeding the lead or copper action level shall recommend optimal corrosion control treatment (§ 141.82(a)) within six months after it exceeds one of the action levels.

(2) *Step 2:* Within 12 months after a system exceeds the lead or copper action level, the State may require the system to perform corrosion control studies (§ 141.82(b)). If the State does not require the system to perform such studies, the State shall specify optimal corrosion control treatment (§ 141.82(d)) within the following timeframes:

(i) for medium-size systems, within 18 months after such system exceeds the lead or copper action level,

(ii) for small systems, within 24 months after such system exceeds the lead or copper action level.

(3) *Step 3:* If the State requires a system to perform corrosion control studies under step 2, the system shall complete the studies (§ 141.82(c)) within 18 months after the State requires that such studies be conducted.

(4) *Step 4:* If the system has performed corrosion control studies under step 2, the State shall designate optimal corrosion control treatment (§ 141.82(d)) within 6 months after completion of step 3.

(5) *Step 5:* The system shall install optimal corrosion control treatment (§ 141.82(e)) within 24 months after the State designates such treatment.

(6) *Step 6:* The system shall complete follow-up sampling (§ 141.86(d)(2) and § 141.87(c)) within 36 months after the State designates optimal corrosion control treatment.

(7) *Step 7:* The State shall review the system's installation of treatment and designate optimal water quality control parameters (§ 141.82(f)) within 6 months after completion of step 6.

(8) *Step 8:* The system shall operate in compliance with the State-designated optimal water quality control parameters (§ 141.82(g)) and continue to conduct tap sampling (§ 141.86(d)(3) and § 141.87(d)).

§ 141.82 Description of corrosion control treatment requirements.

Each system shall complete the corrosion control treatment requirements described below which are applicable to such system under § 141.81.

(a) *System recommendation regarding corrosion control treatment.* Based upon the results of lead and copper tap monitoring and water quality parameter monitoring, small and medium-size water systems exceeding the lead or copper action level shall recommend installation of one or more of the corrosion control treatments listed in paragraph (c)(1) of this section which the system believes constitutes optimal corrosion control for that system. The State may require the system to conduct additional water quality parameter monitoring in accordance with § 141.87(b) to assist the State in reviewing the system's recommendation.

(b) *State decision to require studies of corrosion control treatment (applicable to small and medium-size systems).* The State may require any small or medium-size system that exceeds the lead or copper action level to perform corrosion control studies under paragraph (c) of this section to identify optimal corrosion control treatment for the system.

(c) *Performance of corrosion control studies.* (1) Any public water system performing corrosion control studies shall evaluate the effectiveness of each of the following treatments, and, if appropriate, combinations of the following treatments to identify the optimal corrosion control treatment for that system:

- (i) Alkalinity and pH adjustment;
- (ii) Calcium hardness adjustment; and
- (iii) The addition of a phosphate or silicate based corrosion inhibitor at a concentration sufficient to maintain an effective residual concentration in all test tap samples.

(2) The water system shall evaluate each of the corrosion control treatments using either pipe rig/loop tests, metal coupon tests, partial-system tests, or analyses based on documented analogous treatments with other systems of similar size, water chemistry and distribution system configuration.

(3) The water system shall measure the following water quality parameters in any tests conducted under this paragraph before and after evaluating

the corrosion control treatments listed above:

- (i) Lead;
- (ii) Copper;
- (iii) pH;
- (iv) Alkalinity;
- (v) Calcium;
- (vi) Conductivity;
- (vii) Orthophosphate (when an inhibitor containing a phosphate compound is used);
- (viii) Silicate (when an inhibitor containing a silicate compound is used);
- (ix) Water temperature.

(4) The water system shall identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment and document such constraints with at least one of the following:

(i) Data and documentation showing that a particular corrosion control treatment has adversely affected other water treatment processes when used by another water system with comparable water quality characteristics; and/or

(ii) Data and documentation demonstrating that the water system has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other water quality treatment processes.

(5) The water system shall evaluate the effect of the chemicals used for corrosion control treatment on other water quality treatment processes.

(6) On the basis of an analysis of the data generated during each evaluation, the water system shall recommend to the State in writing the treatment option that the corrosion control studies indicate constitutes optimal corrosion control treatment for that system. The water system shall provide a rationale for its recommendation along with all supporting documentation specified in paragraphs (c)(1) through (5) of this section.

(d) *State designation of optimal corrosion control treatment.* (1) Based upon consideration of available information including, where applicable, studies performed under paragraph (c) of this section and a system's recommended treatment alternative, the State shall either approve the corrosion control treatment option recommended by the system, or designate alternative corrosion control treatment(s) from among those listed in paragraph (c)(1) of this section. When designating optimal treatment the State shall consider the effects that additional corrosion control treatment will have on water quality parameters and on other water quality treatment processes.

(2) The State shall notify the system of its decision on optimal corrosion control treatment in writing and explain the basis for this determination. If the State requests additional information to aid its review, the water system shall provide the information.

(e) *Installation of optimal corrosion control.* Each system shall properly install and operate throughout its distribution system the optimal corrosion control treatment designated by the State under paragraph (d) of this section.

(f) *State review of treatment and specification of optimal water quality control parameters.* The State shall evaluate the results of all lead and copper tap samples and water quality parameter samples submitted by the water system and determine whether the system has properly installed and operated the optimal corrosion control treatment designated by the State in paragraph (d) of this section. Upon reviewing the results of tap water and water quality parameter monitoring by the system, both before and after the system installs optimal corrosion control treatment, the State shall designate:

(1) A minimum value or a range of values for pH measured at each entry point to the distribution system;

(2) A minimum pH value, measured in all tap samples. Such value shall be equal to or greater than 7.0, unless the State determines that meeting a pH level of 7.0 is not technologically feasible or is not necessary for the system to optimize corrosion control;

(3) If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for the inhibitor, measured at each entry point to the distribution system and in all tap samples, that the State determines is necessary to form a passivating film on the interior walls of the pipes of the distribution system;

(4) If alkalinity is adjusted as part of optimal corrosion control treatment, a minimum concentration or a range of concentrations for alkalinity, measured at each entry point to the distribution system and in all tap samples;

(5) If calcium carbonate stabilization is used as part of corrosion control, a minimum concentration or a range of concentrations for calcium, measured in all tap samples.

The values for the applicable water quality control parameters listed above shall be those that the State determines to reflect optimal corrosion control treatment for the system. The State may designate values for additional water quality control parameters determined by the State to reflect optimal corrosion

control for the system. The State shall notify the system in writing of these determinations and explain the basis for its decisions.

(g) *Continued Operation and Monitoring.* All systems shall maintain water quality parameter values at or above minimum values or within ranges designated by the State under paragraph (f) of this section in each sample collected under § 141.87(d). If the water quality parameter value of any sample is below the minimum value or outside the range designated by the State, then the system is out of compliance with this paragraph. As specified in § 141.87(d), the system may take a confirmation sample for any water quality parameter value no later than 3 days after the first sample. If a confirmation sample is taken, the result must be averaged with the first sampling result and the average must be used for any compliance determinations under this paragraph. States have discretion to delete results of obvious sampling errors from this calculation.

(h) *Modification of State treatment decisions.* Upon its own initiative or in response to a request by a water system or other interested party, a State may modify its determination of the optimal corrosion control treatment under paragraph (d) of this section or optimal water quality control parameters under paragraph (f) of this section. A request for modification by a system or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The State may modify its determination where it concludes that such change is necessary to ensure that the system continues to optimize corrosion control treatment. A revised determination shall be made in writing, set forth the new treatment requirements, explain the basis for the State's decision, and provide an implementation schedule for completing the treatment modifications.

(i) *Treatment decisions by EPA in lieu of the State.* Pursuant to the procedures in § 142.19, the EPA Regional Administrator may review treatment determinations made by a State under paragraphs (d), (f), or (h) of this section and issue federal treatment determinations consistent with the requirements of those paragraphs where the Regional Administrator finds that:

(1) a State has failed to issue a treatment determination by the applicable deadlines contained in § 141.81,

(2) a State has abused its discretion in a substantial number of cases or in

cases affecting a substantial population, or

(3) the technical aspects of a State's determination would be indefensible in an expected Federal enforcement action taken against a system.

§ 141.83 Source water treatment requirements.

Systems shall complete the applicable source water monitoring and treatment requirements (described in the referenced portions of paragraph (b) of this section, and in §§ 141.86, and 141.88) by the following deadlines.

(a) *Deadlines for Completing Source Water Treatment Steps*—(1) *Step 1: A system exceeding the lead or copper action level shall complete lead and copper source water monitoring (§ 141.88(b)) and make a treatment recommendation to the State (§ 141.83(b)(1)) within 6 months after exceeding the lead or copper action level.*

(2) *Step 2: The State shall make a determination regarding source water treatment (§ 141.83(b)(2)) within 6 months after submission of monitoring results under step 1.*

(3) *Step 3: If the State requires installation of source water treatment, the system shall install the treatment (§ 141.83(b)(3)) within 24 months after completion of step 2.*

(4) *Step 4: The system shall complete follow-up tap water monitoring (§ 141.86(d)(2)) and source water monitoring (§ 141.88(c)) within 36 months after completion of step 2.*

(5) *Step 5: The State shall review the system's installation and operation of source water treatment and specify maximum permissible source water levels (§ 141.83(b)(4)) within 6 months after completion of step 4.*

(6) *Step 6: The system shall operate in compliance with the State-specified maximum permissible lead and copper source water levels (§ 141.83(b)(4)) and continue source water monitoring (§ 141.88(d)).*

(b) *Description of Source Water Treatment Requirements*—(1) *System treatment recommendation.* Any system which exceeds the lead or copper action level shall recommend in writing to the State the installation and operation of one of the source water treatments listed in paragraph (b)(2) of this section. A system may recommend that no treatment be installed based upon a demonstration that source water treatment is not necessary to minimize lead and copper levels at users' taps.

(2) *State determination regarding source water treatment.* The State shall complete an evaluation of the results of all source water samples submitted by

the water system to determine whether source water treatment is necessary to minimize lead or copper levels in water delivered to users' taps. If the State determines that treatment is needed, the State shall either require installation and operation of the source water treatment recommended by the system (if any) or require the installation and operation of another source water treatment from among the following: ion exchange, reverse osmosis, lime softening or coagulation/filtration. If the State requests additional information to aid in its review, the water system shall provide the information by the date specified by the State in its request. The State shall notify the system in writing of its determination and set forth the basis for its decision.

(3) *Installation of source water treatment.* Each system shall properly install and operate the source water treatment designated by the State under paragraph (b)(2) of this section.

(4) *State review of source water treatment and specification of maximum permissible source water levels.* The State shall review the source water samples taken by the water system both before and after the system installs source water treatment, and determine whether the system has properly installed and operated the source water treatment designated by the State. Based upon its review, the State shall designate the maximum permissible lead and copper concentrations for finished water entering the distribution system. Such levels shall reflect the contaminant removal capability of the treatment properly operated and maintained. The State shall notify the system in writing and explain the basis for its decision.

(5) *Continued operation and maintenance.* Each water system shall maintain lead and copper levels below the maximum permissible concentrations designated by the State at each sampling point monitored in accordance with § 141.88. The system is out of compliance with this paragraph if the level of lead or copper at any sampling point is greater than the maximum permissible concentration designated by the State.

(6) *Modification of State treatment decisions.* Upon its own initiative or in response to a request by a water system or other interested party, a State may modify its determination of the source water treatment under paragraph (b)(2) of this section, or maximum permissible lead and copper concentrations for finished water entering the distribution system under paragraph (b)(4) of this section. A request for modification by a system or other interested party shall be in writing, explain why the modification

is appropriate, and provide supporting documentation. The State may modify its determination where it concludes that such change is necessary to ensure that the system continues to minimize lead and copper concentrations in source water. A revised determination shall be made in writing, set forth the new treatment requirements, explain the basis for the State's decision, and provide an implementation schedule for completing the treatment modifications.

(7) *Treatment decisions by EPA in lieu of the State.* Pursuant to the procedures in § 142.19, the EPA Regional Administrator may review treatment determinations made by a State under paragraphs (b) (2), (4), or (6) of this section and issue Federal treatment determinations consistent with the requirements of those paragraphs where the Administrator finds that:

(i) A State has failed to issue a treatment determination by the applicable deadlines contained in Section 141.83(a),

(ii) A state has abused its discretion in a substantial number of cases or in cases affecting a substantial population, or

(iii) The technical aspects of a State's determination would be indefensible in an expected Federal enforcement action taken against a system.

§ 141.84 Lead service line replacement requirements.

(a) Systems that fail to meet the lead action level in tap samples taken pursuant to § 141.86(d)(2), after installing corrosion control and/or source water treatment (whichever sampling occurs later), shall replace lead service lines in accordance with the requirements of this section. If a system is in violation of § 141.81 or § 141.83 for failure to install source water or corrosion control treatment, the State may require the system to commence lead service line replacement under this section after the date by which the system was required to conduct monitoring under § 141.86(d)(2) has passed.

(b) A system shall replace annually at least 7 percent of the initial number of lead service lines in its distribution system. The initial number of lead service lines is the number of lead lines in place at the time the replacement program begins. The system shall identify the initial number of lead service lines in its distribution system based upon a materials evaluation, including the evaluation required under § 141.86(a). The first year of lead service line replacement shall begin on the date the action level was exceeded in tap

sampling referenced in paragraph (a) of this section.

(c) A system is not required to replace an individual lead service line if the lead concentration in all service line samples from that line, taken pursuant to § 141.86(b)(3), is less than or equal to 0.015 mg/L.

(d) A water system shall replace the entire service line (up to the building inlet) unless it demonstrates to the satisfaction of the State under paragraph (e) of this section that it controls less than the entire service line. In such cases, the system shall replace the portion of the line which the State determines is under the system's control. The system shall notify the user served by the line that the system will replace the portion of the service line under its control and shall offer to replace the building owner's portion of the line, but is not required to bear the cost of replacing the building owner's portion of the line. For buildings where only a portion of the lead service line is replaced, the water system shall inform the resident(s) that the system will collect a first flush tap water sample after partial replacement of the service line is completed if the resident(s) so desire. In cases where the resident(s) accept the offer, the system shall collect the sample and report the results to the resident(s) within 14 days following partial lead service line replacement.

(e) A water system is presumed to control the entire lead service line (up to the building inlet) unless the system demonstrates to the satisfaction of the State, in a letter submitted under § 141.90(e)(4), that it does not have any of the following forms of control over the entire line (as defined by state statutes, municipal ordinances, public service contracts or other applicable legal authority): authority to set standards for construction, repair, or maintenance of the line, authority to replace, repair, or maintain the service line, or ownership of the service line. The State shall review the information supplied by the system and determine whether the system controls less than the entire service line and, in such cases, shall determine the extent of the system's control. The State's determination shall be in writing and explain the basis for its decision.

(f) The State shall require a system to replace lead service lines on a shorter schedule than that required by this section, taking into account the number of lead service lines in the system, where such a shorter replacement schedule is feasible. The State shall make this determination in writing and notify the system of its finding within 6 months after the system is triggered into

lead service line replacement based on monitoring referenced in paragraph (a) of this section.

(g) Any system may cease replacing lead service lines whenever lead service line samples collected pursuant to § 141.86(d)(3) meet the lead action level during each of two consecutive monitoring periods and the system submits the results to the State. If the lead service line samples in any such water system thereafter exceeds the lead action level, the system shall recommence replacing lead service lines, pursuant to paragraph (b) in this section.

(h) To demonstrate compliance with paragraphs (a) through (d) of this section, a system shall report to the State the information specified in § 141.90(e).

§ 141.85 Public education and supplemental monitoring requirements.

A water system that exceeds the lead action level based on tap water samples collected in accordance with § 141.86 shall deliver the public education materials contained in paragraphs (a) and (b) of this section in accordance with the requirements in paragraph (c) of this section.

(a) Content of written materials. A water system shall include the following text in all of the printed materials it distributes through its lead public education program. Any additional information presented by a system shall be consistent with the information below and be in plain English that can be understood by laypersons.

(1) *Introduction.* The United States Environmental Protection Agency (EPA) and [insert name of water supplier] are concerned about lead in your drinking water. Although most homes have very low levels of lead in their drinking water, some homes in the community have lead levels above the EPA action level of 15 parts per billion (ppb), or 0.015 milligrams of lead per liter of water (mg/L). Under Federal law we are required to have a program in place to minimize lead in your drinking water by [insert date when corrosion control will be completed for your system]. This program includes corrosion control treatment, source water treatment, and public education. We are also required to replace each lead service line that we control if the line contributes lead concentrations of 15 ppb or more after we have completed the comprehensive treatment program. If you have any questions about how we are carrying out the requirements of the lead regulation please give us a call at [insert water system's phone number]. This brochure explains the simple steps you can take

to protect you and your family by reducing your exposure to lead in drinking water.

(2) *Health effects of lead.* Lead is a common metal found throughout the environment in lead-based paint, air, soil, household dust, food, certain types of pottery porcelain and pewter, and water. Lead can pose a significant risk to your health if too much of it enters your body. Lead builds up in the body over many years and can cause damage to the brain, red blood cells and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that won't hurt adults can slow down normal mental and physical development of growing bodies. In addition, a child at play often comes into contact with sources of lead contamination—like dirt and dust—that rarely affect an adult. It is important to wash children's hands and toys often, and to try to make sure they only put food in their mouths.

(3) *Lead in Drinking Water.* (i) Lead in drinking water, although rarely the sole cause of lead poisoning, can significantly increase a person's total lead exposure, particularly the exposure of infants who drink baby formulas and concentrated juices that are mixed with water. The EPA estimates that drinking water can make up 20 percent or more of a person's total exposure to lead.

(ii) Lead is unusual among drinking water contaminants in that it seldom occurs naturally in water supplies like rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the water distribution system and household plumbing. These materials include lead-based solder used to join copper pipe, brass and chrome plated brass faucets, and in some cases, pipes made of lead that connect your house to the water main (service lines). In 1986, Congress banned the use of lead solder containing greater than 0.2% lead, and restricted the lead content of faucets, pipes and other plumbing materials to 8.0%.

(iii) When water stands in lead pipes or plumbing systems containing lead for several hours or more, the lead may dissolve into your drinking water. This means the first water drawn from the tap in the morning, or later in the afternoon after returning from work or school, can contain fairly high levels of lead.

(4) *Steps You Can Take in the Home To Reduce Exposure To Lead in Drinking Water.* (i) Despite our best efforts mentioned earlier to control water corrosivity and remove lead from the water supply, lead

levels in some homes or buildings can be high. To find out whether you need to take action in your own home, have your drinking water tested to determine if it contains excessive concentrations of lead. Testing the water is essential because you cannot see, taste, or smell lead in drinking water. Some local laboratories that can provide this service are listed at the end of this booklet. For more information on having your water tested, please call [insert phone number of water system].

(ii) If a water test indicates that the drinking water drawn from a tap in your home contains lead above 15 ppb, then you should take the following precautions:

(A) Let the water run from the tap before using it for drinking or cooking any time the water in a faucet has gone unused for more than six hours. The longer water resides in your home's plumbing the more lead it may contain. Flushing the tap means running the cold water faucet until the water gets noticeably colder, usually about 15-30 seconds. If your house has a lead service line to the water main, you may have to flush the water for a longer time, perhaps one minute, before drinking. Although toilet flushing or showering flushes water through a portion of your home's plumbing system, you still need to flush the water in each faucet before using it for drinking or cooking. Flushing tap water is a simple and inexpensive measure you can take to protect your family's health. It usually uses less than one or two gallons of water and costs less than [insert a cost estimate based on flushing two times a day for 30 days] per month. To conserve water, fill a couple of bottles for drinking water after flushing the tap, and whenever possible use the first flush water to wash the dishes or water the plants. If you live in a high-rise building, letting the water flow before using it may not work to lessen your risk from lead. The plumbing systems have more, and sometimes larger pipes than smaller buildings. Ask your landlord for help in locating the source of the lead and for advice on reducing the lead level.

(B) Try not to cook with, or drink water from the hot water tap. Hot water can dissolve more lead more quickly than cold water. If you need hot water, draw water from the cold tap and heat it on the stove.

(C) Remove loose lead solder and debris from the plumbing materials installed in newly constructed homes, or homes in which the plumbing has recently been replaced, by removing the faucet strainers from all taps and running the water from 3 to 5 minutes. Thereafter, periodically remove the

strainers and flush out any debris that has accumulated over time.

(D) If your copper pipes are joined with lead solder that has been installed illegally since it was banned in 1986, notify the plumber who did the work and request that he or she replace the lead solder with lead-free solder. Lead solder looks dull gray, and when scratched with a key looks shiny. In addition, notify your State [insert name of department responsible for enforcing the Safe Drinking Water Act in your State] about the violation.

(E) Determine whether or not the service line that connects your home or apartment to the water main is made of lead. The best way to determine if your service line is made of lead is by either hiring a licensed plumber to inspect the line or by contacting the plumbing contractor who installed the line. You can identify the plumbing contractor by checking the city's record of building permits which should be maintained in the files of the [insert name of department that issues building permits]. A licensed plumber can at the same time check to see if your home's plumbing contains lead solder, lead pipes, or pipe fittings that contain lead. The public water system that delivers water to your home should also maintain records of the materials located in the distribution system. If the service line that connects your dwelling to the water main contributes more than 15 ppb to drinking water, after our comprehensive treatment program is in place, we are required to replace the line. If the line is only partially controlled by the [insert name of the city, county, or water system that controls the line], we are required to provide you with information on how to replace your portion of the service line, and offer to replace that portion of the line at your expense and take a follow-up tap water sample within 14 days of the replacement. Acceptable replacement alternatives include copper, steel, iron, and plastic pipes.

(F) Have an electrician check your wiring. If grounding wires from the electrical system are attached to your pipes, corrosion may be greater. Check with a licensed electrician or your local electrical code to determine if your wiring can be grounded elsewhere. DO NOT attempt to change the wiring yourself because improper grounding can cause electrical shock and fire hazards.

(iii) The steps described above will reduce the lead concentrations in your drinking water. However, if a water test indicates that the drinking water coming from your tap contains lead concentrations in excess of 15 ppb after

flushing, or after we have completed our actions to minimize lead levels, then you may want to take the following additional measures:

(A) Purchase or lease a home treatment device. Home treatment devices are limited in that each unit treats only the water that flows from the faucet to which it is connected, and all of the devices require periodic maintenance and replacement. Devices such as reverse osmosis systems or distillers can effectively remove lead from your drinking water. Some activated carbon filters may reduce lead levels at the tap, however all lead reduction claims should be investigated. Be sure to check the actual performance of a specific home treatment device before and after installing the unit.

(B) Purchase bottled water for drinking and cooking.

(iv) You can consult a variety of sources for additional information. Your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. State and local government agencies that can be contacted include:

(A) [insert the name of city or county department of public utilities] at [insert phone number] can provide you with information about your community's water supply, and a list of local laboratories that have been certified by EPA for testing water quality;

(B) [insert the name of city or county department that issues building permits] at [insert phone number] can provide you with information about building permit records that should contain the names of plumbing contractors that plumbed your home; and

(C) [insert the name of the State Department of Public Health] at [insert phone number] or the [insert the name of the city or county health department] at [insert phone number] can provide you with information about the health effects of lead and how you can have your child's blood tested.

(v) The following is a list of some State approved laboratories in your area that you can call to have your water tested for lead. [Insert names and phone numbers of at least two laboratories].

(b) *Content of broadcast materials.* A water system shall include the following information in all public service announcements submitted under its lead public education program to television and radio stations for broadcasting:

(1) Why should everyone want to know the facts about lead and drinking water? Because unhealthy amounts of lead can enter drinking water through the plumbing in your home. That's why I

urge you to do what I did. I had my water tested for [insert free or \$ per sample]. You can contact the [insert the name of the city or water system] for information on testing and on simple ways to reduce your exposure to lead in drinking water.

(2) To have your water tested for lead, or to get more information about this public health concern, please call [insert the phone number of the city or water system].

(c) *Delivery of a public education program.* (1) In communities where a significant proportion of the population speaks a language other than English, public education materials shall be communicated in the appropriate language(s).

(2) A community water system that fails to meet the lead action level on the basis of tap water samples collected in accordance with § 141.86 shall, within 60 days:

(i) insert notices in each customer's water utility bill containing the information in paragraph (a) of this section, along with the following alert on the water bill itself in large print: "SOME HOMES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS IN THEIR DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH. PLEASE READ THE ENCLOSED NOTICE FOR FURTHER INFORMATION."

(ii) submit the information in paragraph (a) of this section to the editorial departments of the major daily and weekly newspapers circulated throughout the community.

(iii) deliver pamphlets and/or brochures that contain the public education materials in paragraphs (a) (2) and (4) of this section to facilities and organizations, including the following:

(A) public schools and/or local school boards;

(B) city or county health department;

(C) Women, Infants, and Children and/or Head Start Program(s) whenever available;

(D) public and private hospitals and/or clinics;

(E) pediatricians;

(F) family planning clinics; and

(G) local welfare agencies.

(iv) submit the public service announcement in paragraph (b) of this section to at least five of the radio and television stations with the largest audiences that broadcast to the community served by the water system.

(3) A community water system shall repeat the tasks contained in paragraphs (c)(2) (i), (ii) and (iii) of this section every 12 months, and the tasks contained in paragraphs (c)(2)(iv) of this

section every 6 months for as long as the system exceeds the lead action level.

(4) Within 60 days after it exceeds the lead action level, a non-transient non-community water system shall deliver the public education materials contained in paragraphs (a) (1), (2), and (4) of this section as follows:

(i) post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the system; and

(ii) distribute informational pamphlets and/or brochures on lead in drinking water to each person served by the non-transient non-community water system.

(5) A non-transient non-community water system shall repeat the tasks contained in paragraph (c)(4) of this section at least once during each calendar year in which the system exceeds the lead action level.

(6) A water system may discontinue delivery of public education materials if the system has met the lead action level during the most recent six-month monitoring period conducted pursuant to § 141.86. Such a system shall recommence public education in accordance with this section if it subsequently exceeds the lead action level during any monitoring period.

(d) Supplemental monitoring and notification of results.

A water system that fails to meet the lead action level on the basis of tap samples collected in accordance with § 141.86 shall offer to sample the tap water of any customer who requests it. The system is not required to pay for collecting or analyzing the sample, nor is the system required to collect and analyze the sample itself.

§ 141.86 Monitoring requirements for lead and copper in tap water.

(a) *Sample site location.* (1) By the applicable date for commencement of monitoring under paragraph (d)(1) of this section, each water system shall complete a materials evaluation of its distribution system in order to identify a pool of targeted sampling sites that meets the requirements of this section, and which is sufficiently large to ensure that the water system can collect the number of lead and copper tap samples required in paragraph (c) of this section. All sites from which first draw samples are collected shall be selected from this pool of targeted sampling sites. Sampling sites may not include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic contaminants.

(2) A water system shall use the information on lead, copper, and galvanized steel that it is required to collect under § 141.42(d) of this part

[special monitoring for corrosivity characteristics] when conducting a materials evaluation. When an evaluation of the information collected pursuant to § 141.42(d) is insufficient to locate the requisite number of lead and copper sampling sites that meet the targeting criteria in paragraph (a) of this section, the water system shall review the sources of information listed below in order to identify a sufficient number of sampling sites. In addition, the system shall seek to collect such information where possible in the course of its normal operations (e.g., checking service line materials when reading water meters or performing maintenance activities):

(i) all plumbing codes, permits, and records in the files of the building department(s) which indicate the plumbing materials that are installed within publicly and privately owned structures connected to the distribution system;

(ii) all inspections and records of the distribution system that indicate the material composition of the service connections that connect a structure to the distribution system; and

(iii) all existing water quality information, which includes the results of all prior analyses of the system or individual structures connected to the system, indicating locations that may be particularly susceptible to high lead or copper concentrations.

(3) The sampling sites selected for a community water system's sampling pool ("tier 1 sampling sites") shall consist of single family structures that:

(i) contain copper pipes with lead solder installed after 1982 or contain lead pipes; and/or

(ii) are served by a lead service line. When multiple-family residences comprise at least 20 percent of the structures served by a water system, the system may include these types of structures in its sampling pool.

(4) Any community water system with insufficient tier 1 sampling sites shall complete its sampling pool with "tier 2 sampling sites", consisting of buildings, including multiple-family residences that:

(i) contain copper pipes with lead solder installed after 1982 or contain lead pipes; and/or

(ii) are served by a lead service line.

(5) Any community water system with insufficient tier 1 and tier 2 sampling sites shall complete its sampling pool with "tier 3 sampling sites", consisting of single family structures that contain copper pipes with lead solder installed before 1983.

(6) The sampling sites selected for a non-transient noncommunity water system ("tier 1 sampling sites") shall consist of buildings that:

(i) contain copper pipes with lead solder installed after 1982 or contain lead pipes; and/or

(ii) are served by a lead service line.

(7) A non-transient non-community water system with insufficient tier 1 sites that meet the targeting criteria in paragraph (a)(6) of this section shall complete its sampling pool with sampling sites that contain copper pipes with lead solder installed before 1983.

(8) Any water system whose sampling pool does not consist exclusively of tier 1 sites shall demonstrate in a letter submitted to the State under § 141.90(a)(2) why a review of the information listed in paragraph (a)(2) of this section was inadequate to locate a sufficient number of tier 1 sites. Any community water system which includes tier 3 sampling sites in its sampling pool shall demonstrate in such a letter why it was unable to locate a sufficient number of tier 1 and tier 2 sampling sites.

(9) Any water system whose distribution system contains lead service lines shall draw 50 percent of the samples it collects during each monitoring period from sites that contain lead pipes, or copper pipes with lead solder, and 50 percent of those samples from sites served by a lead service line. A water system that cannot identify a sufficient number of sampling sites served by a lead service line shall demonstrate in a letter submitted to the State under § 141.90(a)(4) why the system was unable to locate a sufficient number of such sites. Such a water system shall collect lead service line samples from all of the sites identified as being served by such lines.

(b) *Sample collection methods.* (1) All tap samples for lead and copper collected in accordance with this subpart, with the exception of lead service line samples collected under § 141.84(c), shall be first draw samples.

(2) Each first-draw tap sample for lead and copper shall be one liter in volume and have stood motionless in the plumbing system of each sampling site for at least six hours. First draw samples from residential housing shall be collected from the cold-water kitchen tap or bathroom sink tap. First-draw samples from a non-residential building shall be collected at an interior tap from which water is typically drawn for consumption. First draw samples may be collected by the system or the system may allow residents to collect first draw samples after instructing the residents of the sampling procedures specified in this paragraph. If a system allows residents

to perform sampling, the system may not challenge, based on alleged errors in sample collection, the accuracy of sampling results.

(3) Each service line sample shall be one liter in volume and have stood motionless in the lead service line for at least six hours. Lead service line samples shall be collected in one of the following three ways:

(i) at the tap after flushing the volume of water between the tap and the lead service line. The volume of water shall be calculated based on the interior diameter and length of the pipe between the tap and the lead service line;

(ii) tapping directly into the lead service line; or

(iii) if the sampling site is a building constructed as a single-family residence, allowing the water to run until there is a significant change in temperature which would be indicative of water that has been standing in the lead service line.

(4) A water system shall collect each first draw tap sample from the same sampling site from which it collected a previous sample. If, for any reason, the water system cannot gain entry to a sampling site in order to collect a follow-up tap sample, the system may collect the follow-up tap sample from another sampling site in its sampling pool as long as the new site meets the same targeting criteria, and is within reasonable proximity of the original site.

(c) *Number of samples.* Water systems shall collect at least one sample during each monitoring period specified in paragraph (d) of this section from the number of sites listed in the first column below ("standard monitoring"). A system conducting reduced monitoring under paragraph (d)(4) of this section may collect one sample from the number of sites specified in the second column below during each monitoring period specified in paragraph (d)(4) of this section.

| System size (No. people served) | No. of sites (standard monitoring) | No. of sites (reduced monitoring) |
|---------------------------------|------------------------------------|-----------------------------------|
| > 100,000..... | 100 | 50 |
| 10,001-100,000..... | 60 | 30 |
| 3,301 to 10,000..... | 40 | 20 |
| 501 to 3,300..... | 20 | 10 |
| 101 to 500..... | 10 | 5 |
| <100..... | 5 | 5 |

(d) *Timing of monitoring—(1) Initial tap sampling.*

The first six-month monitoring period for small, medium-size and large systems shall begin on the following dates:

| System size (No. people served) | First six-month monitoring period begins on |
|---------------------------------|---|
| > 50,000..... | January 1, 1992. |
| 3,301 to 50,000..... | July 1, 1992. |
| <3,300..... | July 1, 1993. |

(i) All large systems shall monitor during two consecutive six-month periods.

(ii) All small and medium-size systems shall monitor during each six-month monitoring period until:

(A) the system exceeds the lead or copper action level and is therefore required to implement the corrosion control treatment requirements under § 141.81, in which case the system shall continue monitoring in accordance with paragraph (d)(2) of this section, or

(B) the system meets the lead or copper action levels during two consecutive six-month monitoring periods, in which case the system may reduce monitoring in accordance with paragraph (d)(4) of this section.

(2) *Monitoring after installation of corrosion control and source water treatment.* (i) Any large system which installs optimal corrosion control treatment pursuant to § 141.81(d)(4) shall monitor during two consecutive six-month monitoring periods by the date specified in § 141.81(d)(5).

(ii) Any small or medium-size system which installs optimal corrosion control treatment pursuant to § 141.81(e)(5) shall monitor during two consecutive six-month monitoring periods by the date specified in § 141.81(e)(6).

(iii) Any system which installs source water treatment pursuant to § 141.83(a)(3) shall monitor during two consecutive six-month monitoring periods by the date specified in § 141.83(a)(4).

(3) *Monitoring after State specifies water quality parameter values for optimal corrosion control.* After the State specifies the values for water quality control parameters under § 141.82(f), the system shall monitor during each subsequent six-month monitoring period, with the first monitoring period to begin on the date the State specifies the optimal values under § 141.82(f).

(4) *Reduced monitoring.* (i) A small or medium-size water system that meets the lead and copper action levels during each of two consecutive six-month monitoring periods may reduce the number of samples in accordance with paragraph (c) of this section, and reduce the frequency of sampling to once per year.

(ii) Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f) during each of two consecutive six-month monitoring periods may request that the State allow the system to reduce the frequency of monitoring to once per year and to reduce the number of lead and copper samples in accordance with paragraph (c) of this section. The State shall review the information submitted by the water system and shall make its decision in writing, setting forth the basis for its determination. The State shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(iii) A small or medium-size water system that meets the lead and copper action levels during three consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three years. Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f) during three consecutive years of monitoring may request that the State allow the system to reduce the frequency of monitoring from annually to once every three years. The State shall review the information submitted by the water system and shall make its decision in writing, setting forth the basis for its determination. The State shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(iv) A water system that reduces the number and frequency of sampling shall collect these samples from sites included in the pool of targeted sampling sites identified in paragraph (a) of this section. Systems sampling annually or less frequently shall conduct the lead and copper tap sampling during the months of June, July, August or September.

(v) A small or medium-size water system subject to reduced monitoring that exceeds the lead or copper action level shall resume sampling in accordance with paragraph (d)(3) of this section and collect the number of samples specified for standard monitoring under paragraph (c) of this section. Any water system subject to reduced monitoring frequency that fails

to operate within the range of values for the water quality control parameters specified by the State under § 141.82(f) shall resume tap water sampling in accordance with paragraph (d)(3) of this section and collect the number of samples specified for standard monitoring under paragraph (c) of this section.

(e) *Additional monitoring by systems.* The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the State in making any determinations (i.e., calculating the 90th percentile lead or copper level) under this subpart.

§ 141.87 Monitoring requirements for water quality parameters.

All large water systems and all small and medium-size systems that exceed the lead or copper action level shall monitor water quality parameters in addition to lead and copper in accordance with this section. The requirements of this section are summarized in the table at the end of this section.

(a) *General Requirements—(1) Sample collection methods.* (i) Tap samples shall be representative of water quality throughout the distribution system taking into account the number of persons served, the different sources of water, the different treatment methods employed by the system, and seasonal variability. Tap sampling under this section is not required to be conducted at taps targeted for lead and copper sampling under § 141.86(a). [Note: Systems may find it convenient to conduct tap sampling for water quality parameters at sites used for coliform sampling under 40 CFR § 141.21.]

(ii) Samples collected at the entry point(s) to the distribution system shall be from locations representative of each source after treatment. If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

(2) *Number of samples.* (i) Systems shall collect two tap samples for applicable water quality parameters during each monitoring period specified under paragraphs (b) through (e) of this section from the following number of sites.

| System size (No. people served) | No. of sites for water quality parameters |
|---------------------------------|---|
| > 100,000 | 25 |
| 10,0001-100,000..... | 10 |
| 3,301 to 10,000 | 3 |
| 501 to 3,300 | 2 |
| 101 to 500..... | 1 |
| <100..... | 1 |

(ii) Systems shall collect two samples for each applicable water quality parameter at each entry point to the distribution system during each monitoring period specified in paragraph (b) of this section. During each monitoring period specified in paragraphs (c)–(e) of this section, systems shall collect one sample for each applicable water quality parameter at each entry point to the distribution system.

(b) *Initial Sampling.* All large water systems shall measure the applicable water quality parameters as specified below at taps and at each entry point to the distribution system during each six-month monitoring period specified in § 141.86(d)(1). All small and medium-size systems shall measure the applicable water quality parameters at the locations specified below during each six-month monitoring period specified in § 141.86(d)(1) during which the system exceeds the lead or copper action level.

(1) At taps:

(i) pH;

(ii) Alkalinity;

(iii) Orthophosphate, when an inhibitor containing a phosphate compound is used;

(iv) Silica, when an inhibitor containing a silicate compound is used;

(v) calcium;

(vi) conductivity; and

(vii) water temperature.

(2) At each entry point to the distribution system: all of the applicable parameters listed in paragraph (b)(1) of this section.

(c) *Monitoring after installation of corrosion control.* Any large system which installs optimal corrosion control treatment pursuant to § 141.81(d)(4) shall measure the water quality parameters at the locations and frequencies specified below during each six-month monitoring period specified in § 141.86(d)(2)(i). Any small or medium-size system which installs optimal corrosion control treatment shall conduct such monitoring during each six-month monitoring period specified in § 141.86(d)(2)(ii) in which the system exceeds the lead or copper action level.

(1) At taps, two samples for:

- (i) pH;
- (ii) Alkalinity;
- (iii) Orthophosphate, when an inhibitor containing a phosphate compound is used;
- (iv) Silica, when an inhibitor containing a silicate compound is used;
- (v) Calcium, when calcium carbonate stabilization is used as part of corrosion control.

(2) At each entry point to the distribution system, one sample every two weeks (bi-weekly) for:

- (i) pH;
- (ii) When alkalinity is adjusted as part of optimal corrosion control, a reading of the dosage rate of the chemical used to adjust alkalinity, and the alkalinity concentration; and

(iii) When a corrosion inhibitor is used as part of optimal corrosion control, a reading of the dosage rate of the inhibitor used, and the concentration of orthophosphate or silica (whichever is applicable).

(d) *Monitoring after State specifies water quality parameter values for optimal corrosion control.* After the State specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment under § 141.82(f), all large systems shall measure the applicable water quality parameters in accordance with paragraph (c) of this section during each monitoring period specified in § 141.86(d)(3). Any small or medium-size system shall conduct such monitoring during each monitoring period specified

in § 141.86(d)(3) in which the system exceeds the lead or copper action level. The system may take a confirmation sample for any water quality parameter value no later than 3 days after the first sample. If a confirmation sample is taken, the result must be averaged with the first sampling result and the average must be used for any compliance determinations under § 141.82(g). States have discretion to delete results of obvious sampling errors from this calculation.

(e) *Reduced monitoring.* (1) Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment during each of two consecutive six-month monitoring periods under paragraph (d) of this section shall continue monitoring at the entry point(s) to the distribution system as specified in paragraph (c)(2) of this section. Such system may collect two tap samples for applicable water quality parameters from the following reduced number of sites during each six-month monitoring period.

| System size (No. of people served) | Reduced No. of sites for water quality parameters |
|------------------------------------|---|
| > 100,000..... | 10 |
| 10,001 to 100,000..... | 7 |
| 3,301 to 10,000..... | 3 |
| 501 to 3,300..... | 2 |
| 101 to 500..... | 1 |
| ≤ 100..... | 1 |

(2) Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f) during three consecutive years of monitoring may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in this paragraph (e)(1) of this section from every six months to annually.

(3) A water system that conducts sampling annually shall collect these samples evenly throughout the year so as to reflect seasonal variability.

(4) Any water system subject to reduced monitoring frequency that fails to operate within the range of values for the water quality parameters specified by the State under § 141.82(f) shall resume tap water sampling in accordance with the number and frequency requirements in paragraph (c) of this section.

(f) *Additional monitoring by systems.* The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the State in making any determinations (i.e., determining concentrations of water quality parameters) under this section or § 141.82.

SUMMARY OF MONITORING REQUIREMENTS FOR WATER QUALITY PARAMETERS ¹

| Monitoring Period | Parameters ² | Location | Frequency |
|---|---|--|---|
| Initial Monitoring..... | pH, alkalinity, orthophosphate or silica ³ , calcium, conductivity, temperature. | Taps and at entry point(s) to distribution system. | Every 6 months |
| After Installation of Corrosion Control..... | pH, alkalinity, orthophosphate or silica ³ , calcium ⁴ | Taps..... | Every 6 months |
| | pH, alkalinity dosage rate and concentration (if alkalinity adjusted as part of corrosion control), inhibitor dosage rate and inhibitor residual ⁵ . | Entry point(s) to distribution system. | Biweekly |
| After State Specifies Parameter Values For Optimal Corrosion Control. | pH, alkalinity, orthophosphate or silica ³ , calcium ⁴ | Taps..... | Every 6 months |
| | pH, alkalinity dosage rate and concentration (if alkalinity adjusted as part of corrosion control), inhibitor dosage rate and inhibitor residual ⁵ . | Entry point(s) to distribution system. | Biweekly |
| Reduced Monitoring..... | pH, alkalinity, orthophosphate or silica ³ , calcium ⁴ | Taps..... | Every 6 months at a reduced number of sites |

SUMMARY OF MONITORING REQUIREMENTS FOR WATER QUALITY PARAMETERS ¹—Continued

| Monitoring Period | Parameters ² | Location | Frequency |
|-------------------|---|--|-----------|
| | pH, alkalinity dosage rate and concentration (if alkalinity adjusted as part of corrosion control), inhibitor dosage rate and inhibitor residual ³ . | Entry point(s) to distribution system. | Biweekly |

¹ Table is for illustrative purposes; consult the text of this section for precise regulatory requirements.

² Small and medium-size systems have to monitor for water quality parameters only during monitoring periods in which the system exceeds the lead or copper action level.

³ Orthophosphate must be measured only when an inhibitor containing a phosphate compound is used. Silica must be measured only when an inhibitor containing silicate compound is used.

⁴ Calcium must be measured only when calcium carbonate stabilization is used as part of corrosion control.

⁵ Inhibitor dosage rates and inhibitor residual concentrations (orthophosphate or silica) must be measured only when an inhibitor is used.

§ 141.88 Monitoring requirements for lead and copper in source water.

(a) *Sample location, collection methods, and number of samples.* (1) A water system that fails to meet the lead or copper action level on the basis of tap samples collected in accordance with § 141.86 shall collect lead and copper source water samples in accordance with the requirements regarding sample location, number of samples, and collection methods specified in § 141.23(a)(1)–(4) (inorganic chemical sampling). (Note: The timing of sampling for lead and copper shall be in accordance with paragraphs (b) and (c) of this section, and not dates specified in § 141.23(a)(1) and (2)).

(2) Where the results of sampling indicate an exceedance of maximum permissible source water levels established under § 141.83(b)(4), the State may require that one additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point. If a State-required confirmation sample is taken for lead or copper, then the results of the initial and confirmation sample shall be averaged in determining compliance with the State-specified maximum permissible levels. Any sample value below the detection limit shall be considered to be zero. Any value above the detection limit but below the PQL shall either be considered as the measured value or be considered one-half the PQL.

(b) *Monitoring frequency after system exceeds tap water action level.* Any system which exceeds the lead or copper action level at the tap shall collect one source water sample from each entry point to the distribution

system within six months after the exceedance.

(c) *Monitoring frequency after installation of source water treatment.* Any system which installs source water treatment pursuant to § 141.83(a)(2) shall collect an additional source water sample from each entry point to the distribution system during two consecutive six-month monitoring periods by the deadline specified in § 141.83(a)(4).

(d) *Monitoring frequency after State specifies maximum permissible source water levels or determines that source water treatment is not needed.* (1) A system shall monitor at the frequency specified below in cases where the State specifies maximum permissible source water levels under § 141.83(b)(4) or determines that the system is not required to install source water treatment under § 141.83(b)(2).

(i) A water system using only groundwater shall collect samples once during the three-year compliance period (as that term is defined in § 141.2) in effect when the applicable State determination under paragraph (d)(1) of this section is made. Such systems shall collect samples once during each subsequent compliance period.

(ii) A water system using surface water (or a combination of surface and groundwater) shall collect samples once during each year, the first annual monitoring period to begin on the date on which the applicable State determination is made under paragraph (d)(1) of this section.

(2) A system is not required to conduct source water sampling for lead and/or copper if the system meets the action level for the specific contaminant in tap water samples during the entire

source water sampling period applicable to the system under paragraph (d)(1) (i) or (ii) of this section.

(e) *Reduced monitoring frequency.* (1) A water system using only groundwater which demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and/or copper concentrations specified by the State in § 141.83(b)(4) during at least three consecutive compliance periods under paragraph (d)(1) of this section may reduce the monitoring frequency for lead and/or copper to once during each nine-year compliance cycle (as that term is defined in § 141.2).

(2) A water system using surface water (or a combination of surface and ground waters) which demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the State in § 141.83(b)(4) for at least three consecutive years may reduce the monitoring frequency in paragraph (d)(1) of this section to once during each nine-year compliance cycle (as that term is defined in § 141.23).

(3) A water system that uses a new source of water is not eligible for reduced monitoring for lead and/or copper until concentrations in samples collected from the new source during three consecutive monitoring periods are below the maximum permissible lead and copper concentrations specified by the State in § 141.83(a)(5).

§ 141.89 Analytical methods.

(a) Analyses for lead, copper, pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature shall be conducted using the following methods:

ANALYTICAL METHODS

| Contaminant | Methodology ^a | Reference (Method Number) | | SM ^b | USGS ^c |
|---|--|---------------------------|-------------------|---------------------|-------------------------------------|
| | | EPA ¹ | ASTM ² | | |
| Lead | Atomic absorption; furnace technique | 239.2 | D3559-85D | 3113 | |
| | Inductively-coupled plasma; mass spectrometry | 200.8 ^d | | | |
| | Atomic absorption; platform furnace technique | 200.9 ^e | | | |
| Copper | Atomic absorption; furnace technique | 220.2 | D1688-90c | 3113 | |
| | Atomic absorption; direct aspiration | 220.1 | D1688-90A | 3111-B | |
| | Inductively-coupled plasma | 200.7 ⁵ | | 3120 | |
| | Inductively-coupled plasma; mass spectrometry | 200.8 ^d | | | |
| | Atomic absorption; platform furnace | 200.9 ^e | | | |
| pH | Electrometric | 150.1 | D1293-84B | 4500-H ⁺ | |
| | | 150.2 | | | |
| Conductivity | Conductance | 120.1 | D1125-82B | 2510 | |
| Calcium | EDTA titrimetric | 215.2 | D511-88A | 3500-Ca-D | |
| | Atomic absorption; direct aspiration | 215.1 | D511-88B | 3111-B | |
| Alkalinity | Inductively-coupled plasma | 200.7 ⁵ | | 3120 | |
| | Titrimetric | 310.1 | D1067-88B | 2320 | |
| | Electrometric titration | | | | |
| Orthophosphate, unfiltered, no digestion or hydrolysis. Colorimetric, automated, ascorbic acid. | 365.1 | | 4500-P-F | | I-1030-85 |
| | Colorimetric, ascorbic acid, two reagent | 365.3 | | 4500-P-F | |
| | Colorimetric, ascorbic acid, two reagent | 365.2 | D515-88A | | |
| | Colorimetric, phosphomolybdate; automated-segmented flow; automated discrete | | | | I-1601-85 I-2601-85 I-2598-85 |
| Silica | Ion chromatography | 300.0 ^b | D4327-88 | 4110 | I-1700-85 I-2700-85 |
| | Colorimetric, molybdate blue; automated-segmented flow | | | | |
| | Colorimetric | 370.1 | D859-88 | | |
| | Molybdosilicate | | | 4500-Si-D | |
| | Heteropoly blue | | | 4500-Si-E | |
| | Automated method for molybdate-reactive silica | | | 4500-Si-F | |
| | Inductively-coupled plasma | 200.7 ⁵ | | 3120 | |
| Temperature | Thermometric | | | 2550 | |

¹ The procedures 239.2, 220.2, 220.1, 150.1, 150.2, 120.1, 215.2, 215.1, 310.1, 365.1, 365.3, 365.2, and 370.1 are incorporated by reference and shall be done in accordance with "Methods for Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, OH (EPA-600/4-79-020), Revised March 1983, pp. 239.2-1 through 239.2-2 and metals-1 through metals-19, 220.2-1 through 220.2-2 and metals-1 through metals-19, 220.1-1 through 220.1-2 and metals-1 through metals-19, 150.1-1 through 150.1-3, 150.2-1 through 150.2-3, 120.1-1 through 120.1-3, 215.2-1 through 215.2-3, 215.1-1 through 215.1-2, 310.1-1 through 310.1-3, 365.1-1 through 365.1-9, 365.3-1 through 365.3-4, 365.2-1 through 365.2-6, and 370.1-1 through 370.1-5, respectively. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from ORD Publications, CERL, EPA, Cincinnati, OH 45268. Copies may be inspected at the United States Environmental Protection Agency, 401 M Street, SW., Room EB-15, Washington, D.C. 20460 or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C.

² The procedures D3559-85D, D1688-90C, D1688-90A, D1293-84B, D1125-82B, D511-88, D1067-88B, D515-88A, D4327-88, and D859-88 are incorporated by reference and shall be done in accordance with Annual Book of ASTM Standards, Vol. 11.01, American Society for Testing and Materials, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at the United States Environmental Protection Agency, 401 M Street, SW., Room EB-15, Washington, D.C. 20460 or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C.

³ The procedures 3113, 3111-B, 3120, 4500-H⁺, 2510, 3500-Ca-D, 3120, 2320, 4500-P-F, 4500-P-E, 4110, 4500-Si-D, 4500-Si-E, 4500-Si-F, and 2550 are incorporated by reference and shall be done in accordance with "Standard Methods for the Examination of Water and Wastewater," 17th Edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1989, pp. 3-32 through 3-43, 3-20 through 3-23, 3-53 through 3-63, 4-94 through 4-102, 2-57 through 2-61, 3-85 through 3-87, 2-35 through 2-39, 4-179 through 4-181, 4-117 through 4-178, 4-2 through 4-6, 4-184 through 4-187, 4-188 through 4-189, 4-189 through 4-191, and 2-80 through 2-81, respectively. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American Water Works Association, Customer Service, 6666 West Quincy Avenue, Denver, CO 80235, Phone (303) 794-7711. Copies may be inspected at the United States Environmental Protection Agency, 401 M Street, SW., Room EB-15, Washington, D.C. 20460 or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C.

⁴ The procedures I-2601-85, I-1030-85, I-1601-85, I-2598-85, I-1700-85, and I-2700-85 are incorporated by reference and shall be done in accordance with "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments," 3rd edition, U.S. Department of Interior, U.S. Geological Survey, 1989, pp. 55-56, 381-382, 383-385, 387-388, 415-416, and 417-419, respectively. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be purchased from the Books and Open-File Reports Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225. Copies may be inspected at the United States Environmental Protection Agency, 401 M Street, SW., Room EB-15, Washington, D.C. 20460 or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C.

⁵ "Determination of Metals and Trace Elements in Water and Wastes by Inductively-Coupled Plasma Atomic Emission Spectrometry," Revision 3.2, August 1990, U.S. EPA, EMSL. This document is available from U.S. EPA, EMSL, Cincinnati, OH 45268.

⁶ "Determination of Trace Elements in Water and Wastes by Inductively-Coupled Plasma-Mass Spectrometry," Method 200.8, August 1990, Revision 4.3, U.S. EPA EMSL. This document is available from U.S. EPA, EMSL, Cincinnati, OH 45268.

⁷ "Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption, Spectrometry," Method 200.9, August 1990, U.S. EPA EMSL. This document is available from U.S. EPA, EMSL, Cincinnati, OH 45268.

⁸ "Determination of Inorganic Ions in Water by Ion Chromatography," Method 300.0, December 1989, U.S. EPA EMSL. This document is available from U.S. EPA, EMSL, Cincinnati, OH 45268.

⁹ For analyzing Lead and copper, the technique applicable to total metals must be used and samples cannot be filtered.

(1) Analyses under this section shall only be conducted by laboratories that have been certified by EPA or the State. To obtain certification to conduct analyses for lead and copper, laboratories must:

(i) Analyze performance evaluation samples which include lead and copper provided by EPA Environmental Monitoring and Support Laboratory or equivalent samples provided by the State; and

(ii) Achieve quantitative acceptance limits as follows:
(A) Lead: ± 30 percent of the actual amount in the Performance Evaluation sample when the actual amount is greater than or equal to 0.005 mg/L, and

(B) Copper: ± 10 percent of the actual amount in the Performance Evaluation sample when the actual amount is greater than or equal to 0.050 mg/L;

(iii) Achieve method detection limits according to the procedures in appendix B of part 136 of this title as follows:

(A) Lead: 0.001 mg/L (only if source water compositing is done under § 141.23(a)(4)); and

(B) Copper: 0.001 mg/L or 0.020 mg/L when atomic absorption direct aspiration is used (only if source water compositing is done under § 141.23(a)(4)).

(iv) Be currently certified by EPA or the State to perform analyses to the specifications described in paragraph (a)(2) of this section.

(2) States have the authority to allow the use of previously collected monitoring data for purposes of monitoring, if the data were collected and analyzed in accordance with the requirements of this subpart.

(3) All lead levels measured between the PQL and the MDL must be either reported as measured or they can be reported as one-half the PQL (0.0025 mg/L). All levels below the lead MDL must be reported as zero.

(4) All copper levels measured between the PQL and the MDL must be either reported as measured or they can be reported as one-half the PQL (0.015 mg/L). All levels below the copper MDL must be reported as zero.

§ 141.90 Reporting requirements.

All water systems shall report all of the following information to the State in accordance with this section.

(a) *Reporting requirements for tap water monitoring for lead and copper and for water quality parameter monitoring.* (1) A water system shall report the information specified below for all tap water samples within the first 10 days following the end of each applicable monitoring period specified in § 141.86 and § 141.87 and § 141.88 (i.e., every six-months, annually, or every 3 years).

(i) the results of all tap samples for lead and copper including the location of each site and the criteria under § 141.86(a) (3), (4), (5), (6), and/or (7) under which the site was selected for the system's sampling pool;

(ii) a certification that each first draw sample collected by the water system is one-liter in volume and, to the best of their knowledge, has stood motionless in the service line, or in the interior plumbing of a sampling site, for at least six hours;

(iii) where residents collected samples, a certification that each tap sample collected by the residents was

taken after the water system informed them of proper sampling procedures specified in § 141.86(b)(2);

(iv) the 90th percentile lead and copper concentrations measured from among all lead and copper tap water samples collected during each monitoring period (calculated in accordance with § 141.80(c)(3));

(v) with the exception of initial tap sampling conducted pursuant to § 141.86(d)(1), the system shall designate any site which was not sampled during previous monitoring periods, and include an explanation of why sampling sites have changed;

(vi) the results of all tap samples for pH, and where applicable, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica collected under § 141.87(b)-(e);

(vii) the results of all samples collected at the entry point(s) to the distribution system for applicable water quality parameters under § 141.87(b)-(e).

(2) By the applicable date in § 141.86(d)(1) for commencement of monitoring, each community water system which does not complete its targeted sampling pool with tier 1 sampling sites meeting the criteria in § 141.86(a)(3) shall send a letter to the State justifying its selection of tier 2 and/or tier 3 sampling sites under § 141.86 (a)(4) and/or (a)(5).

(3) By the applicable date in § 141.86(d)(1) for commencement of monitoring, each non-transient, non-community water system which does not complete its sampling pool with tier 1 sampling sites meeting the criteria in § 141.86(a)(6) shall send a letter to the State justifying its selection of sampling sites under § 141.86(a)(7).

(4) By the applicable date in § 141.86(d)(1) for commencement of monitoring, each water system with lead service lines that is not able to locate the number of sites served by such lines required under § 141.86(a)(9) shall send a letter to the State demonstrating why it was unable to locate a sufficient number of such sites based upon the information listed in § 141.86(a)(2).

(5) Each water system that requests that the State reduce the number and frequency of sampling shall provide the information required under § 141.86(d)(4).

(b) *Source water monitoring reporting requirements.* (1) A water system shall report the sampling results for all source water samples collected in accordance with § 141.88 within the first 10 days following the end of each source water monitoring period (i.e., annually, per compliance period, per compliance cycle) specified in § 141.88.

(2) With the exception of the first round of source water sampling conducted pursuant to § 141.88(b), the system shall specify any site which was not sampled during previous monitoring periods, and include an explanation of why the sampling point has changed.

(c) *Corrosion control treatment reporting requirements.* By the applicable dates under § 141.81, systems shall report the following information:

(1) For systems demonstrating that they have already optimized corrosion control, information required in § 141.82(b) (2) or (3).

(2) for systems required to optimize corrosion control, their recommendation regarding optimal corrosion control treatment under § 141.82(a).

(3) for systems required to evaluate the effectiveness of corrosion control treatments under § 141.82(c), the information required by that paragraph.

(4) for systems required to install optimal corrosion control designated by the State under § 141.82(d), a letter certifying that the system has completed installing that treatment.

(d) *Source water treatment reporting requirements.* By the applicable dates in § 141.83, systems shall provide the following information to the State:

(1) if required under § 141.83(b)(1), their recommendation regarding source water treatment;

(2) for systems required to install source water treatment under § 141.83(b)(2), a letter certifying that the system has completed installing the treatment designated by the State within 24 months after the State designated the treatment.

(e) *Lead service line replacement reporting requirements.* Systems shall report the following information to the State to demonstrate compliance with the requirements of § 141.84:

(1) Within 12 months after a system exceeds the lead action level in sampling referred to in § 141.84(a), the system shall demonstrate in writing to the State that it has conducted a material evaluation, including the evaluation in § 141.86(a), to identify the initial number of lead service lines in its distribution system, and shall provide the State with the system's schedule for replacing annually at least 7 percent of the initial number of lead service lines in its distribution system.

(2) Within 12 months after a system exceeds the lead action level in sampling referred to in § 141.84(a), and every 12 months thereafter, the system shall demonstrate to the State in writing that the system has either:

(i) replaced in the previous 12 months at least 7 percent of the initial lead

service lines (or a greater number of lines specified by the State under § 141.84(f)) in its distribution system, or

(ii) conducted sampling which demonstrates that the lead concentration in all service lines samples from an individual line(s), taken pursuant to § 141.86(b)(3), is less than or equal to 0.015 mg/L. In such cases, the total number of lines replaced and/or which meet the criteria in § 141.84(b) shall equal at least 7 percent of the initial number of lead lines identified under paragraph (a) of this section (or the percentage specified by the State under § 141.84(f)).

(3) The annual letter submitted to the State under paragraph (e)(2) of this section shall contain the following information:

(i) The number of lead service lines scheduled to be replaced during the previous year of the system's replacement schedule;

(ii) the number and location of each lead service line replaced during the previous year of the system's replacement schedule;

(iii) if measured, the water lead concentration and location of each lead service line sampled, the sampling method, and the date of sampling.

(4) As soon as practicable, but in no case later than three months after a system exceeds the lead action level in sampling referred to in § 141.84(a), any system seeking to rebut the presumption that it has control over the entire lead service line pursuant to § 141.84(d) shall submit a letter to the State describing the legal authority (e.g., state statutes, municipal ordinances, public service contracts or other applicable legal authority) which limits the system's control over the service lines and the extent of the system's control.

(f) *Public education program reporting requirements.* By December 31st of each year, any water system that is subject to the public education requirements in § 141.85 shall submit a letter to the State demonstrating that the system has delivered the public education materials that meet the content requirements in § 141.85(a) and (b) and the delivery requirements in § 141.85(c). This information shall include a list of all the newspapers, radio stations, television stations, facilities and organizations to which the system delivered public education materials during the previous year. The water system shall submit the letter required by this paragraph annually for as long as it exceeds the lead action level.

(g) *Reporting of additional monitoring data.* Any system which collects sampling data in addition to that required by this subpart shall report the

results to the State by the end of the applicable monitoring period under §§ 141.86, 141.87 and § 141.88 during which the samples are collected.

§ 141.91 Recordkeeping requirements.

Any system subject to the requirements of this subpart shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, State determinations, and any other information required by § 141.81 through § 141.88. Each water system shall retain the records required by this section for no fewer than 12 years.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority for part 142 continues to read as follows: 42 U.S.C. 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, and 300j-9.

2. Section 142.14 is amended by adding paragraphs (d)(8) through (11) to read as follows:

§ 142.14 Records kept by States.

* * * * *

(d) * * *

(8) Records of the currently applicable or most recent State determinations, including all supporting information and an explanation of the technical basis for each decision, made under the following provisions of 40 CFR, part 141, subpart I for the control of lead and copper:

(i) Section 141.82(b)—decisions to require a water system to conduct corrosion control treatment studies;

(ii) Section 141.82(d)—designations of optimal corrosion control treatment;

(iii) Section 141.82(f)—designations of optimal water quality parameters;

(iv) Section 141.82(h)—decisions to modify a public water system's optimal corrosion control treatment or water quality parameters;

(v) Section 141.83(b)(2)—determinations of source water treatment; and

(vi) Section 141.83(b)(4)—designations of maximum permissible lead and copper concentrations in source water.

(vii) Section 141.84(e)—determinations that a system does not control entire lead service lines.

(viii) Section 141.84(f)—determinations establishing a shorter lead service line replacement schedule than required by § 141.84.

(9) Records of reports and any other information submitted by PWSs under § 141.90;

(10) Records of state activities, and the results thereof, to verify compliance with State determinations issued under §§ 141.82(f), 141.82(h), 141.83(b)(2), and

141.83(b)(4) and compliance with lead service line replacement schedules under § 141.84.

(11) Records of each system's currently applicable or most recently designated monitoring requirements. If, for the records identified in §§ 142.14(d)(8)(i) through 142.14(d)(8)(viii) above, no change is made to State decision during a 12 year retention period, the State shall maintain the record until a new decision, determination or designation has been issued.

* * * * *

3. Section 142.15 is amended by adding new paragraph (c)(4) to read as follows:

§ 142.15 Reports by States.

* * * * *

(c) * * *

(4) States shall report to EPA by May 15, August 15, November 15 and February 15 of each year the following information related to each system's compliance with the treatment techniques for lead and copper under 40 CFR Part 141, Subpart I during the preceding calendar quarter. Specifically, States shall report the name and PWS identification number of:

(i) each public water system which exceeded the lead and copper action levels and the date upon which the exceedance occurred;

(ii) each public water system required to complete the corrosion control evaluation specified in § 141.82(c) and the date the State received the results of the evaluations from each system;

(iii) each public water system for which the State has designated optimal corrosion control treatment under § 141.82(d), the date of the determination, and each system that completed installation of treatment as certified under § 141.83(c)(3);

(iv) each public water system for which the State has designated optimal water quality parameters under § 141.82(f) and the date of the determination;

(v) each public water system which the State has required to install source water treatment under § 141.83(b)(2), the date of the determination, and each system that completed installation of treatment as certified under § 141.90(d)(2);

(vi) each public water system for which the State has specified maximum permissible source water levels under § 141.83(b)(4); and

(vii) each public water system required to begin replacing lead service lines as specified in § 141.84, each public water system for which the State has

established a replacement schedule under § 141.84(f), and each system reporting compliance with its replacement schedule under § 141.90(e)(2).

* * * * *

4. Section 142.16 is amended by adding paragraph (d) to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(d) Requirements for States to adopt 40 CFR Part 141, Subpart I Lead and Copper. An application for approval of a State program revision which adopts the requirements specified in 40 CFR Part 141 Subpart I must contain (in addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that state regulations be at least as stringent as the federal requirements) a description of how the State will accomplish the following program requirements:

(1) §§ 141.82(d), 141.82(f) and 141.82(h)—Designating optimal corrosion control treatment methods, optimal water quality parameters and modifications thereto.

(2) §§ 141.83(b)(2) and 141.83(b)(4)—Designating source water treatment methods, maximum permissible source water levels for lead and copper and modifications thereto.

(3) Section 141.90(e)—Verifying compliance with lead service line replacement schedules and of PWS demonstrations of limited control over lead service lines.

* * * * *

5. § 142.19 is added to read as follows:

§ 142.19 EPA review of State implementation of national primary drinking water regulations for lead and copper.

(a) Pursuant to the procedures in this section, the Regional Administrator may review state determinations establishing corrosion control or source water treatment requirements for lead or copper and may issue an order establishing federal treatment requirements for a public water system pursuant to § 141.82 (d) and (f) and § 141.83(b) (2) and (4) where the Regional Administrator finds that:

(1) a State has failed to issue a treatment determination by the applicable deadline;

(2) a State has abused its discretion in making corrosion control or source water treatment determinations in a substantial number of cases or in cases affecting a substantial population, or

(3) the technical aspects of State's determination would be indefensible in an expected federal enforcement action taken against a system.

(b) If the Regional Administrator determines that review of state determination(s) under this section may be appropriate, he shall request the State to forward to EPA the state determination and all information that was considered by the State in making its determination, including public comments, if any, within 60 days of the Regional Administrator's request.

(c) Proposed review of state determinations:

(1) Where the Regional Administrator finds that review of a state determination under paragraph (a) of this section is appropriate, he shall issue a proposed review order which shall:

(i) Identify the public water system(s) affected, the State determination being reviewed and the provisions of state and/or federal law at issue;

(ii) Identify the determination that the State failed to carry out by the applicable deadline, or identify the particular provisions of the State determination which, in the Regional Administrator's judgment, fail to carry out properly applicable treatment requirements, and explain the basis for the Regional Administrator's conclusion;

(iii) Identify the treatment requirements which the Regional Administrator proposes to apply to the affected system(s), and explain the basis for the proposed requirements;

(iv) Request public comment on the proposed order and the supporting record.

(2) The Regional Administrator shall provide notice of the proposed review order by:

(i) Mailing the proposed order to the affected public water system(s), the state agency whose order is being reviewed, and any other parties of interest known to the Regional Administrator; and

(ii) Publishing a copy of the proposed order in a newspaper of general circulation in the affected communities.

(3) The Regional Administrator shall make available for public inspection during the comment period the record supporting the proposed order, which shall include all of the information submitted by the State to EPA under paragraph (b) of this section, all other studies, monitoring data and other information considered by the Agency in developing the proposed order.

(d) Final review order

(1) Based upon review of all information obtained regarding the proposed review order, including public comments, the Regional Administrator shall issue a final review order within 120 days after issuance of the proposed order which affirms, modifies, or withdraws the proposed order. The

Regional Administrator may extend the time period for issuing the final order for good cause. If the final order modifies or withdraws the proposed order, the final order shall explain the reasons supporting the change.

(2) The record of the final order shall consist of the record supporting the proposed order, all public comments, all other information considered by the Regional Administrator in issuing the final order and a document responding to all significant public comments submitted on the proposed order. If new points are raised or new material supplied during the public comment period, the Regional Administrator may support the responses on those matters by adding new materials to the record. The record shall be complete when the final order is issued.

(3) Notice of the final order shall be provided by mailing the final order to the affected system(s), the State, and all parties who commented on the proposed order.

(4) Upon issuance of the final order, its terms constitute requirements of the national primary drinking water regulation for lead and/or copper until such time as the Regional Administrator issues a new order (which may include rescission of the previous order) pursuant to the procedures in this section. Such requirements shall supersede any inconsistent treatment requirements established by the State pursuant to the national primary drinking water regulations for lead and copper.

(5) The Regional Administrator may not issue a final order to impose conditions less stringent than those imposed by the State.

(e) The Regional Administrator may not delegate authority to sign the final order under this section.

(f) Final action of the Regional Administrator under paragraph (d) of this section shall constitute action of the Administrator for purposes of 42 U.S.C. § 300j-7(a)(2).

6. In section 142.62, the title of the section and paragraphs (f) and (g) are revised to read as follows, and paragraph (h)(7) is added to read as follows:

§ 142.62 Variances and exemptions from the maximum contaminant levels for organic and inorganic chemicals and exemptions from the treatment technique for lead and copper.

* * * * *

(f) The State may require a public water system to use bottled water, point-of-use devices, point-of-entry devices or other means as a condition of granting a variance or an exemption

from the requirements of § 141.61 (a) and (c) and § 141.62, to avoid an unreasonable risk to health. The State may require a public water system to use bottled water and point-of-use devices or other means, *but not point-of-entry devices*, as a condition for granting an exemption from corrosion control treatment requirements for lead and copper in §§ 141.81 and 141.82 to avoid an unreasonable risk to health. The State may require a public water system to use point-of-entry devices as a condition for granting an exemption from the source water and lead service line replacement requirements for lead and copper under §§ 141.83 or 141.84 to avoid an unreasonable risk to health.

(g) Public water systems that use bottled water as a condition for receiving a variance or an exemption from the requirements of § 141.61 (a) and (c) and § 141.62, or an exemption from the requirements of §§ 141.81-141.84 must meet the requirements specified in either paragraph (g)(1) or (g)(2) and paragraph (g)(3) of this section:

(1) The Administrator or primary State must require and approve a monitoring program for bottled water. The public water system must develop and put in place a monitoring program that provides reasonable assurances that the bottled water meets all MCLs. The public water system must monitor a representative sample of the bottled water for all contaminants regulated under § 141.61 (a) and (c) and § 141.62 during the first three-month period that it supplies the bottled water to the public, and annually thereafter. Results of the monitoring program shall be provided to the State annually.

(2) The public water system must receive a certification from the bottled water company that the bottled water supplied has been taken from an "approved source" as defined in 21 CFR 129.3(a); the bottled water company has conducted monitoring in accordance with 21 CFR 129.80(g) (1) through (3); and the bottled water does not exceed any MCLs or quality limits as set out in 21 CFR 102.35, 110, and 129. The public water system shall provide the

certification to the State the first quarter after it supplies bottled water and annually thereafter. At the State's option a public water system may satisfy the requirements of this subsection if an approved monitoring program is already in place in another State.

(3) The public water system is fully responsible for the provision of sufficient quantities of bottled water to every person supplied by the public water system via door-to-door bottled water delivery.

(h) * * *

(7) In requiring the use of a point-of-entry device as a condition for granting an exemption from the treatment requirements for lead and copper under § 141.83 or § 141.84, the State must be assured that use of the device will not cause increased corrosion of lead and copper bearing materials located between the device and the tap that could increase contaminant levels at the tap.

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Part III

Department of Education

**Demonstration Centers for the Training
of Dislocated Workers Program; Notice
Inviting Applications for New Awards for
Fiscal Year 1992; Notice**

DEPARTMENT OF EDUCATION

[CFDA No.: 84.193]

Demonstration Centers for the Training of Dislocated Workers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To provide financial assistance to establish one or more demonstration centers to retrain dislocated workers. The center or centers may provide for the recruitment of unemployed workers, vocational evaluation, assessment and counseling services, vocational and technical training, support services, and job placement assistance. The design and operation of each center must provide for the utilization of appropriate existing Federal, State, and local programs.

The Secretary wishes to highlight for potential applicants America 2000: The President's Education Strategy to move the Nation toward the national education goals establishing educational excellence for all Americans. The Demonstration Centers for the Training of Dislocated Workers Program is one means of transforming America into a Nation of Students and strengthening the Nation's education effort for yesterday's students who are today's workers. The President believes that learning is a life-long challenge. Approximately 85 percent of America's workers for the year 2000 are already in the workforce. Improving schools for today's and tomorrow's students is not sufficient to ensure a competitive America in the year 2000. The President has called on Americans to move from A Nation at Risk to A Nation of Students by continuing to enhance the knowledge and skills of all Americans.

Eligible Applicants: Any private nonprofit organization that is eligible to receive funds under the Job Training Partnership Act.

Deadline for Transmittal of Applications: August 2, 1991.

Deadline for Intergovernmental Review: October 2, 1991.

Available Funds: \$500,000.

Estimated Number of Awards: 1.

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 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses); and (b) The regulations for this program in 34 CFR 411.

Invitational Priority: The Secretary invites applications from eligible applicants associated with community colleges having existing dislocated worker retraining programs in which there is significant State, local, or private sector involvement, commitment, and support, and having the capacity to disseminate information to other dislocated worker retraining centers across the country. However, under 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses. The Secretary assigns the fifteen points, reserved in 34 CFR 411.30(b), as follows: 5 points to selection criterion (b)—Plan of Operation—in 34 CFR 411.31(b) for a total of 20 points for that criterion; and 5 points to selection criterion (c)—Quality of Training—in 34 CFR 411.31(c) for a total of 10 points for that criterion; 5 points to selection criterion (f)—Evaluation Plan—in 34 CFR 411.31(f) for a total of 10 points for that criterion.

(a) *Need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for the proposed demonstration center.

(2) The Secretary looks for information that shows—(i) Specific evidence of the need for the proposed

demonstration center, including evidence of a high concentration of dislocated workers in the area to be served;

(ii) How the need will be met; and
(iii) Ongoing and planned activities in the community pertaining to the proposed demonstration center, where appropriate.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of training.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the training to be provided.

(2) The Secretary looks for information that shows—(i) The training is appropriate for the trainees in light of the labor market; and

(ii) Trainees will receive appropriate counseling.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (d)(2)(i) and (ii) will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from

persons who are members of groups that have been traditionally underrepresented, such as—

- (A) Members of racial or ethnic minority groups;
- (B) Women;
- (C) Handicapped persons; and
- (D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference: See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(h) *Private sector involvement.* (5 points)

(1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—(i) The private sector involvement in the planning of the project; and

(ii) The private sector involvement in the operation of the project.

(i) *Employment opportunities.* (5 points)

The Secretary looks for information on and documentation of the extent to which trainees will be employed in jobs related to their training upon completion of their training.

(j) *Dissemination.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant has an effective and efficient plan for disseminating information about the project, including the results of the project and any specialized materials developed by the project.

(2) The Secretary looks for information that shows—(i) The design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(ii) A description of the types of materials the applicant plans to make available and the methods for making the materials available;

(iii) Provisions for demonstrating the methods and techniques used by the project;

(iv) Provisions for assisting others to adopt and successfully implement the project or methods and techniques developed by the project; and

(v) Provisions for publicizing the findings of the project at the local, State, or national level. (Approved under OMB Control No. 1830-0013)

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 17, 1990, pages 38210-38211.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, Executive Order

12372—CFDA# 84.193, U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202-0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.193), Washington, DC 20202-4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.193), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application notice is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden. Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED form 80-0013) and instructions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80-0014, 9/90) and instructions.

Note: ED Form 80-0014 is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and

the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Further Information Contact: Paul R. Geib Jr., Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4521, Mary E. Switzer Building), Washington, DC 20202-7327. Telephone (202) 732-2364. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 Area Code, telephone 708-9300) between 8 a.m. and 7 p.m. Eastern time.

Program Authority: 20 U.S.C. 2441(b).

Dated: May 30, 1991.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

| | | | |
|--|----|--|---|
| 1. TYPE OF SUBMISSION: <i>Application</i> <input type="checkbox"/> Construction <input checked="" type="checkbox"/> Non-Construction <i>Preapplication</i> <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction | | 2. DATE SUBMITTED | Applicant Identifier |
| | | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |
| 5. APPLICANT INFORMATION | | | |
| Legal Name: | | Organizational Unit: | |
| Address (give city, county, state, and zip code): | | Name and telephone number of the person to be contacted on matters involving this application (give area code) | |
| 6. EMPLOYER IDENTIFICATION NUMBER (EIN): [] [] - [] [] [] [] [] [] [] [] | | 7. TYPE OF APPLICANT: (enter appropriate letter in box) <input type="checkbox"/> | |
| 8. TYPE OF APPLICATION: <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/> A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____ | | A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify): _____ | |
| 10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: TITLE: Demonstration Centers for Training of Dislocated Workers | | 9. NAME OF FEDERAL AGENCY: U.S. Department of Education | |
| 12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): | | 11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: | |
| 13. PROPOSED PROJECT: Start Date Ending Date | | 14. CONGRESSIONAL DISTRICTS OF: a. Applicant b. Project | |
| 15. ESTIMATED FUNDING: | | 16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS? | |
| a. Federal | \$ | .00 | a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____ b. NO. <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372 <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW |
| b. Applicant | \$ | .00 | |
| c. State | \$ | .00 | |
| d. Local | \$ | .00 | |
| e. Other | \$ | .00 | |
| f. Program Income | \$ | .00 | |
| g. TOTAL | \$ | .00 | |
| 17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? <input type="checkbox"/> Yes If "Yes," attach an explanation. <input type="checkbox"/> No | | | 18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED |
| a. Typed Name of Authorized Representative | | b. Title | |
| d. Signature of Authorized Representative | | e. Date Signed | |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
 Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry: | Item: | Entry: |
|-------|--|-------|--|
| 1. | Self-explanatory. | 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). | 13. | Self-explanatory. |
| 3. | State use only (if applicable). | 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. | 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <i>only</i> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. | 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 7. | Enter the appropriate letter in the space provided. | 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. | | |
| 9. | Name of Federal agency from which assistance is being requested with this application. | | |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. | | |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. | | |

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A — BUDGET SUMMARY

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | Total (g) |
|--|---|-----------------------------|-----------------|-----------------------|-----------------|-----------|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | |
| 1. Demo. Center Disl. Wkrs | 84.193 | \$ | \$ | \$ | \$ | \$ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | \$ | \$ | \$ | \$ | \$ |

SECTION B — BUDGET CATEGORIES

| Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | | Total (5) |
|--|-------------------------------------|-----|-----|-----|-----|-----------|
| | (1) | (2) | (3) | (4) | (5) | |
| a. Personnel | \$ | \$ | \$ | \$ | \$ | \$ |
| b. Fringe Benefits | | | | | | |
| c. Travel | | | | | | |
| d. Equipment | | | | | | |
| e. Supplies | | | | | | |
| f. Contractual | | | | | | |
| g. Construction | | | | | | |
| h. Other | | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | | |
| j. Indirect Charges | | | | | | |
| k. TOTALS (sum of 6i and 6j) | \$ | \$ | \$ | \$ | \$ | \$ |

| | | | | | | |
|-------------------|----|----|----|----|----|----|
| 7. Program Income | \$ | \$ | \$ | \$ | \$ | \$ |
|-------------------|----|----|----|----|----|----|

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

| SECTION C - NON-FEDERAL RESOURCES | | | | | |
|---|--------------------------------|-------------|-------------------|-------------|----|
| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS | |
| 8. Demonstration Center - Dislocated Workers | \$ | \$ | \$ | \$ | \$ |
| 9. | | | | | |
| 10. | | | | | |
| 11. | | | | | |
| 12. TOTALS (sum of lines 8 and 11) | \$ | \$ | \$ | \$ | \$ |
| SECTION D - FORECASTED CASH NEEDS | | | | | |
| Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter | |
| 13. Federal | \$ | \$ | \$ | \$ | \$ |
| 14. NonFederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | \$ | \$ | \$ | \$ | \$ |
| SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT | | | | | |
| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | | |
| | (b) First | (c) Second | (d) Third | (e) Fourth | |
| 16. | \$ | \$ | \$ | \$ | \$ |
| 17. | | | | | |
| 18. | | | | | |
| 19. | | | | | |
| 20. TOTALS (sum of lines 16-19) | \$ | \$ | \$ | \$ | \$ |
| SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary) | | | | | |
| 21. Direct Charges: | | | | | |
| 22. Indirect Charges: | | | | | |
| 23. Remarks | | | | | |

Part II—Budget Information

This form is designed so that application can be made for funds from the Demonstration Centers for the Training of Dislocated Workers Program (CFDA No. 84.193). Sections A, B, and C should include budget estimates for the entire project period.

Note: Sections D and E need not be completed to apply for this program.

All applications should contain a breakdown by the object class categories shown in section B. Lines 6a through 6j.

Section A. Budget Summary

Line 1, Columns (a) through (g)—Enter on Line 1 the catalog program title in Column (a) and the catalog program number in Column (b). Leave Columns (c) and (d) blank. Enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the entire project period.

Note: Lines 2, 3, 4, and 5 of Section A need not be completed to apply for this program.

Section B. Budget Categories

Lines 6a through 6j—Fill in the total requirements for Federal funds by object class categories for the entire project period in Column (1).

Line 6a—Personnel: Show salaries and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included in Line 6f.

Line 6b—Fringe Benefits: Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits to personnel are treated as part of the indirect cost rate.

Line 6c—Travel: Indicate the amount requested for travel of employees.

Line 6d—Equipment: Applicants who are institutions of higher education, hospitals, or nonprofit organizations must indicate the cost of nonexpendable personal property which has a useful life of more than one year and an acquisition cost of \$300 or more per unit. Applicants who are State or local governments must indicate the cost of nonexpendable personal property which has a useful life of more than one year and an acquisition cost of \$5000 or more per unit.

Line 6e—Supplies: Include the cost of consumable supplies to be used in this project. These should be items which cost less than \$300 per unit with a useful life of less than one year if an applicant is an institution of higher education, a hospital, or a nonprofit organization, or items which cost less than \$5000 per unit with a useful life of less than one year if

an applicant is a State or local government.

Line 6f—Contractual: Show the amount to be used for: (a) Procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (b) payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc.

Line 6g—Construction: Construction expenses generally are not allowed.

Line 6h—Other: Indicate all direct costs not clearly covered by lines 6a through 6g.

Line 6i—Total Direct charges: Show total of Lines 6a through 6h.

Line 6j—Show the amount of indirect cost to be charged to the project.

Note: The indirect cost rate for training projects cannot exceed eight percent of total direct charge.

Line 6k—Enter the total of the amounts on Lines 6i and 6j.

Line 7—Program Income: Unless program income, as defined and explained in Subpart F—Grant-Related Income of 34 CFR 74 or 34 CFR 80.25 is anticipated, leave this line blank.

Section F. Other Budget Information

Prepare a detailed Budget Narrative that explains, justifies, and/or clarifies the budget figures shown in sections A, B, and C.

Section C. Non-Federal Resources

Line 8—Enter any amounts of non-Federal resources that will be used on the grant. If any in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the catalog program title.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter the totals of Columns (b), (c), and (d).

Note: The amount shown on line 8 column (e), should be the same as the figure shown on section A, Line 1, Column (f).

Note: Lines 9, 10, 11, 12 of section C need not be completed to apply for this program.

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program,

the information regarding the invitational priority, and the selection criteria the Secretary uses to evaluate applications.

34 CFR 75.112 of the Education Department General Administrative Regulations (EDGAR) requires the following:

(a) An application must propose a project period for the project.

(b) An application must describe when, in each budget period of the project, the applicant plans to meet each objective of the project.

34 CFR 75.117 of the Education Department General Administrative Regulations (EDGAR) requires the following:

An applicant that proposes a multi-year project shall include in its application:

(a) Information that shows why a multi-year project is needed;

(b) A budget for the first budget period of the project; and

(c) An estimate of the Federal funds needed for each budget period of the project after the first budget period.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 30 double-spaced, typed, 8½" × 11" pages (on one side only), although the Secretary will consider applications of greater length. Be sure that each page of the application is numbered consecutively.

Supporting documentation (e.g., letters of support, footnotes, resumes, etc.) may be submitted as applicants are advised that:

(1) Under 34 CFR 75.217 of the Education Department General Administrative Regulations (EDGAR), the Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels.

(2) In reviewing applications, the technical review panel evaluates each application solely on the basis of the established selection criteria. Letters of support contained in the application will strengthen the application only insofar

as they contain commitments which pertain to established selection criteria.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public

reporting burden for this collection of information is estimated to average 20 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. You may 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, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project, 1830-0013, Washington, DC 20503.

(Information collection approved under OMB control number 1830-0013. Expiration date: 10/31/92.)

BILLING CODE 4000-01-M

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

| | |
|---|----------------|
| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
| APPLICANT ORGANIZATION | DATE SUBMITTED |

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 -

A. The applicant certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

- (1) Abide by the terms of the statement; and
- (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 —

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| | |
|---|-------------------------------------|
| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

| | |
|---|-------------------------------------|
| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes 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 the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

federal register

**Friday
June 7, 1991**

Part IV

Department of Defense

Department of the Air Force

**Scientific Advisory Board; Notice of
Meeting**

DEPARTMENT OF DEFENSE

Department of the Air Force

**USAF Scientific Advisory Board;
Meeting**

The USAF Scientific Advisory Board of the Ad Hoc Committee Study of Off-Board Sensors—Summer Study 1991 will

meet on 24–27 June 1991 from 8 a.m. to 5 p.m. at the Pentagon, Washington, DC.

The purpose of this meeting is to receive presentations of Air Force projects and programs relevant to the concept using off-board sensors data to support air combat operations. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States

Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4648.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.
[FR Doc. 91-13683 Filed 6-6-91; 10:37 am]

BILLING CODE 3910-01-M

Federal Register

Department of Defense
Department of the Air Force
Scientific Advisory Board Meeting

federal register

Friday
June 7, 1991

Part V

The President

**Executive Order 12764—Federal Salary
Council**

FORM 1
JUNE 1, 1957

Part V

The President

Executive Order 12764—Federal Safety
Council

BRADY'S REGISTER

Presidential Documents

Title 3—

Executive Order 12764 of June 5, 1991

The President

Federal Salary Council

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5304(e) of title 5, United States Code, as amended, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), an advisory committee on locality-based comparability payments for General Schedule employees, it is hereby ordered as follows:

Section 1. Establishment. There is established a Federal Salary Council (the "Council"). The Council shall be composed of nine members appointed by the President in accordance with section 5304(e)(1) of title 5, United States Code. The President shall designate one of the members to serve as Chairman of the Council and shall designate another member to serve as Vice Chairman of the Council. The Vice Chairman shall act as Chairman in the absence of the Chairman.

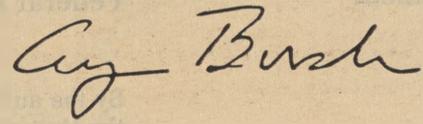
Sec. 2. Function. The Council shall meet with the President's Pay Agent, as designated under section 2(a) of Executive Order No. 12748 of February 1, 1991, to provide views and recommendations regarding:

- (a) the establishment or modification of pay localities;
- (b) the coverage of annual surveys conducted by the Bureau of Labor Statistics under subsection 5304(d)(1)(A) of title 5, United States Code (including, but not limited to, the occupations, establishment sizes, and industries to be surveyed, and how pay localities are to be surveyed);
- (c) the process of comparing the rates of pay payable under the General Schedule with rates of pay for the same levels of work performed by non-Federal workers; and
- (d) the level of comparability payments that should be paid in order to eliminate or reduce pay disparities in accordance with the requirements of section 5304 of title 5, United States Code.

Sec. 3. Administration. (a) Members of the Council shall receive no pay by reason of their service on the Council.

(b) To the extent permitted by law and subject to the availability of appropriations, the Office of Personnel Management (the "Office") shall provide such facilities and administrative support to the Council as the Director of the Office determines appropriate.

(c) Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Council, shall be performed by the Director of the Office, in accordance with the guidelines and procedures established by the Administrator of General Services.



THE WHITE HOUSE,
June 5, 1991.

[FR Doc. 91-13800
Filed 6-8-91; 11:47 am]
Billing code 3195-01-M

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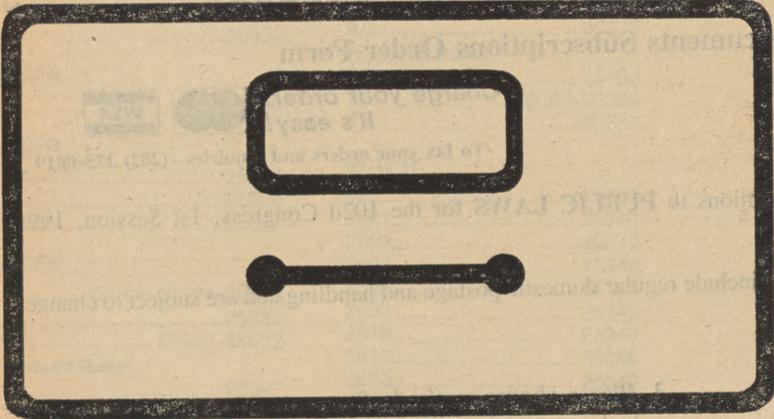
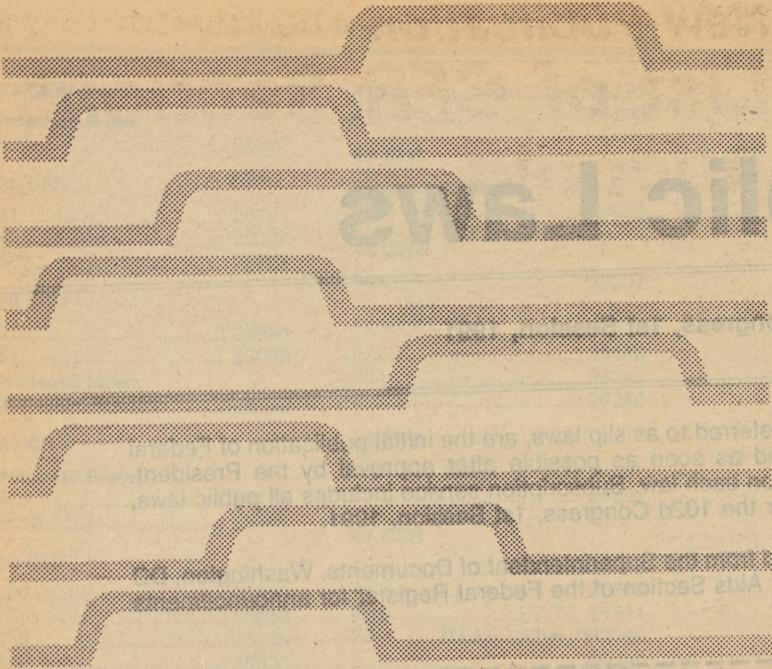
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Guide to Record Retention Requirements in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1991

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

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